AWARD NO. 460
CASE NO. CL-150-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE ) Transportation-Communications International Union and The Atchison, Topeka and Santa Fe Railway Company

QUESTIONS AT ISSUE:

1. Has an extra protected employe who has laid off sick on four occasions, all with proper cause, when called for extra work "engaged in a consistent pattern of conduct of refusing to accept calls to perform extra work" within the meaning of Award No. 6, Case No. H&RE-1-E, of Special Board of Adjustment No. 605?

2. Should Carrier be required to restore protection to M. E. Obirek and compensate him for all loss of compensation as a result of Carrier rescinding his protection on June 13, 1985?

3. Should Carrier be required to pay 18% per annum interest on the amount due M. E. Obirek as a result of said loss?

OPINION OF THE BOARD: Claimant held an August 22, 1974 seniority date on the Chicago Terminal Division Station Department Seniority District, and thus he was a protected employee under the February 7, 1965 Agreement, as amended.

On May 8, 1985, the Carrier called Claimant to work a Tower Janitor vacancy. Asserting that he was ill, Claimant declined the call. On May 12, 1985, the Carrier called Claimant to fill a temporary, two-week vacancy as a Car Shop Janitor. On May 13, 20 and 21, 1985, Claimant contacted the Carrier and said he was sick. Claimant was absent from work on those three dates. Because Claimant refused to perform extra work four times during May, 1985, the Carrier revoked Claimant's Rule 14-B notice of

availability and consequently suspended his protected status pursuant to Article II, Section 1 of the amended February 7, 1965 Mediation Agreement.

In Award No. 458, this Board extensively discussed the guidelines for determining the level of employee unavailability which justifies the suspension of his protective status in accord with Article II, Section 1 and agreed-upon Question and Answer No. 4 (under Article II). We stressed that the Carrier had to take into consideration the reason the employee fails to respond to a call to perform extra work or protect a temporary vacancy. In this case, the Carrier did not conduct an individualized evaluation of Claimant's availability on an equitable basis as contemplated by Question and Answer No. 4. Specifically, the Carrier never directly refuted the Organization's assertion that the Carrier granted Claimant permission to be absent due to illness. Indeed, Claimant received sick pay. Therefore, Claimant had good and sufficient cause to be absent on the four days in May, 1985.

The Carrier vigorously argues that Claimant refused to protect extra work at an abnormally high rate (missing calls or marking off when called relative to the number of times he was called to work short vacancies) during May, June and July, 1985. While the Carrier may properly consider Claimant's unavailability over a reasonable period of time (on a percentage basis), in this case, the Carrier focused solely on a narrow thirty day period and mechanically applied its policy of revoking an employee's notice of availability whenever a worker was absent three or more days

during any thirty day period. For the reasons more fully set forth in Award No. 458, the Carrier improperly suspended Claimant's protective status, but we do not express any opinion on whether or not Claimant was unavailable an excessive amount of time subsequent to May, 1985.

AWARD

1. The Answer to Question No. 1 is No.
2. The Answer to Question No. 2 is Yes.
3. The Answer to Question No. 3 is No.

John B. LaRocco
Neutral Member

Dated: November 7, 1988