Award No. 25
Case No. CL-23-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and New York, New Haven & Hartford Railroad Company

QUESTIONS AT ISSUE:

(1) Did the Carrier violate the provisions of the February 7, 1965 Agreement when, on July 1, 1965 it refused to thereafter compensate Mr. E. Moriarty, Chief Clerk, seniority date 1-19-19, in accordance with the provisions of Article IV?

(2) Shall Carrier now be required to restore Mr. Moriarty to a fully protected status and compensate him in accordance with the provisions of Article IV, Section 1, for all wage loss suffered commencing July 1, 1965 and each day thereafter?

OPINION OF BOARD:

The facts which gave rise to the instant dispute are as follows:

On May 1, 1965, Claimant Moriarity was displaced from his position of Chief Clerk. Thereafter, the Claimant bumped a junior employee with a decrease in rate of .876 cents per day, or $4.38 per week.

The February 7, 1965 National Agreement, required approval of the Court before it could become effective on this property as the Carrier was under the supervision of Trustees. On August 19, 1965, the parties entered into a Letter Agreement supplementing a Petition to the Court, requesting such approval in order to permit the Carrier to comply with the National Agreement. Thereafter, on September 14, 1965, the Court authorized the Trustees to comply with the National Agreement.

In summary, the Claimant was displaced to a lower rated position on May 1, 1965. The February 7, 1965 National Agreement was not effective on this property until July 1, 1965, pursuant to the Letter Agreement of August 19, 1965 and the Court Order of September 14, 1965. However, the Letter Agreement also included the following paragraph which is the genesis of this dispute:

"2. Any non-compliance with the Agreement by the Trustees prior to July 1, 1965 is waived and deemed released."

Thus, the issue posed is whether the Organization waived its right to process any claims resulting from changes which occurred prior

to July 1, 1965. We do not believe that such waiver was contemplated by the parties. In our view, the intent of item 2 of the August 19, 1965 Letter Agreement was not designed to destroy any claim which arose prior to July 1, 1965. Rather, we believe they only agreed to waive any retroactive monetary damages which may have accrued prior thereto. Hence, the claim is valid.

Award

The answer to Questions 1 and 2 is in the affirmative.

Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
January 24, 1969