Award No. 142
Case No. CL-7-SE

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE ) Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express & Station Employes and Chesapeake and Ohio Railway Company (Chesapeake District)

QUESTIONS AT ISSUE:

(1) Are Mrs. Patricia K. McKown and Mrs. Mary P. Collier "protected employes" under the Agreement of February 7, 1965?

(2) Shall the Carrier now treat Mrs. McKown and Mrs. Collier as protected employes and compensate them for any losses they have sustained by reason of its failure to so treat them?

OPINION OF BOARD: Claimants McKown and Collier were furloughed October 1, 1956, and August 29, 1958, respectively. Both Claimants, thereafter, filed letters pursuant to Rule 18 (d) and (e), to protect extra work at Ashland and to be called back for a bulletined position there. In 1964, McKown worked 86 days and Collier worked 94 days. The Organization concedes that there were positions available at Lexington - - 123 miles distant - - and at Shelby - - 118 miles distant.

Rule 18 of the effective Agreement on the property, provides that furloughed employees may limit their availability to home station or terminal. Thereafter, each of the Claimants responded to all calls at Ashland. It is the Carrier's contention that the Claimants voluntarily restricted their availability for all calls for extra work.

Therefore, the issue posed herein is whether pursuant to Article I, Section 1, of the February 7, 1965 National Agreement, the Claimants are protected employees. In the November 24, 1965 Interpretations, the following paragraph is contained on Page 1, thereof:

> "Employes who were on furlough on October 1, 1964 and who were not then available for all calls because of restrictions they had voluntarily placed on their availability are not to be considered in 'active service' on that date."

The Organization argues that these Claimants were in active service inasmuch as they averaged more than seven days per month in 1964. A number of problems are herein presented. Foremost, is the fact that the Interpretations specifically provide that one is not considered to be in active service if unavailable for all calls because of a voluntary restriction. The

language is unambiguous--available for all calls--True, the effective local Agreement permitted such restriction to be placed on one's availability without suffering a loss of seniority.

The Organization further argues that such was not a voluntary restriction, but rather one which flowed from the effective Agreement. However, the effective Agreement merely granted an employee the privilege of restricting his availability to the home station. It did not require nor obligate the employee to restrict his availability.

Our attention has also been directed to Awards 51 and 138. It should be noted that the Labor Members filed a dissent thereto. In Award No. 138, the Referee held as follows:

> "Since he was furloughed from the position in which he held seniority, and he had placed restrictions on his availability, the requirements of the February 7, 1965, Agreement were not met by Claimant."

We are impelled to recognize this Award in an effort to maintain consistency. We would, however, indicate that there appears to be some inconsistency due to the fact that the preceding paragraph of the November 24, 1965 Interpretations, on Page 1, defines active service for a furloughed employee as one who averages seven days or more per month in 1964.

AWARD

The answer to questions 1 and 2 is in the negative.

Murray M. Rohman
Neutral Member

Dated: Washington, D.C.
November 17, 1969