Award No. 175
Case No. CL-49-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE ) Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and Houston Belt and Terminal Railway

QUESTIONS AT ISSUE:

1. Is Wesley Brown a protected employe under the provisions of Article I, Section 1 of the February 7, 1965 Agreement?

2. Shall the Carrier be required to compensate Wesley Brown the wage losses he suffered on and after March 1, 1965?

OPINION OF BOARD: Since May 22, 1946, Claimant was one of the regularly assigned employees on the Mail and Baggage Porter position. In the Fall of 1962, a reduction in force caused abolishment of one of the two Mail and Baggage Porter positions. Despite Claimant's seniority, he could not displace junior employees due to his inability to either read or write. However, he was retained on the seniority roster, furloughed and available for extra calls. Since then, he has been called for extra janitor work and in 1964, performed 133 days of compensated service.

The Organization contends that the Claimant is a protected employee pursuant to Article I, Section 1, of the February 7, 1965 National Agreement. The pertinent portion of said Section provides that ". . . furloughed employees who respond to extra work when called, and have averaged at least 7 days work for each month furloughed during the year 1964."

The Carrier defends its position that Claimant should not be considered a protected employee because, "Mr. Brown voluntarily placed restrictions upon his availability for extra work and, therefore, could not be considered as responding to calls for such work." In addition, it alleges that Claimant ". . . failed to retain or obtain a position available to him in the exercise of his seniority."

Thus, the question presented is whether Claimant is entitled to protected compensation pursuant to Article IV, Section 2, of the February 7, 1965 Agreement.

Our attention has also been directed to the November 24, 1965 Interpretations of Article I, Section 1. Page 1 thereof, contains the following:

> "Employees who were on furlough on October 1, 1964 and 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."

In this posture, our analysis indicates that Claimant lacks the ability to read or write. Furthermore, the Carrier alleges that Claimant voluntarily restricted his availability for all calls, as well as a failure to obtain a position available to him in the exercise of his seniority.

What proof do we find in the submission to support the Carrier's defenses? In this regard, the record is barren of a scintilla of evidence to buttress the Carrier's assertions. Previously, we stated the Rule that a party who alleges a defense is obligated to prove that defense. A mere allegation is not a substitute for proof.

It is, therefore, our conclusion that under the circumstances prevalent herein, Claimant is a protected employee.

Award:

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

Murray M. Rohman
Neutral Member

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