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NATIONAL RAILWAY LABOR CONFERENCE

1225 CONNECTICUT AVENUE, N.W., WASHINGTON, D. C. 20036/AREA CODE: 202-659-9320

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January 25, 1971

Mr. Milton Friedman
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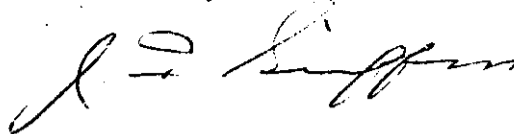
Mr. Nicholas H. Zumas
1225 - 19th Street, N. W.
Washington, D. C. 20036

Gentlemen:

This will supplement our previous letters with which were forwarded to you copies of Awards of Special Board of Adjustment No. 605 established by Article VII of the February 7, 1965 Agreement.

There are attached copies of Awards Nos. 233 to 238 inclusive, dated January 19, 1971, rendered by Special Board of Adjustment No. 605.

Yours very truly,



cc: Messrs.

- G. E. Leighty (10)
- A. R. Lowry (2)
- H. C. Crotty (2)
- C. J. Chamberlain (2)
- J. J. Berta
- M. Frye
- S. Placksin
- T. A. Tracy (3)

J. J. Besta (1)

AWARD NO. **233**
Case No. TCU-71-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) St. Louis-San Francisco Railway Company
TO THE) and
DISPUTE) Transportation-Communication Employees Union

QUESTION
AT ISSUE:

Does a protected employee whose preservation of compensation is computed under Article IV, Section 2 sacrifice any compensation guarantee for the reason that* he bid in a regular position when such became available to him after December 24, 1965?

OPINION
OF BOARD:

Following the asterisk in the above question as it was submitted by the Organization there appear the words, "to retain his protected employee status." By agreement of the members of the Disputes Committee, the question as phrased did not comprehend the factual dispute which must be resolved, and therefore it was agreed to reframe the issue in a way which would permit the answer to apply to the facts in the case.

Claimant was an extra employee on October 1, 1964, with his compensation preserved in accordance with Article IV, Section 2. The following denotes his record since October 1, 1964 to the date of his claim, with the rates of pay shown in 1966 equivalents in all cases for purposes of uniformity:

1. During October, 1964, Claimant bid into and was assigned the regular position of Telegrapher-Leverman Position No. 2, Ky St., Memphis, at a rate which in 1966 was \$2.8208. His compensation continued to be

preserved at his earnings as an extra employee which were more than those of his position.

2. On October 4, 1965, a junior employee was assigned to Telegrapher-Clerk Position No. 2, Tennessee Yard, Memphis, when Claimant failed to bid on it, although its rate of \$2.8428 was higher than he was then receiving. In accordance with Article IV, Section 4, Claimant was thereafter treated as if he were receiving the higher rate.
3. On July 12, 1966, after his bid on Relief Telegrapher Position No. 1, Tennessee Yard, Memphis, was accepted, Claimant was assigned this position which paid \$2.8428. However, he was not permitted to occupy it as of July 28.
4. On July 28, 1966, Claimant bid, and on August 8, 1966, was assigned to, Relief Telegrapher Position No. 17, Ky. St, Memphis, paying \$2.8208.

Up until this last change, Claimant's compensation had been preserved in accordance with Article IV, Section 2, although he had been treated since October 4, 1965, as if he earned \$2.8428 rather than \$2.8208, which is in accordance with Article IV, Section 4. From August 8, 1966, on, Carrier no longer considered Claimant's protected rate to be that which he had formerly enjoyed as an extra employee, but rather that of the new position, on the ground that he had voluntarily bid into it. Article IV, Section 3, states:

Any protected employee who in the normal exercise of his seniority bids in a job or is bumped as a result of such an employee exercising his seniority in the

normal way by reason of a voluntary action, will not be entitled to have his compensation preserved as provided in Sections 1 and 2 hereof, but will be compensated at the rate of pay and conditions of the job he bids in...

Until July 12, when Claimant was assigned Telegrapher Position No. 1 at a higher rate than he had been earning, there can be no dispute that Claimant's compensation was properly computed. He was properly treated in October, 1965, as if he occupied the position of Telegrapher-Clerk at Tennessee Yard, in accordance with Article IV, Section 4. In connection with the 1966 events, it must be determined whether Claimant is properly considered to have held the higher-rated position of Telegrapher No. 1, which was bulletined on July 1, 1966 and to which he was assigned on July 12, but which he did not occupy. For, if he did, then he voluntarily gave up that position while it was still his under the schedule agreement, in order to obtain a lower-paid position, and Article IV, Section 3, comes into play.

According to the Organization, Claimant was unable to do the work of the Telegrapher Position No. 1, Tennessee Yard, for which he bid on July 12, 1966, and that was the reason he was not permitted to occupy it. Carrier denies this and the record does not support the Organization's assertion. Carrier's submission states that not only was Claimant able to do the work, but he had done it in the past and also states:

Prior to expiration of the thirty-day period, however, Relief Telegrapher Position No. 17 at Kentucky Street was bulletined on July 26, 1966 and a bid on this position was received on July 28, 1966 from Claimant Grady...It was obvious to Carrier officers upon receipt of Claimant Grady's bid on Relief Telegrapher Position No. 17 that to force him

onto Relief Telegrapher Position No. 1 would only disrupt other Organization employees on that seniority district. It was for this and the other reasons outlined above that Claimant Grady did not occupy Relief Position No. 1...

According to the schedule agreement, Carrier had 30 days in which to place Claimant on Relief Telegrapher Position No. 1. It was prior to the expiration of the 30-day period that Claimant bid a lower-paid position.

The schedule agreement provides:

Understandings Section (2): If a telegrapher bids in and is assigned a position in line with the schedule, that is his regular position whether he actually works it or not, and if he vacates it, it is a vacancy which should be bulletined. (Underlining added.)

Thus, under the schedule agreement Relief Telegrapher Position No. 1 became his regular assignment, although he had not actually worked it. In light of this, when Claimant bid a lower-rated position while the higher-rated position was his, he came squarely within the ambit of Article IV, Section 3, which states that such an employee no longer has his compensation preserved "as provided in Sections 1 and 2, but is compensated at the rate of the new job."

Article IV, Section 3, applies to all protected employees, whether their compensation has been preserved under Section 1 or Section 2. What Claimant did was to exercise his seniority voluntarily to obtain a lower-rated position and his guaranteed compensation is governed accordingly. This is emphasized by the Interpretations, which in Question and Answer No. 1 on Page 14 state that if an employee "considers another

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job more desirable...and he therefore bids in that job even though it may carry a lower rate of pay than the job he is holding," his rate becomes that of the job into which he voluntarily bids.

A W A R D

The Answer to the Question is Yes.


Milton Friedman
Neutral Member

Dated: January 19, 1971
New York, New York