

AWARD NO. **237**
Case No. MW-50-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) The Atchison, Topeka and Santa Fe Railway Company
TO THE) and
DISPUTE) Brotherhood of Maintenance of Way Employees

QUESTION
AT ISSUE:

Is Trackman D. E. Peacock entitled to sixty-four (64) days' pay because he was not offered employment in 1968 equivalent to his 1964 seasonal employment both as to period and as to compensation?

OPINION

OF BOARD: Claimant, a seasonal protected employee, was laid off from his position as Trackman in Joint Straightening Gang No. 4 in a force reduction on January 19, 1968. He was recalled to service in May. Claimant worked 64 days less than his guarantee. However, three other Trackmen, with seasonal guarantees considerably less than his but with greater seniority, continued to work between January and May in other positions. Each worked more than his guarantee, as shown:

	<u>1964 Guarantee</u>	<u>1968 Days Worked</u>
Claimant	243	179
T. M. Flores	183	232
R. L. Newman	197	230
C. M. Cole	207	233

Carrier contends that any of the three senior employees "could be considered as displacing D. E. Peacock, a junior seasonal employee, in working out the unexpired guarantee under the provisions set out in the November 24, 1965 Interpretations."

Question and Answer 5 on Page 6 of the Interpretations provides:

Question No. 5: May a senior seasonal employe displace a junior seasonal employe and, if so, under what circumstances?

Answer to Question No. 5: If a senior seasonal employe worked less in 1964 than a junior seasonal employe in the same seniority district or roster (the same territory if employment relationship governs) such senior seasonal employe will be permitted to displace the junior seasonal employe for the purpose of working out the unexpired guarantee that otherwise would accrue to the junior seasonal employe.

The evidence discloses that Claimant was not displaced by anyone. He was laid off and the position he had held on Joint Straightening Gang No. 4 was not filled by any of the three men. Answer No. 5 does not suggest that its conditions are met when an employee is "considered" to have displaced. It requires an actual displacement.

The Interpretations anticipate two events which did not occur in this case. One is that there be a displacement. The other is that the senior man, having worked out his guarantee, would proceed to work out the unexpired guarantee of the junior man. This did not occur, since Claimant was laid off at the start of the year, long before the stage when the senior men had worked out their guarantees.

In drafting the Interpretations the parties nowhere implied that a junior man would lose his guarantee upon layoff because a senior man happened to be working at the time. If that had been so, a junior protected man would never receive his guarantee, so long as senior protected men worked during

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the year on other jobs while the junior was laid off from his.
Carrier's construction which produces this result is erroneous.

A W A R D

The answer to the Question is Yes.

A handwritten signature in dark ink, appearing to read 'Milton Friedman', with a long horizontal flourish extending to the right.

Milton Friedman
Neutral Member

Dated: January 19, 1971
New York, New York