

AWARD NO. 241
Case No. MW-13-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Delaware and Hudson Railway Company
TO THE) and
DISPUTE) Brotherhood of Maintenance of Way Employees

QUESTIONS
AT ISSUE:

- (1) Did the Carrier violate the provisions of Article IV of the agreement when, for the period extending from November 1, 1968 through November 1969, it failed and refused to compensate furloughed Crossing Watchman John Andrejko at the normal rate of compensation attached to the position to which he was regularly assigned on October 1, 1964?
- (2) Shall the Carrier now be required to properly compensate John Andrejko in accordance with the provisions of Article IV, Section 1 for each work day for which he did not receive any compensation from this Carrier within the period extending from November 1, 1968 through November 30, 1969?

OPINION
OF BOARD:

In Award No. 169 it was held that this Claimant had not lost his protected status by virtue of events on March 16, 1967, and his claim was sustained. Carrier apparently paid the employee up through October, 1968, and the instant claim concerns compensation due thereafter. In effect, Carrier now urges that this claim should be denied because, on evidence not previously submitted, the earlier claim should have been denied.

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There is no contractual basis for reconsidering the finding that Claimant did not lose his protected status in March, 1967. Subsequent to that time, nothing occurred to cause a forfeiture of protection, for he has accepted all offers of temporary assignments. That a fresh look at the earlier case now might lead to a different result does not justify reconsideration. Litigation otherwise would be endless.

Since Claimant continued to be a protected employee in 1967 and through October, 1968, and did nothing thereafter to cause him to lose that status, the claim necessarily must be sustained.

A W A R D

The answer to the Questions is Yes.


Milton Friedman
Neutral Member

May 6, 1971
Washington, D. C.