

AWARD NO. 272
Case No. TCU-35-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Missouri Pacific Railroad Company
TO THE) and
DISPUTE) Transportation-Communication Employees Union

QUESTION
AT ISSUE:

Did Carrier violate the Agreement when on April 19, 1966, it removed the name of extra employee V. E. Kempfer from its list of protected employees and denied him compensation under Article IV from March, 1965?

OPINION

OF BOARD: Claimant's position was abolished on November 4, 1964. Pursuant to Article I, Section 1, he was a protected employee and his protected status was in effect on February 7, 1965.

In November, 1964, Claimant had told Carrier that he was taking a vacation. He never thereafter specifically advised Carrier of his availability. In fact, according to Carrier, Claimant had told the Chief Dispatcher that "he would take his vacation and then let the Chief Dispatcher know when he was ready to work;" he did not do so. Indeed, Claimant's uncle advised the Chief Dispatcher at one time that Claimant was working for a construction company and earning more money than he could on the railroad.

Carrier also asserts that Claimant failed to bid on vacant positions. Since he was working elsewhere, and had not indicated his availability to Carrier, this was a period of "other absence from the Carrier's service," under Article IV, Section 5, it was said, which required no benefits.

According to the Organization, Claimant told the Chief Dispatcher in November, 1964, that he was taking a vacation and would be ready to work when called thereafter, but was never

called. It appears that previously Claimant had been contacted through the Agent at Prairie du Rocher, Illinois, but this procedure was not utilized afterward.

The available evidence suggests that both sides shared responsibility for the situation which developed. Claimant had an obligation to advise Carrier of his availability, particularly in view of the absence of any address on file and the fact that he was fully occupied elsewhere. If there were work for Claimant, Carrier had the obligation to make an effort to reach him as it had done before, but relied on his alleged statement that he would communicate with Carrier after his vacation.

Claimant's absence from the scene was illustrated by the fact that until October he did not file any claim for compensation under the February 7 Agreement. On October 19, 1965, he filed claims for each month from February through September, and thereafter he filed monthly on Form 32179, the forms provided by Carrier "in the administration of the February 7, 1965 Agreement," according to the Organization.

It appears that Claimant did bid on vacant positions in October and November, 1965, but was not the senior applicant. It also appears that he did not fail to bid on any position which was obtainable by him in accordance with his seniority.

On May 5, 1966, Carrier stated that in view of Claimant's failure to displace in November, 1964, and his failure to advise of his availability thereafter, he had lost his protected status. However, prior Awards of this Committee have held that employees situated similarly to Claimant do not lose their protected status for actions consistent with the schedule agreement prior to February 7, 1965.

Thereafter, protected status cannot be lost by an employee unless his actions come within the ambit of Article II. Claimant was not called for extra work and he did not fail to accept any employment offered him by Carrier. In the absence of a showing that he failed to obtain a position available to him in accordance with his seniority, Carrier's action in May, 1966,


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was improper, particularly since he had signified by his actions from October, 1965, on that he was available for work.

As to compensation, Claimant's conduct demonstrated no readiness or availability to work during much of 1965, and Carrier took no exception to this state of affairs. Thus with Carrier's tacit approval, Claimant had removed himself from Carrier's service up until October, 1965, when he began filing Form 32179 and then bid for vacant positions in October and November. Since he had retained his protected status, and since he demonstrated his availability from October 18, 1965 on, compensation is due Claimant thereafter.

A W A R D

The answer to the Question is Yes, except that compensation was properly denied Claimant prior to October 18, 1965.


Milton Friedman
Neutral Member

Dated: Washington, D. C.

November 16, 1971