AWARD NO. 274
Case No. TCU-56-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE) Duluth Missabe and Iron Range Railway Company
and
Transportation-Communication Employees Union

QUESTION AT ISSUE: Are employees who have seniority in a craft or class, and perform service in from nine to twelve months each calendar year protected employees within the meaning of Article I, Section 1 and thus entitled to preservation of compensation as provided in Article IV, Section 2?

OPINION OF BOARD: Most of Carrier's business is transportation of iron ore from mines and processing plants in Northern Minnesota to Great Lakes docks. Ice conditions on the Great Lakes shut down such operations between December and March of each year; Carrier indicates that its "season" usually is from April through November.

The parties agree that this is a seasonal business. They agree that there are seasonal telegrapher positions. They disagree over whether Claimants are "seasonal employees," within the meaning of Article I, Section 2.

According to the Organization, some of the employees involved often work virtually a full year, but in any case they simply return to the extra list at the end of the ore shipping season and therefore, even though they are not called for work or are little used, they cannot be considered seasonal employees. Under the circumstances, the Organization contends, they must receive their guaranteed compensation on a year-round basis.

Carrier contends that the employees in question are, in fact, seasonal and meet the test of seasonal employees. It appears that many employees did not work at all during several of the winter months and some who worked occasionally limited their activities, apparently with Carrier's acquiescence.

The Organization states that where employees are shown to have declined work, no compensation would be due. It seeks to define a seasonal employee in terms of its schedule agreement. However, under the February 7 Agreement a seasonal employee is defined by the answer to Question No. 1 on Page 5 of the November 24 Interpretations. For the purposes of the February 7 Agreement, the Interpretations' definition is binding. It states:

> An employe is a "seasonal employe" within the meaning of this section if his employment during the years 1962, 1963 and 1964 followed a pattern of layoffs for seasonal reasons.

The test is a factual one, not an academic one. Whether an employee is or is not seasonal is determinable by looking at his employment record in these three consecutive years. To do so the records of the 11 employees in question must be evaluated on an individual basis.

The Organization's approach would give year-round compensation to employees who apparently never receive more than eight or nine months of work because of the nature of the business. The purpose of the February 7 Agreement is to protect employees' compensation and leave them whole, regardless of subsequent events which would otherwise place them in a worse position. It was not designed to provide a windfall to employees by giving them more than they normally earned. If the Organization's view were implemented, monthly income in December, January, February and March would go to employees who either never had any work in those months or had only a few scattered days of work.

The amount of time which employees worked during those four winter months for the three combined years of 1962-1964 is shown in the following table:

Employee	December-March 1962-1964 Total Days Worked	Average Days Worked Per Winter Month
Bebee	28	2
Olson	53	4
D. W. Carlson	0	0
Hussey	26	2
Bradt	221	18
L. C. Carlson	31	3
Peterson	143	12
Johnson	9	1
Anderson	30	3
Ronkainen	149	12
Stroschaen (deceased)	108	9

Source: Derived from Carrier's Exhibit B (11 pages).

Three employees worked the majority of the days during the winter months. They cannot be classified as seasonal employees. The others worked rarely and infrequently, with the possible exception of Mr. Stroschaen, who averaged nine days a month during the test years, but the bulk of his work was only in December of each year. Their work was so limited in the test years that their pattern of employment was plainly seasonal. Some of them who are shown in the above table to average a few

days per winter month, like Anderson and Johnson, worked not a single day from January through March during the three years.

Even the three who worked with considerable regularity were described by Carrier as refusing or not desiring to work the "south end." However, Carrier's acceptance of this situation does not detract from the non-seasonal character of their employment, if the employees nevertheless average two or three weeks a month during the winter months as did these men. Their mutually acceptable limitations on certain work cannot be construed as transforming them from regular employees into seasonal employees.

Consequently Mr. Bradt, Mr. Peterson and Mr. Ronkainen are protected as regular employees, but in view of Carrier's unchallenged statement that they limited their availability, compensation is not due them when they failed to take available south end work. The others are protected as seasonal employees.

A W A R D

The three Claimants who performed substantial service during the entire years 1962-1964--Bradt, Peterson, Ronkainen--are protected under Article I, Section 1, and entitled to preservation of compensation under Article IV, Section 2. The others, who are seasonal employees, are entitled solely to the benefits of Article I, Section 2.

Milton Friedman
Neutral Member

Dated:

Washington, D. C.

November 16, 1971