

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) The Denver and Rio Grande Western Railroad Company  
TO THE ) and  
DISPUTE ) Brotherhood of Maintenance of Way Employees

QUESTIONS

AT ISSUE: 1. Was the Carrier justified in dropping Work  
Equipment Operator J. R. Carlson "from the  
Protected Employees List, effective March 11,  
1970"

and, if not

2. (a) Shall Mr. J. R. Carlson be restored to  
his proper status as a seasonal pro-  
tected employee  
and  
(b) Shall Mr. J. R. Carlson be compensated  
for all loss of earnings suffered as a  
result of his improper removal from the  
protected list?

OPINION

OF BOARD: The issue is whether a seasonal protected employee  
must respond when recalled at the start of the season  
or may invoke Rule 13 of the seniority rules and report  
"within fifteen (15) calendar days from date recalled." That  
provision in the seniority rules is entitled "Recall to Service"  
and concerns the period within which an employee must report upon  
recall or else forfeit his seniority rights.

Claimant was recalled on March 11, 1970, and he advised  
Carrier that since he had 15 days in which to report, he would be  
available on March 24. (Actually another position closer to his  
home became available and he occupied it on March 23.) The  
parties disagree on whether or not Carrier acquiesced in Claim-  
ant's request for time to report. The allegation made by  
Claimant was denied and proof of any such agreement is lacking.

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The Organization relies upon Article II, Section 1, of the February 7 Agreement which provides that an employee loses protected status if he fails to "obtain a position available to him in accordance with existing rules." Since there is a rule permitting a furloughed employee 15 days in which he can respond, it was said, Claimant was justified in the delay.

Carrier cites Question and Answer No. 4 on Page 9 of the Interpretations dated November 24, 1965. It deals with the phrase in Article II, Section 1, concerning the obligation of a furloughed employee to respond to extra work when called. The Answer emphasizes that obligation, although it notes the need to handle "isolated incidents" on an equitable basis. However, the Answer ends with the following sentence:

Seasonal employees must respond when  
offered employment as provided in  
Article I, Section 2. (Underlining  
added.)

There are logical reasons why a protected seasonal employee must respond at the time he is called during the season if he is to be afforded protection. The Organization's suggestion that Carrier need not pay him for a delay in reporting begs the question since he is needed for seasonal purposes when called, just as a furloughed employee is needed promptly when called for extra work.

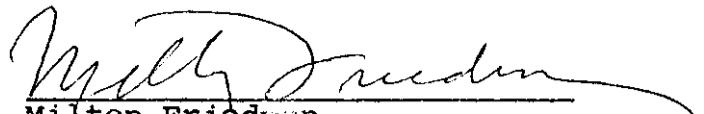
Moreover, the clause relied upon by the Organization in Article II, Section 1, is not attached to the provision obligating employees to respond when called. It refers to the failure of an employee to retain or obtain a position by the exercise of his seniority "in accordance with existing rules," which is altogether different from the obligation to heed a call by management. Indeed, the succeeding words in Article II, Section 1, are clear and specific. They provide without qualification for loss of protected status for "failure to accept employment as provided in this Article." A seasonal employee who must be offered employment during what necessarily

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is a limited period of the year must accept it when it is offered, in accordance with the Interpretation on Page 9, or else he has failed to comply with Article II, Section 1.

A W A R D

The answer to Question No. 1 is Yes.

  
Milton Friedman  
Neutral Member

Dated: Washington, D. C.  
November 17, 1971