NATIONAL RAILWAY LABOR CONFERENCE

1225 CONNECTICUT AVENUE, N.W., WASHINGTON, D. C. 20036/AREA CODE: 202—659-9320

WILLIAM H. DEMPSEY, Chairman M. E. PARKS, Vice Chairman W. S. MACGILL, Assistant to Chairman
JAMES A. WILCOX, General Counsel H. E. GREER, Director of Research J. F. GRIFFIN, Administrative Secretary

March 30, 1972

Dr. Murray M. Rohman
Professor of Industrial Relations
Texas Christian University
Fort Worth, Texas 76129

Mr. Milton Friedman
850 - 7th Avenue
New York, New York 10019

Mr. Nicholas H. Zumas
1225 - 19th Street, N. W.
Washington, D. C. 20036

Gentlemen:

This will supplement our previous letters with which we forwarded to you copies of Awards of Special Board of Adjustment No. 605 established by Article VII of the February 7, 1965 Agreement.

There are attached copies of Awards Nos. 292 to 295 inclusive, dated March 27, 1972 and Award No. 296, dated March 30, 1972, rendered by Special Board of Adjustment No. 605.

Yours very truly,

cc: Messrs.
G. E. Leighty (10)
C. L. Dennis (2)
C. J. Chamberlain (2)
M. B. Frye
H. C. Crotty
J. J. Berta
S. Z. Placksin (2)
R. W. Smith
T. A. Tracy (3)
W. S. Macgill
M. E. Parks
J. E. Carlisle
W. F. Euker
T. F. Strunck

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes and Central Railroad Company of New Jersey

QUESTIONS AT ISSUE:

1. Did the Carrier violate the provisions of the February 7, 1965 Agreement, particularly Article IV thereof, when it refused to compensate Mr. A. Brown for the month of January 1971?

2. Shall the Carrier be required to compensate Mr. A. Brown for the month of January 1971 in accordance with the terms of the February 7, 1965 Agreement?

3. Shall Carrier be required to compensate Mr. A. Brown for the month of January 1971, based on Carrier's failure to handle in accordance with existing time limit rules?

OPINION OF BOARD: On October 1, 1964, Claimant was a regularly assigned employee, therefore, he qualified as a protected employee pursuant to Article I, Section 1, of the February 7, 1965 National Agreement. Subsequently, upon abolishment of his position on December 8, 1970, and lacking seniority rights to enable him to obtain a regular position, Claimant filed Form "G", denoting his desire to be called for extra work. At the time that Claimant submitted Form "G", he also furnished his telephone number. Thereafter, in January, 1971, Claimant filed Form JCP--1--claim for compensation for the month of December, 1970--which was paid. In February, another claim was filed for the month of January, 1971, which was not paid and is the basis for the instant dispute.

Carrier defends its failure to allow the January claim predicated upon the discontinuance of the Claimant's telephone. It supports such disallowance of the guaranteed compensation by relying upon a "telephone agreement" executed on December 28, 1966; and subsequently revised on March 12, 1968. The substance of these agreements provide that protected furloughed employees will furnish their telephone number where they are to be called for extra work. Thus, the Carrier contends that a failure to furnish "their telephone number" will deprive protected furloughed employees the compensation due them under the terms of Article IV of the February 7, 1965 Agreement; and more importantly, such an employee will forever thereafter forfeit his protected status.

The Questions-At-Issue as framed in the submissions present two basic issues--namely, did Carrier violate Article IV when it refused to compensate Claimant for the month of January, 1971; and secondly, an alleged violation of the time limit rules.

Insofar as the alleged time limit rule violation is concerned, our careful reading of the submissions prepared by both parties indicate a complete absence of such contention ever having been raised on the property. Thus, the first instance when such allegation was raised is in the submissions to our Board. Under these circumstances, we would refer the parties to NDC Decisions 3, 5, 10 and 17--which provide that a "failure to raise that question on the property" bars its consideration.

Is a failure to provide their telephone number equivalent to a voluntary absence by the protected furloughed employee? Prior to answering the question we have posed, it is essential that we place in proper perspective the Carrier's arguments. It contends that a protected furloughed employee who fails to furnish "their" telephone number will forfeit his protected status--not only for a particular month--but permanently.

We have previously analyzed the provisions of Article II, Section 1, of the February 7, 1965 Agreement, and especially that portion, viz:

> An employee shall cease to be a protected employee in case of his - - -.
>
> A protected furloughed employee who fails to respond to extra work when called shall cease to be a protected employee.

Our cited decisions have uniformly held that where there has been a consistent pattern of declining calls for extra work, the furloughed employee will be deemed to have forfeited his protection. However, we would emphasize that this resulted from a refusal to respond when called. We repeat, when called! In this context, the Carrier concedes that Claimant was not called due to his failure to furnish a telephone number, although he had submitted an address.

We are also mindful of the fact that the telephone agreements executed by the General Chairman and the Carrier were signed on December 28, 1966 and March 12, 1968--long before Claimant was furloughed. What knowledge did he have of those provisions? We have searched the record for some evidence of notice to Claimant informing him of the necessity to furnish a telephone number. The minimal requirement we would expect in order to condone the severe result contemplated by Carrier, is a letter notifying Claimant of the Carrier's intent, in order to alert him to the consequences.

Hence, in this posture, we revert to the "Questions at Issue" contained in the Ex Parte submissions of the parties. The Carrier has not posed a different set of Questions at Issue than those contained in the Organization's submission. Despite the fact that the Carrier now argues on the basis of Article II, for a permanent forfeiture of protection, nevertheless, the issue before us is predicated only upon an alleged violation of Article IV--a failure to compensate Claimant for the month of January, 1971.

Unquestionably, an employee who fails to furnish a telephone number cannot respond to a call. Of the two innocent parties who shall bear the brunt? In this instance, the employee is not blameless inasmuch as he precipitated the problem by having his telephone discontinued. It is, therefore, our considered judgment that Claimant failed to meet his obligations for the month of January, 1971.

AWARD

The answer to the precise questions submitted in (1) and (2) pursuant to Article IV, is in the negative.

Question (3) is answered in the negative.

Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
March 27, 1972

Dissent follows

H. C. CROTTY
PRESIDENT

B. L. SORAH, JR.
SECRETARY-TREASURER

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AFFILIATED WITH THE A.F.L.-C.I.O. AND C.L.C.
GRAND LODGE
12050 WOODWARD AVE., DETROIT, MICHIGAN 48203
OFFICE OF
PRESIDENT
29

May 5, 1972

FILE SBA #605
Awards 292, 294
CL-51-E, CL-86-W

Mr. J. J. Berta
704-06 Consumers Building
220 South State Street
Chicago, Illinois 60604

Dear Sir and Brother:

For your information I enclose a copy of Dissent of Labor Members to Award No. 292 and Award No. 294, which were rendered by Referee Rohman.

With best wishes, I am

Sincerely and fraternally yours,

H. C. Crotty
President

Enclosures

DISSENT OF LABOR MEMBERS
TO:

Award No. 292
Case No. CL-51-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
and
Central Railroad Company of New Jersey

QUESTIONS AT ISSUE:

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The Referee makes a negative response to all three questions for reasons which we cannot understand. We dissent vigorously from this award.

1. There is nothing in the February 7, 1965 Agreement which requires furloughed employes to have a telephone to be available for calls.

2. There is nothing in the Rules Agreement on this Carrier which requires a furloughed employe to have a telephone to be available for calls.

3. There is nothing in the Letter Agreement, relied upon by the Carrier in denying the claim, which argument was apparently accepted by the Referee, which would require a furloughed employe to have a telephone to be available for a call. Only a most strained interpretation could reach that conclusion. The Carrier did not dare to put such a requirement in an agreement and it was not the intent of the agreement when it was signed. Had there been such provision in the Letter Agreement, which the Carrier submitted to the General Chairman, the General Chairman certainly would not have signed it. Here, we have a Carrier resorting to subterfuge to attain its purpose and a referee sustaining such action.

We now wish to quote three paragraphs of the "OPINION OF THE BOARD" as enunciated by the Referee:

"We have previously analyzed the provisions of Article II, Section 1, of the February 7, 1965 Agreement, and especially that portion, viz:

> "An employee shall cease to be a protected employee in case of his - - - - .
> A protected furloughed employee who fails to respond to extra work when called shall cease to be a protected employee.

"Our cited decisions have uniformly held that where there has been a consistent pattern of declining calls for extra work, the furloughed employee will be deemed to have forfeited his protection. However, we would emphasize that this resulted from a refusal to respond when called. We repeat, when called! In this context, the Carrier concedes that Claimant was not called due to his failure to furnish a telephone number, although he had submitted an address.

"We are also mindful of the fact that the telephone agreements executed by the General Chairman and the Carrier were signed on December 28, 1966 and March 12, 1968--long before Claimant was furloughed. What knowledge did he have of those provisions? We have searched the record for some evidence of notice to Claimant informing him of the necessity to furnish a telephone number. The minimal requirement we could expect in order to condone the severe result contemplated by Carrier, is a letter notifying Claimant of the Carrier's intent, in order to alert him to the consequences.

After reading and digesting those three paragraphs we cannot understand how the Referee could make the decision he did.

In effect, the Referee is saying that furloughed employes must have a telephone to be available for extra work when there is no agreement, either nationally, locally nor by letter which so provides. But, the Referee does. The Referee has no authority to write rules for us and then make his award from the rules he writes.

It is regrettable that the Referee has not served as a furloughed employe so he might appreciate and understand the trials and tribulations which confront these employes and the efforts made in the agreement to provide them with some protection. If he had he would not unjustly and unreasonably add to the burdens of these employes.

C. L. DENNIS, Labor Member of Disputes Committee No. 605

G. E. LEIGHTY, Labor Member of Disputes Committee No. 605