Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12912
Docket No. 12789
95-2-93-2-140

The Second Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Fireman
(and Oilers
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(Chicago and Northwestern Transportation
(Company

STATEMENT OF CLAIM:

"In accordance with Agreement Provisions, claim is presented in behalf of Mr. Daniel Schneider, hostler helper, Proviso Diesel Ramp, Chicago, Illinois for the continuation of his protective benefits guaranteed under the terms of the September, 1964 Agreement."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was transferred from the Harrison Street Motive Power facility in Minneapolis, Minnesota, to Proviso, Illinois. The transfer occurred under provisions of the September 25, 1964 Agreement.

Claimant began his services at Proviso on February 21, 1990. The claimant was entitled to the benefits of Article 1, Section 5 of the September 25, 1964 Agreement which reads as follows:

"Section 5:

> Any employee who is continued in service, but who is placed, as a result of a change in operations for any of the reasons set forth in Section 2 hereof, in a worse position with respect to compensation and rules of governing working conditions, shall be accorded the benefits set forth in Section 6(a), (b) and (c) of the Washington Job Protection Agreement of May, 1936, reading as follows:

Section 6(a):

> No employee of any of the Carriers involved in a particular coordination who is continued in service shall, for a period not exceeding five years following the effective date of such coordination, be placed, as a result of such coordination, in a worse position with respect to compensation and rules governing working conditions than he occupied at the time of such coordination so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination, except however, that if he fails to exercise his seniority rights to accrue another available position, which does not require a change in residence, to which he is entitled under the working agreement and which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline."

Claimant collected a displacement allowance from January 1990 through 1991. On October 21, 1991 he was furloughed as a result of a senior employee returning from a leave of absence. He returned to work in March 1992. The Carrier ceased paying the Claimant's displacement allowance when he was furloughed causing this claim to be filed.

The Organization argues that the cause of the Claimant's furlough was not due to anything he did. It argues that the Carrier admitted he was affected by the transfer of work by paying his displacement allowance for nine months prior to his furlough. It further argues that the period of protestation is for five years so long as the employee meets the requirements of the September 25, 1964 Agreement. The Organization cites several awards to support their position.

The Carrier argues that the employee's furlough was not caused by the transaction but by the normal exercise of seniority of an older employee returning from leave of absence. As a result, it argues it can terminate paying the Claimant's displacement allowance. The Carrier has cited one award to support it's position.

After a review of all the material presented we find the Organization's argument to be more persuasive. In particular Award No. 789 of Special Board of Adjustment No. 570 is on point in this case. The pertinent part reads as follows:

> "The substantive issue here is one which has recurred in many different forms under the various labor protective agreements which have arisen in this industry since the 1930's. The issue is whether an employee who transfers as a result of a transaction which entitles him to protective benefits may continue to collect those benefits when he is furloughed for another reason at his new location. The specific facts of each situation, as well as the precise terms of each protective agreement sometimes dictate different results in facially similar cases. The facts of this situation dictate that the Claimant is entitled to the continuation of protective benefits. ... Thus, in the instant case there is no question that the Claimant qualified for and receive protective benefits due to the original transfer of work. There also is no question that the Carrier at least initially acknowledged that the Claimant was entitled to five years' protection as a result of that transfer. Nor does the Carrier deny that the Claimant is still an employee, even though he is on furlough status.
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> . . . In this case there is no dispute that the Claimant was affected by a transaction, and that the Carrier agreed that it entitled the claimant to protective benefits for five years. The Carrier presumably knew of any routine practice to furlough apprentice mechanics when they reached journeyman status, and knew that the Claimant would advance to journeyman status before the end of the five-year period.

> . . . Of course, the claimant is not protected forever from the adverse effects of any subsequent job to which he turns after the abolishment of his original position. However, here the agreement sets a specific limit of five years for the protective benefits to the Claimant, a limit which the Carrier has acknowledged and which the Arbitrator concludes was intended to act as a limit on the benefits."

This Board will sustain the claim and the Claimant shall be entitled to any of the benefits of the September 25, 1964 Agreement which he has been deprived of by the Carrier.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 16th day of August 1995.