



Award Number 17493

Docket Number MS-17204

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

ERVIN VANHOOSE

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

(CHESAPEAKE DISTRICT)

STATEMENT OF CLAIM: Question: As an Employee of Chesapeake and Ohio Railway Company, and a member of Brotherhood of maintenance way Employees Union, was Ervin VanHoose a protected employee under the February 7, 1965, agreement, and did he meet the requirements of section Article 1 of the February 7, 1965 agreement?

Ervin VanHoose returned from leave of absence from Railroad Co. on Oct. 8, 1964, and worked up until Nov. 7, 1964, when the job was abolished, he was not recalled to work, and he applied for a leave of absence effective May 1, 1965, and leave was canceled Dec. 10, 1965, and the company refused to permit his return to work on the basis he was not a protected employee and at that time they were working four employees of less seniority than Ervin VanHoose, which was in direct violation of the seniority rule, and should not be ruled out under the Feb. 7, 1965 agreement, as Ervin VanHoose was employed on job on Oct. 1 1964, and had 15 or more days of compensated service 1964.

Ervin VanHoose is entitled to pay from December 10, 1965 through April 18, 1966, the time he was held off the job, and work was furnished to seniority employees.

FINDINGS: The Third Division of the Adjustment Board finds:

That the dispute was certified to the Third Division of the Adjustment Board ex parte by the complainant party and that hearing thereon was waived.

The question presented to this Board by the Claimant was:

"As an Employee of Chesapeake and Ohio Railway Company, and a member of Brotherhood of maintenance of way Employees Union, was Ervin VanHoose a protected employee under the February 7, 1965, agreement, and did he meet the requirements of section 1, Article 1 of the February 7, 1965 agreement?"

Article VII of the Agreement of February 7, 1965, provides:

"ARTICLE VII—DISPUTES COMMITTEE

"Section 1—

"Any dispute involving the interpretation or application of any of the terms of this agreement and not settled on the carrier may

be referred by either party to the dispute for decision to a committee consisting of two members of the Carriers' Conference Committees signatory to this agreement, two members of the Employees' National Conference Committee signatory to this agreement, and a referee to be selected as hereinafter provided. The referee selected shall preside at the meetings of the committee and act as chairman of the committee. A majority vote of the partisan members of the committee shall be necessary to decide a dispute, provided that if such partisan members are unable to reach a decision, the dispute shall be decided by the referee. Decisions so arrived at shall be final and binding upon the parties to the dispute."

The question at issue was submitted by the Carrier to the Disputes Committee established under Article VII of the Agreement of February 1965. On September 11, 1969, that Disputes Committee, which has been designated as Special Board of Adjustment No. 605, rendered Award No. 141 disposing of the question at issue.

As Award 141 of Special Board of Adjustment No. 605 disposed of the issues involved in the dispute, the case before the Third Division will be dismissed.

A W A R D

Case dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1969.