

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 21085
Docket Number CL-21076

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Atchison, Topeka and Santa Fe Railway Company
(- Eastern Lines -

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7831) that:

(a) Carrier violated the February 25, 1971 Mediation Agreement by refusing to place D. R. Shepard under the protective provisions of said Agreement.

(b) Carrier shall now pay D. R. Shepard any monthly displacement allowance that he is entitled to under Article VIII, Section 6 of the February 25, 1971 Mediation Agreement, as provided for under Section 6 **of the** Washington Job Protection Agreement, **commencing** July 23, 1973 and continuing forward.

(c) In addition to the money **amounts** claimed above, Carrier shall pay Claimant an additional **amount** of interest at ten percent (10%) per annum, compounded on the anniversary date of each pay period, **commencing** July 23, 1973.

OPINION OF BOARD: Claimant seeks a displacement allowance under the provisions of Article VIII, Section 6 of the February 25, 1971 Mediation Agreement, because Carrier abolished and combined various positions at Emporia and Chanute, Kansas. Carrier posted notice of the job changes on May 15, 1973. At that time Claimant was the successful bidder on a temporary vacancy on **position** No. 6088, Cashier-Chanute, Kansas. He was displaced from position No. 6088 on July 23, 1973 by **R.J. Sime**, whose position had been abolished on June 15, 1973, as a result of the notice posted by Carrier on May 15, 1973. **Claimant** displaced the highest rated position his **seniority** permitted him to obtain and wrote to Carrier advising it that he had been adversely affected by the abolishment and inquired about payment of a displacement allowance. Carrier responded that it was investigating the matter and then on September 27, 1973 denied the claim for protective benefits saying, in part:

"It has been determined that, as you did not obtain position No. 6088 prior to November 1, 1972, you cannot be afforded any of the protective benefits of Article VIII of the February 25, 1971 Mediation Agreement nor the Washington Job Protection Agreement mentioned therein."

Carrier maintained the same position with respect to **Claimant's** eligibility throughout the handling of the claim on the **property**. In its submission to the Board, Carrier has taken a new position, not raised on the property, and under a well-settled principle the Board **cannot** consider it, and **must** decide the **claim** on the issues raised on the **property**.

Article VIII, in Section 3 makes provision for the combination of work and functions and creation of new positions and abolishment of others as a result of the combining of **work** and/or fun&ions. Section 6 of Article VIII reads:

"On and after the date maters are combined under Section 1 of this Article employee on such rosters adversely affected either directly or indirectly es a result of job **abolishments** resulting from the application of Section 3 of this Article, shall receive the protection afforded by Sections 6, 7, 8 and 9 of the Washington Job Protection Agreement of **May** 1936, except that for the purposes of this Agreement, Section 7 is amended to read **100%** (less earnings in outside employment) instead of **60%** and extended to provide period of payment equivalent to length of service not to exceed 5 years, and to provide further that allowances in Sections 6 and 7 be **increased** by subsequent general wage increases."

Claimant is entitled to job protection, notwithstanding Carrier's contention that he is barred from such protection because he did not obtain position No. 6088 prior to November 1, 1972. **Claimant** was clearly adversely affected as a result of a job abolishment resulting from the application of Section 3. Since that is so, as clearly specified in Section 6, he is entitled to the protection afforded by Sections 6, 7, **8** and 9 of the Washington Job Protection Agreement of May, 1936 (**as** modified by Section 6).

FINDINGS: The Third Division of the Adjustment Board, **upon** the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

Award Number 21085
Docket Number CL-21076

Page 3

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this 28th day of **May 1976**.

Serial No, 291

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 21085

DOCKET NO. CL-21076

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and Steamship Clerks,
Freight **Handlers**, Express and **Station Employees**

NAME OF CARRIER: The Atchison, Topeka and Santa Fe Railway Company
- Eastern Lines -

Upon application of the representatives of the Carrier involved **in** the above Award **that this** Division interpret the same in the light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First **(m)** of the Railway Labor Act, as approved June 21, **1934**, the following interpretation is made:

Carrier has submitted the following question to the Board:

Was it the intent of the Award that the interest claimed in Part **(c)** of the Statement of Claim be allowed?

The answer to Carrier's Question is **that it** was not the intent of the Award to allow the interest **which** was claimed in Part **(c)**. The Opinion of the **Board** discussed the claim, and the reasons for sustaining it. There was **no** mention of the claim for interest, and there **was** no intention of sustaining that part of the claim.

Referee William M. **Edgett**, who sat with the Division as a neutral **member** when Award No. 21085 was adopted, also participated with the Division **in** making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 17th day of June 1977.