

Memo

March 19, 1969

H.C.C.

Note the enclosed copies of Awards Nos. 30 through 40 of S.B.A. No. 605 in disputes involving the Clerks.

Award No. 32 could adversely affect our Case No. MW-7-E involving crossing watchmen on the D. & H. As you will recall, they were taken off the protected list by the carrier when they refused to take temporary work (or so the carrier alleges) as trackman.

Award No. 33 should be helpful in our Cases Nos. MW-2-E and MW-3-E involving the Boston Terminal. The carrier failed to recall the claimants to service July 1, 1965.

Although Award No. 35 was decided against the Clerks, it does give support to the language of Article III, Section 1: "provide a force adequate to meet the Carrier's requirements."

In my opinion, the over-all tone of these awards is not encouraging.

D.W.H.

CC: Mr. J. J. Berta

John J. Leary, Jr., Chairman
Five Cooperating Railway
Labor Organizations, National
Washington, D. C. 20002
Code 202-974-7500

March 14, 1969

Mr. C. L. Dennis
Mr. H. C. Crotty
Mr. A. R. Lowry
Mr. C. J. Chamberlain
Mr. R. W. Smith

SUBJECT: Awards Nos. 30 through 40
Disputes Committee
February 7, 1965 Agreement
(Clerks Cases)

Dear Sirs and Brothers:

We met with Referee Rohman on March 7, 1969 to receive his decisions in a number of the clerks cases which had previously been heard by him.

I am enclosing herewith a copy of Awards Nos. 30 through 40, which were presented by Mr. Rohman at that time, and, of course, will be binding on all parties.

We believe that Award Nos. 31 and 36 are particularly damaging to us, and will file dissents to those awards. The carrier representatives and Mr. Rohman were so advised, and copies will be furnished you when they are completed. The carriers will file a separate opinion with respect to Award No. 37, and a copy of that will be furnished to you within the next few days.

We agreed that Mr. Rohman will handle another docket of 20 clerks cases, hearings on which will begin in Washington on April 2, 1969. You will be advised as hearings on these disputes progress.

Fraternally yours,

J. E. Leighty
Chairman

Five Cooperating Railway
Labor Organizations



Enclosures

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Brotherhood of Railway, Airline and Steamship Clerks,
TO) Freight Handlers, Express and Station Employees
DISPUTE) and
Erie Lackawanna Railroad Company

QUESTIONS

- AT ISSUE:
- (1) Is protected employee M. J. McLaughlin entitled to compensatory benefits when
 - (a) reduced to a furloughed status
 - (b) required to accept a position rated lower than his protected rate due to a work restriction imposed on him by the Carrier's Chief Surgeon?
 - (2) Is protected employee M. J. McLaughlin, who holds seniority only on Roster 'B', required to accept or make application for a Roster 'A' position in order to protect his protected status and/or compensatory benefits when he is unable to exercise his seniority to or secure a position on Roster 'B' because of the work restriction imposed on him by the Carrier's Chief Surgeon?
 - (3) If protected employee M. J. McLaughlin, a Roster 'B' employee, having no rights on Roster 'A', elects not to accept a Roster 'A' position or work in that category offered to him by the Carrier, does he retain his protected status and is he entitled to compensatory benefits?
 - (4) Can the Carrier hold the rate of a Roster 'B' position against protected employee M. J. McLaughlin in computing his compensatory benefits when such position is one he is unable to secure because of the work restriction imposed on him by the Carrier's Chief Surgeon?

OPINION

OF BOARD: As a result of a back injury sustained by the Claimant while working, plus a kidney infection which he subsequently developed, the Carrier's Chief Surgeon restricted him from performing heavy lifting in his normal position as a laborer.

The basic question posed herein is whether the Claimant is in a furloughed status or falls within the context of Article IV, Section 5. The pertinent portion of the latter section provides as follows:

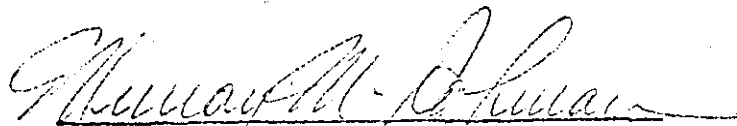
"A protected employee shall not be entitled to the benefits of this Article during any period in which he fails to work due to disability . . ."

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Thus, it is the Carrier's position that the Claimant, "cannot perform the work his seniority would entitle him to because of his physical disability." Under the circumstances prevalent herein, the Organization's position cannot be sustained.

Award

The questions posed by the Organization are confusing and contradictory. The answer herein, nevertheless, is intended to deny the claim in all respects.



Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
March 7, 1969