

SPECIAL BOARD OF ADJUSTMENT NO. 605

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

QUESTIONS

- AT ISSUE:
- (1) Did Carrier violate the terms and conditions of the February 7, 1965 National Stabilization Agreement when it denied to Mr. Joseph J. Murray, Chief Clerk, District Freight Claim Office, Boston, Massachusetts, a lump sum separation allowance in lieu of transferring to Buffalo, New York, under Article V of the Agreement?
 - (2) Does Mr. Murray possess the 15 or more years of employment relationship, as that term is defined, necessary to qualify him for a separation allowance?
 - (3) Shall Carrier now be required to pay to Mr. Murray the lump sum separation allowance afforded under Article V of the Agreement?

OPINION The parties are in accord that the Claimant herein is
OF BOARD: a protected employee within the purview of Article I,
 Section 1, of the February 7, 1965 National Agreement.
The facts indicate that the Claimant was originally hired on February 2, 1948, as a clerk in the office of the General Manager, a fully excepted position. He worked there continuously until August 31, 1954, when he was terminated due to a reduction in force.

On May 3, 1955, he was hired by the Carrier as an investigator. Subsequently, on December 20, 1957, he was promoted to Chief Clerk and remained in that position until its abolishment on December 31, 1966, in accordance with an implementing agreement executed by the parties.

In the instant claim, the question presented is whether or not the Claimant is entitled to severance pay conditioned on the employment relationship? Necessarily, the crucial point in controversy is whether the Claimant had acquired the "15 or more years of employment relationship with the carrier," as contemplated by Article V of the February 7, 1965 National Agreement.

Unquestionably, neither the context of the National Agreement nor the questions and answers included in the interpretations are

targeted to the instant issue. What is an employment relationship? In this regard, Question No. 5 under Article I, Section 1, states as follows:

Q. "Is the term 'employment relationship' synonymous with seniority?"

A. "The term 'employment relationship' used in this Section should not be confused with the term 'seniority' since it was used in the agreement to provide protection to employees who had at least a 2-year employment relationship with a carrier on October 1, 1964, but who may not have had at least 2 years' seniority."

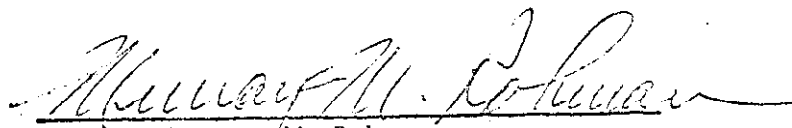
If we were to apply this analogy to the fifteen year employee, then merely indicating the existence of an employer-employee relationship, regardless of any coverage under a collective bargaining agreement, would such suffice for the purpose of determining the employee relationship? Furthermore, is there any significance to the fact that nowhere within Article V is the word seniority mentioned?

Several other aspects should be indicated. The Claimant had received three weeks vacation under the National Vacation Agreement, as well as having the machine listings show his service as of February 2, 1948, his original hire date. On the other hand, there is a subdued innuendo of record tampering, as well as strong reliance by the Carrier on the fact that the positions, from 1948 through 1954, were fully excepted from coverage under the Organization's contract.

We have pondered this problem very carefully and have reached the conclusion that the use of the phrase, "employment relationship," requires that it be given a meaning different from the term "seniority." Seniority, normally, flows from the agreement of the parties as evidenced by the collective bargaining contract. Conversely, the employment relationship arises when an employee is first hired - whether in a bargaining unit or excepted position. Hence, the employment relationship need not be coincidental with seniority.

Award

Answer to Questions 1, 2 and 3 is in the affirmative.



Murray M. Rohman
Neutral Member

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