COOPERATING RAILWAY LABOR ORGANIZATIONS

G. E. Leighty • Chairman
Railway Labor Building • Suite 804
400 First Street, N.W. • Washington, D. C. 20001
Code 202 RE 7-1541

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200 Maryland Ave., N.E. • Washington, D. C. 20002
Code 202 547-7540

April 25, 1969

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

SUBJECT: Awards Nos. 51 through 60
Disputes Committee
February 7, 1965 Agreement
(Signalmen's Cases)

Dear Sirs and Brothers:

We met with Referee Zumas on April 21, 22 and 23 during which period we discussed the last of the cases in the current Signalmen's docket and received his decisions on the cases which he heard on February 5, 6 and 7.

I am enclosing herewith a copy of Awards Nos. 51 through 60, signed by Referee Zumas, which are binding on all parties.

We believe that Award No. 51 as well as Award No. 52 do violence to the interpretations which were agreed upon on November 24, 1965 and we will file a Dissent to that Award. The Carrier Representatives and Mr. Rohman were so advised and copies will be furnished you when they are completed.

Mr. Zumas is scheduled to meet with us again on May 26, 27 and 28 to begin hearings on another docket on Signalmen's Cases. You will be advised as these hearings progress.

Fraternally yours,

G. E. Leighty

Chairman
Five Cooperating Railway Labor Organizations

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Brotherhood of Railroad Signalmen and New York Central Railroad Company (Lines West)

QUESTION AT ISSUE:

(1) Is D. A. Caruso a "protected" employe within the meaning and intent of Section 1 of Article I of the February 7, 1965 Agreement?

(2) If so, should Carrier be required to compensate him from January 5, 1966, until it reinstates him to full employment?

OPINION OF BOARD: Claimant entered service on December 2, 1955. During 1964 he had more than 15 days of compensated service. He worked on October 1, 1964.

Based on the above the Organization contends that Claimant was a "protected" employee within the meaning and intent of Section 1 of Article I of the February 7, 1965 Agreement.

Carrier asserts that even though he worked on October 1, 1964, Claimant's status was that of a furloughed employee; and as such, failed to qualify because he did not average 7 days of work per month for each month furloughed.

Section 1 of Article I of the February 7, 1965 Agreement provides:

> "All employees, other than seasonal employees, who were in active service as of October 1, 1964, or who after October 1, 1964, and prior to the date of this Agreement have been restored to active service, and who had two years or more of employment relationship as of October 1, 1964, and had fifteen or more days of compensated service during 1964, will be retained in service subject to compensation as hereinafter provided unless or until retired, discharged for cause, or otherwise removed by natural attrition. Any such employees who are on furlough as of the date of this Agreement will be returned to active service before March 1, 1965, in accordance with the normal procedures provided for in existing agreements, and will thereafter be retained in compensated service as set out above, provided that no back pay will be due to such employees by reason of this Agreement. For the purpose of this Agreement, the term 'active service' is defined to include all employees working, or

holding an assignment, or in the process of transferring from one assignment to another (whether or not October 1, 1964 was a work day), all extra employees on extra lists pursuant to agreements or practice who are working or are available for calls for service and are expected to respond when called, and where extra boards are not maintained, furloughed employees who respond to extra work when called, and have averaged at least 7 days work for each month furloughed during the year 1964."

An analysis of the language quoted above and the November 24, 1965 Interpretations compels the conclusion the parties did not intend to give a furloughed employee protected rights by virtue of the fact that such employee happened to perform service on October 1, 1964.

AWARD

The answer to the question submitted is in the negative.

Nicholas H. Zumas
Neutral Member

Dated: Washington, D. C.
April 23, 1969

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May 23, 1969

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

SUBJECT: Employees Dissent to Awards No. 51 and 52
(Case Nos. SG-3-E and SG-5-E)
Disputes Committee, February 7, 1965 Agreement

Dear Sirs and Brothers:

I am enclosing hereto our Dissent to Awards No. 51 and 52 (Cases No. SG-3-E and SG-5-E) of Special Board Adjustment No. 605 established by the February 7, 1965 Agreement which was signed by Referee Zumas on April 23, 1969. These decisions are so contrary to the Agreement and the Interpretations that it is necessary to file these Dissents in order to protect our position,

Fraternally yours,

G. E. Leighty

Chairman
Five Cooperating Railway Labor Organizations

Attachment

cc: L. P. Schoene

SPECIAL BOARD OF ADJUSTMENT NO. 605

Dissent of Labor Members

The question at issue in these cases boils down to whether the claimants were in "active service" on October 1, 1964. Admittedly, they met the other requirements for being "protected employees"--they were nonseasonal employees who on October 1, 1964 had had more than two years of employment relationship and had performed more than fifteen days of compensated service in 1964.

What could be more "active service" than being actually at work on the regular business of running the railroad for the full working day of October 1, 1964? Bear in mind that any question as to whether the employee's relationship to the railroad was casual or fortuitous or coincidental was resolved by other tests. Aside from being in "active service" on October 1, 1964, the employee in order to be "protected" under the agreement had to have had on October 1, 1964 two years of employment relationship and had to have performed at least fifteen days of compensated service in 1964. These were the agreed-upon tests as to continuity of the association and were in addition to the requirement of active service on the critical date.

The parties, in the last sentence of Article 1, Section 1, defined "active service." The first, and most obvious, way to be in "active service," the parties agreed, was to be working. But they also agreed that an employee who did not actually work on October 1 might still be in active service: perhaps he held an assignment on which October 1 was a rest day. Obviously, he had to be considered in active service if he held an assignment or was in process of transferring from one assignment to another, but was not working either because the assignment was not scheduled to work or because of the transfer, and the parties so agreed. Employees on extra lists, available for calls and expected to respond, were also in "active service" as of October 1, 1964, even though not actually working that day. Finally, it was agreed that where furlough lists served the same purpose as extra lists, employees on such lists who were used for this purpose should also be considered in "active service" on October 1 even though not working on that date.

This latter group, however, presented a problem. Many employees on furlough lists from which extra men were called from time to time might have disappeared, taken other jobs, lost interest in railroad work or otherwise terminated their railroad careers without the records reflecting it. If a person had not been called for extra service since his furlough, or not recently, there was no way of knowing whether he was holding himself in readiness to respond to such a call. To eliminate people who had,

in practical effect, left the railroad from being considered in "active service," a pragmatic and fairly arbitrary test was devised; an individual whose only claim to being in active service was being on furlough was required to have averaged at least seven days work for each month furloughed during the year 1964.

Now we are presented with the incredible spectacle of a referee actually holding that since the parties took pains to protect certain extra and furloughed employees who were not working on October 1, they thereby did these claimants who were actually working that day out of protection. Surely there could be no such holding if the definition of active service simply said, "For the purpose of this Agreement, the term 'active service' is defined to include all employees working." Yet the agreement says exactly this and more. But what is there in the "more" that could possibly be construed to diminish the rights of any employee who was working? The agreement says "all employees working," not some of them nor subject to exceptions or qualifications.

The Referee tells us only that an analysis of the Agreement and the November 24, 1965 Interpretations "compels the conclusion the parties did not intend to give a furloughed employee protected rights by virtue of the fact that such employee happened to perform service on October 1, 1964." In these cases the employee did not "happen" to perform service on October 1; he had the right and obligation to perform it through having met the requirements other than "active service" for being a "protected employee."

The reference to the November 24, 1965 Interpretations adds nothing. There is not a word anywhere in the Interpretations, any more than in the Agreement itself, that even suggests a subtraction from the rights otherwise conferred on an employee who was working on October 1, 1964.

The simple and undeniable fact is that the authors of the Agreement and the Interpretations used words that did not admit of the possibility that an employee could be at work and at the same time on furlough on the same railroad in the same craft and pursuant to the same seniority rights. To people with even an elementary knowledge of railroad terms any use of words that would admit of such a possibility would be a contradiction in terms.

Of course, the power to decide disputes conferred by Article VII of the Agreement includes the power to make decisions we think are wrong as well as decisions we think are right. It does not, however, include power to remake the agreement of the parties. We cannot help concluding that in these cases the Referee has substituted his notions of the terms the parties might logically have agreed upon for those the parties did in fact agree upon.

Accordingly, we must regard the decisions of the Referee in these cases as beyond the scope of the authority conferred upon him.

C. J. Chamberlain
Labor Member

J. E. Leighty
Labor Member