

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Chicago and North Western Railway Company
TO THE) and
DISPUTE) Brotherhood of Maintenance of Way Employees

QUESTION

AT ISSUE: Does the attached implementing agreement proposed by the carrier fully comply with the provisions of Article III of the Agreement, and if not, in what respect should it be changed before transferring employees on the basis of these provisions?

OPINION

OF BOARD: The questions submitted by the Employees are broader than that posed by Carrier. They ask whether either party's proposed agreement shall be upheld, or neither. In any event, the issue before the Disputes Committee is the propriety of the respective proposals, since it may be possible for conflicting proposals both to comply with Article III. That Article leaves to the parties and the Committee the specific implementation of the Agreement's general guidelines, and does not mandate acceptance of either side's proposed implementing agreement solely because it is not inconsistent with Article III.

1. The submissions give no information on the composition of the seniority rosters to which the protected employees will be transferred. If the unprotected men who are junior to the junior protected men have less seniority than the transferees had on their own rosters, Carrier's proposal is proper. If, however, some of these unprotected men have greater seniority, the proposal is not proper.

Article III, Section 5, anticipates that transfers and rearrangement of forces would adversely affect the seniority rights of unprotected men. But there was no intent that all their seniority rights were to be abandoned vis-a-vis protected employees. If that were intended, the February, 1965, Agreement could readily and simply have said what Carrier here urges: all transferees shall be placed on the new roster below the junior protected man and above all others. It did not.

No rights of protected employees on a roster were to be affected by incoming transferees, but "infringement of rights" of the unprotected was anticipated by Article III. Such infringement of course was necessary unless all unprotected men were to be effectively transformed into protected by having them remain senior to every protected transferee.

The Interpretations of November 24, 1965, affirmatively demonstrate that unprotected men enjoy all seniority rights, except as they are affected by Article III. Thus on every roster the unprotected continue to receive preference over the protected who are junior to them, including the order of furlough. If such rights are enjoyed by the unprotected on every roster, there is no justification for a different approach when protected men are transferred to a different roster on which unprotected men had longer service than the transferees had on their own rosters.

To put a ten-year transferee above a five-year unprotected man infringes on his rights under the rules. To put a ten-year transferee above a twenty-year unprotected man destroys the latter's seniority rights altogether.

It appears most consistent with the Agreement and the Interpretations to give the transferees no greater seniority standing than their lengths of service on their original rosters. Where unprotected men on the new roster are senior to transferees they should be placed above the transferees, rather than below them in all cases, as Carrier proposed.

Such dovetailing, which merges the transferees below the junior protected man but among the unprotected in accordance with seniority, permits Carrier to effectuate transfers meaningfully while conserving the seniority privileges which obtain on every roster for unprotected men. This is an "infringement," to be sure, but the kind which was foreseen by the Agreement once it authorized carriers to transfer protected employees and required neither a preservation nor an abandonment of the rights of unprotected men.

2. The Employees propose that transferred protected employees retain seniority rights on their original districts. Carrier contends that, since the transfers are permanent, there should be no such retention.

It is true that transferees have the benefit of their protected status permanently. But they now may be transferred involuntarily and some with long years of service thereby lose a considerable degree of preferential benefits in various areas. While there may be sound reason not to grant seniority retention to all employees, including those with relatively few years of service or those who voluntarily transfer, the impact on others is sufficiently great to warrant favorable consideration of an approach restricted to those with 15 years of seniority who are involuntarily transferred.

In resolving disputed provisions of implementing agreements, this Committee may define the reasonable terms under which rearrangement of forces takes place. Such recognition of the interests of longer-service employees is not inconsistent either with the language or spirit of the Agreement.

In the absence of specific guidelines for fashioning procedures under a new Agreement, considerations of equity, fairness and reasonableness are properly employed where the degree of injury to the other side is not shown to outweigh the benefit. It has not been shown in this case. Carriers and other organizations have entered into such agreements. Although that has no precedential value, since parties may agree upon anything they desire, it does signify that retention of rights in one's former district is not a strange, outlandish idea. With the limitations set forth herein, it should be granted.

A W A R D

1. The attached implementing agreement proposed by Carrier does not fully comply with Article III of the Agreement.

Article IV of Carrier's proposed implementing agreement should provide that transferred protected employees are to be placed on the new rosters below the most junior protected employees on them, but dovetailed among the unprotected employees in accordance with the seniority dates the latter possess and the seniority dates the transferees had on their prior rosters.

2. The Employees' proposal on retention of seniority in the Subdivision from which transferred shall be modified.

Therefore, Article V of Carrier's proposed implementing agreement should provide as follows: When new positions are created or permanent vacancies occur on the Subdivisions from which protected employees were transferred, any involuntarily transferred employees who have 15 years or more of seniority on such Subdivisions will be afforded an opportunity to return in the order of the seniority they had on those Subdivisions. It will be Carrier's responsibility to inform the employees, in writing, when such new position or vacancy occurs and the employees will have seven (7) calendar days in which to claim the position.

3. In other respects Carrier's proposed implementing agreement should be adopted.


Milton Friedman, Referee

Dated: Washington, D. C.
June 9, 1969