

SPECIAL BOARD OF ADJUSTMENT NO. 605

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

QUESTIONS  
AT ISSUE:

- (1) Did the Carrier violate the provisions of the Agreement of February 7, 1965 and the interpretations thereto, particularly Article IV, Section 2 when it removed protected status from Mrs. L. H. Robey, a clerical employee at Keyser, West Virginia?
- (2) Shall the Carrier be required to reinstate protected status to Mrs. L. H. Robey and pay all compensation due, beginning with October 11, 1965, and continuing until the Carrier complies with the provisions of the Agreement of February 7, 1965?

OPINION  
OF BOARD:

The facts indicate that on July 1, 1965, the Carrier abolished eight positions at Keyser, West Virginia, including the Stenographer Position of the Claimant herein. Concurrent therewith, the parties entered into an oral agreement whereby

"the Carrier agreed to pay the occupants of the abolished positions five days per week at their 'protected' rate, that they would not be required to exercise their displacement rights under the schedule agreement, but that, however, the services of the employees could be utilized on existing vacancies or for other temporary work".

The statement, quoted above, is abstracted from the Carrier's submission and is concurred in by the Organization.

During the week of October 4, 1965, the Claimant was on scheduled vacation and not due to report until Monday, October 11, 1965. However, on Sunday, October 10, she received a telephone call from the Chief Clerk at Cumberland, a terminal located approximately 23 miles from Keyser and in the same seniority district. The phone call was received at 11:30 p.m., directing her to report to Cumberland to fill a vacancy the following morning. Although she advised the Chief Clerk that she lacked transportation, he informed her that bus service was available at 5:55 a.m. and train service at 4:30 a.m. -- and that she would be reimbursed for transportation. In addition, the Carrier also alleges that she informed the Chief Clerk during this conversation, that she was not interested in filling any vacancies at Cumberland. Consequently, the Carrier asserts that she was not removed from protected status, but as a result of her own unwillingness to accept extra work, she ceased to be a protected employee under Article II, Section 1.

In one breath, the Carrier affirmatively states that the employees would not be required to exercise their displacement rights and it agreed to pay their protected rate. In the next breath, the Carrier states, she simply was not "required" to exercise these rights, nor was she "denied" displacement rights; it did not, however, "prohibit" them from displacing if they so desired. (Underlines are same as in Carrier's submission).

We are not persuaded by this ingenious argument. In our opinion, the instant dispute is governed by Article IV, Section 5, a portion of which is hereinafter quoted:

"A protected employee shall not be entitled to the benefits of this Article during any period in which he fails to work due to-----  
absence from the Carrier's service,-----."

Further, Question and Answer No. 1, of the November 24, 1965 Interpretations, contains the following:

"Question No. 1: Does an employee who is absent from service for any of the reasons set forth in this section lose his protected status?


Answer to Question No. 1: He does not lose his protected status but he is not entitled to the compensation guarantee provided in Article IV during the period of time that he is absent -----."

As a matter of fact, assuming that the claimant was a furloughed employee, Question and Answer No. 4, of the November 24, 1965 Interpretations under Article II, Section 1, would then be applicable herein.

Hence, it is our conclusion that the Carrier is in violation of the National Agreement.

Award

Answer to question (1) and (2) is in the affirmative.

  
Murray M. Rohman  
Neutral Member

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