Award No. 145
Case CL-3-SE

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes and Gulf, Mobile and Ohio Railroad Company

QUESTIONS AT ISSUE:

(1) Did Carrier violate the provisions of Article IV, Section 1 of the Agreement when commencing with February 7, 1965 it failed to properly compensate protected employees at the normal rate of compensation of the regular assigned position held by them on October 1, 1964?

(2) Shall Carrier now be required to properly compensate the following named employes at the rate of pay shown opposite their names (including subsequent wage increases) for each and every day they were entitled to compensation commencing with February 7, 1965?

L. A. Riley	$21.1704 per day
A. J. Slaughter	$21.7104 per day
J. Shipley	$20.4384 per day
J. J. Konopek	$20.7588 per day
C. W. Edwards	$23.0784 per day
A. W. Bueschel	$21.0024 per day
A. F. Witte	$20.3184 per day
R. R. Bueschel	$19.8384 per day
R. C. Gimpel	$19.4736 per day
Edward Pleva	$21.8784 per day
Buelah F. McGuire	$22.5024 per day
W. D. Sullivan	$20.2824 per day

Note: Rates of pay shown are those as of October 1, 1964 and must be increased to reflect the wage increases effective January 1, 1965 and January 1, 1966.

OPINION OF BOARD: The parties are in agreement as to the facts which precipitated the instant dispute. Prior to February 7, 1965, the effective date of the National Agreement, twelve employees who held regularly assigned positions on October 1, 1964, were affected, either by having their positions abolished or were displaced as the result of another job being abolished. Consequently, the employees whose jobs were abolished and/or the employees who were displaced as the result of another job being abolished, thereafter, exercised their seniority by displacing junior employees.

At the outset, the representatives of both parties stipulated that up to February 6, 1965, the rate of compensation which the employees received was proper. Thus, where either the employee whose job was abolished and/or the employee who was displaced as the result of another job being abolished, bid in to a lower rated job, the lower job rate was his proper compensation.

The issue raised by this dispute involves an interpretation of

Article IV, Sections 1, 3 and 4 of the February 7, 1965 National Agreement. Inasmuch as they became protected employees on February 7, 1965, should their compensation be the normal rate of compensation of their regularly assigned positions on October 1, 1964? Aware that our Board rendered a number of awards purportedly involving related situations in the interim, the Carrier argues that Section 4 is applicable herein, whereas the Organization counters that Section 1 is the appropriate provision.

The basis for the Carrier's contention that its position be sustained is predicated upon the fact that the claimants could have displaced on higher rated positions, without a change of residence, in accordance with Article IV, Section 4. Hence, where these employees voluntarily elected to displace on lower rated positions, thereafter, they should be treated as occupying the positions which they elected to decline. As indicated, the Organization rejected this argument by insisting that Section 1 was specifically negotiated to provide protection for those employees who are displaced as a result of job abolishments and, hence, an involuntary move is not included within the ambit of Section 3.

Previously, we alluded to the fact that our Board rendered a number of awards which the Carrier now urges upon us as a precedent for the instant dispute. Unquestionably, as we previously indicated in Award No. 26, consistency in interpreting agreements is essential; otherwise, issues would never be resolved. Thus, a previous decision which presumably settled an issue involving the same parties under the identical agreement should be accepted as a precedent. However, in this context, prior to embodying a previous decision with the aura of stare decisis, it is imperative that we carefully scrutinize these prior awards and independently determine whether they are "on all fours."

Especially cited in this regard are Award Nos. 22, 26 and 45. In Award No. 22, CL-2-S.E., the Carrier's submission indicates that, "(O)n October 1, 1964, claimant J. A. Hawthorne was regularly assigned to position of claim and check clerk A-167, rate $23.02 per day."

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". . . and while regularly assigned to and working this position, he voluntarily made application for position of Equipment Record Clerk A-38, rate $23.41 (1965 rate) per day, which was advertised by Bulletin No. 106 dated November 19, 1964, and was awarded this position on November 24, 1964."

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"It will be noted that all four claimants (including the claim of the claimant, Hawthorne, involved in the question at issue) voluntarily bid for and were awarded lower rated positions. They were not placed in a worse position by the Carrier." (Underline added.) Despite the fact that the claimant's voluntary bid to a lower rated position occurred prior to February 7, 1965, we held that his guaranteed compensation was the rate of the job he voluntarily bid into, predicated on Question and Answer No. 1, contained in the November 24, 1965 Interpretations to Article IV, Section 3. In this connection, we stress that our decision in Award No. 22 was predicated upon the fact that the claimant therein voluntarily bid in to the lower rated job. The move was not forced upon him by reason of any action of the Carrier. In the instant situation, the parties are in accord that the displacement was a direct result of a job abolishment initiated by the Carrier. It is, therefore, our considered opinion that Award No. 22 cannot be considered a precedent binding upon us herein.

In Award No. 26, the claimant was removed from the position of Rate Analyst on June 15, 1965, due to inefficiency. Thereafter, he displaced a junior clerk at a lower rate of pay. In denying the claim, we adopted Award No. 13, holding that a disqualified employee who bid in on a lower rated position had voluntarily exercised his seniority pursuant to Section 3, Article IV. Similarly, we do not consider Award No. 26 a precedent in the instant dispute as it did not involve a job abolishment initiated by the Carrier. Furthermore, not only was the claimant disqualified for inefficiency, but such action occurred subsequent to February 7, 1965.

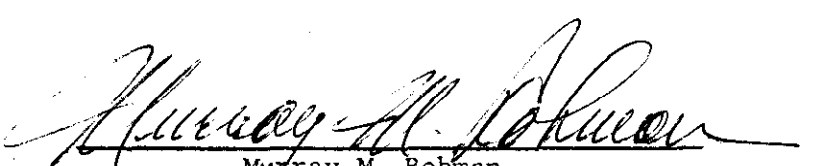
Prior to considering Award No. 45, we should note that in Award No. 39, the claim was denied on the ground that the claimant ceased to be a protected employee for failure to obtain a position available to him in the exercise of his seniority.

In Award No. 45, the claimant wrote a letter to the Carrier on February 25, 1965, in which he elected not to displace on several available positions due to his physical condition. Consequently, we denied the Organization's claim. Now, this Award is cited as a precedent for the instant dispute. In our view, the similarity exists only by virtue of the fact that in Award No. 45, the claimant's position was abolished. Thereafter, the employee declined to exercise his seniority rights, as well as limiting himself to positions which, in his opinion, he was qualified to perform.

In summary, it is our considered opinion that none of the cited Awards reach the controversy presented herein. The gravamen of the Organization's argument is grounded on the fact that a job abolishment was initiated by the Carrier prior to February 7, 1965. Therefore, those employees, who either were displaced as a direct result of such job abolishment and, thereafter, exercised their seniority rights by bidding in to a lower rated job, or those who were displaced as a result of another job being abolished and then bid in to a lower rated job -- prior to February 7, 1965 -- were not required by Article IV, Section 4, to bid in to the highest rated job available to them in the exercise of their seniority in order to be entitled to have their compensation preserved by Article IV, Section 1.

AWARD:

The answer to questions (1) and (2) is in the affirmative.



Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
October 22, 1969