AWARD NO. 147
Case No. MW-~~39~~-W
77

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) Illinois Central Railroad Company
TO THE ) and
DISPUTE ) Brotherhood of Maintenance of Way Employes

QUESTION AT ISSUE: Should the 12-cents-per-hour increase in rates of pay, effective July 1, 1968, provided for in Article VII of the National Agreement of May 17, 1968 be included in the compensation due protected employees under Article IV of the February 7, 1965 Agreement?

OPINION OF BOARD: At issue is the provision in Article IV that guaranteed compensation "shall be adjusted to include subsequent general wage increases," as it applies to Article VII of the Agreement dated May 17, 1968. That Agreement not only provided for a 3.5% across-the-board increase on July 1, but also established a "classification and evaluation fund equivalent to 5 cents per hour for each employee," which was used to give skilled employees and foremen an additional increase of 12 cents per hour on that date.

According to the Employes, the 12¢-per-hour amount is a general increase which should be added to guaranteed compensation. The Carrier maintains that, unlike the 3.5% granted to all, the 12 cents is not a general increase, for it applies only to a fraction of the employees; therefore it should not be included in the compensation guaranteed to protected employees.

The Carrier cites several dictionary definitions to show that unless something is universal, or at least applicable to a majority, it is not "general." Although "general" can be applied to the body of skilled employees even under dictionary definitions, ordinary usage and not subtle nuances of language obviously was contemplated by the phrase in Article IV.

A wage increase need not be uniform to be "general." For example, percentage increases give varying dollar increases.

And an average increase of 10 cents over the unit is "general," although it may not be 10 cents across-the-board for every classification and each individual.

What the parties appear to have intended in Article IV was to limit guaranteed compensation to the normal rate for the position on October 1, 1964, subsequently increased only by wage changes of a general, rather than an individual, character. If the position's rate alone, for whatever reason, was changed, there was to be no change in the guarantee. But if the position's rate was increased because the entire classification's rate was increased generally, obviously the parties intended that amount to be added to the guarantee.

The fact that not every single employee covered by the February 7 Agreement, or every maintenance-of-way employee, or everyone working for this Carrier, received an identical increase on July 1, 1968, does not detract from the general character of the 12-cent increase given to the skilled employees and foremen. It was a generally applicable increase to all in these classifications and therefore is the sort of general increase which must be added to guaranteed compensation under Article IV.

A W A R D

The answer to the Question is Yes.

Milton Friedman
Neutral Member

Washington, D. C.
Dated: October 29, 1969

DISSENT OF CARRIER MEMBERS OF SPECIAL BOARD OF ADJUSTMENT NO. 605 TO AWARD NO. 147 (CASE NO. MW-41-W) - AGREEMENT OF FEBRUARY 7, 1965

Award 147 reaches an erroneous result on an important issue and requires dissent. It is more noteworthy for what it leaves unsaid than what it actually contains.

The award notes that the word "general" can be applied to a classification of employes as well as all employes in the craft or on the railroad. That is certainly an accurate observation but was not the issue in the case.

The question involved in the case was not in defining the word since its meaning is well understood. Application of the term to the facts presented the problem. The issue in the case was whether the word "general" should be applied to the classification or the craft. A resolution of the issue involved a determination of the intent of the parties. In this connection, the majority erred.

The majority apparently failed to give any weight to the fact that the National Agreement of May 17, 1968 separates general and special pay categories and groups of employes. Article I was intended to provide a general across-the-board wage increase to all rates and employes in the bargaining unit. This provision must be considered general in scope since it is completely unrestricted and applicable to "all...rates of pay". This is to be contrasted with Article VII captioned "Classification and Evaluation Fund" which in referring to adjustments in rates of pay is expressly restricted to certain ICC Reporting Divisions in the craft:

> "Application of this fund shall be as follows:
>
> (a) The rates of pay of employees reportable in ICC Reporting Divisions 29, 30, 31, 32, 33, 35, 38 and 40 shall be increased by the amount of 12 cents per hour effective July 1, 1968."

Therefore, Article I and Article VII of the May 17, 1968 Agreement differentiate between all employes in the craft on one hand and certain named cleasifications and groups as designated on the other.

The award states that the drafters of the February 7, 1965 Agreement must have intended the ordinary usage of the word "general" and then proceeds to apply the term to a restricted and admittedly minority group within the craft. This constitutes an addition to Section 1, Article IV of the February 7, 1965 Agreement by attempting to make it read for purposes of this case as though it were written:

> "...in addition thereto such compensation shall be adjusted to include subsequent general wage increases [applicable only to skilled and foremen classifications of employes]" (Interpolation)

Such qualifying words simply are not there and this Board has no authority to add to or amend the unrestricted language of the provision.

Article VII of the Agreement of May 17, 1968 also indicates an intention to treat special classifications of employes differently when it restricts the payment of the 12¢ per hour differential only to certain positions and for special purposes as stated:

> "...in recognition of skills, responsibilities, and training and to correct inequities."

In short, this fund is designed for an express purpose and its beneficiaries are limited to a specific class or group. Clearly it is not directed to all in the craft as is Article I. If it were, it would not be a special fund for special groups. It would then be a general fund for all. Therefore, payments out of such a fund cannot reasonably be considered as a general wage increase.

Also, the neutral was given Award No. 1 "In the Matter of Arbitration Pursuant to Section 4 of Agreement Dated November 3, 1966" between TCU Division of BRAC and the Seaboard Coast Line Railroad Company which was the only precedent supplied him. It was directly in point on principle and held concerning payments out of a "Classification and Evaluation Fund" only to certain positions in the bargaining unit:

"In applying these principles to the instant dispute, we recognize that the intent of Article V was to provide a fund for correcting distortions. This is reflected in the phrase 'to give recognition to differences in skills, responsibilities and training and to correct inequities.' In our view, it is apparent that Article V was not designed to be equivalent to a subsequent general wage increase..."

Attention is invited to the reasoning underlying that conclusion which is set forth in the Opinion.

Article IV, Section 1 of the February 7, 1965 Agreement is clearly concerned with the guarantee of protected employes and how a wage increase affects them. The fact that it is concerned with individuals constitutes further evidence that the parties did not intend a differential of the type involved in this case to become part of a guarantee which an individual might take with him when he leaves the position. Under the February 7, 1965 Agreement a guarantee runs with persons or individuals, specifically protected employes; whereas, a differential based on skilled and inequity adjustments clearly runs with positions in the classification regardless of the individual incumbent.

Article IV, Section 1 is concerned with preserving in the guaranteed rate of assigned protected employes any wage increases that were general. General to whom? In the absence of any qualifying language, to all protected employes entitled to preservation of employment who held regularly assigned positions on October 1, 1964 within the bargaining unit.

It is important to note that the pertinent portion of the agreement quoted above provided for an increase applicable to specified classifications on Class 1 railroads as determined under ICC order concerning "Rules Governing the Classification of Railroad Employes and Reports of their Service and Compensation". This award could not possibly have any precedent under different facts and agreement provisions.

For these reasons we dissent.

M. E. Parks
Carrier Member

Carrier Member