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AWARD NO. 168  
Case No. SG-33-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) The Atchison, Topeka and Santa Fe Railway Company  
TO THE ) and  
DISPUTE ) Brotherhood of Railroad Signalmen

QUESTION AT ISSUE: Claim by the Brotherhood in behalf of J. O. Rouse, a protected employe, for payment of the difference between his protected rate of normal compensation, the rate of pay of Signal Foreman, and his monthly earnings as Signalman, each month until he is again assigned to a position of Signal Foreman, such payments to be made each month.

OPINION OF BOARD: Claimant was a protected Signal Foreman with seniority in the Albuquerque Division in 1965, when his gang was transferred to the Los Angeles Division. In accordance with the rules, Claimant continued to hold seniority in Albuquerque. On November 30, 1967, Carrier abolished Claimant's gang. A Foreman's position was not available to him in Albuquerque and, rather than return to his seniority district as a Signalman, he requested and received permission to remain in Los Angeles as a Signalman. Under the rules he carried no seniority with him when he transferred.

Thereafter Carrier did not compensate him as a Foreman on the ground that he had lost his protected status under Article II, Section 1. The Employes contend that loss of his Albuquerque seniority did not thereby deprive him of his status as a protected employe.

Article II, Section 1, provides, in part, as follows:

An employe shall cease to be a protected employe in case of his... failure to retain or obtain a position

available to him in the exercise of his seniority rights in accordance with existing rules or agreements...

Claimant fits squarely within the limits of this provision. A position was available to him in Albuquerque in the exercise of his seniority rights. Instead he voluntarily chose to forfeit his established seniority and take a position in which he had none until the date he began working there.

There may be many circumstances where it is personally desirable for an employee not to obtain a position available to him in the exercise of seniority. But he cannot avoid the application of Article II, Section 1. It is not the loss of his seniority per se which causes his protected status to cease. As the Employees argue, the one is not dependent on the other under the 1965 Agreement, which speaks of employment relationship. But it was Claimant's failure to exercise seniority to obtain a position which produced that result.

A W A R D

Claim denied.

  
Milton Friedman  
Neutral Member

Washington, D. C.  
December 8, 1969