Award No. 176
Case No. CL-59-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express & Station Employes and Chicago, Burlington and Quincy Railroad Company

QUESTIONS AT ISSUE:

1. Did the Carrier violate the provisions of February 7, 1965 Agreement, particularly Articles III and VIII thereof, when it transferred a protected employe with seniority rights under the Maintenance of Way Employes' Agreement across craft lines to fill position of Mail Handler, Job No. 1058, at St. Joseph, Missouri on October 3, 1966?

2. Shall the Carrier be required to compensate Extra Clerk John Salcedo for wage loss suffered on October 3, 1966; namely, a day's pay at $20.72 per day?

OPINION OF BOARD: The facts in the instant dispute reveal that on Monday, October 3, 1966, there existed a one-day temporary vacancy in the Mail Handler job at St. Joseph. The Organization alleges that despite the availability of several qualified employees to perform the work, the Carrier, nonetheless, assigned a protected furloughed employee, available for extra work, from another craft--the Maintenance of Way Organization.

The Carrier concedes that it intended "to get some service of him during the month that would equal his protected compensation." The reference is to the assignment of the protected furloughed MofW employee to perform work within the scope of the complaining Brotherhood.

We believe several interesting facets are contained in the instant dispute which require analysis.

First, we would note that an identical claim was submitted to the National Railroad Adjustment Board, Third Division (Supplemental). On May 2, 1969, in Award 17107, the Board, sitting with a referee, held as follows:

> "The evidence presented in this claim contains conflicting contentions and is insufficient as to material facts. In view thereof the Board must dismiss the claim."

Therefore, the initial question before us is whether we have jurisdiction? It cannot be gainsaid, under certain circumstances, that different forums may entertain concurrent jurisdiction of a claim without

encroaching upon the rights of either forum. Hence, a scope rule violation was properly presented to the Third Division. In the same vein, an identical claim arising out of the February 7, 1965 National Agreement, likewise, is properly before our Disputes Committee.

Having determined that we may, similarly, exercise jurisdiction of an issue within our province despite a prior determination by the Third Division, the next inquiry is directed at the precise issue presented herein. Do we have jurisdiction of the instant dispute? The Questions at Issue in (1) is stated as follows:

"Did the Carrier violate the provisions of February 7, 1965 Agreement, particularly Articles III and VIII thereof, ---." Articles III and VIII are concerned with technological, operational and organizational changes which, under certain circumstances, require implementing agreements. In the instant dispute, none of the changes contemplated by these articles was involved. Hence, the Carrier was not required to enter into an implementing agreement. However, this merely exacerbates the problem. The first part of the Question at Issue contains the crux of the instant dispute. Were the provisions of the February 7, 1965 Agreement violated?

In this regard, Article II, Section 3, provides as follows:

> "When a protected employee is entitled to compensation under this Agreement, he may be used in accordance with existing seniority rules for vacation relief, holiday vacancies, or sick relief, or for any other temporary assignments which do not require the crossing of craft lines."

Under this Section, how can the Carrier validly argue that it was permitted to use a protected Mof W employee to perform work of another craft?

The second Question at Issue seeks compensation for a non-protected employee. We stated in Award 50, that under Question and Answer No. 7, Article I, Section 1, of the November 24, 1965 Interpretations, an unprotected employee does not acquire any rights from the February 7, 1965 Agreement.

It is, therefore, our considered opinion that the Carrier violated the February 7, 1965 Agreement. However, the question of compensation for the unprotected employee is not properly before us.

Award:

The answer to Question (1) is in the affirmative. The answer to Question (2) is not properly before us.

Murray M. Rohman
(Neutral Member

Dated: Washington, D. C.
December 17, 1969