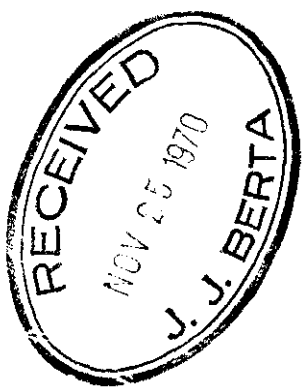
Award No. 214
Case No. CL-44-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

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

QUESTIONS AT ISSUE:

(1) Did the Carrier violate the provisions of the February 7, 1965 Agreement when it reduced the guaranteed normal rate of compensation of employes Elise M. Wynne, Mildred J. Brennan, Gilda C. Trolice, Mary A. Witruk and Lorraine M. Laub who, as "protected employes" qualified under Article I, Section 1, were entitled to preservation of employment and compensation under Article IV, Section 1?



(2) Shall the above named employes now be compensated for the difference between the normal rate of compensation of their regularly assigned position held on October 1, 1964 (plus subsequent general wage increases) and the reduced guarantee the Carrier applied commencing June 19, 1967, and continuing so long thereafter as Claimants remain protected employes and exercise their seniority in order to obtain the highest rated position available which does not require a change in residence?

OPINION OF BOARD:

Despite the confused statement of facts contained in the submissions of the parties, there are revealed two different types of displacements which will be separately discussed.

On March 16, 1967, the parties executed an implementing agreement which provided for the transfer of work and positions across seniority lines. It further provided in paragraph 4 of said Agreement, to wit:

> "4. This Memorandum of Agreement only pertains to changes in seniority districts, and has no effect on rates of pay and working conditions."

The first group of displacements arose as a result of John Clancy displacing John Krolick due to the transfer of the former's position to Newark. It is, therefore, our considered view that all displacements resulting therefrom were directly attributable to the Carrier. See our Award Nos. 194 and 208.

What of the next series of displacements? Specifically, we refer to Rossitto, De Risi, and Trolice, each allegedly returned from a voluntary leave of absence and exercised seniority to obtain the highest rated position available. At our level, we cannot determine whether such exercise of seniority was engendered because of a job abolishment by Carrier or made voluntarily. This aspect, however, can readily be ascertained on the property. In the event they were not initiated by the Carrier, are they protected under Article IV, Section 3,

of the February 7, 1965 National Agreement, viz:

> ". . . . provided, however, if he is required to make a move or bid in a position under the terms of an implementing agreement made pursuant to Article III hereof, he will continue to be paid in accordance with Sections 1 and 2 of this Article IV."

Basically, it is the Organization's argument that as a result of the consolidation of seniority rosters, employees were permitted to displace on positions which were formerly available only to those on the respective individual rosters. Consequently, the Carrier is required to retain their protective status. In our opinion, the Organization's contention ignores the manifested intent of an implementing agreement, as well as subjecting Section 3 of Article IV, of the February 7, 1965 Agreement, to a strained interpretation.

It is our view that the Organization is over-simplifying the impact of the implementing agreement executed on March 16, 1967. That agreement specifically limited its purpose to changes in seniority districts. It knew full-well that a dovetailed seniority roster would permit senior employees on the combined roster to displace on jobs which, otherwise, they would not have been able to exercise displacement rights. The primary question posed herein is whether those employees who exercised such displacement rights were compelled to do so in order to maintain their protection, as a result of an act of the Carrier. As we previously indicated, the answer to this question can best be resolved on the property.

Furthermore, Section 3 of Article IV, provides that employees shall not be placed in a worse position with respect to compensation (Section 1), if they are "required to make a move or bid in a position under the terms of an implementing agreement". The implementing agreement entered into herein merely provided for changes in seniority districts . . . it did not require the employee to make a move or bid in a position under the implementing agreement. In the same vein that we have held Carriers liable for failure to foresee the far reaching consequences of a job abolishment, we, similarly, hold the Organization to the same level. The Organization, likewise, is required to project the consequences flowing from a dovetailing of seniority rosters and to protect itself accordingly. In the absence of any restrictions in such implementing agreement, we are compelled to abide by the language of Section 3. Hence, until the parties on the property determine whether Rossitto, De Risi and Trolice were required to displace as a result of the Carrier's action, or did so voluntarily, we hold that the Carrier acted properly herein.

AWARD:

The answer to Questions (1) and (2) is in the negative, subject, however, to a determination by the parties on the property as to whether the affected employees were required to displace due to an act of the Carrier.

Murray M. Rohman
Neutral Member

Dated: Washington, D.C.
July 8, 1970