SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and St. Louis Southwestern Railway Company

QUESTIONS AT ISSUE:

(1) Does Section 8 of the Agreement of May 1936 Washington, D. C., require the Carrier to provide health and welfare benefits to Messrs. Carson Bell, Z. F. Burford, John Luke, Sam Miles and O. J. Peppers, employees affected in the October 1, 1961 St. Louis Southwestern Railway Company - Southern Pacific (Texas & Louisiana Lines), Dallas, Texas, Station and Yard Facilities Coordination?

(2) If the answer to Question 1 is affirmative, shall the Carrier now be required to afford Claimants Carson Bell, Z. F. Burford, John Luke, Sam Miles and O. J. Peppers the health and welfare benefits that they were arbitrarily deprived of?

OPINION OF BOARD: Effective January 1, 1962, facilities of the St. Louis Southwestern Railway Company and the Southern Pacific Company (T & L Lines) were coordinated, pursuant to the protective provisions of the 1936 Washington Job Protection Agreement. In substance, the Organization contends that,

> Claimants Bell, Burford, Luke, Miles, and Peppers were affected by the coordination and subsequent to being affected have been paid displacement allowances and/or coordination allowances by the St. Louis Southwestern. In months that the Claimants performed work they received coordination allowances, as required by Section 7 of the Washington Agreement. The Carrier, however, did not continue their protection with respect to health and welfare benefits in such months.

Two additional statements contained in the Organization's submission are pertinent herein. It further alleges that, "(S)uch health and welfare benefits are accorded to other employees on Claimants' home road in active service." Also that, "(T)he Carrier's arbitrary elimination of such benefits during months that the Claimants drew coordination allowances is improper and not in keeping with the literal specific language of both Agreements."

The Carrier, in turn, concedes that the Claimants herein continued in service and performed extra work.

> During months they performed compensated service for the Carrier under this rule the Carrier has made

> payments for health and welfare benefits, but during periods when work under this rule has not been available to them and they have performed no service no such payments have been made, as no payment for health and welfare benefits is made to cover other employes who are furloughed and who perform no compensated service for the Carrier.

Illustrative of the instant dispute, the Carrier indicated that Bell performed some work in each month through December, 1963. Thereafter, he has not performed any work but received a Section 7 coordination allowance--and no payments were made for health and welfare benefits.

At this juncture, we would indicate two statements contained in the submission of the parties which are inapposite. Namely, whether the Carrier continued their health and welfare benefits in those months the Claimants performed compensated service, as well as whether such benefits continue to be accorded to other employees on his home road, in active service or on furlough. We have no means of deciding such variance at our level. Both of these statements can readily be verified on the property. However, assuming that the Carrier's statement is correct, are the Claimants entitled to receive health and welfare benefits in those months that they do not perform compensated service?

In this regard, the Organization cites two decisions by the Section 13 Disputes Committee, which it contends is dispositive of the issue herein. Docket No. 9, without a Referee, in response to the Questions posed, i.e.,

> QUESTION (1) Is the "average monthly compensation" determined in accordance with the formulae prescribed in Section 6-(c) and 7-(a) of the Agreement, subject to change to conform to subsequent increases and/or decreases in basic hourly rates resulting from general wage adjustments?
>
> QUESTION (2) Are affected employes who have insufficient seniority to obtain and retain a regular assignment, but who revert to and perform service from the extra list, entitled to compensation under Section 6 or Section 7, of the Agreement, or under a combination of both Sections?

held that the affected employees who perform services from the extra list are entitled to compensation under Section 6 of the WJP Agreement. In Docket No. 127, decided by Referee Bernstein on July 22, 1966, involving some of the same Claimants herein and subsequent to the docketing of the instant dispute with the Section 13 Committee, but thereafter withdrawn pursuant to the February 7, 1965 National Agreement, is an established precedent which our Board is required to follow.

We have previously stated that precedents are important, though not sacrosanct and where they are relevant to a dispute before us, we shall analyze the precedent Award and when appropriate, we intend to follow it unless contrary to good conscience.

We have found it necessary to set forth the above statement in view of the Organization's insistance that the "Decision" in Docket 127--and only that portion entitled "Decision"--shall be our guiding light in deciding the instant dispute. The fact that the Decision is predicated on and responsive to the two Questions posed therein, as well as approximately four pages of single space "Findings," are irrelevant and no concern of ours. We should not inquire what was involved therein, but simply accept the bald statement, viz:

> DECISION: The Claimants, regular position holders who reverted to the Carrier's furlough list by virtue of the coordination, are eligible for Section 6 benefits and not a combination of Section 6 and Section 7 benefits as a matter of interpretation of Section 6 (a) and (c). If Section 7 (h) were applicable the result would be the same.

Ergo, Referee Bernstein held that these Claimants were entitled to Section 6 benefits, i.e., they were continued in service. Therefore, for a period not exceeding five years following the effective date of such coordination be placed in a worse position--this, of course, includes health and welfare benefits.

Prior to analyzing the dispute in Docket 127, we would further indicate the thrust of the Organization's position herein. Paraphrasing the Organization, it is to the effect that once an employee becomes entitled to a Section 6 displacement allowance, i.e., one who is continued in service, he always remains in that category and that his entitlement becomes fixed at the time of coordination as to whether he is subject to Section 6 or 7. In effect, if he commences as a Section 7, then he is governed by Section 7 (h) and not Section 6. Why? Otherwise, the WJP Agreement would have contained a Section 6 (h).

Although the parties have failed to cite a specific Award on this aspect, the Carrier contends that an employee who performs service in a given month is entitled to a Section 6 displacement allowance and in those months in which he does not perform compensated service, he is entitled to a Section 7 coordination allowance. However, such metamorphoses in the employee's status are controlled by monthly changes and are not to be fragmented by days within a month.

Our analysis of the instant dispute now leads us back to Referee Bernstein's decision in Docket 127. The issue before him was stated as follows:

> QUESTION:
>
> 1. Shall affected employees who have insufficient seniority to obtain and retain a regular assignment in the coordinated operation be paid a Section 6 Displacement Allowance in those protective period months in which they perform service?
>
> 2. If the answer to question (1) is in the affirmative, shall the Carrier now be required to pay Claimants Carson Bell; --- Z. F. Burford; --- John Luke; Sam Miles; C. J. Peppers; --- a displacement

> allowance for the month of January, 1962, and each subsequent month thereafter in which they perform service in the protective period, rather than a combination displacement-coordination allowance which is now being paid.

In the Findings, the following paragraph is crucial herein:

> The Organization claims that in any month in which the furloughed employees performed extra work they were entitled to Section 6 allowances for the entire month. However, the Carrier interprets Section 7 (h) to mean that the Section 6 and Section 7 allowances are to be prorated and a combination of both paid depending upon the proportion of the working days of the month in which the employee was working and not working.

Additional comments are included in the Findings, concerning the application of days or months. Finally,

> (T)he grossness of these categories argues against their being subdivided into fractions measured in days. Given the terminology and the rough justice the allowances were to perform, it seems quite unlikely that there was any intention that allowances be made on a daily basis.

It follows, therefore, that Claimants are not eligible for health and welfare benefits in those months when they did not perform service. Furthermore, the two disputed questions initially posed, i.e., whether these Claimants received health and welfare benefits during the period they performed compensated service, as well as whether under Section 8, of the WJP Agreement, other employees on his home road, in active service or on furlough, are accorded these benefits, are remanded to the property for disposition consistent with the Opinion.

AWARD:

The answer to Questions 1 and 2 is in the negative. However, the two factual issues are remanded to the property for disposition per Opinion.

Murray M. Rohman
Neutral Member

Dated: Washington, D.C.
July 24, 1970