Award No. 221
Case No. TCU-40-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) Fort Worth and Denver Railway Company
TO THE ) and
DISPUTE ) Transportation-Communication Employees Union

QUESTION AT ISSUE: Are any protective provisions of the February 7, 1965 Agreement nullified by the terms of an implementing agreement made to affect the coordination of facilities under the Washington Agreement?

OPINION OF BOARD: The facilities at Stamford, Texas, were coordinated under a coordination agreement executed on January 26, 1966. As a result of the coordination, Telegraph-Cashier D. B. Chancellor was displaced and subsequently exercised seniority to a Telegrapher's position at Decatur, Texas, in order to retain his protected status. The question is whether the $400.00 transfer allowance provided in Article V of the February 7, 1965, Agreement is due, or whether he is entitled to no more than is specified in the coordination agreement.

Paragraph 2, Article V - Moving Expenses and Separation Allowances, of the February 7 Agreement provides:

> If the employee elects to transfer to the new point of employment requiring a change of residence, such transfer and change of residence shall be subject to the benefits contained in Sections 10 and 11 of the Washington Agreement notwithstanding anything to the contrary contained in said provisions and in addition to such benefits shall receive a transfer allowance of four

> hundred dollars ($400) and five working days instead of the "two working days" provided by Section 10(a) of said Agreement.

The coordination agreement makes no reference to the $400.00 transfer allowance, although it specifies Carrier's obligations for moving expenses, mileage and wage loss. According to the Organization, this benefit is due any employee who is required to transfer to a point of employment involving a change of residence to retain his protected status. The Organization cites Article VI, Section 3, of the February 7 Agreement which states, as follows:

> Without in any way modifying or diminishing the protection benefits or other provisions of this agreement, it is understood that in the event of a coordination between two or more carriers as the term "coordination" is defined in the Washington Job Protection Agreement, said Washington Agreement will be applicable to such coordination... (Underlining added.)

Carrier states that this provision "is designed to provide the protection of the Washington Job Protection Agreement...to employees who are not protected under the provisions of the February 7, 1965 Agreement," according to Page 18 of the Interpretations, dated November 24, 1965. Further, Carrier notes the General Question on Page 18, which indicates that the Interpretations do not apply to agreements entered into subsequent to February 7, 1965, as in this case. Finally, according to Carrier, the $400.00 allowance is not due under the Washington Agreement and if the parties had intended to provide it, their agreement would have specified it.

Article VI, Section 3, provides that the benefits of the February 7, 1965, Agreement are not to be modified or diminished. The parties of course may specifically agree to modify

any provision of an agreement between them but silence cannot accomplish it. By listing conditions for the coordination they did not waive contractual benefits not mentioned. A waiver, if intended, must be explicit. There was no waiver of the $400.00 allowance expressed in the January, 1966, agreement.

Section 8 of that agreement provides that "except as otherwise provided for in this agreement, it is understood and agreed that all provisions of the 'Washington Job Protection Agreement of May 1936 shall apply..." Without a waiver they must apply, as do the applicable benefits of the February 7 Agreement, which was then in force for a year.

To accept Carrier's reasoning would require a finding that none of the provisions of the February 7 Agreement were applicable in a case like this. For either that Agreement was waived in its entirety by Section 8 of the January 25, 1966, agreement, or all of it governs these parties. If, for example, they had meant that "only" the provisions of the Washington Agreement apply, they should have said so. Absent affirmative language, there is no evidence of a mutual intent to deny any of the February 7, 1965, benefits to affected employees.

The general Question on Page 18 of the Interpretations is not applicable. The issue arises under the Agreement, not under a subsequent interpretation.

With regard to Carrier's contention that Article VI, Section 3, was designed to give benefits to non-protected employees, the Interpretations do so provide. They are to receive the Washington benefits. But that was not the exclusive purpose of this provision. As it states, it does not limit the February 7 benefits to which protected employees are entitled.

A W A R D

The answer to the Question is No.

Milton Friedman
Neutral Member

Washington, D.C.
November 16, 1970



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