Award No. 246
Case No. CL-80-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
and
Kansas City Terminal Railway

QUESTIONS AT ISSUE:

(1) Did Mrs. Barbara J. Mills possess the two (2) years or more of Employment relationship as of October 1, 1964, necessary to qualify her as a "protected employee" as that term is used in Section 1 of Article 1 of the February 7, 1965 Agreement?

(2) Did the Carrier violate the provisions of Article IV, Section 1, of the Agreement when it refused to compensate Claimant Mrs. B. J. Mills during the period of furlough September 2, 1969 to October 2, 1969?

(3) Shall the Carrier now be required to compensate Mrs. B. J. Mills at her protected rate in accordance with Article IV, Section 1 of the February 7, 1965 Agreement?

OPINION OF BOARD: The instant dispute involves a claim for payment of protection benefits due Claimant for the period from September 2, 1969--the date she was furloughed--to October 2, 1969--the date she was re-assigned to a yard clerk position.

The facts, as detailed by the Carrier, indicate that Claimant was employed on February 9, 1961, for temporary vacation relief work. Effective April 6, 1962, she was assigned by Bulletin to the position of Vacation Relief-Messenger & PBX Operator, until October 26, 1962. Thereafter, on approximately twelve dates during October, November and December, 1962, Claimant was offered and she performed extra work on a day-to-day basis. Although she performed no service in January, 1963, Claimant was hired for a regular clerical position on February 11, 1963. Prior to the latter date, Claimant could not establish seniority under Article 12(c) of the effective Schedule Agreement as she had not performed the required sixty days of service. Though Claimant established seniority from February 11, 1963 to September 2, 1969, she was displaced by a senior employee and furloughed until September 18, 1969, when she was again regularly employed.

Thus, the issue presented to us is whether Claimant acquired an employment relationship of two years or more as of October 1, 1964, in order to qualify as a protected employee pursuant to Article I, Section 1, of the February 7, 1965 Agreement.

In support of its position, the Carrier asserts that Claimant did not perform any service during the month of January, 1963. In addition, the Carrier argues that Claimant had only a casual relationship with the Carrier prior to acquiring seniority. In effect, Claimant had no tie-in and no residual rights under the effective Agreement. Conversely, the Organization insists that during this period she was available for extra work, bid on a bulletined position and assigned thereto "without benefit or filing a new application for employment; submitting to a physical examination or any other formality that is routinely followed in the hiring of employees."

In our previous Award Nos. 34 and 161, we thought we had firmly established the principle that an employment relationship is not the equivalent of seniority. In fact, the November 24, 1965 Interpretations, Question and Answer No. 5 under Article I, Section 1, similarly, makes a dichotomy between an employment relationship and seniority. In the same vein, we quote from our Award No. 34, the following:

> "Seniority, normally, flows from the agreement of the parties as evidenced by the collective bargaining contract. Conversely, the employment relationship arises when an employee is first hired - whether in a bargaining unit or excepted position. Hence, the employment relationship need not be coincidental with seniority."

In actuality, the Carrier does not quarrel with the above. However, the Carrier's position is predicated on the following contention:

> "---that Mrs. Mills did not have a continuous employment relationship with the Kansas City Terminal Railway during the period October 1, 1962 to February 11, 1963, and accordingly is not a 'protected employe' as contemplated by the first sentence of Article I, Section 1, of the February 7, 1965 Agreement, which reads:
>
> "All employees, other than seasonal employes, who were in active service as of October 1, 1964, or who after October 1, 1964, and prior to the date of this Agreement have been restored to active service, and who had two years or more of employment relationship as of October 1, 1964,---." (Underlining added)

As noted, we have underlined the word "continuous," as well as "two years or more of employment relationship." It will be recalled that Claimant did not perform any service during the month of January, 1963. Thus, the Carrier argues that she did not have a continuous relationship. Despite the fact that we have carefully and minutely reviewed every word contained in Article I, Section 1, of the February 7, 1965 Agreement, we failed to observe therein the word "continuous."

Thus, the Carrier is seeking refuge in a non-existent word, one absent from the Agreement and which now we are requested to read into said Agreement. Our function, in this situation, is relegated to interpreting the Agreement as written by the parties. We do not have the power to add words which would limit or expand the language contained therein. Hence, under the conditions prevalent herein, it is our opinion that Claimant had an employment relationship of two years or more as of October 1, 1964.

AWARD

The answer to questions (1), (2) and (3) is in the affirmative.

Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
June 9, 1971