Award No. 267
Case No. CL-50-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

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

QUESTIONS AT ISSUE:

Organization's Questions:

(1) Did the Carrier violate the provisions of the February 7, 1965 Agreement, when it notified Miss Alice Ahearn, that she was no longer under the protective features of the February 7, 1965, Stabilization Agreement by reason of her failure to work a position of extra clerk at Perth Amboy, N. J., due to extra clerk Barbara Young going on vacation?

(2) Shall Carrier now be required to restore the protective features of Miss Alice Ahearn in accordance with the February 7, 1965 Agreement she held prior to Carrier's action in this case (plus subsequent general wage increases)?

(3) Shall Carrier now be required to correct claimant's protective rate which is $599.41, per month instead of protective rate of $550.09 as stated by Carrier?

Carrier's Question:

Did the Carrier violate the provisions of the February 7, 1965 Agreement when it notified Miss Alice Ahearn, that she was no longer under the protective features of the February 7, 1965 Stabilization Agreement by reason of her consistent pattern of declining calls for extra work?

OPINION OF BOARD:

On January 23, 1970, Claimant's position of telephone operator was abolished. Thereafter, she exercised her seniority to the position of Assistant Chief Tariff Compiler and after a trial period was disqualified. In due course, she was placed on the extra list as a protected employee and was subject to call until her retirement on December 11, 1970.

Involved herein is that portion of Article II, Section 1, of the February 7, 1965 Agreement, hereinafter quoted:

> "A protected furloughed employee who fails to respond to extra work when called shall cease to be a protected employee."

The instant dispute presents a number of issues which require comment. The first concerns the question of her protected rate. The Carrier contends that it was $550.09 per month, whereas the Organization argues that it

should have been $599.41 per month. Why should it be necessary for us to decide such an issue? The parties have under their control the records which would reveal the protected rate to which she was entitled. We merely have a bald statement that they dispute the amount. If nothing else, the parties should be capable of resolving this disagreement on the property.

The second issue is interrelated with the question of her availability when called. Without detailing the various times Claimant was called to fill a vacancy in her seniority district, which the Carrier has cited in the record, there is alleged a consistent pattern of refusal to respond. Implicit in the Organization's contention is the fact that Claimant was not qualified to perform the required work, hence, she was not obligated to respond. Thus, in this context, who has the right to determine qualifications?

We would state the rule in its simplest form. Absent a provision to the contrary, the Carrier has the unqualified right as part of its management prerogatives to initially determine an employee's qualifications. Thus, where an employee on the extra list is called to fill a vacancy in the seniority district, that employee is required to accept such call--in the absence of other contingencies. Thereafter, if that employee is found to be unqualified, the Carrier is obligated to continue to pay the protective benefits. On the other hand, when a protected employee is called from the extra list and declines, or is unavailable, solely on the ground that the employee is not qualified to perform the work, a different aspect is presented.

Under these circumstances, a consistent refusal to respond to the call will be deemed to demonstrate a pattern and result in a denial of protective benefits.

In our view, the Carrier's records indicate a pattern of conduct reflecting a refusal to accept calls. In Award Nos. 16, 126, 182, 185, to name only a few, our Board has denied protective benefits where there has been amply demonstrated the existence of a consistent pattern. Therefore, it is our considered judgment that the Claim should be denied.

AWARD

1. The Organization's Questions at Issue are answered in the negative, except Question (3), which is referred back to the property.

The Carrier's Question at Issue is answered in the negative.

Murray M. Rohman

MURRAY M. ROHMAN
Neutral Member

Dated: Washington, D. C.
October 27, 1971