

AWARD NO. 288
Case No. TCU-77-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
TO THE) and
DISPUTE) TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

QUESTION
AT ISSUE:

Does a protected employee whose preservation of compensation is computed under Article IV, Section 2 sacrifice any compensation for the reason that, to retain his protected employee status, he bid in a regular position when such became available to him after December 24, 1965?

This dispute involves the preservation of compensation due to J. F. Miles. (Carrier File 2563)

OPINION

OF BOARD: This case concerns Carrier's failure to preserve the compensation of J. F. Miles, an Agent-Telegrapher, subsequent to January 18, 1967.

In 1965 Claimant was a protected employee on the extra board whose compensation was preserved under Article IV, Section 2, of the February 7 Agreement. In 1966 he bid and obtained a temporary position as Telegrapher-Leverman. Subsequently on four occasions in 1966 Carrier agreed to the Organization's request for a waiver of Claimant's obligation to bid into an available regular position, and he continued to fill the temporary Telegrapher-Leverman vacancy.

For example, in its letter of August 19, 1966, Carrier agreed to waive Claimant's obligation to bid a regular position stating, in part:

1. Mr. Miles will be permitted to remain on the position at South Tower, Muskogee,

*Interpretation
Follows*

Oklahoma, in accordance with his rights under the seniority rules, retaining his protected status under the February 7, 1965 Agreement; this to continue only until the next regular assignment on which he can place himself through exercise of his seniority rights becomes available to him...

3. Any future cases involving requests of Telegraphers for waiver of the provisions of the February 7, 1965 Agreement with respect to their obligation to place themselves on permanent assignments to protect their protected status will be handled on their own merits...

In January, 1967, however, a regular position of Agent-Telegrapher at Welch, Oklahoma, was bulletined. Claimant bid for and was assigned the position. The Welch assignment paid a lower rate than the temporary vacancy which Claimant had been filling.

According to Carrier, since Claimant voluntarily exercised his seniority he was thereafter entitled to have his compensation preserved only at the lower rate of the position for which he bid. The Organization contends that Claimant was required to bid a regular position when one became available (absent the kind of mutually agreeable waiver which had been made four times during 1966), or else he would have lost his protected status.

Article II, Section 1, provides that an employee's protection ceases if he fails to "obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements." Question and Answer No. 3, on Page 9 of the Interpretations, state:

Question No. 3: What are the obligations of extra employees with respect to obtaining or retaining a position in order to remain a "protected employee"?

Answer to Question No. 3: If an extra employe fails to obtain a position other than a temporary position available to him in the exercise of his seniority rights in accordance with the existing rules or agreements, he will lose his protected status. It should be understood, however, that this does not prohibit the making of local agreements which will permit an employe to remain an extra employe if there is a mutual understanding that this action may be justified.

The Agreement imposes on extra employees the obligation to "obtain a position other than a temporary position." The alternative is loss of protected status. An employee faced with a choice of losing his protected status or placing a bid cannot be described as engaging in a voluntary exercise of seniority. His action is non-volitional. Carrier no doubt would be quick to discern the consequences of an extra employee's failure to place a bid on a regular position. Indeed Carrier's letter of August 19, 1966, warned that such employees must "place themselves on permanent assignments to protect their protected status."

No ambiguity can be found in Article II, Section 1, or in Question and Answer No. 3 on Page 9 of the Interpretations. Since the employee must bid to retain his protection, his bid is mandatory and cannot be construed to be a voluntary exercise of seniority. This obligation is unaffected by whether the rate of the regular position is higher or lower than the employee's earnings from the extra board or from the temporary position that he occupies.

Nothing in the Agreement indicates that an employee can lose his guaranteed compensation as a result of such an action. No provision of the Agreement suggests that an employee who has complied with it may have his status changed so that his compensation is preserved under Article IV, Section 1, instead of Section 2. Conversely, if the regular position which an extra employee obtains pays a higher rate than his preserved compensation, no change is made in the future method of computing

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his guarantee; he continues to be protected in accordance with Article IV, Section 2.

Award No. 13 is not in point, since that dealt with a voluntary exercise of seniority, whereas in the instant case the Agreement required Claimant to bid in order to retain the protection it had afforded him.

Award No. 233 is also not analogous. In that case Claimant, who was protected under Article IV, Section 2, bid into a regular position while maintaining his Section 2 protected compensation. Subsequently, he voluntarily bid into a lower-rated position and, pursuant to Article IV, Section 3, then no longer "was entitled to have his compensation preserved as provided in Sections 1 and 2." But that extra employee's original bid into a regular position, paying a lower rate than his Section 2 guarantee, had not caused a forfeiture of the guarantee, as Carrier here asserts should occur.

A W A R D

The answer to the Question is No.


Milton Friedman
Neutral Member

Dated: Washington, D. C.
March 7, 1972

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Case No. TCU-77-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Missouri-Kansas-Texas Railroad Company
TO THE) and
DISPUTE) Transportation-Communication Employees Union

QUESTION
AT ISSUE:

Does a protected employe whose preservation of compensation is computed under Article IV, Section 2 sacrifice any compensation for the reason that, to retain his protected employe status, he bid in a regular position when such became available to him after December 24, 1965?

OPINION

OF BOARD: This is a request for an "Interpretation," the Organization claiming that Award No. 288 intended to direct monetary relief for Claimant when the above Question was answered in the negative. Carrier contends that the Committee answered only the Question as submitted, and alleges that there is an unresolved dispute over matters involving the claim for compensation which was never raised or dealt with by this Committee in Award No. 288.

Carrier challenges the timeliness of money claims submitted by Claimant, a matter which had never been adjudicated. The issue may be real or specious, but the subject never had been considered by the Committee--as would have occurred if there had been a request that Claimant be made whole.

Instead, the Committee dealt only with the Question submitted to it, all that it has a right to do under Article VII, Section 3, of the February 7 Agreement which states, in part:

...The notice provided for in this Section 3 shall state specifically the questions to be submitted to the committee for decision; and the committee shall confine itself strictly to decisions as to the questions so specifically submitted to it.

Article I, Section D, of the "Procedures for Handling Disputes under Article VII," similarly states that the Committee "shall confine itself strictly to decisions on the questions submitted." In accordance with a series of Awards extending back to Award No. 9, the Committee has often so held. Thus, a Question submitted is answered directly and, unless the Answer itself is unclear, the Committee's authority over the issue has ended. It is functus officio for all purposes. In the instant case the Question sought an interpretation, which was given.

In the Committee's recent deliberations the question was asked: Did the Committee intend that the employee should be paid whatever was due him, rather than just to rule on an academic question? No doubt the Committee assumed that an employee would receive what was due him. But the Committee intended to answer only the question put to it, in accordance with the Agreement and Procedures under it.

So far as the Committee was aware, all claims could have been filed properly, or just some of them, they could have been handled without any disagreement on procedure, or held in abeyance by agreement. The parties might have mutually agreed on a course of action to be followed once the Award was issued. The Committee, however, decided no other issue besides the particular Question submitted to it, since nothing else was before the Committee.

Under the Agreement, matters arising out of or related to a submitted Question must be separately dealt with if they are to be enforceable as a Committee decision. Award No. 63 indicates that a submitted Question, restricted to an interpretation of the February 7 Agreement, does not automatically embrace a remedy for compensation lost. Each claim must be submitted in such a way that any dispute which it is designed to embrace is finally and definitively resolved by the Answer.

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The Committee cannot now supplement its decision by directing monetary payments, where it never heard the substance of the issue. In effect, it would be making a new award under the guise of interpreting what was a final, complete and definitive award. This is beyond its power. So long as the Question posed to the Committee was answered directly, without any ambiguity, the Committee can have nothing before it to interpret.

AWARD

The Question submitted to the Committee originally has been answered without ambiguity, and the Committee lacks jurisdiction to consider other, even related, Questions.


Milton Friedman
Neutral Member

Dated: Washington, D. C.
March 22, 1974