Award No. 293
Case No. CL-52-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE)

Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
and
Central Vermont Railway, Inc.

QUESTIONS AT ISSUE:

EMPLOYEES' STATEMENT OF QUESTIONS AT ISSUE

1. Did Carrier violate the provisions of the February 7, 1965 National Agreement Stabilization Agreement and the Washington Job Protection Agreement of May 21, 1936, when it failed to properly compensate Messrs. R. F. Walker and R. G. Coons as provided for under Section 9 of the Washington Job Protection Agreement?

2. Shall Carrier now be required to allow Messrs. Walker and Coons the difference between the gross separation allowance received based on daily rate of position occupied on December 31, 1969, and the amount they would have received had the separation allowance been properly computed at the daily rate of pay received by the employes in the positions occupied on March 10, 1971?

CARRIER'S STATEMENT OF QUESTIONS AT ISSUE

1. Is January 1, 1970 the "time (date) of coordination" as described in Section 2(c) of the Washington Job Protection Agreement and, if so,

2. Has the Carrier properly applied the rate of the last position occupied by Claimants R. F. Walker and R. G. Coons in formula provided under Section 9(b) of the Washington Job Protection Agreement, thus fully compensating the Claimants?

OPINION OF BOARD:

In an effort to narrow the precise issues of the parties, we shall attempt to briefly highlight only the important facts. Admittedly, the parties have prepared well-written submissions of their respective positions.

On August 1, 1969, the parties executed an Implementing Agreement effective as of June 1, 1969, governing a coordination of certain facilities. It was therein provided that those employees affected by the coordination, who are protected by the February 7, 1965 National Agreement, shall be entitled to the benefits provided by Section 6 of the Washington Job Protection Agreement.

Crucial to the Organization's contention that the separation allowance of the two Claimants herein were not properly computed, is the following statement:

> While Carrier's notice of September 26, 1969 contemplated the abolishment of the affected positions as of January 1, 1970, and even though the affected employees were compensated thereafter under the provisions of Section 6(c) of the Washington Job Protection Agreement, the fact remains that the positions actually remained in existence until such time as the work was transferred in March 1971. At the time of the actual work transfer in March 1971, the positions occupied by the Claimants herein were as follows:
>
> R. F. Walker - Comptometer Operator - $33.9355 per day
> R. G. Coons - Chief Timekeeper - $33.9333 per day

The Organization further states as follows:

> It is out(sic) understanding that a minimal portion of the disbursement work may have been transferred to Montreal during the year 1970, however, the bulk of the work remained in St. Albans in the Payroll Section of the Accounting Department until the transfer actually occurred in March of 1971.

The Carrier, in turn, argues as follows:

> It is the position of this Carrier the coordination became effective as of January 1, 1970. A displacement allowance has been paid, effective with January 1, 1970, to the Claimants in accordance with Carrier Exhibit No. 6 which shows Claimants' hours worked, monthly earnings and the displacement allowance paid monthly to each.

The substance of the Organization's reasoning herein is that the Claimants on December 31, 1969, were paid the following daily rate:

R. F. Walker - Comptometer Operator - $29.8814 per day
R. G. Coons - Chief Timekeeper - $29.8793 per day

whereas on March 10, 1971, the Claimants were being paid as follows:

R. F. Walker - $33.9355 per day
R. G. Coons - $33.9333 per day

Therefore, the Organization argues that the Claimants are entitled to receive an additional sum of $1,459.56. This is stated in the following:

> We content (sic) the gross amount should have been $12,216.96 based on rate of $4.2420 per hour and based on what the position paid on March 1, 1971, making a difference of $1,459.56.

Actually, although the Organization is only claiming the sum of $1,459.56, the Carrier has paid since January 1, 1970, a displacement allowance of $1,468.84; $9.28 in excess of the Organization's claim.

We recognize that the parties are vitally concerned with the proper application of the Washington Job Protection Agreement. In this vein, we cite our Award Nos. 187, 188 and 192. Basic to the determination herein is the interpretation to be placed upon Section 2(c), of the Washington Job Protection Agreement; especially that portion which states, viz:

> "As applying to a particular employee it means the date in said period when that employee is first adversely affected as a result of said coordination."

In contemplation of such coordination, the parties executed an Implementing Agreement which provided that affected employees shall "for a period not exceeding five (5) years from the date affected by this transfer of work, be entitled to the benefits of Section 6 of the Washington Job Protection Agreement of May, 1936, ---". Commencing on January 1, 1970, and continuing until March 10, 1971, when they exercised their right to resign, these Claimants were paid a displacement allowance in accordance with the formula established by Section 6(c) of the Washington Job Protection Agreement.

Thus, what the Organization now urges is that Claimants should have received a separation allowance pursuant to Section 9(b) of the Washington Job Protection Agreement. Presumably, on the theory that they were not first adversely affected until March 10, 1971, rather than the date of January 1, 1970. It cannot be gainsaid that Claimants were treated as first adversely affected on January 1, 1970--otherwise, why would the Carrier have paid them a coordination allowance for fourteen months; and, furthermore, why would the employees have elected to receive such coordination allowance? Now, not only do they seek to retain the previously paid coordination allowance pursuant to the Implementing Agreement, but further pyramid it by seeking a separation allowance pursuant to Section 9(b), of the Washington Job Protection Agreement.

In our judgment, the Claimants opted to be considered as "first adversely affected" on January 1, 1970, as evidenced by receiving and retaining the coordination allowance paid by the Carrier. At some point, we are required to effectuate the intent of the parties. Neither party has raised the contention that the Implementing Agreement was ambiguous nor tainted with fraud. Hence, in our view, the parties bona-fide have performed pursuant to the terms of the Implementing Agreement. Thus, negating the necessity of making an independent determination as to the actual date when Claimants were first adversely affected.

AWARD

The answer to the Organization's questions (1) and (2) is in the negative.

The answer to the Carrier's questions 1 and 2 is in the affirmative.

Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
March 27, 1972