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PARTIES) Missouri Pacific Railroad Company  
TO THE ) and  
DISPUTE) Transportation-Communication Division, Brotherhood  
of Railway, Airline and Steamship Clerks, Freight  
Handlers, Express and Station Employees

QUESTIONS

- AT ISSUE:
1. Is Carrier in violation of the Agreement when it refused to grant J. R. Baker, Jr., preservation of compensation under Article IV contending that he cannot work on a position requiring bond and therefore is not entitled to any protection of any kind?
  2. If the answer to the above is in the affirmative shall Carrier be required to pay J. R. Baker, Jr., the preservation of compensation due to him under Article IV?

OPINION

OF BOARD: Claimant's position as Telegrapher-Clerk was abolished in September, 1968. He sought to displace an Agent but was advised by Carrier that he could not do so since the Agent's position required a bond and Claimant was not bondable. On several occasions, beginning in 1914, Claimant had been refused a surety bond, the specific reasons for which are not in the record, aside from Carrier references to "inability to handle company funds" and "excessive garnishments."

There was no position which Claimant might have occupied which did not require a bond. According to Carrier, therefore, Claimant has lost the right to protected status because his failure to qualify for a bond was the result of voluntary circumstances which he alone could cure. Carrier states that "there was no intention on behalf of the parties to the February 7, 1965 Agreement to afford protected benefits to an individual who by his own conduct effectively deprived the Carrier of utilizing his services wherever his seniority would permit."

The Organization contends that Claimant is entitled to receive the benefits of Article IV, Section 1, because he was "ready and willing at all times to perform service." He did not obtain the position he sought (or any other to which his seniority entitled him), it was said, solely because Carrier declined to permit him to occupy them. Since Claimant was prepared to work but was denied work by action of Carrier, he should receive the benefits due protected employees, according to the Organization.

It is certainly doubtful, absent direct evidence, whether the inability of an employee to obtain a bond is accurately described as voluntary on his part. Moreover, for a half-century Claimant has worked for Carrier as a non-bonded employee, and obtained protected status with that circumstance in his record.

Claimant was able and willing to perform the work on the position he was occupying, but Carrier abolished it. Claimant then was obliged to obtain another position to which his seniority entitled him and for which he was qualified. There was none.

"Disability" is given as one of the reasons in Article IV, Section 5, why "a protected employee shall not be entitled to the benefits of this Article." Yet a protected employee whose job is abolished and who cannot hold another position because he is disqualified for it would not be denied the benefits of Article IV. Award No. 194 deals with this question, and holds that the consequences of a job abolishment, which is not a voluntary act of the employee, entitled him to the benefits of Article IV.

There may be various reasons why no other job is obtainable by an employee following Carrier's abolishment of the position he held. Award No. 194 cites one situation. Physical limitations may restrict an employee's capacity to move into other positions, as described in Awards 136 and 169, but guaranteed compensation is payable. Or, as in this case, the requirement that positions must be manned by a bondable employee may narrow or eliminate the possibility of placement for particular employees.

AWARD NO. 303  
Case No. TC-BRAC-101-W

Since Claimant became a protected employee on October 1, 1964, with all of the limitations and disabilities flowing from his inability to obtain a bond, he cannot lose that status if an action of Carrier results in the loss of his position and no other position for which he is eligible is available.

If it were shown that he were, in fact, bondable but chose not to obtain a bond, Carrier's denial of the claim would be appropriate. As it is, the absence of bondability cannot be described as voluntary, particularly since Claimant had tried for more than 40 years to obtain a bond. Claimant apparently has done all that he could to place himself on another position and to make himself available for work. Since he lost his position by Carrier's action, his protected compensation therefore cannot be terminated.

AWARD

The Answer to the Questions is Yes.

  
Milton Friedman  
Neutral Member

Dated: May 19, 1972  
Washington, D. C.