NATIONAL RAILWAY LABOR CONFERENCE

1225 CONNECTICUT AVENUE, N.W., WASHINGTON, D. C. 20036/AREA CODE: 202—659-9320

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June 8, 1973

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Gentlemen:

This will supplement our previous letters with which we forwarded to you copies of Awards of Special Board of Adjustment No. 605 established by Article VII of the February 7, 1965 Agreement.

There are attached copies of Awards Nos. 355-356 dated June 5, 1973; Awards Nos. 357 to 360, inclusive, and Interpretation to Award No. 318 dated June 7, 1973 rendered by Special Board of Adjustment No. 605.

Yours very truly,

J. F. Griffin

cc: Messrs.
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AWARD NO. 355
Case No. SG-30-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE) The Chesapeake and Ohio Railway Company and Brotherhood of Railroad Signalmen

QUESTIONS AT ISSUE:

(a) The Carrier violated current provisions of the Signalmen's working Agreement and the February 7, 1965 Mediation Agreement by removing Signalmen R. M. Black, Jr., and G. W. Leist from the 'protective list' of signal employes and, as a result, Black was furloughed at close of work day, Wednesday, November 3, 1971; and Leist was furloughed at close of vacation day, October 29, 1971; as a result,

(b) Carrier be required to restore Black and Leist back to its protective list of signal employes and, further, be required thereafter to retain them in compensated service in accordance with provisions of Section 1, Article I, of the February 7, 1965 Mediation Agreement; and

(c) Carrier be required to compensate Black and Leist at their applicable rates of pay as Signalmen for all loss of earnings from dates of furlough as cited in part (a). In addition, the Carrier should make necessary payments in order to make Claimants whole for any and all loss, including payments toward Railroad Retirement, C&O Hospital Association dues, and Travelers Insurance, and credit for such loss of time toward vacation and/or holidays; and

(d) Inasmuch as this is a continuing violation, said claim is to cover the period of time until Carrier takes the necessary corrective action to comply with our applicable Agreement.

Interpretation Follows Award

OPINION
OF BOARD: Claimant Black established seniority as a Signal Helper in the Barboursville Reclamation Plant seniority district in July, 1947. He acquired seniority there as an Assistant Signalman in 1956. He was furloughed in 1958 and obtained work in the Huntington seniority district where, as provided in the rules, he established seniority as a Signal Helper in 1959 and as a Signalman in 1962.

In 1968, by virtue of an opening in his home seniority district, Barboursville, Claimant Black returned there as a Signalman, forfeiting his Huntington seniority. When he was furloughed in 1971, Carrier asserted that he was not a protected employee.

Claimant Black's acquisition of seniority on the two districts, and his return to Barboursville in 1968, were based on Rule 42(d) of the working agreement which provides:

> Laid off employes going to another seniority district . . . establish seniority on the district to which they go . . . The employe may thus establish and accumulate seniority on the new seniority district as well as retain seniority on the home district until such time as he is advised by . . . the home district of a permanent position which his seniority entitles him. He must then . . . choose the district on which he will hold and accumulate seniority. Thus, if he returns to the home district, he forfeits all seniority on the other district . . .

Claimant Leist's employment history was essentially the same as Claimant Black's. Both men had greater seniority on their home district, Barboursville, than they had in Huntington, although they originally had been protected by virtue of the Huntington positions which they occupied on October 1, 1964.

According to Carrier, pursuant to Article II, Section 1, of the February 7 Agreement, the two men lost protected status when they gave up the Huntington positions which they

held. The organization contends that they acted within the rules and consistent with Article II, Section 1, since they obtained positions available to them in the exercise of their seniority rights.

An employee may have acquired protected status on a district in which he held a year's seniority. If he simultaneously had 20 years of seniority on another district, and a job opens up there to which his seniority entitles him, does he lose protected status by taking it? After all, Article II, Section 1, anticipates retention of protection when a position is obtained in the exercise of seniority, in accordance with existing rules. This is emphasized by Article IV, Section 3, which provides that remuneration may be affected by a voluntary exercise of seniority--but not protected status.

Carrier's arguments that employees lose protected status by yielding the position in which they had become protected, and also lose protected status by "failure to retain... a position," are not persuasive in the context of Article II and Article IV.

For the February 7 Agreement makes no reference to retention of seniority in the district in which protection was originally earned on October 1, 1964, where an employee may hold seniority in two districts. Having become protected by virtue of Article I, Section 1, he thereafter retains or loses protection solely by operation of specific provisions of the Agreement. And none of them suggests a loss of protection where a job available in the exercise of seniority is obtained.

With reference to Carrier's second argument, the Agreement does not suspend operation of seniority rules or deny employees the opportunity to utilize them while retaining protected status. If, as in Award 168, an employee fails to obtain a position which was "available to him in the exercise of his seniority rights," he loses protected status. But in Award 168, the employee gave up his seniority altogether, in order to take a job where he started without any seniority in another district. He thus failed to obtain a position which was available to him in the exercise of his seniority rights.

However, in the instant case, Claimants not only held seniority on their home districts, they had even greater seniority there than in Huntington. They complied with seniority rules in obtaining their positions. Had they not pursued the course they did, they would have lost all seniority on their home district. As it was, they lost seniority on the Huntington district, since in any event one or the other must be lost, according to Rule 42(d).

Thus, while they failed to retain the positions available to them in Huntington, they did act to obtain positions to which their seniority in Barboursville entitled them. This meets the condition of Article II, Section 1, and affords no warrant for treating them as unprotected thereafter.

The situation in which Claimants found themselves made it mandatory that they comply with one of the conditions in Article II, Section 1, and that they not comply with the other. They could not retain seniority in both districts and they were compelled by the rules to make a choice at that time. The choice was theirs to make, and it was neither inconsistent with the February 7 Agreement nor cause for loss of protection.

As the Organization states, if Claimants had failed to return to Barboursville when positions became available to them, Carrier could then have charged them with failure to obtain a position available in exercise of their seniority. The February 7 Agreement does not anticipate that a failure to follow one of two alternative required courses of action, both involving exercise of seniority, will lead to loss of protection.

Award 75, cited by Carrier is not in point in view of the substantial difference in the Question posed. It asked:

> If an employee has "protected" status under the February 7, 1965 Agreement and subsequently voluntarily bids onto a position on another seniority district and thereby gives up his seniority on the former district and begins as a new employe on the new district, does he lose his "protected" status under that Agreement? (Underlining added.)

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Award 75 has the same factual situation as Award 168. The individual in each case began as a new employee on his new district. In the instant case, however, the jobs chosen carried with them retained seniority of many years.

AWARD

Claims sustained, except that the claims made in the second sentence of (c) are dismissed on jurisdictional grounds, without reference to their merits.

Milton Friedman
Neutral Member

Dated: Washington, D. C.
June 5, 1973

INTERPRETATION
AWARD NO. 355
Case No. SG-30-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) The Chesapeake and Ohio Railway Company
TO THE) and
DISPUTE) Brotherhood of Railroad Signalmen

OPINION
OF BOARD: In its original submission to the Board in Case No. SG-30-E, the Organization listed four issues to be decided. One, which was identified as (c), stated:

> Carrier be required to compensate Black and Leist at their applicable rates of pay as Signalmen for all loss of earnings from dates of furlough as cited in part (a). In addition, the Carrier should make necessary payments in order to make Claimants whole for any and all loss, including payments toward Railroad Retirement, C&O Hospital Association dues, and Travelers Insurance, and credit for such loss of time toward vacation and/or holidays.

The Award in that case sustained the claims in toto, with the exception noted:

> Claims sustained, except that the claims made in the second sentence of (c) are dismissed on jurisdictional grounds, without reference to their merits.

After issuance of the Award, Carrier advised the Organization that both Claimants would be compensated for the time they had been furloughed at the rate of Signal Helpers. This was the rate of pay at which they concededly were protected. The Organization, however, notes that Item (c) in the original claim, as quoted above, sought compensation at the Signalman rate. This request for an interpretation therefore asks that Carrier now be directed to pay the two men at the Signalman rate rather than at the rate of Signal Helper.

A key to resolution of the instant dispute is the need to distinguish between the seniority rules in the schedule agreement governing layoffs, and the guarantee of a continuation of an employee's protected rate of compensation under the February 7, 1965 Agreement. So far as the schedule agreement is concerned, it does not make a particle of difference whether or not an employee is protected, when it comes to preferential selection for job retention. The senior man must be retained in accordance with the schedule agreement, and violations of seniority rights are challengeable in the usual manner up to the Third Division.

Thus, if a man protected as a Signal Helper is properly laid off in accordance with his seniority from any position, he continues to receive Signal Helper's pay so long as he meets the conditions of the February 7 Agreement. If, however, that same individual is improperly laid off from a Signalman's position, which he has been holding, he is entitled to be made whole as a Signalman. But this is by virtue of the schedule agreement, not because he is protected as a Signal Helper under the February 7 Agreement. If that individual's layoff entitles him to protective benefits, they cannot be greater than those at which he was protected.

The only reference in the original submission to how Claimants were improperly treated in their 1971-1972 layoff was the Organization's statement that they had been working as Signalmen when laid off, and ultimately were

recalled to Signalmen's positions. The submission did not establish that there were positions in the Signalman's classification available to them (although one of the two Claimants had been found improperly laid off for a few days in October, 1971, and was made whole by Carrier).

But wrongful layoff is not material in a proceeding before this Board. For the Board held, in effect, that whether or not the layoffs were proper under the schedule agreement, these employees were protected men. That was the central issue submitted. And their protected compensation without question was that of Signal Helper.

In its request for an interpretation the Organization referred to the occasion on which the Claimant, who had been laid off out of seniority, was made whole:

> In further support of our position here, we refer Carrier to our claim filed with Supt. Radspinner on November 15, 1971, Carrier file RP-SN-3, that resulted from Carrier working a Signalman (McCormick) junior to Black in 1971. There Carrier allowed our claim in its letter dated January 13, 1972...

The foregoing indicates that where seniority was involved and Carrier erred, the employee was properly reimbursed for lost wages as a Signalman. However, the Organization then continues:

> Had Carrier not acted to remove Claimants from the protected list - which SBA Award 355 said it had no right to do - it is reasonable to assume that both Black and Leist would have continued to work in their Signalmen's positions the same as McCormick did in October 1971.

Such an assertion is purely speculative. Presumably, if Signalmen are laid off, they are laid off because no work exists for them. It is not unusual for protected employees to be furloughed, either from the jobs in which they are protected, or from other jobs which they are occupying. But in both cases they continue to receive their protected rate of compensation, whether it is the same as their last assignment, higher than it, or lower than it.

Consequently, not only is support lacking for compensation to Claimants above the Signal Helper rate, but there was not even a showing of entitlement under the schedule agreement to a higher rate. What the issue here boils down to is that Item (c) in the claim asks for compensation at the "applicable rates of pay as Signalmen" and this part of the claim was sustained in Award No. 355.

The issue as originally presented had only one focus: were or were not Claimants protected employees? Compensation was not debated, no doubt it being well understood that if Claimants prevailed they could be made whole by this Committee only to the extent of their protected rate, not to some larger amount, generously dispensed, nor to some smaller amount for a punitive purpose.

Item (c) of the Question at Issue had referred to compensation at the "applicable rates of pay as Signalmen." There is no applicable protected rate for these employees in a classification of "Signalmen." The rate of the Signalman position is inapplicable, and may no more be granted them than may be the rate of Signal Foreman.

In its context, therefore, Item (c) must be construed to refer to "Signalmen" generically, as denoting the craft, and not to the job classification of "Signalman." These two members of the Signalmen's Organization have as their applicable rate of protected compensation that of Signal Helper, and they are entitled to that rate alone.

In this case the "applicable rates of pay" were awarded. This is the Signal Helper's rate. Had the Arbitrator awarded the Signalman's rate of pay, the Award would have been more than just a mistake, for it would have been beyond any third party's legal authority to impose. What the organization seeks neither was intended by Award No. 355, nor could it have been intended, regardless what was in the Organization's submission when it filed the claim and presented it here.

AWARD

Claimants are to be compensated at their protected rate, which is that of Signal Helper, and not at the rate of Signalman.

Milton Friedman, Neutral Member

Dated: January 30, 1975
Washington, D. C.