

AWARD NO. 356  
Case No. SG-31-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

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

QUESTIONS  
AT ISSUE:

(a) The Carrier violated current provisions of the February 7, 1965 Mediation Agreement, particularly Section 1 of Article I, and Sections 2 and 6 of Article IV, when claimant Hunter Cyrus was furloughed close of vacation day October 22, 1971. As a result;

(b) Carrier hereafter offer claimant employment equivalent to his "base period" as contemplated in Section 1 of Article I, and Section 2 of Article IV; and,

(c) Carrier provide us with claimant's base period of compensation earned and paid during the last twelve months in which he performed compensated service immediately preceding the date of the Agreement - February 7, 1965; and,

(d) Carrier compensate claimant for all loss of earnings which are less than his protected monthly base rate due under Section 2 of Article IV. In addition, Carrier make necessary payments in order to make claimant whole for any and all other loss, including payments toward his Railroad Retirement, C&O Hospital Association dues, Travelers, and credit for loss of time toward vacation and/or holidays; and,

(e) Inasmuch as this is a continuing violation, said claim is to be retroactively 60 days prior to the filing of same, and is to further cover the period of time until Carrier takes necessary corrective action to comply with the above mentioned violations.

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OPINION

OF BOARD: The circumstances of this case are similar to those in Award No. 307 (SG-30-E), except that a question has been raised as to whether or not Claimant ever had qualified as a protected employee.

Claimant was furloughed on May 1, 1964, and did not work again until November 27, 1964. For a week he worked as an extra and on December 3 was awarded a temporary position. According to Carrier, he did not meet the test of Article I, Section 1, which determines whether furloughed employees are protected; he was not in "active service," since he did not average 7 days of work per month of furlough in 1964.

The criteria determining whether or not an employee is protected are set forth in Article I, Section 1. The employee must have been in active service on October 1, 1964, must have had two years or more of employment relationship, and must have had at least 15 days of compensated service in 1964. Only the "active service" standard is questioned in this case, as a result of Claimant's furlough status on October 1, 1964. There is no contention that Claimant failed to meet the other criteria.

However, the February 7 Agreement identifies protected employees not only as those in active service on October 1 but, alternatively, those "who after October 1, 1964 and prior to the date of this Agreement have been returned to active service."

The relevant provision in Article I, Section 1, is:

All employees, other than seasonal employees, who were in active service as of October 1, 1964, or who after October 1, 1964, and prior to the date of this Agreement have been restored to active service, and who had two years or more of employment relationship as of October 1, 1964, and had fifteen or more days of compensated service during 1964, will be retained in service subject to compensation as hereinafter provided... (Underlining added.)

Thus, if there have been a two-years' employment relationship and 15 days of compensated service in 1964, employees are protected if they either were in active service on October 1

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or thereafter, but prior to February 7, 1965, "have been restored to active service." A furloughed employee who was restored to active service before February 7, 1965, meets the alternative condition to "active service" on October 1, 1964, without regard to days worked during the furlough.

Award 28 of this Committee demonstrates that an employee furloughed on October 1, 1964, but recalled prior to February 7, 1965, who has two years of employment relationship and 15 days of compensated service in 1964, is a protected employee. In that case the employee was furloughed September 28, 1964, and "did not return to active service until she was notified on February 3, 1965." The Committee held that having been "restored to active service" prior to February 7, she was a protected employee.

The seven-day test is applicable to employees who were on furlough on or before October 1, 1964, and were not restored to active service "prior to the date of this Agreement." Since Claimant held an assignment beginning December 3, 1964, he satisfied the contractual conditions without regard to the seven-day test. Otherwise, there would have been no need to distinguish between all furloughed employees and those restored to active service after October 1, 1964, but before February 7, 1965. The latter qualification would be superfluous if the seven-day test applied to anyone on furlough on October 1, whether restored to active service by February 7 or not.

AWARD

Claim sustained, except that the request stated in Paragraph (b) for "employment" is denied, and the claim in Paragraph (d) for fringe benefits is dismissed without prejudice.

  
Milton Friedman  
Neutral Member

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