

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES )  
TO )  
DISPUTE )  
Brotherhood of Railway, Airline and Steamship Clerks,  
Freight Handlers, Express and Station Employees  
and  
Texas and Pacific Railway Company

QUESTIONS  
AT ISSUE:

1. Did the Carrier violate Article II, Section 1 of the Agreement of February 7, 1965, and the interpretation thereto, when it removed the protective status from Mrs. Mary J. O'Campo, a clerical employee at Fort Worth, Texas?
2. Shall the Carrier be required to reinstate protected status to Mrs. O'Campo and pay her all compensation due beginning April 19, 1971, and continuing until Carrier complies with the provisions of the Agreement of February 7, 1965?

OPINION  
OF BOARD:

Claimant was a protected employee, pursuant to the provisions of the February 7, 1965 National Agreement, with a seniority date of October 14, 1943. Prior to returning from sick leave on April 1, 1971, after a lapse of five years, Claimant was regularly assigned to a position of Mail Trucker. During the interim, her position was abolished. Hence, upon her return following a physical examination, Claimant exercised her seniority rights in accordance with Rule 12 of the Schedule Agreement. Said Rule required her to utilize such rights within ten days after her return and in this instance, the time commenced to run from April 8 -- following the medical release to active service.

On April 8, 1971, the Carrier advised Claimant that she could displace a junior employee on a Messenger position. Although she possessed a valid driver's license and could operate a car with an automatic transmission, being unable to operate a manual shift, she was permitted to break-in so as to qualify for that position. Accordingly, during the period from April 8 to 18, Claimant attempted to master the rudiments of a manual shift car by breaking-in two or three times a week. Nevertheless, at the end of the ten day period, April 18, still having failed to place herself on the position, the parties extended Claimant's time until April 22, to qualify and place herself on the Messenger position.

In the interim, the Carrier posted Bulletin No. 58, dated April 12, 1971, for a vacancy in Relief Position #19, a porter position for which Claimant was qualified. Despite the fact that Claimant was qualified for said position, she failed to submit a bid. Thereafter, on April 19, Claimant was removed from her protected status and the Organization filed the instant Claim. As a matter of fact, two Claims were filed -- one predicated upon loss of her protected status for failure to bid on Bulletin No. 58; and the second Claim for failure to grant her the Messenger position on April 22.

- 2 -

Although we have carefully reviewed the Carrier's arguments with respect to a violation of the time limits rule, we believe it would simplify our analysis were we to direct our attention to the substantive portion of the Claim.

One of the defenses urged herein by the Organization is directed at the Carrier's failure to assign Claimant to Relief Position #19 -- porter -- as advertised in Bulletin No. 58, pursuant to Rule 14(g) of the Schedule Agreement. Our only comment pertinent thereto is that Rule 14(g) would be applicable, were Claimant on that date a furloughed employee. The facts indicate that between April 8 and 22, she was not a furloughed employee, instead, she was attempting to break-in on the Messenger position.

Incidentally, we would note that at the present time, Claimant is regularly assigned. Nonetheless, the basic thrust of the Organization is directed at the query whether Claimant was deprived of her protected status in violation of Article II, Section 1 of the February 7, 1965 National Agreement. The pertinent portion of Section 1, provides as follows, viz:

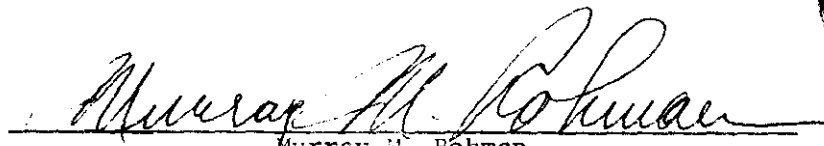
"An employee shall cease to be a protected employee in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, or failure to retain or obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements, or failure to accept employment as provided in this Article."

Admittedly, Claimant attempted to break-in on the Messenger position. Despite prodding by the Carrier, she declined to place herself on that position within ten days of her return -- as required by Rule 12 of the effective Agreement. Moreover, said time was extended by mutual Agreement until April 22 -- still without compliance on her part. Hence, we can only conclude that Claimant ceased to be a protected employee pursuant to Article II, Section 1 of the February 7, 1965 Agreement, for her failure to obtain a position available to her in the exercise of her seniority rights in accordance with existing rules or agreements.

In this posture, we would note one additional comment. In the event Claimant had placed herself on the Messenger position and the Carrier had disqualified her, in all probability, she would still have been a protected employee. See our Award Nos. 45 and 267.

AWARD:

The answer to the questions is in the negative.

  
Murray M. Rohman  
Neutral Member

Dated: Washington, D. C.  
June 28, 1973

