

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Atchison, Topeka and Santa Fe Railway Company
TO THE) and
DISPUTE) Brotherhood of Railroad Signalmen

QUESTION
AT ISSUE:

Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka and Santa Fe Railway Company that:

(a) The Company violates the February 7, 1965 Mediation Agreement, Case No. A-7128, by their failure to pay Mr. Huffman the Signal Inspector's rate of pay. Mr. Huffman is a protected employe and does qualify under the terms of Article IV, "Compensation Due Protected Employes", as he did not relinquish his protected rate under the normal exercise of seniority. The record will clearly show that Mr. Huffman was forced, for physical reasons, to fill a position worse than his protected rate position. Even though he did place application for the Signal Shop Signalman position, it was forced on him as the only position he could hold account physical conditions.

(b) G. R. Huffman be paid the Signal Inspector's rate of pay and that he be paid the difference between Signal Inspector's rate of pay and that of Signal Shop Signalman retroactive to May 1, 1972, and continuous until his rate of pay is properly adjusted to that of Signal Inspector.

OPINION
OF BOARD:

Claimant, a Signal Inspector, underwent eye surgery on November 1, 1971. On February 4, 1972, he was pronounced fit for duty by Carrier's doctor, except that he was "essentially blind" in one eye and therefore might require evaluation by the Chief Surgeon.

Subsequently, Claimant was held not physically fit for a Signal Inspector's position. When the Organization inquired about his status, Carrier expressed willingness to have him work as a Signaller in the Signal Shop, if he applied for it. He did so, and was assigned there on May 1, 1972, with restrictions on operating any Company conveyance and with the need to wear safety goggles.

On June 29, 1972, the General Chairman filed a claim, asserting that Claimant was entitled to receive Signal Inspector's pay under the February 7, 1965, Agreement, because he "was forced, for physical reasons, to fill a position worse than his protected rate position." Carrier contends that his move into the Signal Shop was a voluntary act, and protected compensation therefore was not due him under Article IV, Sections 3 and 5, of the February 7 Agreement.

Claimant was not denied his Signal Inspector position because of a Carrier action, unless the refusal to qualify him because of his disability were put in that category. However, such incapacity to perform a job is not of Carrier's making, and there can be no question about Carrier's right to determine physical qualifications. If there is a dispute on qualifications, the employee may pursue his remedies. But in this case he chose to accept disqualification as a Signal Inspector.

Although the Organization asserts that Claimant's position was abolished in March, 1972, which Carrier disputes, the reason why he stopped working in November, 1971, and was unable to work as a Signal Inspector thereafter, was his physical condition. In no event, absent a disposition in his favor on qualifications--which he never even sought--could he hold a Signal Inspector's position.

Unlike Award No. 136, in which the employee was laid off from the job he had been performing and subsequently was held to be physically incapacitated for another job, Claimant simply was unable to meet the requirements for the job in which he had been protected. His case is clearly distinguishable from Award No. 136 which stated, in part:

Claimant's failure to work as a watchman
certainly was not due to his physical
condition but to a reduction in force.

Also, in Award No. 149 the position in which the employee was protected was abolished. While he was unable to obtain another position, due to his physical limitations,

these had long been known to the Carrier. In any event, in Award No. 149 the triggering act was the abolition of the position, the Board holding that the employee was physically qualified for his regular position and therefore his guarantee should continue.

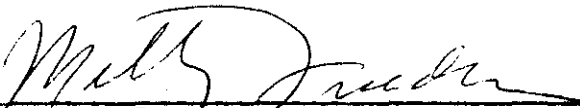
On the other hand, in the instant case Claimant's failure to work as a Signal Inspector was solely attributable to his physical condition, and not to Carrier's action. Maintenance of a protected rate contemplates that the employee has the capacity and willingness to work at the job in which he is protected, and an act of his employer has made it impossible for him to do so.

Claimant need not have accepted the suggestion to go into the Signal Shop, if he genuinely believed that he was capable of working as a Signal Inspector. He could have challenged the doctor's findings and, had he prevailed, the Signal Inspector's position would be his and with it the protected rate of that job. Instead Claimant chose voluntarily to move to the Signal Shop at a lower rate and consequently, under Article IV, Section 3, is not entitled to have his compensation preserved. Awards 13 and 30 also are in point.

Despite the wording of the claim, the Signal Shop position was not "forced on him" by Carrier. He selected it because as Claim (a) notes, he was unable "for physical reasons" to hold his regular position. His incapacity and consequent disqualification were not the result of an action by Carrier, and it was these which caused him to lose his status as a Signal Inspector.

AWARD

Claim denied.


Milton Friedman, Neutral Member

Dated: Washington, D.C.
May 30, 1974