

NATIONAL RAILWAY LABOR CONFERENCE

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

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February 3, 1975

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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 Award Nos. 386 to 389, inclusive, and Interpretation of Award No. 355, Case No. SG-30-E, dated January 30, 1975 rendered by Special Board of Adjustment No. 605.

Yours very truly,



cc: Chairman - Employes' National Conference Committee (10)
Messrs.

C. J. Chamberlain (2)
C. L. Dennis (2)
H. C. Crotty (2)
R. W. Smith (2)
M. B. Frye (2)
W. W. Altus (2)
S. G. Bishop (2)

E. J. Neal (2)
J. J. Berta (2)
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R. K. Quinn, Jr. (3)
W. F. Euker
T. F. Strumck

AWARD No. 386
Case No. SG-37-E

SPECIAL BOARD OF ADJUSTMENT No. 605

PARTIES) The Chesapeake and Ohio 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 Chesapeake and Ohio Railway Company:

Protest of Carrier requiring Cecil E. Deane to accept a permanent position of Signal Foreman on its System Signal Gang, advertised for bid under Bulletin No. SS-73-1 dated March 1, 1973, in order to preserve his protected rate of compensation as Signal Foreman under provisions of the February 7, 1965 National Mediation Agreement, Case No. A-7128. As a result, we hold that:

The Carrier is in violation of the February 7, 1965 Agreement, particularly Section 4 of Article IV and Section 2 of Article III, when Deane was required by Carrier to bid to a System Signal Foreman's position assigned to work off of his home Clifton Forge Seniority District. Furthermore, such work is on Carrier's Western Territory, which does not include its Clifton Forge District; such work assignment requiring a change of residence.

Therefore, it is our contention that (1) Deane had a clear right under the Signalman's Working Agreement and the February 7, 1965 Agreement, to remain on his home district of Clifton Forge and continue to receive his protected rate of compensation as Signal Foreman; and (2) if required under Section 4 of Article IV (February 7, 1965 Agreement) to bid to position of System Signal Foreman off of his home district - thereby requiring change of residence - and/or Eastern territory, such move and requirement did in fact require an "Implementing Agreement" under Section 1 of Article III. [General Chairman file 730312-89. Carrier file 365-Signal-Stabilization]

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OPINION

OF BOARD: Under the schedule agreement, employees have seniority rights to bid to system signal gangs from positions on their home seniority districts.

On March 1, 1973, Claimant was protected under the February 7 Agreement as a Signal Foreman. He was then working as a Leading Signal Maintainer in his home district which is in "Eastern Territory." In 1973, the area in which system forces work was divided into "Eastern" and "Western."

When Carrier issued a Bulletin on March 1, 1973, advertising a Signal Foreman position on a system gang headquartered in camp cars on the Western Territory, Claimant inquired about his obligation to bid for the opening. Carrier advised him that under the February 7 Agreement, unless he did so, he would forfeit his right to protected compensation as Signal Foreman. Claimant accordingly bid, and took the system gang position under protest. Simultaneously he filed this request for an interpretation of the parties' rights and obligations in such situations.

Creation of Eastern and Western Territories is given meaning under the schedule agreement, but it proves to be irrelevant to the present claim. The claim arises and must be decided under Article IV, Section 4, whose concern is solely with an employee's obligation to exercise whatever seniority he possesses to obtain a higher paying position, if he is working at less than his protected rate. For there is no question that Claimant was entitled by his seniority to the advertised position. He bid for it and he obtained it.

Territorial division would be significant only if, as the Organization claims, it is proof that Claimant was required to move in order to hold the new position. Unless a change in residence were involved, Claimant was obligated to take the system gang position to retain his protected Foreman's rate under Article IV, Section 4, which states:

If a protected employee fails to exercise his seniority rights to secure another available position, which does not require a change

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in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position he elects to retain, he shall thereafter be treated for the purpose of this Article as occupying the position which he elects to decline.

The only possible limitation in the foregoing provision on Claimant's obligation to take the system gang job lies in the Agreement's reference to a change in residence. If Claimant were required to move his abode in order to take the bulletined position, then he was not obliged to do so, and he would still retain his protected rate. Resolution of the issue of the need to change residence will therefore be dispositive of the claim.

Headquarters for the system gang position is in camp cars. As with all disputes involving changes of residence, this one must be decided in accordance with specific facts and not merely by reference to general principles. A helpful guide is in the Interpretations of November 24, 1965. Item 3 on page 11 states that if a work-site is 30 miles or less from an employee's residence, no change in residence is deemed necessary. Neither Agreement nor Interpretations provide a more affirmative guide but Awards of this Board, like 271, have held that actual experience is dispositive.

Claimant has worked on system gangs in what is now Western Territory, without moving his residence. No evidence was submitted to the contrary. The importance of actual experience is emphasized in situations where men work from camp cars, which may be shifted over substantial distances.

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The Organization's submission cites various reasons why an assignment like Claimant's might require a change in residence. These are all theoretical and speculative. Aside from his not having moved when he took the assignment in March, 1973, Claimant has not moved his residence on other occasions when assigned to distant locations on a system gang headquartered in camp cars. The Organization's argument that the designation of Eastern and Western Territories demonstrates that a man holding seniority in a district on one Territory must move his residence if he goes to work on the other is suppositious, not contractual. Obviously an employee may be on his home Territory and yet be far more distant from his former workplace than if he were located close to the border of the other Territory.

Given the absence of specific standards on this subject, development of the facts on the property is all the more important. Yet only brief reference by each side was made in the correspondence to a change in residence. On May 25, 1973, the Organization's letter asserted that a change in Territory requires a change in residence, and that when Claimant in 1972 had been on a system gang (in what since became his home Territory), he "moved his residence -- just as he had done many times in the past." Carrier's rejoinder to this on July 23, 1973, noted that Claimant had previously "worked this same position and resided at his present location." This ended the discussion of the subject.

As in all factual disputes, the party making the claim has the burden of proving its case by setting forth specific facts which the other is obliged either to rebut or, in effect, to acknowledge. In view of the absence of adequate proof by the Organization, this burden has not been met. Consequently, it cannot be held that the system gang position required a change in residence and, accordingly, Claimant was obliged to exercise his seniority rights in order to retain his protection as Signal Foreman.

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AWARD

Since Claimant was not required to change his residence in order to take the system gang position bulletined on March 1, 1973, Carrier properly decided that under Article IV, Section 4, his protected compensation as a Foreman would have been lost had he declined to exercise seniority to obtain the position.


Milton Friedman, Neutral Member

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