

# NATIONAL RAILWAY LABOR CONFERENCE

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

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T. F. STRUNCK, Administrator of Disputes Committees

August 27, 1975

Dr. Murray M. Rohman  
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Texas Christian University  
Fort Worth, Texas 76129

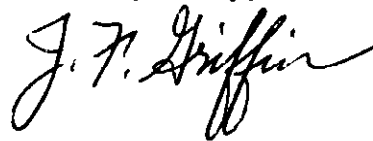
Mr. Nicholas H. Zumas  
1990 M Street, N. W.  
Washington, D. C. 20036

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 is attached copy of Award No. 395, dated August 27, 1975, rendered by Special Board of Adjustment No. 605.

Yours very truly,



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

Messrs.

C. L. Dennis (2)  
E. J. Neal (3)  
S. G. Bishop (4)  
C. J. Chamberlain (2)  
H. C. Crotty (2)  
R. W. Smith (2)  
M. B. Frye (2)  
W. W. Altus (2)  
J. J. Berta (2)  
Lester Schoene Esquire (2)  
R. K. Quinn, Jr. (3)  
W. F. Euker  
T. F. Strunck



SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES )  
TO )  
DISPUTE )  
Brotherhood of Railway, Airline and Steamship Clerks,  
Freight Handlers, Express and Station Employees  
and  
Louisville and Nashville Railroad Company

QUESTIONS  
AT ISSUE: (1) Did the Carrier violate the provisions of the  
February 7, 1965 Agreement, particularly Article II,  
Section 1 thereof when it reduced the protective  
status of Employee R. E. Hall?

(2) Shall Claimant Hall now be compensated the  
difference between amounts allowed and his original  
protected status on a continuing basis beginning  
March 1, 1974?

OPINION  
OF BOARD: Claimant was a clerical employee on the Monon Railroad prior to  
its merger with the Louisville and Nashville Railroad on September 9, 1970. Thereafter, the Carrier and the Organization entered into an Agreement on July 28, 1971, whereby all present clerical employees were included and accorded the protective benefits provided by the February 7, 1965 National Agreement. Moreover, on September 15, 1972, the parties consolidated clerical and telegrapher positions, thereby creating protected surplus clerical employees.

Subsequently, in November, 1972, at the behest of the General Chairman, the Carrier created an extra board -- which was non-existent prior thereto -- and allowed senior protected employees to work from the extra board. At this time, Claimant was regularly assigned to the position of Chief Caller - Yard Clerk at Lafayette, Indiana. On December 4, 1972, Carrier advertised at the same location, by Bulletin No. 72, a permanent position of Extra Clerk Operator; and, subsequently, awarded the position to Claimant, effective December 19, 1972. Thereafter, Claimant occupied said position continuously until October 25, 1973, when it was abolished. During the period that Claimant occupied the permanent extra clerk operator position -- approximately ten months -- he was paid his protected rate. Upon the abolishment of the permanent extra clerk operator position, Claimant bid and was awarded a Yard Clerk position on October 23, 1973.

In the interim, on June 28, 1973, the Carrier had bulletined a permanent position, Utility-Teleprocessing Clerk at Hammond, Indiana. Approximately nine months thereafter, the Carrier notified Claimant that he had forfeited his protection due to his failure to bid on the aforementioned permanent position at Hammond.

At this juncture, it is essential that we refer to the oral understanding of the parties concerning the establishment of an extra board.

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At said time, all employees had protection; and the Carrier concedes that Claimant "held a regular position before taking the extra board and was allowed to take the extra board without loss of protection. Carrier does not deny this, and this was the only thing Carrier agreed to." In effect, the Carrier argues that the oral agreement providing for the establishment of the extra board, did not relieve the Claimant ". . . from the obligation of exercising seniority to permanent vacancies with assigned hours and an established rate of pay."

Hence, the thrust of the Carrier's contention on March 1, 1974, when it informed Claimant that he had forfeited his protection, was predicated on Article II, Section 1 of the February 7, 1965 Agreement, the pertinent portion of which is hereinafter quoted, to wit:

"An employee shall cease to be a protected employee in case of his . . . failure to retain or obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements . . ."

In addition, the Carrier relied on Question and Answer No. 3 of the November 24, 1965 Interpretations, viz:

"Question No. 3 - What are the obligations of extra employees with respect to obtaining or retaining a position in order to remain a 'protected employee'?"

"Answer to Question No. 3 - If an extra employee fails to obtain a position other than a temporary position available to him in the exercise of his seniority rights in accordance with the existing rules or agreements, he will lose his protected status. It should be understood, however, that this does not prohibit the making of local agreements which will permit an employee to remain an extra employee if there is a mutual understanding that this action may be justified."

It would be repetitious for us to enumerate the various awards wherein we have interpreted this Section. Suffice it to indicate that an extra employee is required to exercise his seniority rights to obtain a position in order to retain his protected status. However, in the posture of the instant dispute, the inapposite contentions of the parties are startlingly highlighted. We have carefully pondered the arguments of the parties and it is apparent that the core of the disagreement herein is entwined with the oral agreement creating the extra board in November, 1972. Predicated upon the confusion evidenced by the respective interpretations placed upon said oral agreement by the parties, it is our view that the instant matter cannot be determined solely upon the language contained in Article II, Section 1 of the February 7, 1965 Agreement.

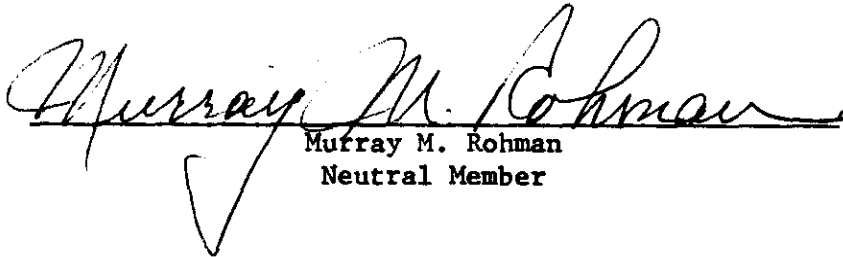
Therefore, aware of the peculiar facts and unusual circumstances evidenced herein; and specifically limiting our decision to the instant dispute only; and without establishing in any shape or form a precedent on this or any other Carrier, it is our considered judgment that Claimant should be restored to protected status under the February 7, 1965 Agreement, effective as of the

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date of the instant Award. Furthermore, it is our view that the request for retroactive compensation should be denied. Accordingly, Claimant shall be restored to protected status under the February 7, 1965 Agreement, effective as of the date of the instant Award, without any retroactive compensation.

AWARD:

Questions at Issue are answered as per Opinion.



Murray M. Rohman  
Neutral Member

Dated: Washington, D. C.  
August 27, 1975