

NATIONAL RAILWAY LABOR CONFERENCE

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

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May 28, 1976

Mr. Irwin M. Lieberman
91 Westover Avenue
Stamford, Connecticut 06902

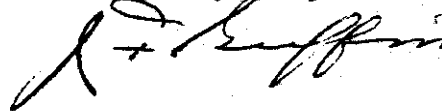
Dr. Murray M. Rohman
Professor of Industrial
Relations
Texas Christian University
Fort Worth, Texas 76129

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

Gentlemen:

There are attached two copies of Award No. 398, dated May 27, 1976, rendered by Special Board of Adjustment No. 605 established by Article VII of the February 7, 1965 National Agreement.

Yours very truly,



cc: Chairman - Employees' 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)
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R. K. Quinn, Jr. (3)
W. F. Euker
T. F. Strunck



SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES)
TO)
DISPUTE)

Brotherhood of Railroad Signalmen
and
Lehigh Valley Railroad Company

QUESTION
AT ISSUE:

Claim on behalf of Leading Signal Maintainer Walter Kowalow for compensation which represents the difference between his protected rate as Signal Foreman and that of the position he holds (presently Leading Signal Maintainer), and retention of his protected rate as Signal Foreman, with the claim for compensation being filed on a continuing basis commencing October 1, 1974.

OPINION
OF BOARD:

Claimant, at the time of the application of the February 7, 1965 Agreement, occupied the position of Signal Foreman on Carrier's Buffalo Division and resided in Buffalo, N. Y. Approximately a year before the instant dispute arose, Claimant's position, the only Signal Foreman position of the Buffalo Division, was abolished. Claimant exercised his seniority rights by displacing the occupant of a Leading Signal Maintainer position at Niagara Junction, N. Y. Under the provisions of the February 7th Agreement, Claimant retained his protected rate of pay as a Signal Foreman, receiving the difference in earnings each month between the rates of the Signal Foreman and that of the Leading Signal Maintainer.

In September, 1974, Carrier restored a Signal Foreman position to the Buffalo Division; the position was advertised with headquarters at Geneva, N. Y., approximately 100 miles from Buffalo. Claimant did not bid on the position and effective as of September 23, 1974, he was considered by Carrier, for the purposes of Article IV, as occupying the position he elected to decline, thus triggering this dispute.

The Organization argues that Claimant was not required to bid on the Signal Foreman's position at Geneva in order to retain the Signal Foreman's rate of pay. This position is predicated on the contention that Claimant's obtaining the Geneva position would have required him to change his place of residence. Petitioner relies on Article IV, Sections 1 and 4 as well as the November 24, 1965 Interpretation of Article III. Contrary to Carrier, Petitioner urges that the interpretation of Article III as a matter of consistency must be applied to Article IV as well. That Interpretation provides:

"When changes are made under Items 1 or 2 above which do not result in an employee being required to work in excess of 30 normal travel route miles from the residence

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he occupies on the effective date of the change, such employee will not be considered as being required to change his place of residence unless otherwise agreed."

Carrier argues that the Interpretation, supra, relates only to Article III, Section 2 and is not applicable to Article IV, Section 4 which is involved in the instant dispute. Carrier states that under the February 7, 1965 Agreement, a position was available to Claimant; the position was within Claimant's seniority district and to protect his seniority he was required to bid on the position. Carrier relies in part on Award No. 144 of this Board, which stated, inter alia:

"There is nothing in the provisions of the February 7 Agreement or the Agreed upon Interpretation which allows an employee to take a lower rated position and be compensated at his protected rate if the equal or higher rated position is 'in excess of 30 normal travel route miles from the residence he occupies on the effective date of the change...'. "

Carrier argues further, that Award 239 and Award 386 support the position that a change in residence is not required merely because the employee's work is in excess of 30 miles from the residence he occupies.

The crux of this dispute is the relationship of the factual circumstances herein to the language of Section 4 of Article IV. It is noted that no information has been submitted by the partisans with respect to the Geneva assignment except that it was 100 miles from Buffalo. It seems reasonable to conclude that accepting such an assignment would require either a commutation of 200 miles daily or a change in residence; the latter alternative is clearly applicable to this dispute. It is noted that in Carrier's Special Concurring Opinion to Award No. 144, it stated that "...whether a change of residence was required in a particular case depends upon the facts of that case."

We are very much aware of the controversy with respect to the significance of the Interpretation, supra. In Award No. 271 of this Board we said that the Interpretation is couched in the negative in its thirty mile criteria but does not state when a change of residence may be required. We are also convinced (as the Board stated in Award No. 190) that the phrase "which does not require a change in residence" appearing in Section 4 must be considered in this dispute. The rights guaranteed to employees under the February 7th Agreement are spelled out in Section 1 of Article IV. The basic guarantee is restricted, in part, by Section 4 of the same Article which specifies that an employee may properly be placed in a "worse position" under certain circumstances, but only if the available job does not require a change in residence.

No basis in fact exists in this dispute to permit us to establish standards for application to the language of Section 4. However, it is clear that under the facts present in this case the 100 miles herein represents a distance requiring a change in residence, without reference to the Interpretation.

It must be noted that Carrier's argument with respect to seniority of Claimant is not germane to this dispute. We are concerned herein with rate protection which is not forfeited because an employee fails to bid on a position which would require him to change his residence.

It is noted that in its submission, Petitioner modifies its original claim in that it excludes a period of illness absence from October 7, 1974 until February 12, 1975, excepting a vacation extending from January 6, 1975 through February 7, 1975. Carrier while concurring with the absence exclusion, also maintains that no vacation pay at the Foreman's rate is appropriate. While this position of Carrier is consistent with its entire position, it has no validity standing alone: Claimant is entitled to be paid for his vacation at the same rate he received prior thereto, which should have been the protected rate.

AWARD:

Claim sustained.



I. M. Lieberman
Neutral Member

Dated: Washington, D. C.
May 27, 1976