

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES)
TO)
DISPUTE)
Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
and
Atchison, Topeka and Santa Fe Railway Company

QUESTIONS
AT ISSUE: (a) Did Carrier violate the provisions of the February
7, 1965 Mediation Agreement when it removed the protected
status from R. J. Sime, Cashier at Chanute, Kansas?

(b) Shall Carrier be required to reinstate the protected
status of Mr. Sime and compensate him for the difference
between his protected rate of Manager-Wire Chief and the
rate of Cashier Position No. 6088, to which assigned,
plus subsequent general wage increases, commencing July
16, 1973, and continuing each work day thereafter?

OPINION

OF BOARD: On November 1, 1972, coincident with the dovetailing of the
Clerks' and Telegraphers' seniority rosters, Claimant acquired
dual seniority on the dovetailed roster and on the special ro-
ster for wire chiefs, manager wire chiefs, assistant wire chiefs and student
wire chiefs. On October 28, 1972 the parties to the instant dispute signed
an agreement, identified as the Wire Chief Agreement, which appears as Appen-
dix No. 1 of the current Clerks' Agreement. That Appendix No. 1 provides in
Section 2(d):

"Employees occupying positions in the Wire Chief
Class, who are affected by force reduction, may
elect to totally exhaust their seniority in the
Wire Chief Class, including displacement of Student
Wire Chiefs, before exercising seniority displace-
ment rights in another class, thus preserving
seniority in the Wire Chief Class. In the event an
employee transfers to another class by bidding or
fails to exhaust his seniority in the Wire Chief
Class when displaced by a senior employee or af-
fected by force reduction he shall forfeit previously
acquired seniority in the Wire Chief Class."

Carrier served notice on May 15, 1973 that certain positions
would be abolished effective at the close of work June 15, 1973, including the
Manager Wire Chief Position occupied by Claimant. Claimant chose to displace
in a Cashier Position, which was the highest rated position that his seniority
would permit him to attain which did not require a change in residence. Claim-
ant recognized that he could have displaced on positions within the Wire Chief
Class but that such moves would have required a change in residence.

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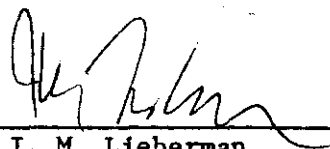
In view of his dual seniority and the fact that Claimant did obtain a position available to him in the exercise of his seniority rights, Petitioner asserts that he was in compliance with Article II, Section 1 of the February 7, 1965 Agreement and retained his protected status. For that reason, it is urged that his protected rate of Manager Wire Chief should be retained. The Organization argues that Section 2(d) cited above does not require an employee to exhaust his seniority in the Wire Chief Class before he is privileged to displace in another class. Petitioner cites Award 355 which held that a protected employee retains or loses protection solely by operations of specific provisions of the Agreement and no provisions suggest a loss of protection, in that dispute, where a job available in the exercise of seniority is obtained.

Article II, Section 1 of the February 7, 1965 Agreement provides that an employee shall cease to be a protected employee for a variety of reasons including "....failure to retain or obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements...." Claimant in this dispute chose to exercise his seniority rights only in his own location and in a non-Wire Chief Class. This active choice on his part had several implications. First, as we said in Award No. 96, employees do not meet the requirements of Article II, Section 1 for retention of protected status if they fail to obtain an available position because they have restricted the geographic area in which to exercise their rights, as herein. Second, the "existing rules or agreements" referred to in Section 2 may in this dispute properly refer to Section 2(d) of Appendix No. 1 of the Schedule Agreement. Section 2(d) is permissive in part, as the Organization argues. However, its clear and unequivocal language provides that when an employee, as herein, fails to exhaust his seniority in the Wire Chief Class when affected by force reduction, he forfeits his previously acquired seniority in the Wire Chief Class. Ergo, if he has no seniority in the Wire Chief Class, he certainly has no protected rate in that class. In this instance, there is no inconsistency between the Schedule Agreement and the National Agreement with respect to the issue at bar, and both Agreements mandate that the questions must be answered in the negative.

AWARD:

The answer to both questions is "no".





I. M. Lieberman
Neutral Member

Dated: Washington, D. C.
October 21, 1976