SPECIAL BOARD OF ADJUSTMENT NO. 605

Case No. CL-68-E
Award No. 413

PARTIES TO DISPUTE) Brotherhood of Railway and Steamship Clerks

- and -

Central Vermont Railway Company

QUESTIONS AT ISSUE:

(1) Did the Carrier violate the provisions of the February 7, 1965 Agreement, particularly Article IV, Section 1, when it refused to compensate Mr. Branch H. Warner his protected rate of pay for period subsequent to January 1, 1975.

(2) Shall the Carrier be required to restore Mr. Warner to his protected rate and compensate him for the wage loss subsequent to January 1, 1975.

OPINION OF THE BOARD:

The material facts involved in the instant claim are not in dispute. On August 1, 1969, the parties entered into an Implementing Agreement that provided for the coordination of functions between the Carrier (i.e. the Central Vermont Railway Company) and the Canadian National Railway. On January 1, 1970, Carrier's Accounting Department was transferred to the Canadian National Railway at Montreal, Quebec. The employees affected by the coordination were protected under the provisions of Section 5(a) of the Implementing Agreement which provided that for a period not exceeding five (5) years from the date affected by the transfer of work, they would be entitled to the benefits of Section 6 of the May, 1936 Washington Job Protection Agreement, after which they would revert to their compensation status as set forth in the February 7, 1965 Job Stabilization Agreement.

The Claimant had established his protective status as provided by the February 7, 1965 Agreement on a Paymaster position which he held on October 1, 1964. As a result of Carrier's coordination with the Canadian National Railway, Claimant's work was transferred to Montreal, Quebec and his position was abolished on March 10, 1971. Claimant exercised his seniority to the highest rated position he could hold, viz. Rate Clerk in Carrier's Transportation Department, and he was assigned to this position from March 15, 1971 to June 7, 1971. However, he was disqualified from the Rate Clerk position due to his inability to adequately

perform the duties thereof. He thus reverted to an extra or utility clerk status. On June 14, 1971, Carrier established a Yard Clerk-Interchange Clerk position, and Claimant was instructed by the Carrier that in accordance with Article II, Section 1 of the February 7, 1965 Agreement, he was required to exercise his seniority rights to this position or else lose his protected status. Claimant bid on the Yard Clerk-Interchange Clerk position and Carrier continued to compensate him at his protected rate as provided by the August 1, 1969 Implementing Agreement until January 1, 1975.

Commencing January 1, 1975, pursuant to the August 1, 1969 Implementing Agreement, Claimant reverted to his protected rate established under the February 7, 1965 Agreement. The Employees contend that Claimant's protected rate was $44.6871 while the Carrier avers that it was $41.5960. Hence the dispute before this Board.

It is the Employees' position that when Carrier arbitrarily and unilaterally reduced Claimant's protected rate on and after January 1, 1975, they thereby violated Article IV of the February 7, 1965 Job Stabilization Agreement. Carrier retorts, however, that when Claimant bid on the lower rated position of Yard Clerk-Interchange Clerk after he was disqualified from the higher rated position of Rate Clerk, he voluntarily bid on a job carrying a lower rate of pay and his protected rate was reduced as a result.

Carrier's position herein is premised on their contention that Claimant voluntarily bid on a position carrying a lower rate of pay, and thus pursuant to Article IV, Section 3 of the February 7, 1965 Agreement, he was not entitled to have his previous protected rate preserved. However, it is the considered opinion of this Board that when Claimant was disqualified from the Rate Clerk position, his subsequent exercise of seniority onto the lower rated position of Yard Clerk-Interchange Clerk, the only other position available to him, was not a voluntary exercise of his seniority to the latter position as contemplated by the February 7, 1965 Agreement. There is no disputing the fact that Carrier had the right to disqualify Claimant from the Rate Clerk position. Yet when he subsequently bid on the only position available to him, it was not the intent of the February 7, 1965 Agreement that his protected rate be reduced as a result.

The only distinction between the instant case and Award No. 194 of this Board is that in the instant dispute Carrier established a lower rated position which the Claimant was required to bid on following his disqualification whereas in Award No. 194 the protected employee there was placed in a furloughed status following his displacement. This Board subscribes to the reasoning of Award No. 194, and we consider it dispositive of the dispute before us. Accordingly, we hold that

when Carrier unilaterally reduced Claimant's protected rate of pay effective January 1, 1975, they thereby violated the February 7, 1965 Agreement.

AWARD

The answer to Questions (1) and (2) is in the affirmative.

Robert M. O'Brien

Robert M. O'Brien, Neutral Member

December 1, 1977