

NATIONAL RAILWAY LABOR CONFERENCE

LABOR RELATIONS DEPARTMENT

1901 L STREET, N.W., WASHINGTON, D.C. 20036/AREA CODE: 202-862-7200

J. F. GRIFFIN
Director of Labor Relations
862-7228

R. T. KELLY
Assistant Director of Labor Relations
862-7229

T. F. STRUNCK
Labor Relations Counsel
862-7232

April 3, 1979

3231 AGR
2-7-65
SBA-605

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

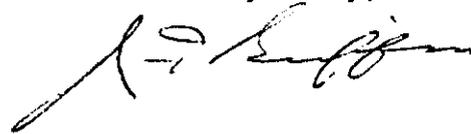
Mr. Robert M. O'Brien
225 Franklin Street
Boston, Massachusetts 02110

Mr. Nicholas H. Zumas
Suite 505
1140 Connecticut Avenue, N.W.
Washington, D. C. 20036

Gentlemen:

There are attached copies of Awards Nos. 418 to 420 inclusive dated March 29, 1979, rendered by Special Board of Adjustment No. 605 established by Article VII of the February 7, 1965 National Agreement.

Yours very truly,



cc: Chairman - Employes National
Conference Committee

Messrs:

✓ Fred J. Kroll (10)
✓ Ole M. Berge
R. T. Bates
R. W. Smith
E. J. Neal
S. G. Bishop
M. B. Frye
W. W. Altus, Jr.
R. K. Quinn, Jr. (3)
W. F. Euker
T. F. Strunck

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Brotherhood of Railroad Signalmen
TO) and
DISPUTE) Baltimore and Ohio Railroad Company

QUESTION AT ISSUE: "(a) The Carrier violated the current Signalmen's Agreement and Scope, particularly Rules 4-7-8 (a)-11-12-14 (a)-17-31 (a) (b)-February 7, 1965 Agreement and the Railway Labor Act, when on February 23, 1977 at approximately 12:00 noon, Mr. Keirs was informed by Signal Supervisor Lawrence Hanlen to go home, as he was disqualified for not having a valid driver's license.

"(b) That Signal Maintainer M. J. Keirs now be compensated for all time lost, which was 32 days at Independent Signal Maintainer's rate of pay less unemployment benefits Mr. Keirs may have received. (Total hours 256)"

OPINION OF BOARD: The Claimant herein was a protected employee and held a regular assignment as a Signal Maintainer at Washington, PA. As a result of a severe snow storm the positions held by Claimant and other Signal employees were abolished. His position was abolished at the close of business of February 10, 1977. Subsequently Claimant exercised his displacement rights on an independent Signal Maintainer Position at Wheeling, West Virginia effective February 22, 1977. He worked that position until noon, February 23, 1977 at which time he was sent home by his Signal Supervisor. He was sent home on the basis of disqualification on the position for not possessing a Motor Operator's License. Possession of such license was an integral part of the position which involved driving a company vehicle. Claimant's former position of Signal Maintainer was restored and he was awarded the position as the senior applicant and began to work on that position on April 11, 1977. A secondary aspect of this dispute relates to whether or not he was properly held off the position for the period from April 4, 1977 until April 11, 1977. It will not be necessary to deal with that aspect of the dispute.

Both Carrier and Petitioner agree that Claimant could have worked positions held by junior employees on his home seniority district during the claim period. He apparently chose not to do so.

Petitioner asserts that Claimant used his seniority to obtain a position and was denied the right to do so by Carrier. Since he was ready, willing and able to work, Carrier had no right not to afford him the privileges which were afforded to less senior employees.

The Carrier states that the remedy sought by Petitioner is one not to be found under the February 7, 1965 Agreement. Specifically, Carrier points out that the Organization concedes that Claimant was protected in the Assistant Maintainer's class but claimed compensation for him for thirty-two

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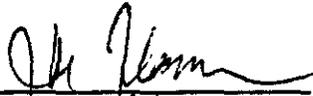
days at the independent Signal Maintainers rate of pay. Further Carrier suggests that the sole issue handled on the property was the validity of the Carrier's disqualification of Claimant because of his inability to handle the duties of the position. Carrier states that the removal of Claimant from a position for which he was not qualified does not constitute a violation of the February 7, 1965 Agreement. There were other positions available to Claimant on his seniority district during the claim period in which he could have worked. For example, there was such a position within thirty miles from his residence which did not have a motor vehicle assigned as an integral aspect of the job. Carrier argues that the failure of Claimant to work was a result of his own actions and not those of the Carrier.

Petitioner, in support of their position, cites a number of Awards of this Board including, for example, No. 303. Those Awards are all distinguishable from the facts herein in that unlike this case in those disputes, the Claimants apparently had done all that could have been done to place themselves on another position and they lost their positions as a result of Carrier's actions, not their own.

An examination of the question at issue herein indicates that the sole question raised is that of Claimant's disqualification for not having a valid driver's license. We find no basis or provisions in the February 7, 1965 Agreement which would restrict Carrier's requirement that an independent Signal Maintainer possess a motor vehicle license where the particular position requires one. It follows therefore that the disqualification could not have been a violation of the February 7, 1965 Agreement. The facts indicate that Claimant could have secured a position which he was able to perform had he so desired. Thus Carrier was not at fault for his loss of protection during the claim period.

AWARD

The questions are answered in the negative.



E. M. Lieberman
Neutral Member

Dated: March 29, 1979



O. M. BERGE
PRESIDENT

APR 5 - 1979

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B. M. W. F.