

SPECIAL BOARD OF ADJUSTMENT NO. 605

AWARD NO. 433
CASE NO. CL-122-W

PARTIES TO DISPUTE:

TERMINAL RAILROAD ASSOCIATION
OF ST. LOUIS

- and -

BROTHERHOOD OF RAILWAY, AIRLINE
AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION
EMPLOYEES

QUESTIONS AT ISSUE:

1. Did Carrier violate the provisions of the February 7, 1965 National Agreement, as amended, when it refused and failed to establish the protective rate of pay for Mr. Kenneth Cotton, as provided by the Agreement as amended? (Carrier's File 012).
2. Shall Carrier now be required to establish Mr. Cotton's protective rate of pay to be that of the rate of his average monthly earnings in the preceding calendar year or the preceding twelve (12) months in which he performed service or was compensated for vacation pay and compensate him for all protective pay benefits due beginning July 1, 1982?

OPINION OF BOARD:

Kenneth Cotton worked for Carrier in the clerical craft or class for some nine (9) years, after he was hired and established seniority date of January 14, 1969 on Master Roster 1. On October 15, 1978 Cotton accepted a promotion to the official position of Transportation Supervisor, while retaining accrued seniority rights on the BRAC seniority roster pursuant to Rule 4 of the controlling Schedule Agreement. For the next several years Cotton worked in this official capacity supervising clerical and transportation employees. In the meantime, Carrier and BRAC negotiated the amendments to the February 7, 1965 Agreement which they incorporated into a Memorandum

Agreement dated July 20, 1979, reading in pertinent part as follows:

"IT IS AGREED:

Article I. The provisions in Article I, Sections 1, 2, 3 and 4 and Article IV, Sections 1 and 2 of the Mediation Agreement A-7128, dated February 7, 1965, are hereby revised and amended to provide for the following:

- A. All employees in active service who do not have a protected status on the date of this Agreement and who were in active service on or before January 1, 1976, will become protected employees effective September 1, 1979.
- B. All employees who do not become protected employees on September 1, 1979, will acquire protected status as of the first day of January immediately subsequent to their fifth (5th) anniversary date of employment.
- C. Protected employees who were regular assigned on January 1, 1979, will become protected employees at the rate of the assignment held on that date.
- D. Protected employees who did not hold regular assignments on January 1, 1979, will be protected at the rate of their monthly average earnings for the year 1978 or the twelve (12) months immediately preceding January 1, 1979 in which they performed service or were compensated for vacation pay.
- E. Employees that attain a protected status pursuant to Paragraph B of this Agreement will be protected at the rate of the assignment held on the first day of January of the year in which they acquire protected status, if not regularly assigned on that date, their protected rate will be the rate of their average monthly earnings in the preceding calendar year or the preceding twelve (12) months in which they performed service or were compensated for vacation pay.

In July 1982 Carrier abolished Cotton's official position and he activated his dormant BRAC seniority and returned to the clerical craft or class. However, his seniority was insufficient to obtain a regular position and he was placed in furlough status from which he protected whatever work he could. Carrier did not place Claimant on the list of protected employees when he returned to the BRAC craft or class and has denied his claims for protective pay benefits under the February 7, 1965 National Agreement, as amended. In handling on the property and in its submission to this Board, Carrier advised Claimant that "when his seniority is sufficient to gain a regular assignment in the clerical craft, the rate of pay of that assignment will become his protected rate". By thus apparently conceding Claimant's status as a "protected employee", Carrier relies upon "equity", and also apparently upon Award No. 195 of this Board. We also note the provisions and the applicability of a Letter of Understanding executed February 7, 1965 by the parties to the original February 1965 National Agreement, as follows:

"Washington, D. C.
February 7, 1965

Mr. G. E. Leighty, Chairman
of the Five Cooperating
Railroad Labor Organizations

The following will confirm the understanding we had in connection with the agreement signed today.

If, subsequent to the effective date of the Protective Agreement, i.e. October 1, 1964, officials, supervisory or fully excepted personnel exercise seniority rights in a craft or class of employees protected under said Agreement, then, during the period such seniority is exercised, such officials, supervisory or fully excepted personnel shall be entitled to the same protection afforded by the said Agreement to employees in the craft or class in which such seniority is exercised, and no employee subject to said Agreement shall be deprived of employment or adversely affected with respect to compensation, rules, working conditions, fringe benefits, or rights and privileges pertaining thereto, by the return of the official, supervisory, or fully excepted employee to work under the schedule agreement.

If this is in accord with the understanding reached please signify by signing in the lower left hand corner of this letter.

/s/ J. W. Oram
J. W. Oram, Chairman
Eastern Carriers' Conference Committee

ACCEPTED

/s/ E. H. Hallmann
E. H. Hallmann, Chairman
Western Carriers' Conference Committee

/s/ G. E. Leighty

G. E. Leighty, Chairman
of the Five Cooperating
Railroad Labor Organizations

/s/ W. S. Macgill
W. S. Macgill, Chairman
Southeastern Carriers' Conference
Committee"

Notwithstanding these concessions, BRAC pressed the claim that the July 20, 1975 amendments to Articles I and IV of the February 7, 1965 Agreement required Carrier to establish Claimant's protected rate at the monthly average earnings for the Transportation Supervisor position he occupied for the twelve (12) months preceding January 1, 1979. Upon a thorough review of the language and cited authorities, we conclude that the result BRAC seeks is not consistent with reason, equity or the professed intent of the contracting parties. Assuming the retiring official is accorded "protected employee" status, the question remains which twelve (12) month period did the parties intend to be used to compute his protected rate. It is unreasonable to the point of absurdity to conclude that the official position worked, irrespective of compensation, should establish the protected rate which is the quid pro quo for continued (resumed) employability under the BRAC Agreement. By jointly established Interpretations to the original February 7, 1965 Agreement, the contracting parties agreed that services and compensation as an elected union official should not be the proper basis upon which to calculate the protected rate

when an employe returns to the bargaining unit. No more should service as a Transportation Supervisor, or for that matter as President of the railroad, be the basis for controlling the protected rate upon return to the craft. Taking the amended Agreement language, the previous awards of this Committee, the agreed-upon Interpretation, and the basic rule of reason all into account, we find that Claimant's protected rate upon his return to the craft in January 1982 should have been determined by focusing upon on the twelve (12) months when he last performed service or was compensated for vacation pay under the BRAC Agreement, i.e., prior to becoming an official on October 15, 1978.

AWARD

Question No. 1 is answered in the affirmative.

Question No. 2 is answered that Carrier shall now be required to establish Mr. Cotton's protected rate to be that rate of his average monthly earnings in the calendar year or twelve (12) month period during which he performed service or was compensated for vacation under the BRAC Agreement preceding his appointment as an official of Carrier.

Dana E. Eischen /pk
Dana E. Eischen, Chairman

Date: May 21, 1984