

AWARD NO. 437  
CASE NO. CL-127-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) Brotherhood of Railway, Airline and Steamship Clerks,  
TO ) Freight Handlers, Express and Station Employees  
DISPUTE ) and  
) Terminal Railroad Association of St. Louis

QUESTIONS 1. Did Carrier violate the provisions of the February 7,  
AT ISSUE: 1965 National Agreement, as amended by Agreement dated  
July 20, 1979, when it refused and failed to permit Mr. J.  
L. Dobbs to exercise seniority to position of Operator/  
Leverman and then treated Mr. Dobbs as occupying the posi-  
tion they had determined him to be unqualified to perform  
service on and refused protection pay to him as provided  
by the Agreement?

2. Shall Carrier now be required to compensate Mr. Dobbs  
at his protected rate of pay \$91.30 per day, for each  
date; December 27, 28, 29, 30 and 31, 1982?

OPINION OF  
THE BOARD:

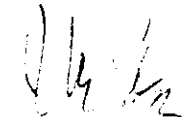
Claimant was a protected employee with seniority date of February 24, 1955. He was notified on December 16, 1982 that his yard clerk position would be abolished effective December 23, 1982. He attempted to displace on a Tower Operator position on December 26, 1982 in compliance with Article II, Section 1 of the February 7, 1965 Agreement. The Tower Operator position was the highest rated position available to him (in fact the only position available) in the exercise of his seniority. Claimant was informed by Carrier that he was not qualified to take the Tower Operator position until he passed the examination on Carrier's Operating Rules which was next to be given on January 3, 1983. The record reveals that Claimant had never taken such examination prior to December 26, 1982 and the examination was last offered on June 30, 1981 (a make-up class was held on July 9, 1981); he took and passed the examination on January 3, 1983. Claimant bid in and was awarded a yard clerk's position on January 6, 1983. The period of the Claim was held against him by Carrier for failure to qualify for the Tower Operator's position and he was denied protection for those days, thus triggering the dispute.

Carrier notes that familiarity with the Operating Rules was the most basic requirement for the Tower Operator position; thus Claimant was not qualified for the position until he passed the examination. The requirement was applicable to other employees, according to Carrier, and had to be applied to Claimant. Carrier argues that it is well accepted that it has the right to establish appropriate standards to evaluate fitness and ability for jobs and in this case the standard was not only appropriate but almost self-evident from a safety point of view. Petitioner argues that Carrier had no right to hold Claimant off the position for five days, or in any case deny him protective benefits.

This Board has held many times in the past that Carriers have the right to establish standards for positions and to judge whether or not employees attempting to displace on positions are qualified. Carrier was within its rights in determining that Claimant was not qualified for the position in question in this dispute because of his lack of passing the rules examination. However, Carrier had no concomitant right to discontinue Claimant's protective benefits; it was some seventeen or eighteen months since Claimant could have taken the examination and he cannot be penalized for failing to foresee his job abolishment. He lost his position due to Carrier's actions and not due to any action or inaction on his part; he cannot be faulted nor should his protective status be impaired (see Award No. 418).

AWARD

Both Questions are answered in the affirmative.

  
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I. M. Lieberman  
Neutral Member

Dated: 6-8-87