

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Brotherhood of Railway, Airline and Steamship
TO THE) Clerks, Freight Handlers, Express and Station
DISPUTE) Employees
) and
) The St. Joseph Terminal Railroad Company

QUESTIONS AT ISSUE: 1. Did the parties consummate the December 4, 1975 Agreement covering the "Transfer of Work From Seniority District #71 to St. Joseph Terminal Railroad Company" under the provisions of Mediation Agreement Case No. A-7128 dated February 7, 1965?

2. If the answer to Question No. 1 is in the affirmative, shall the Company be required to pay Mr. D. H. Mejia the difference between the rate allowed and the rate of IBM Train Clerk commencing December 5, 1980 and continuing each and every day thereafter?

OPINION

OF THE BOARD: On December 4, 1975, the parties signed two agreements concerning the transfer of Telegrapher Clerk and Printer Operator positions from the Union Pacific Railroad to the St. Joseph Terminal Railroad Company. The first contract, an implementing agreement, resolved seniority and wage issues and incorporated the moving expenses and real estate benefits (with certain adjustments) embodied in the February 7, 1965 Job Stabilization Agreement. Pursuant to the second December 4, 1975 Agreement, all transferees became "...protected employees in accordance with and subject to the provisions of the February 7, 1965 Agreement..." for a five year period commencing on December 5, 1975. Also, the second agreement suspended Article IV, Sections 3 and 4 of the February 7 Agreement for five years.

Claimant, an IBM Train Clerk in 1975, transferred and enjoyed the benefits of both December 4, 1975 Agreements. Claimant holds a December 17, 1973 seniority date and is presently assigned to the Guaranteed Extra Board.

Effective May 16, 1980, the parties updated the February 7, 1965 Agreement by extending job security protection to employees who had attained a three year employment relationship with the Carrier. Covered employees were protected at the rate of the position they held on January 1, 1980. Thus, Claimant became a protected employee under the May 16, 1980 Amended Job Stabilization Agreement.

Claimant went on a leave of absence effective April 27, 1979. He returned to service on January 14, 1980. Upon his return, Claimant was unable to occupy his previous position and he consequently displaced to a lower rated position on the Guaranteed Extra Board. The Carrier compensated Claimant at the higher IBM Train Clerk rate until December 5, 1980, the expiration date of the five year period set forth in the second December 4, 1975 Agreement. Thereafter, the Carrier paid Claimant the Guaranteed Extra Board rate.

The Organization argues that Claimant "owned" the higher rated position of IBM Train Clerk under the two December 4, 1975 agreements and so the IBM Clerk rate became his protected rate. The Organization reasons that since the May 16, 1980 Agreement superseded the second December 4, 1975 Agreement, Claimant could choose either protection measured by the amount he

would have received had he been working on January 1, 1980 or protection at the rate provided by the February 7, 1965 Agreement as amended.

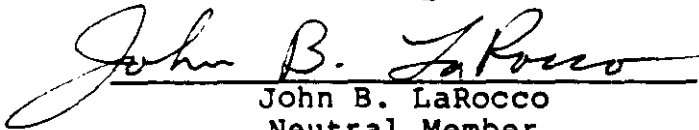
The Carrier challenges this Board's jurisdiction to resolve a dispute arising out of the December 4, 1975 local agreements. Carrier also argues that it should prevail on the merits since the source of Claimant's IBM Train Clerk guaranteed rate is found exclusively in the expired December 4, 1975 Implementing Agreement. Assuming arguendo that Claimant's higher protected rate was acquired under the February 7, 1965 Job Stabilization Agreement, as amended, the Carrier contends that Article IV, Section 5 and the February 7, 1965 Letter of Understanding (pertaining to supervisory and excepted personnel who return to the clerical craft) barred Claimant from obtaining a guaranteed rate while he was on leave of absence. When Claimant returned to active service on January 14, 1980 and exercised his seniority to the lower rated Guaranteed Extra Board position, Claimant established his protected rate at the level of the bid-in job under Article IV, Section 3.

This Board has jurisdiction to interpret the February 7, 1965 Job Stabilization Agreement as amended even if our interpretation affects the application of local agreements. Without doubt, Claimant satisfied the eligibility criteria in the May 16, 1980 Agreement since he was assigned to the Extra Board on that date with three years of continuous service. [See Section 1(A) of the May 16, 1980 Agreement.] The question here is whether the May 16, 1980 Agreement reconfirmed or carried

forward Claimant's protected rate established under the two December 4, 1975 Agreements. The December 4, 1975 contracts protected all transferring employees, including Claimant, in accordance with the provisions of the February 7, 1965 Agreement but as a result of the express language in the 1975 Agreements, Claimant's protective period expired on December 4, 1980. Claimant's protected rate under the May 16, 1980 Agreement is governed by Article IV therein. Most notably, Article IV does not make any reference to the 1975 Agreements. In addition, Claimant is not covered by Article IV, Section 1 of the 1980 amendments, which determines the compensation due protected employees inasmuch as Claimant, even though he is an Article I, Section 1(a) protected employee, was on leave of absence on January 1, 1980. Consequently, he did not have access to the two protective rate options in Article IV, Section 1. Had Claimant acquired his position on the Extra Board as of January 1, 1980, Claimant could have elected to carry forward his job protection rate fixed in the December 4, 1975 Implementing Agreements since the 1975 Agreements were executed under the auspices of the February 7, 1965 Agreement. However, due to Claimant's unique circumstances, the Carrier properly reduced Claimant's protective rate upon the expiration of the express protective period in the second December 4, 1975 Agreement.

AWARD

The Answer to Question 1 is "Yes." The Answer to Question 2 is "No."


John B. LaRocco
Neutral Member

Dated: July 29, 1987