

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES)
TO THE)
DISPUTE)
)
)
) The Atchison, Topeka and Santa Fe Railway Company

QUESTIONS AT ISSUE: 1. Did the Carrier violate the provisions of the February 7, 1965 Mediation Agreement as amended effective January 1, 1980, when it suspended the protection of the Claimants listed herein because they submitted notice under the provisions of Rule 17-C(2)?

2. Shall Carrier be required to restore Claimants listed below to protected status with all rights unimpaired and to compensate them for their loss of protective benefits from date Carrier suspended their protective status?

D. F. Allen
D. A. Lehman
F. J. Zachman
R. D. Rager

D. M. May
T. W. Keathley
M. Silva
S. Keating

OPINION

OF THE BOARD: Claimants are protected employees under the February 7, 1965 Job Stabilization Agreement as amended by an Agreement effective January 1, 1980. When the Carrier reduced its forces and abolished jobs, Claimants lacked seniority to hold a regularly assigned position on their seniority district. Consequently, Claimants were required to place themselves in off-in-force-reduction status. Thereafter, Claimants filed an application with the Carrier to limit their recall to designated points on their seniority districts as permitted under Schedule Rule 17-C(2) which was adopted pursuant to a May 19, 1976 Letter of Understanding. Immediately upon

receipt of the recall restriction filing, the Carrier suspended Claimants' protected status.

To justify its suspension of Claimants' protective benefits, the Carrier cited Article II, Section 1 of the February 7, 1965 Job Stabilization Agreement which reads:

"An employe shall cease to be a protected employe in case of resignation, death, retirement, dismissal for cause in accordance with existing agreements, or he becomes eligible for an annuity at age 65 under the Railroad Retirement Act. The protected status of an employe who fails to obtain or retain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements, or fails to accept employment as provided in this Agreement, or fails to respond to extra work when called, will be suspended until such time as he obtains a regular position. As of the date he occupies such position he will be restored to the status of a protected employe and protected at the rate of the regular position occupied on the date his protected status is restored. If an employe dismissed for cause is reinstated to service, he will be restored to the status of a protected employe as of the date of his reinstatement."

The Carrier argues that the filing of Rule 17-C(2) recall restrictions automatically operated to suspend Claimants' protective benefits. In the past, the Carrier has consistently applied Article II, Section 2 in this fashion. Since Claimants refused to obtain an available position anywhere on their seniority district, they lose their protected status. Comparing the language in Rule 17-C(2) with Rule 17-C(6), the Carrier disagrees with the Organization's contention that employees restricting their availability for recall under Rule 17-C(2) may bid on an advertised position located beyond the points designated in the Rule 17-C(2) filing.

The Organization concurs with the Carrier that an off-in-force-reduction employee who fails to exercise his seniority to obtain a regular assignment loses his February 7, 1965 job protection. However, the Organization asserts that the mere filing of a Rule 17-C(2) recall restriction by itself does not automatically trigger a loss of protection. Rather, the Organization argues that an employee must actually refuse a position before the Carrier can suspend Claimants' rights under the February 7, 1965 Agreement. Even after filing the 17-C(2) recall restriction, an employee may still bid on any regular position bulletined on his seniority district per Schedule Rule 11. Indeed, Rule 11(B) grants senior off-in-force-reduction employees a preference over junior bidders when awarding regular positions. Under these facts, the Organization contends the Carrier prematurely suspended Claimants' protection.

The Carrier's application of Article II, Section 1 is overly broad. The Carrier's mechanical application of Article II, Section 1 to any employee who files a Rule 17-C(2) recall restriction improperly presumes that a position was otherwise available to the employee absent the Rule 17-C(2) filing. However, Article II, Section 1 speaks expressly to the availability of positions as opposed to employees. It is possible that the first available position will arise at one of the points designated by the employee on the Rule 17-C(2) form. The Carrier cannot suspend protection until the employee refuses an available position or his Rule 17-C(2) recall limitation actually operates like a refusal of an available position.

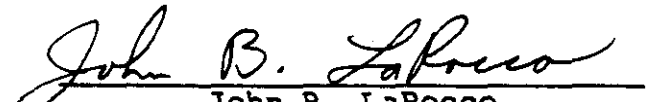
By suspending protection simply because an employee files a Rule 17-C(2) form, the Carrier prematurely applied Article II, Section 1. Although Article II, Section 1 is the source of its authority for suspending protection, such suspension occurs only when "...an employee ... fails to obtain ... a position available to him in the exercise of his seniority rights..." [Emphasis added.] While the Carrier alluded to a practice of suspending employee protective benefits as soon as they filed a Rule 17-C(2) form, any past practice cannot vitiate or unreasonably expand the clear language in Article II, Section 1. Moreover, the May 19, 1976 Letter Agreement preserved protected employees' rights as well as their obligations under the February 7, 1965 Agreement. Under the Carrier's unreasonably expansive interpretation of Article II, Section 1, an employee's rights would never survive a Rule 17-C(2) filing which would effectively nullify the "rights" preserved under the May 19, 1976 Letter of Understanding. The Carrier relies on Award No. 96 but in that case, there was a position held by a worker junior to Claimant on the seniority district at the time Claimant restricted his availability. In sum, the filing of a Rule 17-C(2) restriction may often coincide with the employee's failure to obtain an available position but the Carrier may not automatically assume that such a filing immediately causes a cessation of benefits.

This Board is unable to formulate an appropriate remedy based on the record before us. Claimants may not be entitled to any relief. Their protected status might have been

properly suspended simultaneously with or shortly after they filed their Rule 17-C(2) forms depending on the availability of positions on their seniority districts. Each Claimant retained his protected status until he either refused an available position within his designated area or his Rule 17-C(2) recall restriction actually prevented Claimant from occupying an available position on his seniority district. Consequently, we remand this case to the property for disposition consistent with our Opinion.

AWARD

The Answer to Question 1 is "Yes." Question 2 is remanded to the property per our Opinion.


John B. LaRocco
Neutral Member

Dated: July 29, 1987