

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 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(6)?
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?

N. Cummings	D. F. Allen
S. E. Gammill	J. A. Ethridge
D. W. Moore	D. E. Squires
J. J. Clarke	J. E. Bordier
M. K. Rowe	D. W. Sullivan
S. K. Saavedra	S. Keating
Y. S. Stubbs	J. C. Vasquez

OPINION

OF THE BOARD: All Claimants are covered by the February 7, 1965 Job Stabilization Agreement as amended effective January 1, 1980. Each Claimant was affected by a job abolition either directly or as a result of a chain of displacements. Since Claimants were unable to hold regular assignments on their seniority district, they assumed off-in-force-reduction status. Thereafter, each Claimant filed a Rule 17-C(6) application which restricted each Claimant's availability for recall. Upon filing the application, the worker was not subject to recall but would work as unassigned employees on short vacancies throughout the

seniority district. According to the final clause of Rule 17-C(6), employees may file bids for bulletined vacancies. Rule 17-C(6) provides:

"Off-in-force-reduction employees who serve written notice that they will work as unassigned employees only, and who have a Rule 14-B notice of availability on file for short vacancies at all points on their seniority district will not be subject to recall. Written notice of this election must be filed with the designated official, with copy to the Division Chairman. Such notice may be withdrawn by giving ten day's written notice to parties receiving original notice. Such employees may file bids for bulletined vacancies in their seniority district, while not subject to recall under this rule."

The Carrier suspended the protective benefits for Claimants as soon as they filed the Rule 17-C(6) application. The Carrier relies on the pertinent portion of Article II, Section 1 which states: "The protected status of an employee 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 ... will be suspended..."

In Award No. 444, this Board ruled that the Carrier could not automatically suspend protective benefits for an employee merely because the clerical worker filed an application restricting his availability under Rule 17-C(2). Since the March 19, 1976 Letter Agreement preserved Claimants' rights (as well as their obligations) under the February 7, 1965 Agreement, the event triggering suspension of benefits is the availability of a position that but for the Rule 17-C application, the employee would have been able to obtain. Indeed, Claimants may very well

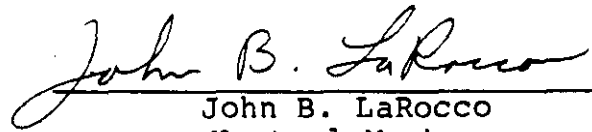
bid on and be awarded the first available position arising after the filing of their Rule 17-C(6) application.

In its submission, the Carrier alleged that at the time Claimant Cummings made his Rule 17-C(6) filing, there were forty-five workers junior to Claimant Cummings holding regularly assigned positions. If Claimant Cummings had been able to obtain a position in the absence of his Rule 17-C(6) filing, the Carrier was entitled to suspend his protective benefits.

For the reasons more fully set forth in Award No. 444, we find that the Carrier violated the February 7, 1965 Agreement, as amended. With regard to the remedy, we must remand Question 2 to the property to determine when each Claimant, either by his own volition or through operation of Rule 17-C(6), did not obtain an available position.

AWARD

The Answer to Question 1 is "Yes." Question 2 is remanded to the property in accord with our Opinion.



John B. LaRocco
Neutral Member

Dated: July 29, 1987