

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES)
TO THE)
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Brotherhood of Railway, Airline and Steamship
Clerks, Freight Handlers, Express and Station
Employees
and
Missouri Pacific Railroad Company

QUESTIONS
AT ISSUE:

1. Did the Carrier violate the provisions of the February 7, 1965, Agreement when it refused to compensate J. W. Shell for twenty (20) days during the period of January through May, 1983, as mandated by Article IV thereof?
2. If the answer to Question No. 1 is in the affirmative shall the Carrier be required to compensate J. W. Shell for the wage loss suffered in January, 1983, three (3) days; February, 1983, seven (7) days; March, 1983, three (3) days; April, 1983, five (5) days and May, 1983, two (2) days?

OPINION

OF THE BOARD: On November 25, 1982, a senior clerical employee displaced Claimant from his regular position and Claimant took a position on the Non-Guaranteed Extra Board at San Antonio, Texas. Extra Board workers are called to protect various temporary vacancies as needed.

The Chief Clerk verbally directed Claimant to report for duty to qualify for positions protected by the Extra Board during those weeks when the Carrier did not call Claimant for a full five day work week. During December, 1982, Claimant complied with Chief Clerk's directive. During certain weeks from January 1, 1983 to May 31, 1983, Claimant was not called to work for a full five days and he did not work on twenty of the days because he was not qualified. Claimant seeks twenty days of

protective compensation under the February 7, 1975 Job Stabilization Agreement as amended on November 7, 1978.

The Organization contends that lack of qualifications is not among the reasons (for suspending benefits) enumerated in Article IV, Section 5 of the February 7, 1965 Agreement. According to the Organization, Claimant was not voluntarily absent. He was available and first out on the Extra Board but the Carrier failed to call Claimant for training or to a position that he was qualified to occupy. On the property, Claimant emphasized that he was never given a written instruction to qualify for positions when he was not called to work a full work week.

The Carrier relies on Article II, Section 1 of the February 7, 1965 Agreement. The Carrier contends that Claimant understood the order to break in on positions when not called for a full work week because he obeyed the instruction for a short while after he assumed his Extra Board position. On the twenty days during the first five months of 1983, Claimant voluntarily chose not to break in as instructed. The Carrier argues that since Claimant was fully capable of becoming qualified on the positions protected by Extra Board employees, he should have attained such qualifications so that the Carrier could achieve maximum use of his services on the full range of positions protected by the Extra Board.


Although it was a verbal directive, Claimant was under a standing instruction to break in and become qualified on positions on those days when he was not called to perform five

days of work in any given work week. Claimant's own conduct manifests that he was aware of the continuing instruction. Indeed, even during the first five months of 1983, Claimant reported to duty on numerous occasions to break in on positions. Inexplicably, Claimant simply failed to report for training on some of the days during this period. Pursuant to the September 1, 1982 Training Agreement, Claimant, if he had reported to break in on a position, would have been compensated at his protective rate of pay. Thus, the Carrier properly suspended his benefits on the twenty days in question.

The Committee notes that the Organization is fearful that the Carrier may manipulate the work week to deprive Claimant of wages or overtime compensation. For example, the Organization contended that if Claimant was called to work on Monday through Thursday and on Friday reported to break in and was then called for Saturday work on a position for which he was qualified, the Carrier would deny Claimant overtime compensation. The Organization's hypothetical is not supported by any facts in the record and so, it is speculative to assume how the Carrier would compensate Claimant in such a situation. However, the Chief Clerk apparently assured Claimant that he would be paid for time spent breaking in on clerical positions in addition to pay for each day that he was actually called to work.

AWARD

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


John B. LaRocco
Neutral Member

Dated: July 29, 1987