

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Transportation-Communications International
TO THE) Union
DISPUTE) and
) 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, when it refused to consider J. B. Cunningham a protected employee pursuant to Article 1, Section 1, based upon the position she held on June 9, 1985 when she obtained five (5) years of service?
 2. Shall Carrier be required to compensate J. B. Cunningham for all loss of compensation commencing July 1, 1985, as a result of failing to recognize Claimant as a protected employee?
 3. Shall Carrier now be required to pay an appropriate per annum interest rate on the amounts wrongfully withheld beginning thirty (30) days after date of claim?

OPINION

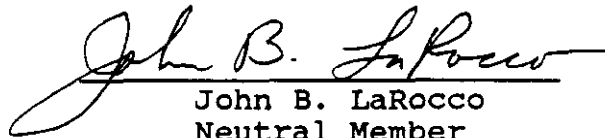
OF THE BOARD: Claimant acquired a June 9, 1980 seniority date on the Plains Division Office of the Superintendent's Seniority District. At the time Claimant established five years of continuous employment with the Carrier on June 9, 1985, she was regularly assigned to Position No. 6025 (Stenographer to Trainmaster) with a daily rate of \$98.25. The Carrier abolished the Stenographer job at the end of the June 14, 1985 shift. Claimant lacked sufficient seniority to hold a regular position on her seniority district, and so she reverted to off-in-force-reduction status. Claimant filed for protective benefits under the February 7, 1965 Agreement, as amended, beginning with July, 1985 based on the rate of the regular Stenographer job she had held on June 9, 1985.

In Award No. 457, we interpreted Article I, Section 1(e) of the February 7, 1965 Job Stabilization Agreement, as amended. We held that the operative date for determining when a worker becomes eligible to become a protected employee is the first day of the month following the month that an employee accumulates five years of continuous service. Claimant was clearly eligible to become a protected employee on July 1, 1985, but she did not actually attain protected status because she did not hold a regular position on July 1, 1985. Her operative date for protective status eligibility was July 1, 1985 but as of that date, she did not satisfy the condition precedent in Section 1(e). Put differently, Claimant was not regularly assigned on the date she was "...eligible to become..." a protected employee.

For the reasons more fully set forth in Award No. 457, Claimant did not become a protected employee on either June 9, 1985 or July 1, 1985.

AWARD

1. The Answer to Question No. 1 is No.
2. Question No. 2 is moot.
3. Question No. 3 is moot.


John B. LaRocco
Neutral Member

Dated: November 7, 1988