

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 7, 1965 Mediation Agreement, as amended, when it refused to consider S. T. Davis, a protected employe pursuant to Section 1(d), Article I, based upon attaining the requisite three (3) years of continuous employment relationship and being recalled and assigned to a regular position?
 2. Shall the Carrier be required to compensate S. T. Davis for all loss of compensation commencing November 1, 1985, as a result of failing to recognize S. T. Davis as a protected employe?

OPINION

OF THE BOARD: Claimant, who established a May 8, 1979 seniority date on the Illinois Division Station Department Seniority District, did not hold a regular position on January 1, 1980. Thus, the question of whether or not Claimant thereafter attained protected status is controlled by Article I, Section 1(d) which reads:

"Employees not regularly assigned as of January 1, 1980, having less than three (3) years of continuous employment relationship in the clerical craft as of January 1, 1980, will become protected employes on the first of the month immediately following the month in which they acquire three (3) years of continuous employment relationship in the clerical craft, unless they are not regularly assigned on the date they are eligible to become protected employes, in which event they will become protected employes on the first of the month immediately following the month when recalled to service and assigned to a regular position in accordance with existing rules of the Clerks' Agreement."

Claimant was apparently in off-in-force-reduction status for several years. Claimant accumulated three years of continuous service with the Carrier on May 8, 1982 meeting the threshold requirement in Article I, Section 1(d). Claimant was eligible to become a protected employee as of June 1, 1982. See Award No. 457. Claimant did not become a protected employee on his earliest eligibility date inasmuch as he was not regularly assigned on June 1, 1982.

The Carrier called Claimant to protect a short vacancy on October 28, 1985. The vacant job was Head Crew Clerk Relief Position No. 4, which the Carrier had advertised as a permanent position on October 22, 1985. On October 29, 1985, an Interchange Clerk notified Claimant that he had been recalled from off-in-force-reduction status and assigned to the job he was protecting as a short vacancy. Claimant responded and assumed the duties of the job at the start of the shift later in the day. The next day, a Superintendent's bulletin confirmed Claimant's assignment to the permanent position. However, about three hours later, the Superintendent rescinded the bulletin assigning Claimant to Head Crew Clerk Relief Position No. 4 because the Carrier had inadvertently overlooked an employee with more seniority than Claimant. Claimant reverted back to off-in-force-reduction status but continued to work the Head Clerk Relief position, as a short vacancy, until November 1, 1985. On November 1, 1985, a different worker, with greater seniority than the person assigned to the job in lieu of Claimant, displaced onto the Head Crew Clerk Relief Position.

Beginning with November, 1985, Claimant filed an application for protective benefits under the February 7, 1965 Mediation Agreement, as amended.

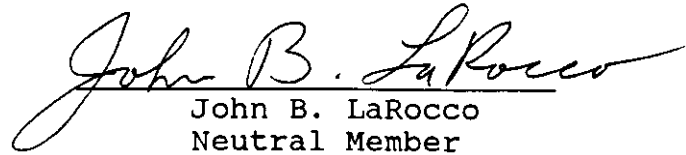
To reiterate our earlier discussion, Claimant did not become a protected employee on the first day of the month immediately following the month in which he accrued three years of continuous service because he was not regularly assigned on that date. Thus, whether Claimant, who was already eligible to become a protected employee, actually attained protected status subsequent to June 1, 1982 is governed by the final clause of Article I, Section 1(d) which states: "...in which event they will become protected employees on the first of the month immediately following the month when recalled to service and assigned to a regular position in accordance with existing rules of the Clerks' Agreement." (Emphasis added.) Thus, an employee who is eligible to become a protected employee actually achieves protected status on the first of the month following the month in which he is assigned a regular position in compliance with existing rules in the working Agreement (even if he no longer occupies a regular position on the first of the month after being recalled for a regular job).

While Claimant fleetingly occupied a regular position in late October, 1985, his assignment to the position was contrary to existing rules of the Clerks' Agreement. Put simply, the Carrier mistakenly awarded Claimant a permanent assignment. Since there is no evidence Claimant filed a grievance or otherwise challenged the rescission of the bulletin granting him the job,

Claimant obviously realized that he lacked sufficient seniority to be awarded the position. Thus, he had not been assigned a regular position in compliance with existing rules. It follows that, though eligible, Claimant had not yet attained protective status as of November 1, 1985.

AWARD

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


John B. LaRocco
Neutral Member

Dated: November 7, 1988