

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Transportation-Communications International
TO THE) Union
DISPUTE) and
) The Galveston, Houston and Henderson Railroad
) Company

ORGANIZATION'S QUESTIONS AT ISSUE:

1. Did the Carrier violate the provisions of the Mediation Agreement, Case No. A-7128, dated February 7, 1965, as amended, by Agreement dated August 3, 1978, when it terminated the protection due K. D. Ward on the basis of the decline of business?
2. If the answer to Question No. 1 is in the affirmative shall Carrier now be required to compensate K. D. Ward for any and all compensation he would otherwise have received pursuant to the provisions of the February 7, 1965 Agreement, as amended by Agreement dated August 3, 1978?

CARRIER'S QUESTION AT ISSUE:

1. Did the Carrier violate the February 7, 1965 Stabilization Agreement or the Agreement dated August 3, 1978, when it refused to allow Claimant his protective rate for February 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27 and 28, 1986, subsequent to abolishing the position of "Vacation - Extra Clerk" effective February 1, 1986?

OPINION

OF THE BOARD: The Carrier abolished Claimant's Vacation Relief

- Extra Clerk position on February 1, 1986.

Claimant attempted to displace to a Night Chief Dispatcher job occupied by a junior employee. However, the General Yardmaster-Agent disallowed Claimant's displacement inasmuch as he was unqualified to perform the primary duties of the position.

Claimant did not hold sufficient seniority to place on another job. Consequently, Claimant reverted to furloughed status and thereafter he filed a claim for protective pay covering February, 1986.

Prior to August 3, 1978, the February 7, 1965 Job Stabilization Agreement was in full force and effect on this property. On August 3, 1978, the Carrier and Organization entered into a new job stabilization agreement. Section 9(a) of the August 3, 1978 agreement provided:

(a) This Agreement is in settlement of the dispute growing out of the Organization's Section 6 Notice of January 16, 1978, and except as otherwise provided herein, supercedes any and all agreements applicable to this property relating to "Job Stabilization."

In a Memorandum of Agreement attached to the August 3, 1978 Job Stabilization Agreement, the parties expressly agreed that Claimant would become a protected employee on November 1, 1978.

At the onset, the Carrier challenges the jurisdiction of this Board over this dispute because the February 7, 1965 Job Stabilization Agreement is no longer in effect on this property. The Carrier points out that Section 8 of the August 3, 1978 Agreement specifically provides that disputes under the August 3, 1978 agreement, if not disposed of on the property, will be progressed to the National Railroad Adjustment Board or a Public Law Board. Section 8 of the August 3, 1978 agreement reads:

Any dispute involving the interpretation or application of any of the terms of this Agreement shall be handled in the usual manner as required by the Railway Labor Act, as amended.

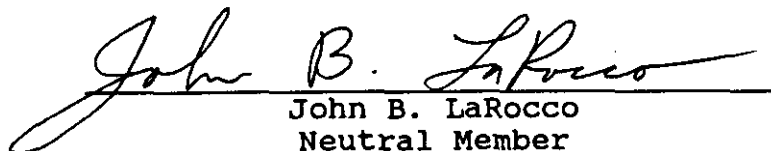
This Board holds that Section 8 deprives this Board of jurisdiction to adjudicate this case. Pursuant to Section 8, disputes involving the interpretation or application of the August 3, 1978 Job Stabilization Agreement must be handled in the usual manner which, on this property, is governed by Rule 45 of the working agreement. Moreover, the Organization recognized that this claim must be handled in accordance with the terms of Rule 45. In a letter dated February 20, 1987, the Organization requested the Carrier to extend the nine month limitation period set forth in Rule 45(c). While the Carrier granted the Organization's request, the Organization was ready to submit the claim to the Third Division of the National Railroad Adjustment Board if the Carrier did not agree to an extension of time.

Based on the plain and unambiguous language in Section 8 of the August 3, 1978 Job Stabilization Agreement, we must dismiss this claim.

AWARD

1. The Organization's Questions at Issue are dismissed for lack of jurisdiction.
2. The Carrier's Question at Issue is dismissed for lack of jurisdiction.

Dated: April 14, 1989


John B. LaRocco
Neutral Member