SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE) Transportation-Communications International Union
and
Missouri-Kansas-Texas Railroad Company

QUESTIONS AT ISSUE:

1. Was R. W. Winslow required to place himself on the highest rated position available to him in an exercise of seniority on his seniority district in order to maintain the level of his protective rate?

2. If the above-posed question is answered in the negative, should Claimant be reimbursed for the difference in his protected rate of Livestock Clerk Position No. 2213 and that of Consolidated Agent Position No. 2024 commencing August 6, 1985?

OPINION OF THE BOARD: Claimant is a protected employee under the February 7, 1965 Job Stabilization Agreement with amendments effective February 22, 1980. Pursuant to a July 22, 1985 bulletin, the Carrier abolished Livestock Clerk Position No. 2213, a regular assignment at Parsons, Kansas, which Claimant had continuously occupied since 1958. The abolishment was effective at the end of Claimant's tour of duty on August 5, 1985. The next day, Claimant exercised his seniority to the position of Consolidated Agent, with a daily rate of $102.15, also located at Parsons. Claimant's protected rate was $2,977.84 per month, premised on the monthly rated seven-day-a-week Livestock Clerk position. On August 30, 1985, the Carrier advertised an Agent-Telegrapher position at Coffeyville, Kansas, rated at $2,827.52 per month. Claimant did not bid on the Coffeyville vacancy. If

Claimant had bid on the vacancy, he would have been awarded the job. The Carrier offset the difference between the rate of Claimant's Consolidated Agent position and the Agent/Telegrapher position at Coffeyville from Claimant's protective guarantee.

On the property, the Organization asserted that Coffeyville was 59 normal travel route miles from Claimant's residence in Parsons. On the other hand, the Carrier insisted that Coffeyville was slightly more than 30 miles from Parsons. After reviewing the map contained in the record before us, this Board finds that, via the most direct highway route, Coffeyville is 40 miles from Parsons.

The issue in this case centers on the proper interpretation and application of Article IV, Section 4 of the February 7, 1965 Job Stabilization Agreement which provides:

> *If a protected employee fails to exercise his seniority* rights to secure another available position, <u>which does not require a change in residence</u>, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the *position he elects to retain, he shall thereafter be* treated for the purposes of this Article as occupying the position which he elects to decline. [Emphasis added.]

The Organization cites Interpretation No. 3 under Article III of the February 7, 1965 Agreement. The interpretation defines what constitutes a change in residence for purposes of applying Article III, the implementing agreement provision. The interpretation reads:

> When changes are made under Items 1 or 2 above which do not result in an employe being required to work in excess of 30 normal travel route miles from the residence he occupies on the effective date of the change, such employe will not be considered as being required to change his place of residence unless otherwise agreed.

Claimant seeks the difference between his protected rate and the rate of the Consolidated Agent position he holds in Parsons because, as the Organization argues, taking the Coffeyville job would have required Claimant to change his residence. The Organization stresses that Article IV, Section 4 does not obligate an employee to obtain a higher rated position than the one he occupies if the higher rated position would necessitate a change in his residence.

The Carrier contends that Article IV, Section 4 permits it to treat Claimant as if he occupied the Coffeyville position because Claimant must acquire a position equal to or greater than his guarantee and, if no such positions are available, Claimant must take the highest rated position available to him in the exercise of his seniority rights. Claimant has the implied obligation, in exchange for February 7, 1965 protection, to place himself on the highest rated job on his seniority district to which his seniority entitles him to occupy. The Carrier alternatively argues that if Claimant had assumed the Coffeyville position, he would not have been required to change his residence.

This is not the first time that this Board has been confronted with a dispute concerning the proper interpretation and application of the change of residence clause in Article IV, Section 4 of the February 7, 1965 Agreement. The landmark case was Award No. 421. In that decision, we held that the absolute 30-mile measurement for determining a residence change under Article III did not carry over to Article IV, Section 4. This Board observed:

> First, we must reject the theory espoused by the Organization that any distance over thirty miles, under Article IV, Section 4, requires a change of residence. Had the parties decided to promulgate such a standard they could easily have done so since such specific standards have been included in other crafts' agreements. Clearly, the Board has no authority to establish a rule which the parties have failed to negotiate. We must take the position that each case must be evaluated on its particular facts.

Therefore, the fact that Coffeyville is 40 miles from Parsons does not mean that Claimant was per se required to change his residence. Rather, whether or not an employee would be required to change his residence if he exercised his seniority to a higher rated position at another location is an issue that must be decided on a case by case basis. Previously, this Board ruled that 70 miles (Award No. 134), 50 miles (Award No. 135) and 100 miles (Award No. 398) would require an employee to change his residence. In Award No. 421, the 43-mile distance between the employee's residence and the higher rated available position was, in and of itself, insufficient evidence to show that the employee was required to change his residence. However, in each of these

decisions, this Board unequivocally held, consistent with the plain language in Article IV, Section 4, that "a change in residence" remains a salient criterion when determining if an employee is obligated to acquire a higher rated position in line with his seniority. See also Award No. 190. Thus, an employee is not required to bid on and assume any higher rated position available to him on his seniority district when taking the position would require the employee to change his residence.

Aside from the actual distance between an employee's residence and the available position with a higher rate of pay, this Board must evaluate the time and ease of the employee's commute from his current residence to the higher rated available position to determine if taking the latter position would, in a practical sense, compel the employee to move his residence to the location of the higher rated job. In this particular case, Coffeyville is only 40 normal travel route miles from Parsons, which is less than the distance between the two positions involved in Award No. 421. Also, the record evidence indicates that Claimant would have an easy, fast 45-minute commute, over good highways, when driving from Parsons to Coffeyville. In Award No. 421, this Board held that a 45-minute commute was not sufficiently long to require an employee to change his residence.

In conclusion, if Claimant had acquired the Coffeyville position, he would not have been required to change his residence. It follows that the Carrier could deduct from

Claimant's protective guarantee the rate of the Coffeyville Agent-Telegrapher position so long as Claimant would have been able to hold the position with his seniority.

AWARD

1. The Answer to Question at Issue No. 1 is Yes.

2. Question at Issue No. 2 is moot.

Dated: April 14, 1989

John B. LaRocco
Neutral Member

[BD-ADJ-4.AWD]