

SPECIAL BOARD OF ADJUSTMENT NO. 605

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

QUESTIONS AT ISSUE:

1. Was C. A. Brush, a protected extra board Clerk, required to bid on a bulletined Section 2 job in order to preserve her protective status?
2. Should C. A. Brush's protected rate be reinstated as of January 13, 1986?

OPINION OF

THE BOARD: Claimant, who holds a February 17, 1979 seniority date on Seniority District No. 7, is a protected employee under the February 7, 1965 Job Stabilization Agreement with amendments effective on February 22, 1980.

During December, 1985 and January, 1986, Claimant was an extra employee at Houston, Texas and she received a protective allowance (covering those days which the Carrier did not call her to perform work). On December 26, 1985, the Carrier issued Bulletin No. 11, advertising Chief Clerk, Position No. 9124, at Houston, Texas. The Chief Clerk position fell within the provisions of Article I, Section 2, Paragraph (g) of Agreement No. DP-451 (the working agreement). Working Agreement Article I, Sections 2(a) and 2(b) provide:

- (a) Positions listed in paragraph (g) of this section will be bulletined but may be filled without respect to Rules 6 and 36 of the Agreement.

(b) Assignment to positions shown in paragraph (g) hereof will be made by the railroad from a seniority roster set out in this agreement (not necessarily from the roster of the seniority district in which the vacancy occurs) and based on fitness and ability in accordance with Rule 6 of this agreement. Announcement of assignment will be promptly posted on bulletin board in office in which the vacancy occurred.

In sum, the Carrier had the prerogative to select any employee holding clerical seniority on any seniority district to fill the Chief Clerk vacancy.

Claimant did not file an application for the Chief Clerk position. The Carrier's General Manager issued a bulletin, on January 13, 1986, announcing that a Seniority District No. 7 employee with a seniority date of February 6, 1968 was awarded the Chief Clerk job. Simultaneously, the Carrier notified Claimant that it was terminating her protective status as of January 13, 1986 because she had failed to bid on the Chief Clerk opening. The Carrier relied on Article II, Section 1 of the amended February 7, 1965 Job Stabilization Agreement, which reads:

An employee shall cease to be a protected employee in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, or failure to retain or obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements, or failure to accept employment as provided in this Article. [Emphasis added.]

The Organization argues that the Carrier improperly terminated Claimant's protective status because she was under no obligation to bid on a position when the Carrier could assign any

clerical employee from any seniority district (regardless of seniority standing) to the position. The Organization emphasizes that Claimant's seniority did not give her a paramount right over any other clerical employee (either junior or senior to her), to attain the Chief Clerk position. Since the position was not governed by seniority selection rules, the Organization asserts that Article II, Section 1 of the February 7, 1965 Agreement was inapplicable. The Organization also argues that it would have been futile for Claimant to bid on this position because the Carrier selected a senior worker.

The Carrier responds that Claimant failed to exercise her contractual right to apply for the job. Since the Carrier must select a clerical employee with seniority, Claimant could have been assigned to the Chief Clerk position. According to the Carrier, the seniority of the person it ultimately selected is irrelevant since it had no opportunity to choose Claimant for the position inasmuch as she failed to submit an application.

Article II, Section 1 of the February 7, 1965 Job Stabilization Agreement does not contain any language relieving employees from bidding on jobs which could be available to them merely because the job is exempt from the promotion, assignment and displacement rules in the working agreement. However, it was not the intent of Article II, Section 1 to compel employees to engage in meaningless, futile acts. In Award No. 256, this Board held that an employee's "...failure to place a bid, which is

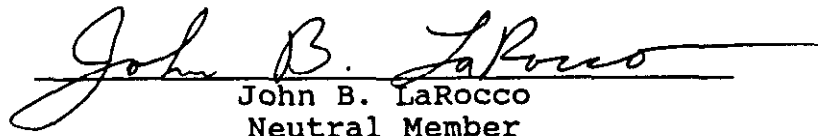
known to be fruitless, does not affect a protected employee's rights to his guaranteed compensation." Thus, not every clerical worker who holds seniority on every seniority district across the Carrier's system must file an application each and every time an Article I, Section 2, Paragraph (g) position is advertised to maintain their protected status. The Agreement does not contemplate that employees must fulfill useless, perfunctory conditions to keep their protective status. In this case, the Carrier awarded the Chief Clerk position to an applicant who was eleven years senior to Claimant, which demonstrates that Claimant had no reasonable likelihood of being selected for the position.

Our decision is restricted to the peculiar facts in this record. To reiterate, this Board's holding shall not be construed to excuse employees from applying for partially excepted positions to retain their protective status. Employees are obligated to bid on a partially exempt job vacancy when they have a practical probability of being selected to fill the position but, in this particular case, it was futile for Claimant to tender an application.

AWARD

1. The Answer to Question at Issue No. 1 is No.
2. The Answer to Question at Issue No. 2 is Yes.

Dated: April 14, 1989


John B. LaRocco
Neutral Member