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NATIONAL RAILWAY LABOR CONFERENCE

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A. K. GRADIA
Director of Labor Relations

July 17, 2000

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Mr. Roland Watkins
Director Arbitration Services
National Mediation Board
1301 K Street, N.W.
Suite 250 East Tower
Washington, DC 20572-0002

Dear Mr. Watkins:

Enclosed is a copy of **Award No. 514 (Case No. CL-78-E, NMB Case No. 43)** rendered by **Special Board of Adjustment No. 605**, established by Article VII of the February 7, 1965 National Agreement.

Very truly yours,

A. K. Gradia

A. K. Gradia

Enclosures

cc: Messrs. S. E. Crable (3)
R. A. Scardelletti (10)
M. A. Fleming (2)
W. D. Pickett (2)
I. Monroe (2)
J. B. LaRocco (1)

AWARD NO. 514
CASE NO. CL-78-E
NMB CASE NO. 43

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE) Transportation•Communications International Union

and

Springfield Terminal Railway Company

QUESTION AT ISSUE:

Guarantee Claim under BRAC October 17, 1984 Stabilization Agreement for the months of October 1997 for Claimant R. Michaels.

OPINION OF THE BOARD:

The Organization and the Carrier concur that Claimant is a protected employee under the February 7, 1965 Job Stabilization Agreement, as amended by the October 17, 1984 Master Implementing Agreement and the October 17, 1984 Stabilization Agreement. During 14 days in October 1997, the Carrier offset Claimant's protective guarantee because he failed to work a Transportation Service Representative Position (No. MC-1).

According to the Carrier, Claimant was afforded a 30-day period to qualify on the Transportation Service Representative position but failed to do so. The Carrier emphasizes that had Claimant been qualified, the Carrier would have called him for the vacancies on the Transportation Service Representative position and thus, Claimant would have earned greater compensation than his guarantee on the 14 dates in question.

On each of the 14 days, Claimant exercised his seniority to the fullest extent but he could not occupy any position for which he was qualified. Disqualification is not among the events

enumerated in the February 7, 1965 Job Stabilization Agreement, as amended on this property, for suspending or offsetting a protected employee's guarantee. If the authors of the Job Stabilization Agreement intended for disqualification to constitute cause for suspending benefits, they could have easily added that event to those enumerated therein.

We also emphasize that *Public Law Board No. 4848, Award No. 1* interpreted a similar protective agreement with identical facts. In *Award No. 1, Public Law Board No. 4848* extensively analyzed the interrelationship between an employee's failure to qualify for a position and the employee's entitlement to protective pay. *Public Law Board No. 4848* wrote:

> Next, the Carrier submits that employees could deliberately devise their disqualifications to obtain access to a furlough allowance. To the extent the Carrier's argument is logical, it works equally well in reverse. After the permanent abolition of a protected employee's position and his displacement to the only available position under Rule 8, the Carrier could, in bad faith, disqualify the protected employee from the position relegating the employee to furloughed status without a protective allowance. The negotiators of protective agreements expect both parties to apply their contracts in good faith and refrain from manipulating the agreement provisions to create loopholes. Therefore, if the Carrier shows that a protected employee affected by a permanent position abolishment deliberately failed to exert reasonable efforts to qualify on a position, knowing that, if disqualified, he would be unable to obtain any other position, the Carrier is relieved of its obligation to pay the employee a furlough allowance. In such a situation, sabotaging the qualification and training process is akin to a failure to fully exercise seniority under Article V(c).

In this case, there is not any evidence that Claimant sabotaged his disqualification from the Transportation Service Representative position knowing that he could not hold any other position

or protect any other vacancy. Absent such evidence, Claimant was entitled to his guarantee on the 14 days in October 1997.

Claimant failed to report to work on two days in October due illness. To the extent that the instant claim includes these two days, this part of the claim for protection is dismissed because it is not properly before this Board inasmuch as sick leave is governed by the Schedule Agreement.

AWARD AND ORDER

Claim sustained per the Opinion.

Date: July 11, 2000

John B. LaRocco
Neutral Member