Award No. 187
Case No. CL-34-E
WSPA Dkt 15
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SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express & Station Employes
and
Erie Lackawanna Railroad Company

QUESTIONS AT ISSUE:

(1) Mr. W. F. Heaney, an employe of the Erie Railroad, was involved in the coordination of the Passenger Stations of the former Erie Railroad and the Delaware, Lackawanna and Western Railroad at Jersey City and Hoboken, New Jersey, which occurred on or about October 13, 1956. including the ferry abandonment on February 19, 1958. as a part of such coordination; and as an employe "continued in service" is, therefore, entitled to be peid a displacement allowance under Section 6 of the "Agreement of May, 1936, Washington, D. C. "

(2) As an employe involved in the consolidation and-"continued in service" Mr. W. P. Heaney is entitled to be paid a displacement allowance equal to the difference between his monthly earnings on any porition he has held during the protective period as providd for in Section 6 and his average monthly earnings during the "test period" as defined in Section 6 (c).

OPINION OF BOARD:

On October 13, 1956, facilities of the Erie Railroad and Delaware, Lackawanna and Western Railroad Company were coordinated. Between August 27, 1956, when the Interstate Commerce Commission approved the coordination and the effective date of such on October 13, 1956, Implementing Agreements were negotiated with the various Organizations involved therein. As Carrier was preparing to abandon the ferry service operated by Erie, it was compelled to desist due to litigation initiated by Northern Valley Commuters Association, which lasted until February, 1958. During the period of such litigation, Carrier was required to retain Claimant's position of Ferrymaster. However, on January 18, 1958, Claimant's position was finally abolished and he, thereafter, displaced on a number of positions. Although a position of Supervisory Clerk was bulletined on March 30, 1959, paying a higher rate of compensation, Claimant failed to bid for such and it was awarded to a junior employee, P. J. Roach.

Thus, two issues are presented for our consideration, namely, from what period of time does Claimant's five-year protective period start to run and the amount of compensation to be applied against Claimant which was earned by the junior employee, P. J. Roach, who bid into the supervisory position on March 30, 1959.

Both protagonists, in their efforts to pursuade us as to the validity of their positions, rely 00 Referee Bernstein's Decision rendered by the Section 13 Committee in Docket No. 67. involving the same parties. We should note, however, that while the Carrier adopts the substantive portion of the analysis contained in Docket No. 67, it disagrees with the final conclusion as stated in that Award. It is, therefore, incumbent upon us to attempt to reconstruct the basis for. the deductions contained in that Docket, in order to determine the significance of the language espoused in the Decision.

Prior to our analysis of Docket No. 67, we would first quote for ready reference the applicable provisions of the Agreement of May 21, 1936, the Washington Job Rotection Agreement.

"Section 2(c). The term 'time of coordination' as used hereinincludes the period following the effective date of a coordination during which changes consequent upon coordination ere being made effective; as applying to a puticuler employee it means the date in said period when that employee is first adversely affected as a result of said coordination.'

"Section 6(a). No employee of any of the carriers involved in a particular coordiaatioa who is continued in service shell, for a period not exceeding five years following the effective date of such coordiaatioa. be placed, as a result of such coordination, in a worse position with respect to compensation ead rules governing working conditions than he occupied at the time of 'such coordination so long es he is unable in the normal exercise of his seniority rights under existing agreements, rules sad practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination, except however, that if he fails to exercise his seniority rights to secure another available. poaition, which &es not require a change in residence. to

which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain. he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline."

In D&et No. 67, the coordination became effective on 'October 13, 1956--of course, the similarity is apparent inasmuch as the same facilities were involved as those in the instant dispute. Voss, the Claim-&t, was continued in service until March, 1958, in the position he held at 'the time of coordination at the Erie's Jersey City passenger station. In March, 1958, he was appointed Ticket Agent at Paterson.

Based upon these facts, Referee Bernstein stated as follows:

"The employee was one 'continued in service' who lost his positioa ' as a result of such (a) coordination. Section 6(a) makes it clear that' for a period (of) five years following the effective date of such coordination ' he shell not be' in a worse position with respect to compensat ion ' so long es he is unable by the exercise of seniority to obtain a position which produces as much or more compensation' ".

"It is the first adverse effect of a coordination which makes the employee eligible for the benefits of Section 6 (See Section 2(c)). Thereafter the protection of the agreement is his for the specified five years in the ordinary case ."

"Decision: A. W. Voss is entitled to a displace&t allowance for each month of a period of five years after March, 1958, in which his compensation for the number of hours equal to the average monthly time paid for during his test period (3/57 - 2/58) was below the average monthly compensation of the test period."

How do the facts in the instant dispute jibe with those in Docket No. 67.

1. October 13, 1956, a coordination became effective.

2. Claimant Heaney was continued in service due to litigation instituted by. Northern Valley Commuters Association.

3. Claimant's job as Ferrymaster was abolished on January 18, 1958.

4. January 18, 1958, was the date of the first adverse effect of the coordination which made the employee eligible for tbe benefits of Section 6.

5. Thereafter, the protection of the Agreement is his .for the specified five years in the ordinary case.

6. However, the facts in the instant dispute indicate that this is not the ordinary case. Therefore, we turn our attention to the Carrier's arguments concemiag the litigation, as well as Claimant's failure to bid on the Supervisory Clerk position in March, 1959.

Previously, we mentioned that litigatioa was instituted by the Northern Valley Commuters in October; 1956, which was not terminated until February, 1958. The Carrier argues, therefore, that the employees should not benefit from such litigation, inasmuch as the Carrier was prevented from abolishing Claimant's position during this period. In support of this contention it cites Docket Nos. 2 and 13 of Arbitration Board Do. 289.

We would be prepared to accede to the Curler's thrust in this regard, if sufficient proof were included thereof. The record indicates that between August 27 and October 13, 1956, the Organization negotiated au Implementing Agreement vith respect to the said coordiaatioa. Insofar as the 1956 coordination was concerned, only the Commuters Association vas a litigant, not the Orgaaizatioa. True, the Carrier alludes to the fact that "---this coordination was also involved in a litigation, created by the employes, which prevented Carrier from implementing its coordination plans for over 16 months." Thus, the impression is left that the Organization was a party to such litigatioa. However, ve may not indulge in conjectures. We are aware that the Organization was a party litigaat in the 1960 coordination ---but not to the 1956 coordination. We do not believe that the employees should be penalized for an act over which they had no control. Therefore, in our view, the delay caused by the litigation was not attributable to the Organization. Hence, it may not now be used to penalize Claimant.

What of the failure of Claimant to bid in to the higher rated position of Supervisory Clerk on March 30, 19591 Section 6 (a) requires that "he shall thereafter be treated for the purposes of this section as occupying the position which ha elects to decline." Here, too, we find the parties in disagreement. The Carrier argues that all earnings of the junior employee should be held against Claimant, whereas the Organization contends that only the earnings of the junior which he received in the position of Supervisory Clerk should be applied against Claimant. Hence, any earnings received as Box Car Checker, Chief Clerk or Assistant Chief Clerk, may not be used for this purpose. In our view, the junior employee's earnings oo those dates when he filled the position of Supervisory Clerk. as well as those dates on which he could have worked the Supervisory Clerk position, may be applied against Claimant.

We vould note one additional remark. Numerous precedents were cited by the parties to substantiate their arguments. While we are prone, at times, to disregard precedent, we believe that in the instant dispute we are obligated to follow the precedent established in Docket No. 67. In this vein, it is our firm opinion that the conclusions reached herein are entirely consistent with the decision reached previously, involving the same parties, as well as the same coordination.

AWARD:

1. Claimant, W. P. Reaney, is entitled to be paid a displacement allowance under Section 6 of the Washington Job Protection Agreement.

2. In determining the displacement allowance to which W. P. Reaney is entitled to for each wnth of a period of five years commencing from January 18, 1958, the date of the first effect of the coordination, the earnings of the junior employee, P. J. Roach, on those dates when he filled the position of Supervisory Clerk, as well as those dates on which he could have worked the Supervisory Clerk position, may be applied against Claimant Heaney.

Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
January 19, 1970

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Award No. 188
Case No. CL-35-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE)

Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express & Station Employes
and
Brie Lackawanna Railroad Company

QUESTIONS AT ISSUE:

(1) Mr. E. Bouaski, an employe of the Erie Lackawanna Railroad Company, was involved in the coordination of the passenger stations of the former Erie Fall-'road and former Delaware, Lackawanna and Western Railroad at Jersey City end Hoboken, N. J., which occurred on or about October 13, 1956. including the ferry abandonment oa January 18, 1958. as a part of such coordination; and as an employe "continued in service" is, threfore, entitled to be paid a displacement allowance under Section 6 of the "Agreement of May, 1936, Washington, D.C."

(2) As an employe involved in the consolidation and "continued in service", Mr. E. Bonaeki is entitled to be paid a displacement allowance equal to the difference between his monthly earnings on any position he has held during the protective period provided for in Section 6 and his average monthly earnings during the "test- period" as defined in. Section 6 (c).

OPINION OF BOARD:---

The instant dispute parallels the one submitted in Case No. CL-34-E and arose out of the coordination of facilities betwee Erie Railroad and Delaware, Lackawanna and Western Railroad Company. Inasmuch as we carefully analyzed the arguments of the parties in CL-34-E. we are adhering to our conclusions reached in Award No. 187, decided on January 19, 1970.

We would further note that &spite the Organization's contention that Claimant, E. Bonaski, was first affected on December 14. 1958. the date his position of Ferrymaster was abolished, we find this statement to be inaccurate. In Organization's Exhibit "A", a letter &ted January 14, 1961, signed by the General Chairman and addressed to the Carrier, the following statement is contained:

"Mr. Bonaski vas adversely affected on January 18. 1958 or thereabouts as a result of the abandonment of the Erie ferry service."

It is, therefore, our considered opinion that Claimant is entitled to be paid a displacement allowance under Section 6 of the Washington Job Protection Agreement. Such allowance shall commence on January 18, 1958, the date of the first adverse effect of the coordination on the employee, and shall continue for a period of five years therefrom.

AWARD

Claimant, E. Bonaski, is entitled to a displacewot allowance commencing on January 18. 1958, the date of the first adverse effect on the employee, and shall continue for a period of five years therefrom.

Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
January 19. 1970

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SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE)

Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees
and
St. Louis Southwestern Railway Company

QDRSTIONS AT ISSUE:

(1) Does Section 8 of the Agreement of May 1936 Washington, D. C., require the Carrier to provide health and welfare benefits to Messrs. Carson Bell, Z. F. Burford, John Luke, Sam Miles and O. J. Peppers, employees affected in the October 1, 1961 St. Louis Southwestern Railway Company - Southern Pacific (Texas & Louisiana Lines), Dallas, Texas, Station and Yard Facilities Coordination?

(2) If the answer to Question 1 is affirmative, shall the Carrier now be required to afford Claimants Carson Bell, Z. F. Burford, John Luke, Sam Miles and 0. J. Peppers the health and welfare benefits that they were arbitrarily deprived of?

OPINION OF BOARD:

Effective January 1, 1962, facilities of the St. Louis Southwestern Railway Company and the Southern Pacific Company (T & L Lines) were coordinated, pursuant to the protective provisions of the 1936 Washington Job Protection Agreement. In substance, the Organization contends that,

> Claimants Bell, Burford, Luke, Miles, and Peppers were effected by the coordination and subsequent to being affected have been paid displacement allowances and/or coordination allowances by the St. Louis Southwestern. In months that the Claimants performed work they received coordination allowances, as required by Section 7 of the Washington Agreement. The Carrier, however, did not continue their protection with respect to health and welfare benefits in such months.

'Two additional statements contained in the Organization's submission are pertinent herein. It further alleges that, "(S)uch health and welfare benefits are accorded to other employees on Claimants' home road in active service." Also that, "(T)he Carrier 's arbitrary elimination of such benefits during months that the Claimants drew coordination allowances is improper and not in keeping with the literal specific language of both Agreements."

The Carrier, in turn, concedes that the Claimants herein continued in service and performed extra work.

During months they performed compensated service for the Carrier under this rule the Carrier has made

payments for health and welfare benefits, but during periods when work under this rule has not been available to them and they have performed no service no such payments have been made, as no payment for health and welfare benefits is made to cover other employes who are furloughed and who perform no compensated service for the Carrier.

Illustrative of the instant dispute, the Carrier indicated that Bell performed some work in each month through December, 1963. Thereafter, he has not performed any work but received a' Section 7 coordination allowance--and no payments were made for health and welfare benefits.

At this juncture, we would indicate two statements contained in the submission of the parties which are inapposite. Namely, whether the Carrier continued their health and welfare benefits in those months the Claimants performed compensated service, as well as whether such benefits continue to be accorded to other employees on his home road, in active service or on furlough. We have no means of deciding such variance at our level. Both of these statements can readily be verified on the property. However, assuming that the Carrier's statement is correct, are the Claimants entitled to receive health and welfare benefits in those months that they do not perform compensated service?

In this regard, the Organization cites two decisions by the Section 13 Disputes Committee, which it contends is dispositive of the issue herein. Docket No. 9, without a Referee, in response to the Questions posed, i.e.,

QUESTION (1) Is the "average monthly compensation" determined in accordance with the formulae prescribed in Section 6-(c) and 7-(a) of the Agreement, subject to change to conform to subsequent increases and/or decreases in basic hourly rates resulting from general wage adjustments?

QUESTION (2) Are affected employes who have insufficient seniority to obtain and retain a regular assignment. but who revert to and perform service from the extra list, entitled to compensation under Section 6 or Section 7, of the Agreement, or under a combination of both Sections?

held that the affected employees who perform services from the extra list are entitled to compensation under Section 6 of the WJP Agreement. In Docket No. 12 decided by Referee Bernstein on July 22, 1966, involving some of the same Claimants herein and subsequent to the docketing of the instant dispute with the Section 13 Committee, but thereafter. withdrawn pursuant to the February 7, 1965 National Agreement, is an established precedent which our Board is required to follow.

We have previously stated that precedents are important, though not sacrosanct and where they are relevant to a dispute before us, we shall analyze the precedent Award and when appropriate, we intend to follow it unless contrary to good conscience.

We have found it necessary to set forth the above statement in view of the Organization's insistance that the "Decision" in Docket 127--and only that portion entitled "Decision''--shall be our guiding light in leciding the instant dispute. The fact that the Decision is predicated on and responsive to the two Questions posed therein, as well as approximately four pages of single space "Findings," are irrelevant and no concern of ours. We should not inquire what was involved therein, but simply accept the bald statement, viz:

> DECISION: The Claimants, regular position holders who reverted to the Carrier's furlough list by virtue of the coordination, are eligible for Section 6 benefits and not a combination of Section 6 and Section 7 benefits as a matter of' interpretation of Section 6 (a) and (c) . If Section 7 (h) were applicable the result would be the same.

Ergo, Referee Bernstein held that these Claimants were entitled to Section 6 benefits, i.e., they were continued in service. Therefore, for a period not exceeding five years following the effective date of such coordination be placed in a worse position--this, of course, includes health and welfare benefits.

Prior to analyzing the dispute in Docket 127, we would further indicate the thrust of the Organization's position herein. Paraphrasing the Organization, it is to the effect that once an employee becomes entitled to a Section 6 displacement allowance, i.e., one who is continued in service, he always remains in that category and that his entitlement becomes fixed at the time of coordination as to whether he is subject to Section 6 or 7. In effect, if he commences as a Section 7, then he is governed by Section 7 (h) and not Section 6. Why? Otherwise, the WJP Agreement would have contained a Section 6 (h).

Although the parties have. failed to cite a specific Award on this aspect, the Carrier contends that an employee who performs service in a given month is entitled to a Section 6 displacement allowance and in those months in which he does not perform compensated service, he is entitled to a Section 7 coordination allowance. However, such metamorphoses in the employee's *status are* controlled *by* monthly changes and are not to be fragmented by days within a month.

Our analysis of the instant dispute now leads us back to Referee Bernstein's decision in Docket 127. The issue before him was stated as follows:

> QUESTION:
>
> '1. Shall affected employees who have insufficient seniority to obtain and retain a regular assignment in the coordinated operation be paid a Section 6 Displacement Allowance in those protective period months in which they perform service?
>
> 2. If the answer to question (1) is in the affirmative, shall the Carrier now be required to pay Claimants Carson Bell; --- 2. F. Burford; --- John Luke; Sam Miles; C. J. Peppers; --- a displacement

allowance for the month of January, 1962, and each subsequent month thereafter in which they perform service in the protective period, rather than a combination displacement-coordination allowance which is now being paid.

In the Findings, the following paragraph is crucial herein:

> The Organization claims that in any month in which the furloughed employees performed extra work they were entitled to Section 6 allowances for the entire month. However, the Carrier interprets Section 7 (h) to mean that the Section 6 and Section 7 allowances are to be prorated and a combination of both paid depending upon the proportion of the working days of the month in which the employee was working and not working.

Additional comments are included in the Findings, concerning the application of days or months. Finally,

> (T)he grossness of these categories argues against their being, subdivided into fractions measured in days. Given the terminology and the rough justice the allowances were to perform, it seems quite unlikely that there was any Intention that allowances be made on a daily basis.

It follows, therefore, that Claimants are not eligible for health and welfare benefits in those months when they did not perform service. Furthermore, the two disputed questions initially posed, i.e., whether these Claimants received health and welfare benefits during the period they performed compensated service, as well as whether under Section 8, of the WJP Agreement, other employees on his home road, in active service or on furlough, are accorded these benefits, are remanded to the property for disposition consistent with the Opinion.

AWARD:

The answer to Questions 1 and 2 is in the negative. However, the two factual issues are remanded to the property for disposition per Opinion.

Murray M. Rohman
Neutral Member

Dated: Washington, D.C.
July 24. 1970