Award No. 4
Case No. CL-12-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
and
The Baltimore and Ohio Railroad Company

QUESTIONS AT ISSUE: (1) Did the Carrier violate the provisions of the Agreement of February 7, 1965 and the interpretations thereto, particularly Article II, Section 1, when it removed the protected status from Mr. A. Prince, a clerical employee at Philadelphia, Pennsylvania?

(2) Shall the Carrier be required to reinstate the protected status to Mr. Prince and pay him all compensation due, beginning with May 1965, and continuing until the Carrier complies with the provisions of the Agreement of February 7, 1965?

OPINION OF BOARD: The essential facts are not in dispute. A. Prince was a protected furloughed employe on October 1, 1964. On May 7, 1965 the Carrier advertised three "Storehelper" positions at Brunswick, Maryland which was in the Claimant's seniority district. Claimant did not apply for any of the positions. They were awarded to employes having less seniority than Prince. Thereafter, Carrier removed Prince from the status of a protected employe contending that he failed to "obtain a position available to him in the exercise of his seniority rights" as provided for in Section 1 of Article II of the February 7, 1965 Mediation Agreement.

The pertinent part of said Section 1 of Article II says that "An employee shall cease to be a protected employee in case of his ... failure to . . . obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements . . ." (Emphasis added). The language "existing rules or agreements" refers to the basic collective bargaining agreement to which this Carrier and this Organization are parties, particularly those rules dealing with seniority rights. Rule 31 (d) of the latter agreement provides, in part, as follows:

"Assignment by Appointment.

(d) When no applications are received from employees in service with sufficient fitness and ability senior to those furloughed . . . new positions or vacancies expected to be of ninety (90) calendar days or more duration will be filled as follows:

1. The senior qualified applicant in service, if any, will be conditionally assigned, subject to possible subsequent displacement as hereinafter provided.

2. The senior qualified employee not holding an assignment under this Agreement and who is not on leave of absence as of the date of the advertising bulletin, incapacitated, or in service referred to in Rule 41, will be assigned and so notified in writing by mail or telegram sent to his address of record, copy of the notice to be furnished the Division Chairman . . ." (Emphasis added).

Prince was on furlough; no applications were received from employees "with sufficient fitness and ability senior to" Prince; there is no claim that Prince lacked the "fitness and ability" required for the positions advertised; Prince was not assigned and was not "notified in writing by mail or telegram" as required in Rule 31(d). Carrier is obligated to comply with the provisions of that rule. The alleged "failure" of Prince to obtain the position was due not to negligence on his part but to the failure of the Carrier to comply with the notice requirements of Rule 31(d).

Carrier concedes that Prince "did not hold a regular position" on October 1, 1964, "but was in 'active service' under Article I, Section 1, of the February 7, 1965 Agreement by reason of the fact that he was a furloughed employee who responded to extra work at Philadelphia."

The interpretations of November 24, 1965 are not inconsistent with the conclusion that Carrier failed to abide by the provisions of Rule 31(d) of the basic agreement. The answer to question 3 under Section 1 of Article II of the February 7, 1965 Mediation Agreement refers to the obligation of "extra employes" to obtain or retain positions. We have already pointed out that Prince was not an extra but a furloughed employee who responded to extra work. The answer to question 4 under the same Section and same Article states that a furloughed protected employee is required "to respond to a call for extra work in order to preserve the protected status." Prince did respond to extra work when called.

We conclude that the Carrier violated the February 7, 1965 Mediation Agreement.

AWARD

The answer to question (1) is in the affirmative.

The answer to question (2) is also in the affirmative.

REFEREES:

Washington, D. C. - December 19, 1967