SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees
and
New York Central System

QUESTIONS AT ISSUE:

(1) Did Carrier violate Section 1, Article I of the February 7, 1965 Stabilization Agreement on April 1, 1965, when it failed to return Mr. James Fershee to active service and retain him in compensated service?

(2) Shall Carrier now be required to return Mr. James Fershee to service and compensate him at the rate of Position No. 6 at Moraine, Ohio, daily rate, $21.512 (plus all subsequent general wage increases) for Thursday, April 1, 1965 and the same for each and every day thereafter for five days each week until the Agreement has been complied with?

OPINION OF BOARD: The pertinent portion applicable herein of Article I, Section 1, of the February 7, 1965 National Agreement provides that furloughed employees, ".....as of the date of this agreement will be returned to active service before March 1, 1965, in accordance with the normal procedures provided for in existing agreements,....." Subsequently, the parties mutually modified the effective date from March 1 to April 1, 1965.

In the instant matter, the facts indicate that the Claimant was disqualified from his regular position on November 9, 1964, thus causing him to be placed in a furloughed status. It is, therefore, the Organization's contention that by the Carrier's failure to return the Claimant to active service before April 1, 1965, Article I, Section 1, was violated. The Carrier, however, although conceding that the Claimant is a protected employee within the purview of Article I, Section 1, insists that it has not violated said section.

This dispute requires us to determine the significance of the following language contained in Article I, Section 1, to the effect that:

> "...in accordance with the normal procedures provided for in existing agreements,...."

Within the framework of this argument, the Carrier predicates its defense

on the provisions of Rules 2 and 3 of the effective agreement. In order for the claimant to return to service under normal procedures, he would be required to bid and then be assigned on any bulletined position for which he could qualify.

It appears to this Board that we cannot ignore this portion of the phraseology contained in Article I, Section 1. Furthermore, the Carrier's explanation of the method used to implement the normal procedures as provided for in existing agreements, is plausible. Nevertheless, the Organization argues that acceptance of the Carrier's version would necessitate us adding a clause superimposing the factors of ability and fitness -- one not contemplated by the negotiators and signatories to the National Agreement. Although we are cognizant of the possibility that such view may potentially have an effect of broader scope than envisioned herein, nonetheless, we are compelled to ascribe a rational meaning to the words used in said section. The Carrier's interpretation of its version of normal procedures provided for in existing agreements, as presented herein, is consonant with the method whereby a furloughed employee may be returned to active service. Hence, it is our considered judgment that the Carrier did not violate the agreement.

AWARD

Answer to questions 1 and 2 is in the negative.

Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
March 7, 1969

...ERATING RAILWAY LABOR ORGANIZATIONS

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...Labor Building • Suite 804
...Street, N.W. • Washington, D. C. 20001
202 RE 7-1541

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Code 202 547-7543

April 3, 1969

Dr. Murray M. Rohman
Professor of Industrial Relations
School of Business
Texas Christian University
Fort Worth, Texas 76129

SUBJECT: Dissent to Award No. 31
Case No. CL-26-E

Dear Doctor Rohman:

You were advised at the time Award No. 31 (Case No. CL-26-E) of Special Board of Adjustment No. 605 was signed by you on March 7, 1969, that the Employee Members of the Special Board would file a Dissent to that Award. A copy of that Dissent is attached hereto.

We have decided that we will not file a Dissent to Award No. 36.

Very truly yours,

J. E. Fairbairn

Chairman
Five Cooperating Railway Labor Organizations

Attachment

cc: J. P. Hiltz

W. S. Macgill
J. W. Oram
M. E. Parks

T. A. Tracy

Dissent Award No. 31
Case No. CL-26-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

Dissent of Labor Members

It has not been our practice to dissent from the Awards of this Board with which we disagree. But this award does such violence to both the plain language and the obvious intent of the February 7, 1965 Agreement that we cannot let it go unchallenged.

There seems to be no doubt in the mind of anyone, claimant Organization, Carrier or Board, that claimant was, as of October 1, 1964, a regularly assigned employee, who had had more than two years of employment relationship, and had had more than fifteen days of compensated service during 1964, and was as of February 7, 1965 on furlough. He was accordingly, in the language of the agreement, without any exception or condition or qualification, one who "will be returned to active service before [April 1, 1965,] in accordance with the normal procedures provided for in existing agreements, and will thereafter be retained in compensated service as set out above, ..."

The sole reason assigned for a denial award is that under the existing rules agreement the right to return from furlough was conditioned upon the employee's bidding upon and assignment to a bulletined position for which he could qualify. Apparently claimant could not qualify for mechanical car reporting which was required on all yard-clerk jobs to which his seniority attached, but he had successfully performed the duties of yard-clerk for nearly eight years before mechanical car reporting was instituted.

The Neutral Member of the Board says he finds himself under compulsion to ascribe a rational meaning to the words "in accordance with the normal procedures provided for in existing agreements," and therefore must deny the claimant any right to be returned to service at all as the February 7, 1965 Agreement plainly commands.

Rational meaning can be ascribed to the language used--in fact its most natural and normal meaning--without contradicting the unqualified right the February 7, 1965 Agreement gives the claimant to "be returned to active service."

In writing a national agreement covering five crafts and most of the major railroads of the country providing for definite rights of all employees of a described category to return to active service by a specified date the question naturally arose as to what procedures were to be used in carrying out this program. How and when were the employees to be notified? By posting on bulletin boards? By letter to last known address? By both? How, when, and where were recalled employees to report for service? What, if any, time was to be allowed between notification and reporting for service? For the answers to these and similar questions the parties agreed that they would turn to the agreements that each craft had, respectively, with each railroad with respect to the procedures

applicable to return from furlough. Of course the incorporation of existing procedures placed no limitations of any kind on the absolute substantive right of people in the specified category to be returned to active service.

The action of the Board in this Award of curtailing the substantive rights of a claimant, who admittedly falls within the category to whom the Agreement gives substantive rights, can no more be justified than could an award holding that the existing procedures required a recall only when the carrier's operations demanded additional personnel--thus completely negativing any obligation of the carrier imposed by the Agreement toward furloughed employees.

As we understand this Award it hinges on the inability of the claimant to qualify for mechanical car reporting work when the performance of such work was a requisite of any yard clerk job that might now be established at the point where he held seniority. Thus confined it is just as wrong as though it stood for a principle of broader application. But since most railroad employees are qualified for some work currently being performed to which their seniority attaches it will, hopefully, have little applicability as a precedent. So viewed it is another example of the same type of aberration that led other neutral members to cut the compensation to which the claimant was entitled in Award 13.

C. L. Dennis

C. L. Dennis

J. E. Leighty

J. E. Leighty

April 3, 1969