Award No. 44
Case No. CL-5-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE ) Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and Grand Trunk Western Railroad

QUESTION AT ISSUE: (1) Is Chicago Mail Handler A. C. Baxter entitled to be paid in accordance with Article IV, Section 1, of the February 7, 1965 Agreement commencing March 1, 1965?

OPINION OF BOARD: On October 1, 1964, the Claimant held a regular assignment as Mail Sorter. On October 29, 1964, he was displaced as a result of a senior employee returning to active service from leave of absence due to illness. Thereafter, the Claimant was reduced to a furloughed status until returned to active service on February 27, 1965. Until assigned to a position of Relief Caller-Vacations on August 13, 1965, he worked intermittently performing extra and relief work. He also worked as Mail Sorter in November and December; and on December 15, 1965, Claimant was awarded a regular position of Storekeeper Helper. In the instant claim, the Organization seeks the additional compensation for this period of time as provided by Article IV, Section 1 of the February 7, 1965 National Agreement.

The parties are in agreement that the Claimant met the qualifications for a protected employee, pursuant to Article I, Section 1. They disagree, however, as to whether he is entitled to have his rate of compensation preserved as of October 1, 1964. In essence, Article IV, Section 1, provides that protected employees shall not be placed in a worse position with respect to compensation than as of October 1, 1964, subject to the provisions of Section 3.

Section 3 of Article IV, in essence, provides that a protected employee who is bumped in the normal exercise of seniority will not have his compensation preserved, but will be compensated at the rate of pay and conditions of the job he bids in. Hence, in the instant dispute, the Claimant, having been bumped by a senior employee, was relegated to the compensation at the rate of the job he bids in. At this juncture, the critical point in controversy herein is exposed. What if the bumped employee has no job available for him to bid in? The Organization argues that in such an event, Section 3 of Article IV has no application. Under these circumstances, only Section 1 is applicable, which provides that he shall not be placed in a worse position with respect to compensation as of October 1, 1964. In fact, the Organization recognizes that if the Claimant had been able to bid in on a lower rated position, under the facts presented herein, he would have received only the compensation as provided on the job which he bid in. However, in view of the fact that he was unable to bid in on any job until December 15, 1965, he was entitled to the protective provisions of Section 1.

What is the significance of the February 7, 1965 National Agreement, as applied to the instant dispute? Without a job stabilization agreement, an employee who is furloughed does not have any guarantee. Therefore, under the said Agreement, where a job is not available for him to bid in and he is furloughed, in our view, it would appear that he is protected by Section 1 of Article IV.

We recognize that this relationship may place such an employee in a better light than one who does bid in to a lower rated job, and is compensated at the rate of that position. Nevertheless, we are required to interpret the provisions of the National Agreement as written. We would be transcending our responsibilities were we to add, amend, alter or subtract from the language contained therein. In this regard, we would indicate that, in our view, the conclusion arrived at is consonant with the language as expressed in Sections 1 and 3 of Article IV.

Award

Answer to question 1 is in the affirmative.

Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
April 18, 1969

DISSENT OF CARRIER MEMBERS OF SPECIAL BOARD OF ADJUSTMENT NO. 605 TO AWARD NO. 44 (CASE NO. CL-5-E) - AGREEMENT OF FEBRUARY 7, 1965

The Carrier Members of this Board are of the view that Award No. 44 by Neutral Member, Doctor Murray M. Rohman, constitutes a gross misinterpretation of Article IV of the February 7, 1965 Agreement.

When the February 7th Agreement was being negotiated, and certain compensation guarantees were provided for protected employees, the carriers made it clear that they were not willing to provide such compensation guarantees in situations where the employees were the moving parties and voluntarily created certain conditions over which the carriers had no control. Thus, they said, that where a carrier abolished positions, and protected employees were forced to exercise their seniority, the carriers would maintain the compensation guaranteed by Sections 1 and 2 of Article IV to protected employees adversely affected, regardless of the number of displacements resulting from the bidding and bumping processes initiated by the job abolishments, and regardless of whether or not any of such employees were furloughed in the process because no work was available for them.

On the other hand, they said that they were not willing to apply such guarantees to employees displaced as a result of employees voluntarily exercising their seniority, over which management has no control.

Accordingly, Section 3 of Article IV was adopted which provided specifically that any protected employee who bids in a job or is bumped as a result of a voluntary exercise of seniority will not be entitled to have his compensation preserved as provided in Sections 1 and 2 of Article IV. The Section goes on to say that such an employee will be compensated at the rate of pay and conditions of the job he bids in. It does not, at this point, mention anything about employees who are furloughed or go onto extra lists as a result of such voluntary exercise of seniority, nor indicate what their compensation will be. This appears to have caused some dilemma in the mind of the neutral member of the Board, and he arrived at the completely erroneous conclusion that such employees were covered by Section 1 of Article IV despite the clear and specific provision in Section 3 that any protected employee who is bumped as a result of an employee exercising his seniority in a normal way by reason of a voluntary action will not be entitled to have his compensation preserved as provided in Sections 1 and 2 of Article IV.

The neutral made two statements in an effort to extricate himself from what appeared to him to be a dilemma.

The first one is a complete non sequitur. We quote:

> "Without a job stabilization agreement, an employee who is furloughed does not have any guarantee. Therefore, under the said Agreement, where a job is not available for him to bid in and he is furloughed, in our view, it would appear that he is protected by Section 1 of Article IV."

The conclusion that an employee who is furloughed as a result of a voluntary exercise of seniority is protected by Section 1 of Article IV does not follow from the premise that "without a job stabilization agreement, an employee who is furloughed does not have any guarantee." It depends on what the agreement provides, and the agreement clearly provides that in the case of a voluntary exercise of seniority Section 1 of Article IV does not apply. Keep in mind that the carriers are not contending that Section 1 does not apply where some action by the carrier makes the exercise of seniority necessary.

The second statement of the neutral member is made after he observes that the conclusion would lead to the rather incongruous result that the furloughed employee would be placed in a better light than the employee senior to him who was able to bid in to a lower-rated job. The statement is as follows:

> "Nevertheless, we are required to interpret the provisions of the National Agreement as written. We would be transcending our responsibilities were we to add, amend, alter or subtract from the language contained therein. In this regard, we would indicate that, in our view, the conclusion arrived at is consonant with the language as expressed in Sections 1 and 3 of Article IV."

What the neutral member has done in this instance is to ignore the specific language of the agreement which provides in Section 3 of Article IV that Sections 1 and 2 are not applicable in the case of a voluntary exercise of seniority - and then reached a conclusion that did in fact amend and alter the language of the agreement.

During the argument of this case before the Board, a representative of the employees referred to Question and Answer No. 1 of Section 3 of Article IV on page 14 of the Agreed-Upon Interpretations of November 24, 1965. This Question and Answer reads as follows:

> "Question No. 1: If a 'protected employe' for one reason or another considers another job more desirable than the one he is holding, and he therefore bids in that job even though it may carry a lower rate of pay than the job he is holding, what is the rate of his guaranteed compensation thereafter?
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> "Answer to Question No. 1: The rate of the job he voluntarily bids in."

The argument made was that somehow this proved that Section 3 had no application to an employee who is furloughed at the end of the bumping process, and that, therefore, Section 1 of Article IV applied. All that this agreed-upon interpretation does is provide that in the simple case where a protected employee voluntarily bids in a job that he considers more desirable, even though it may carry a lower rate, he will be guaranteed the rate of the lower paying job. The significant fact is that there is no agreed-upon interpretation creating any guarantee for employees who are furloughed as a result of a voluntary exercise of seniority. It took a special agreement to create a guarantee for the employee who bids in another job, and it obviously would require a special agreement to create a guarantee for the employee who is furloughed, particularly since Section 3 provides that the guarantees under Sections 1 and 2 are not applicable. There is no such agreement.

The position taken by the organization in this case is another step in its efforts to take away from the carriers the few protective benefits the carriers secured in the February 7th Agreement in granting unprecedented protective benefits to the employees. If the award in this case were to prevail, it would produce an unintended and unfair result.

For these reasons, we dissent.

Carrier Member

Carrier Member