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Office Address:

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July 15, 1969

Phone 255-6664
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1-25

Mr. J. B. Clark, Asst. Vice-Pres.-Personnel
Louisville & Nashville Railroad Company
908 West Broadway
Louisville, Kentucky 40201

Dear Sir:

I have former Chief Engineer J. B. Clark's letter of June 20, 1969, 21500-68 Nash, addressed to Mr. J. W. Leinard, calling Mr. Leinard's attention to my letter dated December 3, 1968, concerning claim that R. C. Todd be paid from October 15, 1968 and continue to be paid as long as Mr. R. C. Unger is working in B&B Gang #3 which Mr. Todd was cut off on the above mentioned date.

This claim was held in abeyance with the understanding that it would be settled on the basis of other claims of a similar nature which were pending before Special Board of Adjustment No. 605. The Board ruled that the other claims should be paid and that Mr. Leinard should make arrangements with Mr. Stier's office for payment of this claim. As of this date, no letter has been received addressed to Mr. Stier advising him to pay this claim.

I have a letter dated July 10, 1969, addressed to Mr. R. C. Todd from Mr. J. W. Leinard requiring him to report to B&B Gang #3, Russellville, Kentucky, on July 14, 1969. Mr. Todd is due to be paid from October 15, 1968 until the date he returned to service which I assume according to Mr. Leinard's letter will be July 14, 1969. I will appreciate your advising me when Mr. Todd will receive payment of this claim.

Yours truly,

JACK BENSON
General Chairman

JB/pw

bcc: Mr. H. C. Crotty
Mr. John J. Berta
Mr. R. R. Painter
Mr. R. C. Todd

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Louisville & Nashville Railroad Company
TO THE) and
DISPUTE) Brotherhood of Maintenance of Way Employees

QUESTION Were Mr. R. C. Todd's superior rights
AT ISSUE: to a position of B&B laborer nullified
 as of February 21, 1966 because Draw-
 bridge Tender R. C. Unger, a "protected
 employee", was assigned to a position as
 laborer in a B&B gang and paid therefor
 at Drawbridge Tender's rate.

OPINION R. C. Todd, an unprotected employee, is senior
OF BOARD: to R. C. Unger, a protected employee, as B&B laborer.
 On February 21, 1966, Mr. Todd unsuccessfully sought
 to displace Mr. Unger in that position. In their submission
 the Employees cite the Interpretations of November 24, 1965,
 which provide that unprotected employees retain their seniority
 rights over junior protected men.

 Carrier acknowledges that senior unprotected
employees are entitled to preference to positions over junior
protected men, in general. In this instance, it was said,
there was no basis for the exercise of seniority because Mr.
Unger had been given a "make-work" assignment, which was done
"solely for the purpose of affording work to a 'protected'
employee."

 The record does not disclose the work actually
performed by Mr. Unger. Carrier noted that he was in a B&B
gang. Duties performed in a B&B gang, no matter what the
motivation for their assignment, fall within the jurisdiction
of the Maintenance of Way Employees and are governed by the
Agreement.

 A question concerning the enforcement of the
rights of unprotected employees like Mr. Todd has been raised
in the Disputes Committee. Their rights are not covered by
the February 7 Agreement, it was said, but arise under the
basic rules, whose application is the province of the Adjust-
ment Board; thus any seniority claim of an unprotected employee

should be referred to the Adjustment Board for disposition under the rules. Award No. 50 was cited in support of this approach.

Although the claim is that of an unprotected employee who asserts a violation of seniority rights, its origin is in Carrier's contention that the February 7 Agreement provided certain superior rights for protected employees in connection with "make-work." It is this Committee's function to interpret the February 7 Agreement. The rules may become enmeshed in a case before us, and this has frequently occurred. But adjudication involving the February 7 Agreement and the November 24 Interpretations, and the relative rights of protected versus unprotected employees under them, properly comes before the Disputes Committee.

Award No. 50 is not applicable. Not only did it concern "the particular facts and circumstances of this case," but the issue required an interpretation of the basic schedule agreement solely. Here, it is necessary to decide the preferential rights of a protected employee to "make-work" under the 1965 Agreement. Carrier had not contended that it was justified because of the rules--but, in effect, because of Mr. Unger's status under the 1965 Agreement as an "unassigned 'protected' employee."

A W A R D

The answer to the Question is "No."


Milton Friedman
Neutral Member

Dated: Washington D.C.
June 10, 1969