

AWARD NO. 139
Case No. MW-14-SE

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Gulf, Mobile and Ohio Railroad Company
TO THE) and
DISPUTE) Brotherhood of Maintenance of Way Employes

QUESTION AT ISSUE: "Is Section Laborer Willie Randle a protected employee under the provisions of Section 1 of Article I of the Agreement dated February 7, 1965?"

OPINION OF BOARD: Claimant holds seniority on District No. 1. He was furloughed in July, 1963. In 1964, he worked 167 days in District Nos. 3 and 4, sufficient to satisfy the "seven-day test" for active service in Article I, Section 1, if all service is counted.

Page 4 of the Interpretations dated November 24, 1965, contains the following:

Question No. 10: Can employment in more than one seniority district in the same craft on the same carrier be counted in determining protected status?

Answer to Question No. 10: Yes, provided the employee acquired and retained seniority on each seniority district or roster or was transferred to another seniority district or roster at the request of management for temporary service. Otherwise, no.

Rule 2(f) of the working agreement provides that seniority is restricted to one district. Thus a determination in this case hinges upon whether or not Claimant worked in the other districts at the request of Carrier.

According to Claimant, he was "sent" by Carrier's supervisor and roadmaster. He wrote, "Everywhere I went they sent me." The roadmaster stated that "we informed Randle that this work was available, if he desired to do this extra work.

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He...worked for some time but solely on his own. We did not demand that he accept this work." He added that demands were never made of an employee to work in another district. The supervisor also said that "we have never told any man he had to leave his home Seniority District."

Carrier obviously needed men in the other districts and, while Claimant could not be ordered there, he could be requested to go. That his acquiescence was voluntary--as it had to be--would not alter the fact that he responded to a request. Carrier provided transportation by bus, which demonstrates a positive encouragement for Claimant to take the position, as distinguished from a mere announcement that work was available. Camp cars were also provided.

Unlike "demand," "request" is a mild noun. It anticipates that the requestee may accept or decline that which is asked. In this case, Claimant favorably responded to management's proffer of work in other districts, and thereby came within the ambit of Question No. 10.

A W A R D

The answer to the Question is Yes.


Milton Friedman, Neutral Member

Dated: Washington, D. C.
September 10, 1969