Award No. 144
Case No. SG-25-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Brotherhood of Railroad Signalmen and Lehigh Valley Railroad Company

QUESTION AT ISSUE: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Lehigh Valley Railroad Company on behalf of Messrs. G. J. Fech and J. G. Bennett for the difference between the Signalman rate of pay and that of lower rated positions they worked after Carrier abolished their Signalman positions on the gang at Slatington, Pa., on or about August 4 and December 22, 1967, respectively, with this payment to be made to them as long after those dates as they are entitled to it under the February 7, 1965 Agreement.

OPINION OF BOARD: While there are two individual claimants, the pertinent facts are applicable to both. They are protected employes as Signalmen under the February 7 Agreement. Their positions were abolished, and rather than exercise their seniority to positions of equal or higher rates of pay involving work at distances greater than 30 miles from their residences, each exercised his seniority and took lower rated positions which were very near their residences. The claims are for the difference between the Signalman rate of pay and that of the lower rated positions.

The issue to be determined in this dispute is whether the provisions of the February 7 Agreement give an employe the option to either change residence and work the higher rated position or not change residence, work the lower rated position and receive the compensation of the higher rated position.

The rationale of Claimant's contention is that whenever an employe takes a position in excess of 30 miles from his residence, a change of residence would be required. If, Claimants contend further, a change of residence is required, but they elect not to move and work the lower rated position, then they are entitled to the difference between the compensation paid for the protected rate and that of the lower rated position.

We do not agree. There is nothing in the provisions of the February 7 Agreement or the Agreed Upon Interpretations which allows an employe to take a lower rated position and be compensated at his protected rate if the equal or higher rated position is "in excess of 30 normal travel route miles from the residence he occupies on the effective date of the change, ***."

AWARD

The claims are denied.

Nicholas H. Zumas
Neutral Member

Dated: Washington, D. C.
September 22, 1969

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Dissent of Labor Members

Everyone agrees that the claimants in this case are protected employees under the February 7, 1965 Agreement and, although the Opinion of the Board does not recite that they held regularly assigned positions as Signalmen on October 1, 1964, there is apparently no dispute about the fact that they did. The dispute arises because the carrier abolished their Signalmen's positions and they could not, with their seniority rights, obtain other positions at an equal rate of pay without changing their residences. Hence, they exercised seniority and obtained positions at a lesser rate of pay and claimed payment from the carrier of the difference between the pay on the lower rated jobs and the Signalmen's positions that were abolished.

What these claimants claimed was exactly what they were entitled to under the February 7, 1965 Agreement. Yet the Neutral Member denies the claims.

The governing provision of the Agreement is Article IV, Section 1. That section provides that protected employees who hold regularly assigned positions on October 1, 1964, "shall not be placed in a worse position with respect to compensation than the normal rate of compensation for said regularly assigned position on October 1, 1964" plus adjustments for subsequent general wage increases.

Note at this point that, without more, the Agreement clearly requires that the claims be allowed. The abolition of claimants' positions does place them in a worse position with respect to compensation unless the claims are allowed; either the claims must be allowed or something must be found elsewhere in the Agreement which limits or conditions or qualifies the rights conferred by Article IV, Section 1.

Just at this point the Neutral Member misstates the issue. He says "The issue to be determined in this dispute is whether the provisions of the February 7 Agreement give an employe the option to either change residence and work the higher rated position or not change residence, work the lower rated position and receive the compensation of the higher rated position." This is wrong. We need not find the conferrence of such an "option" in the Agreement to allow the claims; the language quoted above entitled the claimants to allowance unless we find something else in the Agreement that takes that right away. This brings us to the question, which the Neutral Member never faces, what else is in the Agreement that could be claimed to limit the right granted by Article IV, Section 1?

Obviously the provision most nearly relevant is Article IV, Section 4. In fact that section would clearly govern this case if Signalmen's positions had been available to the claimants without their having to change their residences. That section says, as applied to this case, that if positions paying as well as or better than Signalmen's positions had been available to them without requiring a change in residence and these claimants had done what they did, they would now be treated as though they had taken Signalmen's positions and would be entitled to no additional compensation. But now the Neutral Member tells us that it makes no difference that taking the Signalmen's positions would have required a change in residence. In other words, the Neutral Member is deciding this case exactly as it would have been decided if the clause "which does not require a change in residence," had been left out of Article IV, Section 4.

That this clause was not surplusage or included through inadvertence is indicated by the fact that Article IV, Section 2 includes the same arrangement with respect to employees who did not hold regularly assigned positions on October 1, 1964. Such employees were to be made whole with respect to their compensation based on earnings during a base period, but the last proviso in the section also said that in determining his earnings in his current employment he should be treated as holding the highest compensated position he could hold with his seniority--without requiring a change of residence.

Thus, Article IV displays a consistent pattern of computing the compensation guarantees of protected employees as though they in fact were as well compensated as their seniority rights entitled them to be, but only to the extent that this could be done without a change in residence. Yet now the Neutral Member says it make no difference whether a change of residence is required.

The only other part of the Agreement that might remotely be thought to bear on the question is Article IV, Section 3. The Neutral Member does not indicate that the decision is in any way predicated on that section and it obviously should not be. That section deals only with action taken by the employee on his own volition or when he is bumped by another employee acting on his own volition. Not only is this evident on the face of the Agreement, but all questions and answers with respect to this section further clarify such an application. In this case, the claimants were forced to exercise seniority by the abolition of their jobs.

C. J. Chamberlain
Labor Member

D. E. Leighty
Labor Member

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SPECIAL CONCURRING OPINION OF CARRIER MEMBERS

The Board rejected the Organization's argument in this case that Article IV, Section 4 of the February 7, 1965 Agreement entitled a protected employee to refuse a higher rated position at a point in excess of 30 miles from his former work location on the Organization's theory that such a move automatically required a change in residence.

The Dissenters now incorrectly assert that the Agreement, and in particular Article IV, Section 4, was interpreted as though the language "Which does not require a change in residence" was not present.

This Opinion is submitted to emphasize the fact that the Organization misrepresents the nature of the Board's award. The Neutral did not write the above-quoted language out of the agreement. He simply made it abundantly clear that the Claimants' contention that whenever an employee takes a position in excess of 30 miles from his residence a change of residence automatically is considered as being required is not supported by the agreement or interpretations.

The Carrier's position was that whether a change of residence was required in a particular case depends upon the facts of that case. It is apparent from reading the entire Opinion that the Neutral subscribed to this construction and concluded that the facts presented here did not lead to the conclusion that a change of residence was required. Thus, it is apparent the Neutral did not expunge any language from the Agreement but rather he addressed himself to the issues presented by the parties and his findings clearly reflect this conclusion.

W. S. Macgill