

SPECIAL BOARD OF ADJUSTMENT NO. 605

J. J. H.
PARTIES) Brotherhood of Railway, Airline & Steamship Clerks,
TO) Freight Handlers, Express & Station Employees
DISPUTE) and
Baltimore and Ohio Railroad Company

QUESTIONS
AT ISSUE:

- (1) Did Carrier improperly terminate the wages of protected employee Anna M. Zobrest on January 17, 1966?
- (2) Did Carrier violate the provisions of the Agreement of February 7, 1965, and Interpretations thereto, when it terminated the wages of Anna M. Zobrest on January 17, 1966?
- (3) Shall Carrier be required to pay A. M. Zobrest one day's pay for January 17, 1966, and each subsequent date, at her guaranteed rate of pay, in accordance with the terms of the Agreement of February 7, 1965, until she obtains a position in accordance with the terms of the Rules Agreement on the B. & O. Railroad?

OPINION

OF BOARD:

The parties are in agreement as to the facts involved in the instant dispute. On June 18, 1965, an Implementing Agreement was executed, abolishing and transferring certain positions in Buffalo to Baltimore, effective December 10, 1965. The Claimant was allowed to exercise displacement rights to a Yard Clerk position on December 13, 1965. Additionally, on December 11, 1965, she reported to the Carrier's local Medical Examiner and advised him of a congenital defect in her right eye. She was, nonetheless, permitted to displace until January 14, 1966, when the Chief Medical Director would not certify her for outside yard work.

The problem arises partially as a result of the effective Agreement. The local Agreement provides that employees who are displaced or whose positions are abolished must exercise displacement rights within six calendar days; and those who are removed for medical reasons acquire no displacement rights and may only secure another position by bidding. It is the Organization's contention that had the Claimant not been cleared by the local Medical Officer, she could have displaced on other positions in her seniority district.

In issue is Article IV, Section 5, of the February 7, 1965 National Agreement, the pertinent portion of which is hereinafter quoted:

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" A protected employee shall not be entitled to the benefits of this Article during any period in which he fails to work due to disability, - - - -."

One argument presented by the Organization is that the term disability as used in Section 5, is intended to apply to a situation where total disability is involved. We fail to find any adjective limiting the type of disability contained therein. Further, Question and Answer No. 1, under Section 5, of the November 24, 1965 Interpretations, provides that such an employee does not lose his protected status. However, he is not entitled to the compensation guarantee.

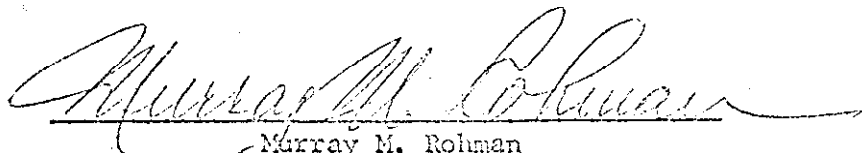
We are sympathetic with the plight of the Claimant herein. We are also cognizant of similar situations wherein the Chief Medical Officer has overruled local Medical Officers. In this regard, the Organization does not contend that the Chief Medical Officer's decision was arbitrary or improper. Rather, it faults the Company for permitting her to displace on the Yard Clerk position in the first instance.

As a matter of fact, the Carrier suggested a modification of the local Agreement whereby the Claimant would be enabled to exercise displacement rights on positions which she could qualify. It is obvious that the Organization could not accept such proposal, inasmuch as other junior employees would be affected thereby.

Hence, in this posture, has the Carrier violated the February 7, 1965 Agreement? We are compelled to acknowledge that it has complied with Article IV, Section 5, thereof. Despite the fact that we have stated our conclusions with respect to the technical aspects of the Organization's claim, we believe, however, that a further comment is necessary. The Carrier could have expedited the decision of the Chief Medical Examiner, in view of the local Medical Officer's knowledge of her congenital defect, so as to prevent the tolling of the six calendar days.

AWARD

The answer to questions (1), (2) and (3) is in the negative.


Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
November 17, 1969