

AWARD NO. 168
Case No. SG-33-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) The Atchison, Topeka and Santa Fe Railway Company
TO THE) and
DISPUTE) Brotherhood of Railroad Signalmen

QUESTION . Claim by the Brotherhood in behalf of
AT ISSUE: J. O. Rouse, a protected employe, for
payment of the difference between his
protected rate of normal compensation,
the rate of pay of Signal Foreman, and
his monthly earnings as Signaller, each
month until he is again assigned to a
position of Signal Foreman, such pay-
ments to be made each month.

OPINION Claimant was a protected Signal Foreman with
OF BOARD: seniority in the Albuquerque Division in 1965,
when his gang was transferred to the Los Angeles
Division. In accordance with the rules, Claimant continued to
hold seniority in Albuquerque. On November 30, 1967, Carrier
abolished Claimant's gang. A Foreman's position was not avail-
able to him in Albuquerque and, rather than return to his sen-
iority district as a Signaller, he requested and received per-
mission to remain in Los Angeles as a Signaller. Under the
rules he carried no seniority with him when he transferred.

Thereafter Carrier did not compensate him as a
Foreman on the ground that he had lost his protected status
under Article II, Section 1. The Employes contend that loss
of his Albuquerque seniority did not thereby deprive him of his
status as a protected employe.

Article II, Section 1, provides, in part, as
follows:

An employe shall cease to be a
protected employe in case of his...
failure to retain or obtain a position

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available to him in the exercise of his seniority rights in accordance with existing rules or agreements...

Claimant fits squarely within the limits of this provision. A position was available to him in Albuquerque in the exercise of his seniority rights. Instead he voluntarily chose to forfeit his established seniority and take a position in which he had none until the date he began working there.

There may be many circumstances where it is personally desirable for an employee not to obtain a position available to him in the exercise of seniority. But he cannot avoid the application of Article II, Section 1. It is not the loss of his seniority per se which causes his protected status to cease. As the Employees argue, the one is not dependent on the other under the 1965 Agreement, which speaks of employment relationship. But it was Claimant's failure to exercise seniority to obtain a position which produced that result.

A W A R D

Claim denied.


Milton Friedman
Neutral Member

Washington, D. C.
December 8, 1969