# COOPERATING RAILWAY LABOR ORGANIZATIONS

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January 12, 1970

Mr. C. L. Dennis
→Mr. H. C. Crotty
Mr. A. R. Lowry
Mr. C. J. Chamberlain
Mr. R. W. Smith

Subject: Disputes Committee No. 605
Awards 181 through 185
(Dining Car Employes Cases)

Dear Sirs and Brothers:

I am enclosing herewith copies of Awards No. 181 through 185 signed by Referee Zumas on January 7, 1970. Because of the nature of the questions asked we cannot take exception to any of these Awards.

Fraternally yours,

G. E. Leighty

Chairman
Five Cooperating Railway Labor Organizations

cc: Mr. L. P. Schoene
Mr. F. T. Lynch

enclosures

GEL:bk

Award No. 181
Case No. H&RE-5-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Hotel and Restaurant Employees and Bartenders International Union and Penn Central (former New York Central)

QUESTIONS AT ISSUE:

Employees' Statement of Question at Issue

Does Article IV, Section 1, apply to an employee who is forced to vacate his regularly assigned position by reason of being displaced and thus forced to work from the extra list, it being the position of Employees that under these circumstances, he is entitled to the preservation of compensation provided for in Article IV, Section 1.

Carrier's Statement of Question at Issue

Is an employee who held a regular assignment on October 1, 1964, but who shortly thereafter is displaced from his regular job to the extra board by the return from sick leave of a senior protected employee, entitled to preservation of employment and compensation computed in accordance with Article IV, Section 2.

OPINION OF BOARD: As of October 1, 1964 Claimant held a regular position and consequently was protected under the terms of the February 7 Agreement. 1/

Shortly after October 1, 1964 Claimant was displaced from his regular position by the return from sick leave of a senior protected employe. As a result Claimant was forced to the extra board, and worked from the extra list.

The Organization contends a protected employe who is "bumped" by a senior protected employe, and as a result, is forced to the extra board is (1) not considered to have voluntarily exercised his seniority within the meaning of Section 3, Article IV, and (2) the provisions of Section 3, Article IV apply only "where there is a job in which the displaced employe can bid in."

Carrier asserts that a protected employe who is displaced from his regular assignment to the extra board by reason of the voluntary exercise of seniority by a senior protected employe is entitled to preservation of employment and compensation, computed in accordance with Section 2, Article IV, and that the provisions of Section 1, Article IV do not apply to such an employe.

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1/ Carrier contends that despite the fact that Claimant held a regular position as of October 1, 1964 it erroneously concluded "on the basis of incomplete information" that Claimant was entitled to protected status under Article IV, Section 1. Subsequently Carrier concluded that Claimant was not entitled to have his compensation as a "fully protected" employe preserved, but instead was protected "at the rate of pay and conditions of the job he bids in" pursuant to Article IV, Section 3.

Section 1, Article IV reads as follows:

> "Subject to the provisions of Section 3 of this Article IV, protected employees entitled to preservation of employment 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; provided, however, that in addition thereto such compensation shall be adjusted to include subsequent general wage increases."

Section 3, Article IV reads as follows:

> "Any protected employee who in the normal exercise of his seniority bids in a job or is bumped as a result of such an employee exercising his seniority in the normal way by reason of a voluntary action, will not be entitled to have his compensation preserved as provided in Sections 1 and 2 hereof, but will be compensated at the rate of pay and conditions of the job he bids in; provided, however, if he is required to make a move or bid in a position under the terms of an implementing agreement made pursuant to Article III hereof, he will continue to be paid in accordance with Sections 1 and 2 of this Article IV."

The underscored language is inartful and is confusing. While it is unclear whether "such an employee" refers to the bumping employee or to the bumped employee, we cannot agree with the Organization that it refers to the bumped employee. The only logical conclusion is that "such an employee" means the bumping employee who is also a protected employee.

The Board is in accord, however, with the second contention of the Organization, viz. that the provisions of Section 3, Article IV are not applicable in that an employee does not "bid in" on extra board work. He is forced to the extra board when there is no regular assignment available to him.

This position is supported by Award No. 44 which considered the applicability of Section 3, Article IV in detail. There the Board said:

". . .Section 3 of Article IV, in essence, provides that a protected employee who is bumped in the normal exercise of seniority will not have his compensation preserved, but will be compensated at the rate of pay and conditions of the job he bids in. Hence, in the instant dispute, the Claimant, having been bumped by a senior employee, was relegated to the compensation at the rate of the job he bids in. At this juncture, the critical point in controversy herein is exposed. What if the bumped employee has no job available for him to bid in? The Organization argues that in such an event, Section 3 of Article IV has no application. Under these circumstances, only Section 1 is applicable, which provides that he shall not be placed in a worse position with respect to compensation as of October 1, 1964. In fact, the Organization recognizes that if the Claimant had been able to bid in on a lower rated position, under the facts presented herein, he would have received only the compensation as provided on the job which he bid in. However, in view of the fact that he was unable to bid in on any job until December 15, 1965, he was entitled to the protective provisions of Section 1. What is the significance of the February 7, 1965 National Agreement, as applied to the instant dispute? Without a job stabilization agreement, an employee who is furloughed does not have any guarantee. Therefore, under the said Agreement, where a job is not available for him to bid in and he is furloughed, in our view, it would appear that he is protected by Section 1 of Article IV..."

Accordingly, the Board finds that Section 1, Article IV is applicable under the circumstances.

AWARD

The question presented by the Organization is answered in the affirmative, and the question presented by Carrier is answered in the negative.

Nicholas H. Zumas
Neutral Member

Dated: Washington, D. C.
January 7, 1970