Award No. 190
Case No. CL-15-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE)

Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express & Station Employes
and
Penn Central (former New York, New Haven & Hartford Railroad Company)

QUESTIONS AT ISSUE:

(a) Did the Carrier violate the terms of the Mediation Agreement currently in effect commencing July 1, 1965, when it failed to pay Mr. L. Brodeur properly September 1, 1965 and each subsequent date thereto?

(b) Shall Claimant Brodeur now be paid $22.7888 per day plus 9 cents hourly effective April 1, 1966?

OPINION OF BOARD:

On January 12, 1965, a Memorandum of Agreement was executed which provided for a Central Billing Department at New Haven, as a new seniority district. Effective September 1, 1965, work was transferred from various freight stations, including Springfield, Massachusetts. Upon abolishment of Claimant's position at Springfield, he displaced on a position of Yard Clerk on the Springfield Yard Roster, with a rate of $21.5624, as contrasted to his former rate of $22.7888, as General Clerk. Thereafter, the instant claim was progressed for the difference of $1.2264 per day.

The Carrier declined the claim on the ground that Claimant "failed to exercise his seniority rights to secure another position which carries a rate of pay and compensation exceeding those of the position he elected to retain, and he should therefore be treated as occupying the position which he elected to decline."

In turn, the Organization argues that any other position available to Claimant would have required a change of residence.

Thus, in issue herein, is the question whether Claimant was obligated under Article IV, Section 4, of the February 7, 1965 National Agreement to obtain any one of several positions carrying a higher rate of pay than the one he displaced upon at Springfield. A number of these positions with higher rates of pay are listed, namely, Waterbury, Manchester and Wallingford, Connecticut, without any indication of their distance in mileage from Springfield, Massachusetts.

In order to reach the crux of this dispute, the pertinent portion of Section 4, Article IV, is hereinafter quoted:

> "If a protected employee fails to exercise his seniority rights to secure another available position, which does not require a change in residence,---." (underline added)

We are also cognizant of the explanation contained in the November 24, 1965 Interpretations, as stated in Section 3 of Article III, to wit:

> "When changes are made under Items 1 or 2 above which do not result in an employe being required to work in excess of 30 normal travel route miles from the residence he occupies on the effective date of the change, such employe will not be considered as being required to change his place of residence unless otherwise agreed."

Additionally, we would note that in Award No. 144, the Board therein stated as follows:

> "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'--- excess of 30 normal travel route miles from the residence he occupies on the effective date of the change, ---'.

Furthermore, attached thereto is a vigorous Dissent by the Labor Members as well as a Special Concurring Opinion of Carrier Members.

In essence, the Organization argues that whenever an employee has an option of selecting a position in excess of 30 miles from his residence, it automatically falls within the context of Section 4. The Carrier, on the other hand, concedes that Section 4 of Article IV, negatively provides for a situation which entails a change of residence. Therefore, in order to fall within the ambit of whether a change of residence is required, necessarily, would depend upon the facts in that particular case.

Predicated upon the historical development of this phrase since the Washington Job Protection Agreement, the Organization, in reality, premises its thrust on the ground that the 30 miles provision is a measurement--a yard stick--which should not be ignored nor debilitated by us.

We are keenly aware of the vital concepts presented by the opposing arguments of the parties. We are furthermore firmly convinced that the phrase, "which does not require a change in residence," may not be eliminated from our consideration in the instant dispute. A careful examination of the submissions reveal that claimant's position at Springfield, Massachusetts, was abolished. Thereafter, the Carrier alleges that at least four other positions were available in Connecticut, with higher rates of pay. It would appear obvious at this juncture, without further details, that these other positions would undoubtedly entail a change of residence. We would be impelled to this conclusion, regardless, whether we adopted the 30 miles criterion as a measuring stick or evaluated it on the basis of the facts of the particular case. In this posture, we are not in a position to determine whether omission of distances were designed for reasons of obfuscation.

Therefore, it is our considered view, that Claimant did not fail to exercise his seniority rights pursuant to Article IV, Section 4.

AWARD

The answer to Questions (a) and (b) is in the affirmative.

Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
January 19, 1970