Award No. 194
Case No. CL-62-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE ) Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express & Station Employes and Kansas City Terminal Railway

QUESTIONS AT ISSUE:

(1) Did the Carrier violate the provisions of the February 7, 1965 Agreement, particularly Article II, Section 1 and Article IV thereof, when it denied Mrs. Stasia Schooler the "protected status" she held; and refused to compensate her as a protected employee for the period subsequent to April 14, 1967?

(2) Shall the Carrier be required to compensate Mrs. Schooler for the wage loss suffered subsequent to April 14, 1967 and accord to her the full allowances and benefits prescribed in the February 7, 1965 Agreement by restoring to her the protected status she held on that date?

OPINION OF BOARD:

The parties are in agreement as to the facts. Prior to March 15, 1967, Claimant, a protected employee, was regularly assigned to a Messenger position. Effective that date, her position was abolished, whereupon she exercised her seniority to a position as Equipment Record Clerk No. 3. Although at the time of her bid, the Carrier believed she possessed sufficient fitness and ability to perform the duties of that position, within the thirty day period she was disqualified. Pursuant to the effective Agreement, she was required to bid on a bulletined position and being unable, she was furloughed.

The Carrier removed her protected status on the ground that she failed to retain a position available to her in the exercise of seniority pursuant to Article II, Section 1, of the February 7, 1965 National Agreement. As a matter of fact, the Carrier states as follows:

> "The language of Article II is so clear and unambiguous that it cannot be misconstrued. It clearly provides that an employe shall cease to be a protected employe if he fails to 'retain' a position available to him in the exercise of seniority rights in accordance with existing rules."

The Organization, on the other hand, counters that the Carrier violated not only Article II, Section 1, but also Article IV. It argues that after her disqualification, Claimant "was not eligible to displace other employees under the Agreement provision and had only the option to bid in a bulletined position. This placed her in the position of not being able to hold an assignment."

We do not believe the instant dispute is as simple as the Carrier contends. It originated as a result of a job abolishment and not a voluntary act by Claimant. She then bid on a bulletined position from which she was disqualified. If Claimant had failed to obtain a position in the exercise of her seniority rights in accordance with existing rules, the Carrier, likewise, would have contended that she ceased to be a protected employee. At the same time, having exercised her seniority rights in submitting a bid for a bulletined position, the Carrier disqualified her for lack of ability.

We find no fault with the right of the Carrier to judge an employee's fitness and ability. In fact, the Organization does not herein challenge the Carrier's right to disqualify. However, in our view, we do not believe it was the intent of the February 7, 1965 Agreement, to encompass the instant result. We are firmly of the opinion that the purpose of the February 7, 1965 Agreement was to provide protection for an employee whose job was abolished, as occurred in the instant situation.

We are buttressed in our position by the following statement contained in Carrier Members' Dissent to Award No. 44:

> "When the February 7th Agreement was being negotiated, and certain compensation guarantees were provided for protected employees, the carriers made it clear that they were not willing to provide such compensation guarantees in situations where the employees were the moving parties and voluntarily created certain conditions over which the carriers had no control. Thus, they said, that where a carrier abolished positions, and protected employees were forced to exercise their seniority, the carriers would maintain the compensation guaranteed by Sections 1 and 2 of Article IV to protected employees adversely affected, regardless of the number of displacements resulting from the bidding and bumping processes initiated by the job abolishments, and regardless of whether or not any of such employees were furloughed in the process because no work was available for them."

In the instant dispute, we would note further that Claimant notified the Carrier that "she was ready and available for any work made available to her." Hence, it is our considered opinion that Claimant is entitled to be paid compensation as a protected employee.

AWARD

The answer to Questions (1) and (2) is in the affirmative.

Murray M. Rohman
Neutral Member

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