

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Brotherhood of Railway, Airline and Steamship Clerks,
TO) Freight Handlers, Express and Station Employees
DISPUTE) and
Missouri Pacific Railroad Company (Gulf District)

QUESTIONS AT ISSUE: (1) Did the Carrier violate the provisions of the Agreement of February 7, 1965 and the interpretations thereto, when it reduced the protected rate of Mr. R. A. Hornberger, a clerical employe at Corpus Christi, Texas?

(2) Shall the Carrier be required to restore Mr. Hornberger's protected rate to \$27.06 per day (1-1-68 \$27.74) plus any General Wage Increases, and compensate him for all losses due to the changing of his protected rate?

OPINION OF BOARD: The facts are not in dispute. Due to the illness of W. F. Murphy, the Chief Clerk position was bulletined as a temporary vacancy. On June 20, 1963, Claimant Hornberger was assigned said position. In turn, the latter's position of Revising-Expense Bill Clerk was advertised as a temporary vacancy and subsequently assigned. Thereafter, Murphy received a disability annuity and Claimant continued to work the Chief Clerk position under the temporary vacancy bulletin. On May 1, 1967, Murphy retired and the said position of Chief Clerk was bulletined as a permanent vacancy. A senior employee to Claimant, bid on and was assigned the permanent vacancy of Chief Clerk position.

In issue herein is the question of Claimant Hornberger's protected rate. Is he entitled to the protected guarantee of the Revising-Expense Bill Clerk position of \$22.84 per day, or the Chief Clerk rate of \$24.33 per day -- the position he held on October 1, 1964?

The pertinent portion of Article IV, Section 1, of the February 7, 1965 National Agreement, provides 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;....."

Thus, the key to the instant dispute revolves around the all-important phrase of "regularly assigned position on October 1, 1964." The Carrier argues that Claimant's regularly assigned position on that date was the Revising-Expense Bill Clerk. The Organization, on the other hand, refutes such contention by insisting that on October 1, 1964, Claimant was "regularly

assigned to the position of Chief Clerk."

Did the parties contemplate a distinction between a temporary and permanent assignment? Does Question and Answer No. 3, under Section 3, of Article IV, of the November 24, 1965 Interpretations, provide a clue?

"Question No. 3: Does this section affect the guaranteed compensation of an employee holding a regular assignment and who bids in a position with a higher rate of pay on a temporary basis, being entitled to return to the regularly assigned position at the conclusion of the temporary work?

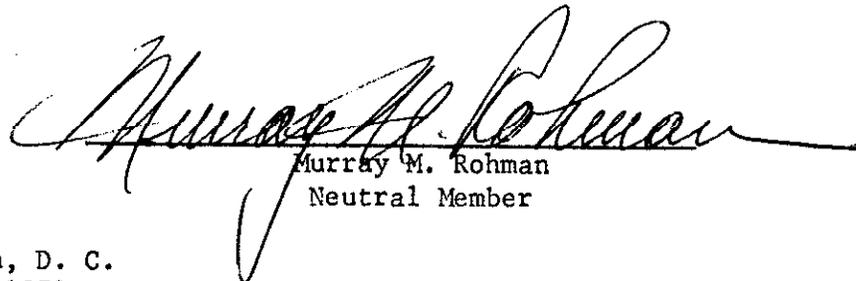
Answer to Question No. 3: No. Such an employee continues to be guaranteed the compensation as determined by Section 1 or Section 2 of this Article."

Applying the latter question and answer to the facts presented in the instant dispute, we find that the Claimant bid on the Chief Clerk position which was bulletined as a temporary vacancy -- a position with a higher rate of pay on a temporary basis. At the conclusion of the temporary work he was entitled to return to the regularly assigned position of Revising-Expense Bill Clerk, or any other position in accordance with his seniority -- and continue to be guaranteed the compensation of his regularly assigned position of Revising-Expense Bill Clerk.

In our considered opinion, Claimant is a protected employee and his protected rate is predicated on the rate of pay applicable to the position of Revising-Expense Bill Clerk.

AWARD

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


Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
April 20, 1970