

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES)
TO)
DISPUTE)
Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express & Station Employes
and
Portland Terminal Railroad Company
(Former Northern Pacific Terminal Company of Oregon)

QUESTION
AT ISSUE: Did Mr. Brodell cease to be a protected employe under Article I, Section 1, of the February 7, 1965 Mediation Agreement when he declined to accept the call for the temporary vacancy in the Mail and Baggage Department on March 17, 1965?

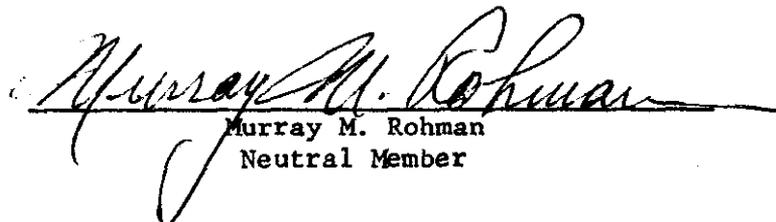
OPINION
OF BOARD: The original joint submission of the parties contained fifteen separate cases. Since then, Case No. 15 was mutually withdrawn on the property, therefore, only fourteen cases will be considered herein.

On October 1, 1964, Claimant Brodell was a protected employee assigned to the extra list. On March 17, 1965, he declined to accept a temporary vacancy in the Mail and Baggage Department. Predicated on these brief facts, the Carrier argues that Claimant ceased to be a protected employee, whereas the Organization contends that the employee retained his protected status, but was not entitled to the benefits therefrom during the period of absence.

In our view, a protected employee does not lose such status for failure to take a temporary vacancy.

AWARD

The answer to the question is in the negative.


Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
May 25, 1970



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- QUESTIONS AT ISSUE:
- (1) Did Mr. Buzard cease to be a protected employe under Article II, Section 1, of the February 7, 1965 Mediation Agreement when he failed to obtain the rest day relief position bulletined on April 1, 1965 in the exercise of his seniority rights in accordance with the existing Rules Agreement?
 - (2) Is an unassigned employe obligated to bid on all regular and temporary positions available to him regardless of seniority rank and without regard to his own personal evaluation of his qualifications?

OPINION OF BOARD: Claimant Buzard was a protected employee on October 1, 1964, assigned to the extra list. On April 1, 1965, a temporary rest day relief position was bulletined for which Claimant failed to apply. Consequently, the Carrier contends he ceased to be a protected employee pursuant to Article II, Section 1, of the February 7, 1965 National Agreement.

In this regard, Question and Answer No. 3, of the November 24, 1965 Interpretations, provides as follows:

"If an extra employee fails to obtain a position other than a temporary position available to him in the exercise of his seniority rights in accordance with the existing rules or agreements, he will lose his protected status."

It is our view, therefore, that Claimant continued to be a protected employee.

AWARD

The answer to Question No. 1 is in the negative. Question No. 2 is ambiguous.


Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
May 25, 1970

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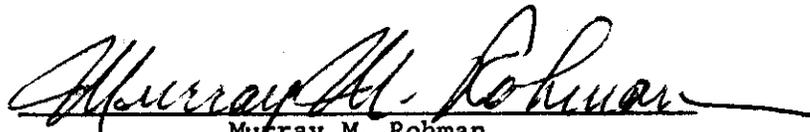
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Brotherhood of Railway, Airline and Steamship Clerks,
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QUESTION
AT ISSUE: Did Mr. Thompson cease to be a protected employe under Article II, Section 1, of the February 7, 1965 Mediation Agreement when he failed to obtain the rest day relief position bulletined on April 1, 1965, in the exercise of his seniority rights and in accordance with the existing Rules Agreement?

OPINION
OF BOARD: Claimant Thompson was a protected employee on October 1, 1964, who held a regularly assigned position. Thereafter, due to a reduction in force and lacking seniority to displace, worked off the extra list. On April 1, 1965, a temporary rest day relief position was bulletined for which Claimant failed to make application. Therefore, Carrier argues that Claimant ceased to be a protected employee pursuant to Article II, Section 1, of the February 7, 1965 National Agreement. In view of our analysis in Case No. 2, we are, similarly, disposing of the instant matter.

AWARD

The answer to the Question is in the negative.


Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
May 25, 1970



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QUESTIONS
AT ISSUE:

- (1) Did Mr. Fillman cease to be a protected employe under Article II, Section 1, of the February 7, 1965 Mediation Agreement when he failed to obtain the rest day relief position bulletined on April 1, 1965, in the exercise of his seniority rights in accordance with the existing Rules Agreement?
- (2) Is the extra board in the Mail and Baggage Department, Stationmaster's Department, Ticket Office, and Store Department, a position within the meaning and intent of Article II, Section 1, of the February 7, 1965 Mediation Agreement?

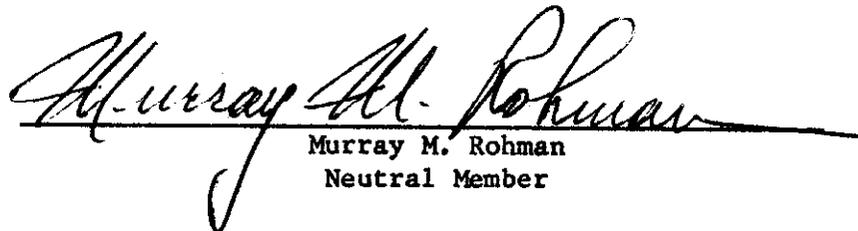
OPINION
OF BOARD:

Claimant Fillman was a protected employee on October 1, 1964, assigned to the extra list. On April 1, 1965, Claimant failed to bid on a bulletined temporary rest day relief position.

In view of our previous analysis in Case No. 2, we are adhering to our conclusion therein that Claimant did not cease to be a protected employee.

AWARD

The answer to Question No. 1 is in the negative and Question No. 2 has previously been answered in the negative.


Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
May 25, 1970

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QUESTION)
AT ISSUE:)
Did Mr. Harr cease to be a protected employe under Article I,
Section 1, of the February 7, 1965 Mediation Agreement by
virtue of missing the call on April 16, 1965?

OPINION)
OF BOARD:)
Claimant Harr was a protected employee on October 1, 1964,
assigned to the extra list. On April 16, 1965, he failed
to answer the telephone for a vacancy on that day.

In view of Award Nos. 4, 16, 126 and 185, in the absence of
a consistent pattern of refusal to answer calls, an employee does not lose
his protected status for failure to answer one telephone call.

AWARD

The answer to the Question is in the negative.


Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
May 25, 1970



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QUESTION
AT ISSUE: Did Mr. Mack cease to be a protected employe under Article II,
Section 1, of the February 7, 1965 Mediation Agreement when
he failed to respond to the call for the short vacancy
occurring in the Mail and Baggage Department on April 17,
1965?

OPINION
OF BOARD: Claimant Mack was a protected employee on October 1, 1964,
assigned to the extra list. On April 17, 1965, he failed
to answer a telephone call.

This matter is similar to Case No. 5, therefore, we adhere
to our previous conclusion.

AWARD

The answer to the Question is in the negative.


Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
May 25, 1970

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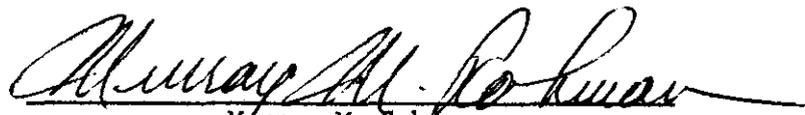
QUESTION) Did Mr. Seeholzer cease to be a protected employe under
AT ISSUE:) Article II, Section 1, of the February 7, 1965 Mediation
Agreement when he failed to respond to the call for the
short vacancy occurring in the Mail and Baggage Department
on March 6, 1965?

OPINION)
OF BOARD:) Claimant Seeholzer was a protected employee on October 1,
1964, assigned to the extra list. On March 6, 1965, Claimant
failed to answer a telephone call.

Nos. 5 and 6. We are disposing of this matter in a similar manner to Case

AWARD

The answer to the Question is in the negative.


Murray M. Rohman
Neutral Member

Dated: Washington, D.C.
May 25, 1970



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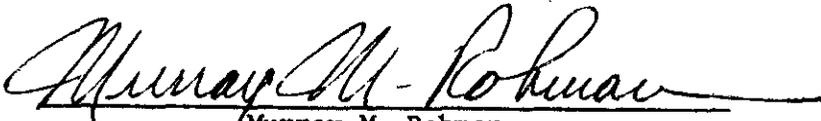
QUESTION
AT ISSUE: Did Mr. Tri cease to be a protected employe under Article I,
Section 1, of the February 7, 1965 Mediation Agreement when
he failed to exercise seniority over junior employes on
November 11, 1964? If Mr. Tri did not cease to be a protected
employe when he failed to exercise seniority over a junior
employe on November 11, 1964, did he cease to be a protected
employe in March and April, 1965 when he failed to accept
bulletined positions available to him in the exercise of
seniority?

OPINION
OF BOARD: Claimant Tri was a regularly assigned protected employe on
October 1, 1964, from which position he was subsequently dis-
placed. On March 27, 1965, he failed to bid on a bulletined
permanent position of car checker.

In our view, predicated on the peculiar circumstances existing
herein and without precedent, pursuant to Article II, Section 1, of the
February 7, 1965 National Agreement, an employe ceases to be a protected em-
ployee in case of his failure to obtain a position available to him in the
exercise of his seniority rights.

AWARD

The answer to the Question is that Claimant Tri ceased to be
a protected employe on March 27, 1965, under the peculiar circumstances
indicated herein and without establishing a precedent.


Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
May 25, 1970

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- QUESTIONS
AT ISSUE:
- (1) Did Mr. Ferrante cease to be a protected employe under Article I, Section 1, of the February 7, 1965 Mediation Agreement when he failed to obtain by displacement regular Job 457 held by junior Clerk Martinotti, as provided by Article II Section 1 of said Agreement?
 - (2) Assuming that, for any reason, regular Job 457 was not available to Mr. Ferrante, should he be treated as constructively occupying temporary Job No. 524 as provided by Article IV, Section 4, of said Agreement?
 - (3) If the answer to Question No. 2 is in the affirmative should Mr. Ferrante (or any other employe in like circumstance) be treated as constructively occupying such temporary position?
 - (a) For as long as his seniority would entitle him to hold such position?
 - (b) For all time, beginning with the date he failed to obtain such a position?

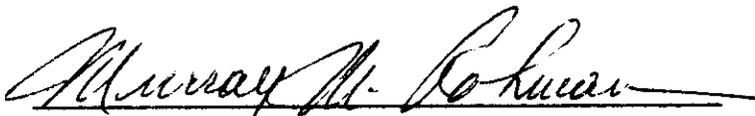
OPINION
OF BOARD:

Claimant Ferrante was a protected employee on October 1, 1964. On March 3, 1965, he was displaced and failed to exercise his seniority rights to obtain a regular position available to him for which he was qualified and did not require a change of residence.

It is, therefore, our considered opinion that under the peculiar circumstances prevalent herein and without precedent, Claimant ceased to be a protected employee on March 3, 1965, pursuant to Article II, Section 1, of the February 7, 1965 National Agreement.

AWARD

The answer to Question No. 1 is in the affirmative, without precedent. In view of our answers to previous questions concerning a temporary vacancy, we decline to indulge in the theoretical assumptions posed therein.


Murray M. Rohman
Neutral Member

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QUESTIONS AT ISSUE:

(1) Did R. M. Ray, on and after October 9, 1964, cease to be a protected employe under Article I, Section 1, of the February 7, 1965 Mediation Agreement when he was displaced as a direct result of the voluntary action of Clerk V. McKechnie?

(2) If the answer to Question No. 1 is negative, did the compensation thereafter preserved to Mr. Ray become the rate of the position he acquired on July 2, 1965, when he returned to service, assuming said position had a lower rate than the position he lost on October 9, 1964?

OPINION
OF BOARD:

On October 1, 1964, Claimant Ray was a protected employee and held a regularly assigned position. On October 9, 1964, McKechnie returned from a sick leave absence resulting in a chain of displacements which included Claimant. Thereafter, Claimant became ill and did not return until July 2, 1965, when he displaced a junior employee. In none of these displacements was there involved a Carrier job abolishment or rearrangement of forces.

Under the circumstances indicated herein, pursuant to Article IV, Section 3, of the February 7, 1965 National Agreement, a protected employee who is bumped as a result of a voluntary action will be compensated at the rate of pay and conditions of the job he bids in. See Award Nos. 44 and 181.

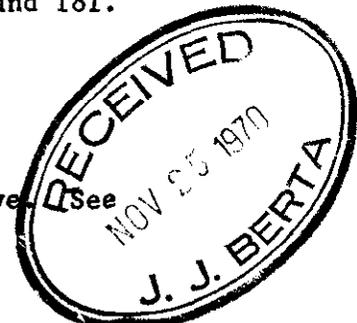
AWARD

The answer to Question No. 1 is in the negative.

The answer to Question No. 2 is in the affirmative. See our Award No. 68.


Murray M. Rohman
Neutral Member

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May 25, 1970



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QUESTION)
AT ISSUE:) Has Mrs. Yetter, by reason of her failure to respond to
call on and after March 3, 1965, ceased to be a protected
employee under Article I, Section 1, of the February 7,
1965 Mediation Agreement?

OPINION)
OF BOARD:) Claimant Yetter was a protected employee on October 1, 1964,
assigned to the extra list. On March 3, 4, 5, 8, 10, 11, 15,
16, 17, 18, 22, and 23, 1965, Claimant failed to respond to
calls for service.

In our view, there is indicated herein a consistent pattern
of failure to respond to calls. See our Award No. 126. Consequently, Claimant
has forfeited her protected status.

AWARD

The answer to the Question is in the affirmative.


Murray M. Korman
Neutral Member

Dated: Washington, D. C.
May 25, 1970



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QUESTIONS
AT ISSUE:

- (1) Is the compensation preserved to Mr. Burnett from April 9-13, inclusive, the rate of his regular assignment on October 1, 1964, (or that of subsequent assignments voluntarily taken at a lower rate) or is his preserved compensation to be calculated at both the rate and the hours of his previous assignment? See Case No. 9, Question No. 3.
- (2) A protected employe whose rate of preserved compensation is computed under Article IV, Section 1, is forced to the extra list through no fault of his own, as was Burnett for five days. He cannot hold an assignment, either regular or temporary. Does his preserved rate, under Article IV, Section 1, apply only to whatever lower-rated work he may perform in his capacity as an extra man, or is he guaranteed while on the extra list, 40 hours per calendar week at his preserved rate, less appropriate deductions under Article IV, Section 5?
- (3) Did Mr. Burnett cease to be a protected employe on April 14, 1965, when he declined to accept a temporary position offered him as described above, or should he thereafter be treated as constructively occupying Job 356? See Question No. 3, Case No. 9.
- (4) Is the extra list in the Mail and Baggage Department a "position" within the intent of the February 7, 1965 Agreement, as contended by the employes in this case? See also Case No. 14.

OPINION
OF BOARD:

Claimant Burnett was a protected employee who held a regularly assigned position on October 1, 1964. On April 9, 1965, Claimant was displaced by a senior employee due to a job abolishment. While performing work on the extra board, claimant declined to bid on a temporary vacancy. Consequently, the Carrier contends the Claimant forfeited his protected status due to his failure to bid on temporary job 356.

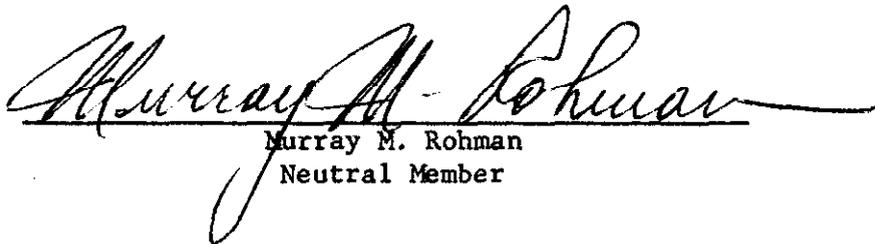
We adhere to our conclusion reached in Case No. 1, to the effect that an extra employee does not lose his protected status upon failure to bid on a temporary vacancy.

AWARD

The answer to Question No. 1 is that Claimant is guaranteed his normal rate of compensation.

The answer to Question No. 2 is that he is entitled to such guarantee for five days per week.

The answer to Question Nos. 3 and 4 is in the negative.


Murray M. Rohman
Neutral Member

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May 25, 1970



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QUESTIONS
AT ISSUE:

- (1) Did Browning cease to be a protected employe on and after the date he was displaced by senior Clerk Arehart in the chain of displacements described above?
- (2) If the answer to Question No. 1 should be negative, did Browning's rate then become the rate of Job 85 upon which he exercised his seniority?
- (3) If Browning's displacement was not the result of a voluntary action, and his original rate is preserved, does his preserved rate (but not his hours) apply to any work performed? Please see Question No. 1, Case No. 12.
- (4) If it is held that both the previously original rate and five day week are preserved to Browning, does the original rate simply apply to all hours worked on his new assignment, without regard to any difference in rest days between the two assignments? That is, if original Job A has rest days of Saturday and Sunday and second Job B has rest days of Wednesday and Thursday, should the preserved rate be applied to all hours worked on Job B, without regard to the difference in the number of work days in any month, or the work weeks of the two jobs.

OPINION
OF BOARD:

On October 1, 1964, Claimant Browning was a protected employee and held a regularly assigned position. On November 4, 1964, Job 362 was abolished, which necessitated the rearrangement and rebulletining of Job 349. Upon rebulletining said Job 349, Adams, a senior employee to incumbent McKittrick on Job 349, bid and was awarded said job. Thereafter, McKittrick commenced a chain of displacements which eventually involved Claimant Browning and forced him to displace a junior employee on Job 85, a lower rated job.

It is the Carrier's position that the bid by Adams on the rebulletined Job 349, was voluntary. Therefore, when Browning was displaced subsequently, he ceased to be a protected employee pursuant to Article IV, Section 3, of the February 7, 1965 National Agreement. In the alternative, upon Browning's bid into Job 85, his compensation was thereafter preserved at the rate of the new job.

In our view, the initiating action was Carrier's abolishment of Job 362, which caused Job 349 to be rearranged and rebulletined. Thus, the chain reaction of the various displacements is directly attributable to the

Carrier's act. This is another instance wherein all the consequences of a job abolishment are not readily apparent. Nevertheless, the Carrier having precipitated the abolishment, cannot now contend that Claimant's eventual displacement and bid into a lower rated job was caused by a voluntary action.

AWARD

The answer to Question Nos. 1 and 2 is in the negative.

The answer to Question Nos. 3 and 4 is the normal rate of compensation based on a five day week.


Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
May 25, 1970



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- QUESTIONS
AT ISSUE:
- (1) Did J. Tober cease to be a protected employe by reason of her failure to qualify for and/or bid on one or more of the assignments listed?
 - (2) If the answer to Question No. 1 is negative, should J. Tober have one day deducted from her original preserved compensation for each day a junior clerk works a position on which she has made no attempt to qualify?
 - (3) Is the extra list a "position" within the meaning and intent of the February 7, 1965 Agreement?
(See Argument in Case No. 12, Burnett).

OPINION
OF BOARD:

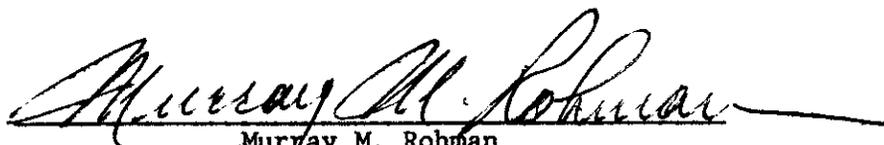
On October 1, 1964, Claimant Tober was a protected employee assigned to the extra list. Subsequent to March 1, 1965, numerous regular and/or temporary jobs were bulletined. However, Claimant failed to obtain a regular position other than Information-Reservation Clerk established during peak periods of business in the Ticket Office.

Rule 8(c) of the effective Agreement provides that the Carrier will not be required to pay an employee during the qualifying period. As a result, Claimant has never attempted to qualify for any other position.

In our view, Claimant is required to bid on a bulletined regular position for which she is eligible (requisite seniority, fitness and ability). Under the circumstances evidenced herein, as a protected employee her guaranteed compensation would have substituted for the lack of pay during the qualifying period. However, as Carrier has stipulated that Claimant is not presently qualified, the opinion herein may not be applied retroactively, hence, she is now required to attempt to qualify.

AWARD

The answer to Question Nos. 1, 2 and 3 is in the negative.


Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
May 25, 1970