SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express & Station Employes
and
Bangor and Aroostook Railroad Company

QUESTION AT ISSUE: Were the rights of Clerk Laurel R. Littlefield, a protected employee under the February 7, 1965 Agreement, violated when he was transferred in accordance with Article III, Section 1 of said Agreement and put on seniority list as the most junior clerk instead of next below the most junior protected employee in the seniority district into which he was transferred?

In view of circumstances outlined in Carrier's Statement of Facts, shall Carrier change seniority roster to show Clerk Laurel R. Littlefield with a seniority date of January 26, 1960, on the Revenue Section roster next below Clerk S. W. Gilman?

OPINION OF BOARD: The position of Clerk Littlefield was abolished on June 20, 1968, on his seniority district at Presque Isle. Subsequently, a vacancy developed in another seniority district at Bangor, Maine, which was offered to and accepted by Clerk Littlefield. Although the seniority date on the sending roster lists the individual as 1 - 26 - 60, on the receiving roster his seniority date is shown as 7 - 14 - 69. Prior to effectuating the transfer of the individual to Bangor, the parties executed an Implementing Agreement on June 11, 1969, in accordance with Article III of the February 7, 1965 Agreement. Thereafter, the individual was placed at the bottom of the receiving seniority roster--below four unprotected employees.

Subsequently, the Carrier was apprised of a series of Awards rendered by our Board, which provided that a protected employee who is transferred to another seniority district should be placed below the most junior protected employee on the seniority list. In effect, the Carrier is now requesting that where there are both protected and non-protected employees on a seniority roster, the transferred employee should be placed below the most junior protected employee, but dovetailed among the unprotected employees.

The Carrier supports its position by relying upon Award Nos. 67, 79-90. The Organization, in turn, scoffs at the Carrier's attempt to rewrite an Implementing Agreement which was entered into by the parties in good faith.

It should be noted, furthermore, that the Implementing Agreement executed on June 11, 1969, is silent on the question of seniority dovetailing. Hence, the Carrier urges that we have the power to provide for such contingency as we would not be changing any terms in the Agreement.

Should we assume the prerogative of meddling with an Implementing Agreement executed by the parties? The Carrier does not contend that said Implementing Agreement is ambiguous or unclear, merely, that it is silent on the

question of seniority dovetailing. Hence, predicated on previous Awards of our Board, we should make the necessary insertion. Under what circumstances did our Board previously arrive at its conclusion to dovetail? Had the parties entered into an Implementing Agreement before it was requested to exercise its judgment? In each of the Awards cited to us, Nos. 67 and 79-90, there was a proposed Agreement preferred by the Carrier which was not accepted by the Organization. Hence, the matter came before the Disputes Committee to resolve the issue.

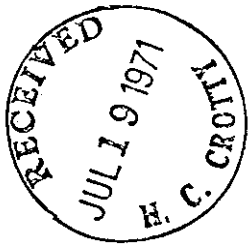
It is our firm belief that we should not tamper with an Agreement executed by both parties in good faith, absent an ambiguity. Inasmuch as none is alleged herein, we fail to find any basis for adding any terms to the Agreement. Unquestionably, were we to indulge in such act on this occasion, it would redound to the benefit of the Carrier. Under what circumstances would we thereafter refrain from adding terms to an Agreement? In our view, in the long run, the interests of both parties would best be served by fulfilling an Agreement negotiated in good faith, one arrived at through discussions and a quid pro quo exchange, as final and binding until changed by the parties themselves. Furthermore, we were not privy to the negotiations prior to execution of the Implementing Agreement on June 11, 1969. In addition, we would note that in Award No. 67, the Referee prefaced said Award with the following statement:

> "In the circumstances described in Carrier's Statement of Fact, ---"

Therefore, it is our conclusion that we should not add any terms to the Implementing Agreement executed on June 11, 1969.

AWARD

The answer to the Question is in the negative.




Murray H. Robman
Neutral Member

Dated: Washington, D. C.
June 9, 1971