

AWARD NO. 259
Case No. TC-BRAC-17-SE

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Jacksonville Terminal Company
TO THE) and
DISPUTE) TC Division - BRAC

QUESTIONS

- AT ISSUE:
1. (a) Did Carrier violate the provisions of Article IV, Section 1, and Article II, Section 1, of the February 7, 1965 Agreement when it refused to compensate D. M. Loop at the rate of the regularly assigned position he occupied on October 1, 1964, plus subsequent general wage increases, after he was reinstated to the service of the Carrier?
 - (b) Did Carrier violate the provisions of Article IV, Section 1, of the February 7, 1965 Agreement when it refused to compensate J. C. Saunders at the rate of the regularly assigned position he occupied on October 1, 1964?
 2. (a) Shall Carrier now be required to compensate Mr. Loop at the rate of his regularly assigned position on October 1, 1964, plus subsequent general wage increases?
 - (b) Shall Carrier now be required to compensate Mr. Saunders at the rate of his regularly assigned position on October 1, 1964, plus subsequent general wage increases?

OPINION
OF BOARD:

D. M. Loop

On October 1, 1964, Claimant Loop was a Train Director. He was dismissed from service on August 9, 1965, and restored to

service almost three months later, with the understanding that the intervening period was a suspension. It was also agreed that thereafter his seniority rights "will be restricted to Beaver Street Tower except in event the Company's operation at Beaver Street Tower is discontinued...he will be permitted to exercise his seniority on a comparable position in the Company's remaining tower operations. All other rights are unimpaired."

When Claimant Loop was reinstated, the only positions at Beaver Street Tower were Levermen's. The Organization claims that nevertheless Carrier violated the February 7, 1965, Agreement by failing to preserve Claimant's compensation as a Train Director. In support of its position, the Organization points to the understanding that aside from restrictions on his exercise of seniority all rights of Claimants were to be "unimpaired."

Carrier contends that it would be ludicrous to agree to reinstate a discharged employee, restrict his service to lower-rated positions and nevertheless be obliged to guarantee his compensation at a higher position which he no longer is permitted to occupy. Further, Carrier points to the final sentence of the memorandum which led to Claimant's reinstatement. It provides that "this agreement supersedes all agreement rules in conflict therewith." This, Carrier suggests, would override any conflict with the February 7 Agreement if there were one. Carrier also argues in its submission that Claimant is under a continuous period of discipline which still prevails, so long as he is not permitted to occupy the position of Train Director.

The Train Director's position was relinquished by Claimant as part of the understanding restoring him to work. Certainly the intent of that understanding was not that he would be compelled to occupy lower-rated position and receive a guarantee of compensation at a higher rate. This would constitute a reward rather than the punishment which was manifestly intended both by his period of suspension without pay as well as by the restriction on the exercise of his future seniority.

Significantly, in agreeing to the settlement which restored him to service, he and the Organization agreed to permanence in a lower-rated position. The parties then waived "all agreement rules" in conflict with their settlement. This apparently was

not done in Award No. 108, cited by the Organization. In that case the reduction in position was temporary. In this one Claimant was permanently barred as Train Director and could only exercise his seniority on a position comparable to Leverman.

The Organization and Claimant need not have acquiesced in the settlement, but could have sought an adjudication which either would have sustained the Company's action or would have restored him to his full rights. Instead, a mutually agreeable compromise was found to be more desirable. Claimant must take the bad with the good. He cannot be rewarded as he seeks, since the parties agreed otherwise, as they had a right to do.

Not only the evident intent of the settlement but Question No. 1 on Page 14 of the Interpretations of November 24, 1965, demonstrates that Claimant's guaranteed compensation should not be that of Train Director. The Question is:

If a "protected employee" for one reason or another considers another job more desirable than the one he is holding, and he therefore bids in that job even though it may carry a lower rate of pay than the job he is holding, what is the rate of his guaranteed compensation thereafter?

The answer is given as "the rate of the job he voluntarily bids into." For his own reasons Claimant Loop considered a move into the Leverman's job more desirable than efforts to retain the Train Director's job by successful litigation. He chose the voluntary downgrading, which could not have been imposed unilaterally by Carrier, and he cannot be held entitled, therefore, to retention of a guarantee at the Train Director's rate.

While Claimant Loop's protected status and other rights remained unimpaired as a result of the settlement, he obtained no greater rights than are generally available to employees covered by the February 7 Agreement. What was in effect a voluntary bid into a lower-rated job does not permit retention of the guaranteed compensation of a higher-rated position.

J. C. Saunders

Claimant Saunders, an Assistant Train Director, voluntarily bid in a temporary position as Leverman on December 3, 1966. The position was abolished on December 23, 1966. According to Carrier, Claimant Saunders thereafter was entitled to guaranteed compensation only as a Leverman and not as an Assistant Train Director.

The Organization contends that an employee's guaranteed compensation is unaffected by his bidding into a temporary position, and cited Question No. 3 on Page 14 of the Interpretations in support. That Question is:

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? (Underlining added.)

The Question is answered in the negative. However, the Organization extrapolates the specific reference to a higher-rated job to lower-rated, temporary positions as well. Question No. 1 on Page 14 emphasizes that voluntarily bidding into a lower-rated job reduces guaranteed compensation accordingly. It makes no reference to whether the job is temporary or permanent.

There is no logical justification for the Organization's effort to interpret Question No. 3 as equally applicable to higher-rated and lower-rated temporary positions. That Question deals solely and specifically with employees who bid into positions with a higher rate of pay. Consequently, it is inapplicable to the issue involving Claimant Saunders.


Moreover, Article IV, Section 3, of the February 7 Agreement makes no distinction between temporary and permanent positions. It simply states that a protected employee who exercises

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his seniority voluntarily "will not be entitled to have his compensation preserved as provided in Sections 1 and 2."

A W A R D

The answer to the Questions is No.


Milton Friedman
Neutral Member

Dated: July 8, 1971
Washington, D. C.