Award No. 294
Case No. CL-86-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

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

QUESTIONS AT ISSUE:

1. Did the Carrier violate Article II, Sec. 3 and Article IV of the February 7, 1965 Agreement when it denied a protected employe compensation when he refused call for extra work not covered by the scope of the Clerks' Agreement and the work for which called was of a classification of another craft?

2. Shall the Carrier be required to compensate extra employe N. N. Christner for wage loss suffered on October 22 and 30, 1969, at his protected rate of pay of $2.9699 per hour, or a total payment of $47.52, for the two claim dates?

OPINION OF BOARD: Claimant, a furloughed protected employee, was called to perform work as a Caboose Supplyman and General Laborer on October 23 and 30, 1969; and he declined to work the position on those dates. Consequently, the Carrier reduced his protective benefits for the two days on the ground that it was voluntary lost time. Thereafter, the instant claim was filed by the Organization to recover the total sum of $47.52.

The Organization predicates its claim on that portion of Article II, Section 3, of the February 7, 1965 National Agreement, which provides that:

> When a protected employee is entitled to compensation under this Agreement, he may be used in accordance with existing seniority rules for vacation relief, holiday vacancies, or sick relief, or for any other temporary assignments which do not require the crossing of craft lines.

It is the Organization's contention that Claimant was being required to cross craft lines in protecting the Caboose Supplyman vacancy "---which classification is not under the Clerks' Agreement but is a classification of the Firemen and Oilers craft and class." This is the sum and substance of the Organization's entire argument devoted to an explanation of the scope rule; the difference between positions and work; the significance of duties exclusively performed by another craft, i.e., historically, traditionally, usually and customarily--either system-wide or at the location in issue.

Of course, the Carrier summarily rejected the Organization's argument on the ground that Claimant had performed service as a Caboose Supplyman for several months preceding the claim dates, without complaint; and has also performed service subsequently. Furthermore, the Carrier argues that certain miscellaneous functions are not subject to the provisions of any collective bargaining agreement with any craft on this property.

Admittedly, we have not analyzed the scope rule of the International Brotherhood of Firemen and Oilers, nor do we believe that is our function. We would agree that an alleged scope rule violation would normally be a function of the National Railroad Adjustment Board, unless it is intertwined with an alleged violation of the February 7, 1965 National Agreement--which is under our jurisdiction. However, a mere bald assertion that a crossing of craft lines has been attempted, does not raise the issue--especially in view of the Organization's statement contained in Employees' Exhibit No. 7, to wit:

> You further advised that the work involved is not work of another craft as alleged by the Employees, however, in our several conferences on this subject there was no disagreement that the classification of caboose supplyman is under the scope and operation of the Firemen and Oilers Agreement, but the positions of caboose supplyman at Little Rock, Arkansas, are not covered by that Agreement, for some unknown reason, but the classification and work performed is work of another craft and class. Request was made by the Employees that these positions be put under the scope of the Clerks' Agreement in order that the employees could be called in line with their seniority to protect vacancies in that classification but our request was denied---.

Thus, having failed to achieve its objective of including such position under the Organization's scope through collective bargaining, now it seeks a determination from our Board that such work is exclusively within the scope of another craft.

In our view, the Organization may not accomplish by indirection what it could not obtain by direct methods. Therefore, it is our considered judgment that it has failed to establish by probative evidence that Claimant was required to cross craft lines in violation of Article II, Section 3, of the February 7, 1965 Agreement.

AWARD

The answer to questions 1 and 2 is in the negative.

Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
March 27, 1972

Dissent Follows

DISSENT OF LABOR MEMBERS
TO:

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The Referee answers both questions in the negative.

We dissent most strenuously from this award.

Article II, Section 3 of the February 7, 1965 Agreement reads as follows:

> "When a protected employee is entitled to compensation under this Agreement, he may be used in accordance with existing seniority rules for vacation relief, holiday vacancies, or sick relief, or for any other temporary assignments which do not require the crossing of craft lines."

How can the Referee determine whether or not there has been a crossing of craft lines if he admittedly does not analyze scope rules. Is he really performing his function as a neutral?

The Carrier does not deny that this class of work is contained in the Agreement with the Firemen and Oilers, neither does it deny that the Firemen and Oilers negotiate the rates of pay for such positions. The Firemen and Oilers are definitely a class and craft separate from the Brotherhood of Railway and Airline Clerks. Yet what do you need to show the crossing of craft lines?

The penultimate paragraph of the "OPINION OF THE BOARD" is not worthy of comment. A little practical knowledge of the art of railroading might be helpful in reaching reasonable conclusions.

C. L. DENNIS, Labor Member of Disputes Committee No. 605

G. E. LEIGHTY, Labor Member of Disputes Committee No. 605