

AWARD NO. 302
Case No. TC-BRAC-108-W

PARTIES) Union Pacific Railroad Company
TO THE) and
DISPUTE) Transportation-Communication Division, BRAC

QUESTION

AT ISSUE: On what position is an employee's guaranteed rate based, who, on October 1, 1964 was on the extra board, and;

1. Voluntarily bid on a position in February, 1965;
2. Voluntarily bid on a position in April, 1965;
3. Traded positions and seniority, by agreement, with an employee on another seniority district on May 2, 1965;
4. Voluntarily bid on a position on his new seniority district in February, 1966;
5. Was displaced on his latest position due to a force reduction on July 2, 1968; and
6. Displaced on the position he acquired in item (3).

OPINION

OF BOARD: The essential issue is whether an employee, whose protected rate is reduced because he voluntarily bid into a lower-rated job, can subsequently increase that protected rate by bidding into a higher-paying position. There is no dispute that the voluntary exercise of seniority to obtain a lower-paying job does result in a reduced guarantee under Article IV, Section 3, of the February 7 Agreement.

According to Question and Answer No. 1 on page 14 of the Interpretations, an employee's compensation is the rate of the job he voluntarily bids in "even though it may carry a lower rate of pay than the job he is holding." According to the Answer, that is the guaranteed rate "thereafter." Nothing is said in the Interpretations concerning subsequent bids to higher-paying positions, or about an employee's return to his former position.

Under Article IV, an employee's protected compensation is based on his October 1, 1964, rate. It cannot be increased above that, but it may be lost or reduced under various provisions of the Agreement. A guarantee which has been reduced may be restored only by virtue of an implementing agreement, according to Question No. 2 on page 14 of the Interpretations. No other provision of the Agreement or of the Interpretations evidences an intent to permit an upward fluctuating guarantee.

It is apparent that the February 7 Agreement was designed both to protect employees' rates and also to discourage voluntary movements to lower-paying positions. The protected rate is to be permanent, unless by his own voluntary act an employee reduces it. If he does so, the reduction is permanent, since the key word in Question No. 1 is "thereafter," whether the employee makes a single move to a lower-rated position or does it more frequently, with each move effecting a lower protected rate.

But no language in the Agreement is reasonably susceptible of an interpretation that an employee can take a lower-rated job and later restore his former guarantee by bidding into a higher-rated position. If there had been any intent to permit protected rates to see-saw, some such indication would surely have appeared in the Agreement. Where the parties were interpreting the February 7 Agreement so specifically as to show how a lower guaranteed rate is produced, they would have shown the reverse, if some subsequent action by the employee made that possible.

Thus it must be held that the intent of this Agreement is to fix a permanently protected rate which can be reduced once, or more than once, by an employee's action, but cannot be moved upward thereafter.

Since Claimant had been on the extra board on October 1, 1964, he properly bid into a regular position on February 16, 1965. However, his move to a lower-rated position by his voluntary action on April 1, 1965 resulted in a lower protected rate thereafter. He made no subsequent voluntary moves to lower-rated positions, and the moves to higher-rated positions did not change his guarantee.

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Claimant's guaranteed rate is that
of the position into which he volun-
tarily bid in April, 1965.


Milton Friedman
Neutral Member

Dated: May 19, 1972
Washington, D. C.