SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Hotel and Restaurant Employees and Bartenders International Union and Denver and Rio Grande Western Railroad Company

QUESTION AT ISSUE: "Whether the Carrier is required by the February 7, 1965 Agreement to restore to protected status employees whom it deprived of protected status by the application of a pre-1965 schedule rule reading as follows:

> 'An employee who, on account of reduction in force, has not performed sixty (60) days' service during a period of twelve (12) consecutive months will be dropped from the seniority roster.'

and whether the Carrier is required to pay the employees the compensation to which they have been entitled under the February 7, 1965 Agreement as protected employees."

OPINION OF BOARD: In August 1971 Claimants were notified by Carrier that they were dropped from the seniority roster pursuant to the provisions of Rule 8(c) of the schedule Agreement between the parties.

Rule 8(c) provides:

> "An employe who, on account of reduction in force, has not performed sixty (60) days' service during a period of twelve (12) consecutive months will be dropped from the seniority roster."

The Organization protested the action of Carrier asserting that the action taken under the provisions of Rule 8(c) was inconsistent with Article I, Section 1 of the February 7, 1965, Agreement that provides that protected employes "will be retained in service subject to compensation as hereinafter provided unless or until retired, discharged for cause, or otherwise removed by natural attrition."

Summarized, Carrier's positions are:

1) This Board lacks jurisdiction of this dispute because a conference was not held as required by Section 2, Second of the Railway Labor Act. 1/

1/ "All disputes between a carrier or carriers and its or their employes shall be considered, and if possible, decided with all expedition in conference between representatives designated and authorized so to confer, respectively by the carrier or carriers and by the employes thereof interested in the dispute."

OPINION
OF BOARD
(Continued):

2) Carrier's action under Rule 8(c) /a collectively bargained provision/ was mandatory.

3) The February 7, 1965, Agreement does not, and cannot, prohibit Carrier's action under Rule 8(c); and in fact recognizes Carrier's right to do so.

4) Claimants were dismissed for "cause" and as such they lost their right to any protection under the terms of the February 7, 1965, Agreement.

The Board finds that Carrier's contention that we have no jurisdiction to consider this dispute because "no conference was held" is without merit. Resolution of this dispute is ultimately based on the meaning of a provision of the February 7, 1965, Agreement. In such situations the parties have agreed that the "Rules and procedures governing the handling of claims or grievances including time limit rules, shall not apply to the handling of questions or disputes concerning the meaning or interpretation of the provisions of the February 7, 1965, Agreement." (Page 18, Interpretations.)

Essentially Carrier asserts that its action under Rule 8(c) comes within the definition of "discharged for cause or otherwise removed by natural attrition."

The Board does not agree. The purpose and policy of the February 7, 1965, Agreement was to afford job protection, under certain conditions, to certain employes because of economic crises in the railroad industry.

It is assumed from the record that Claimants herein did not work the required 60 days solely because Carrier had no need for their services, and not because of any willful or voluntary act on their part. This was what the February 7, 1965, Agreement attempted to obviate.

Since there has been no showing that Claimants were discharged for cause, they did not lose their protected status under the provisions of the February 7, 1965, Agreement.

AWARD

The answer to the Question at Issue is in the affirmative.

Nicholas H. Zumas
Neutral Member

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

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Hotel and Restaurant Employees and Bartenders International Union
and
The Denver and Rio Grande Western Railroad Company

QUESTION AT ISSUE: Whether under the Award the Carrier is required to pay the employees the compensation which they would have received if the Carrier had applied the February 7, 1965 Agreement in the manner in which it should have been applied as determined by the Award.

OPINION OF BOARD: The Board is called upon to interpret its Award No. 318 with respect to that portion of the Question at Issue relating to compensation in the event it was determined that Carrier restore certain employes to protected status. That portion of the Question at Issue is stated as follows:

> "and whether the Carrier is required to pay the employees the compensation to which they have been entitled under the February 7, 1965 Agreement as protected employees."

With respect to the matter of compensation, Carrier in its original submission asserted in its Statement of Facts that:

> "The written request and protest on this matter by the General Chairman on the property to the Director of Personnel, dated September 3, 1971, (see Carrier's Exhibit "B"), made no claim or demand for '...compensation to which they have been entitled under the February 7, 1965, Agreement as protected employees...' as does the Question at Issue before your Committee as composed by the Employes. Instead, his September 3, 1971, requested only that the waiters involved '...be returned to protected status...' under the February 7, 1965, Agreement."

Further in its submission, Carrier took the position that:

> "As Carrier has pointed out in its Statement of Facts, above, the last part of the Question at Issue asks the question as to whether the Carrier is required to pay the Employes the compensation to which they have been entitled under the February 7, 1965, Agreement as protected employes. Carrier's position is that this part of the Question at Issue is also improperly before

your Committee in that the question was not posed by the Employes on property for which reason it cannot be said that there was any dispute involving this item on the property.

"For this reason, too, under Article VII, Section 1 of the Agreement such question is improperly before your Board and your Board has no jurisdiction to consider such question. That the request that Carrier be required to pay the Employes compensation which they have been entitled to under the February 7, 1965, Agreement was not raised on the property is shown by General Chairman Kirkland's letter to Carrier's Director of Personnel, dated September 3, 1971. In the last paragraph on Page 2 of his letter he makes the request that claimants be returned to protected status, but he did not request or demand any '... pay for claimants...' (See Carrier's Exhibit "B".)

"Without prejudice to the foregoing, Carrier's position also is as expressed in its position, above, point (6) in particular.

"On Page 2, top, the Organization alleges that the General Chairman handled the action of the Carrier in this matter as a grievance and progressed it in the usual manner on the property to Carrier's highest officer authorized to handle disputes. Carrier has denied this above and again denies this allegation as it is incorrect. The '...usual manner...' of handling grievances or disputes on the property includes a conference and confrontation between the parties. This has not yet occurred in this matter."

Thus Carrier, in its argument on jurisdiction as it related to compensation, raised two points: 1) that the compensation question had never been raised on the property, and 2) that there had never been a "conference" on the property.

On the matter of jurisdiction the Board found:

"The Board finds that Carrier's contention that we have no jurisdiction to consider this dispute because 'no conference was held' is without merit. Resolution of this dispute is ultimately based on the meaning of a provision of the February 7, 1965, Agreement. In such situations the parties have agreed that the 'Rules and procedures governing the handling of claims or grievances including time limit rules, shall not apply to the handling of questions or disputes concerning the meaning or interpretation of the provisions of the February 7, 1965, Agreement.' (Page 18, Interpretations.)"

It is clear that the Board focused on the question as to whether the failure to have a "conference" precluded consideration of "this dispute"; and did not consider the jurisdictional aspect in relation to the fact that the compensation question was not raised on the property.

As a consequence Award No. 318 admittedly is deficient and confusing. In order to rectify the deficiency and clarify the confusion, the Board further finds that the Board did not intend to award compensation to the employes therein incident to its determination that they were protected employes under the February 7, 1965 Agreement. Since the question of compensation was not raised on the property, the Board was not empowered to make such award. See Award No. 310 and Paragraph 2 of Handling of Claims or Grievances (page 18 of Interpretations.)

The affirmative award was and is intended to apply solely to the question of whether the employes were entitled to protected status. Compensation is not payable under Award No. 318.

The question presented, therefore, must be answered in the negative.

Nicholas Zumas
NICHOLAS H. ZUMAS

Dated: Washington, D. C.
June 7, 1973


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J. J.