

# NATIONAL RAILWAY LABOR CONFERENCE

1225 CONNECTICUT AVENUE, N.W., WASHINGTON, D. C. 20036/AREA CODE: 202-659-9320

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October 13, 1972

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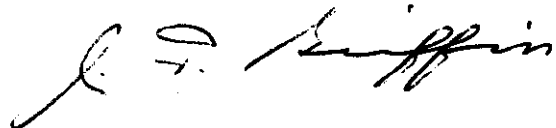
Mr. Nicholas H. Zumas  
1225 - 19th Street, N. W.  
Washington, D. C. 20036

Gentlemen:

This will supplement our previous letters with which we forwarded to you copies of Awards of Special Board of Adjustment No. 605 established by Article VII of the February 7, 1965 Agreement.

There are attached copies of Awards Nos. 320 to 325 inclusive, dated October 12, 1972, rendered by Special Board of Adjustment No. 605.

Yours very truly,



cc. Messrs. G. E. Leighty  
C. L. Dennis (2)  
C. J. Chamberlain (2)  
M. B. Frye  
H. C. Crotty  
✓ J. J. Berta  
S. Z. Placksin (2)  
R. W. Smith  
T. A. Tracy (3)  
W. S. Macgill  
M. E. Parks  
J. E. Carlisle  
W. F. Euker  
T. F. Strunck

AWARD NO. 320  
Case No. TC-BRAC-45-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) Central Vermont Railway, Inc.  
TO THE ) and  
DISPUTE ) TC Division - BRAC

QUESTIONS

- AT ISSUE:
1. Are there any provisions in the February 7, 1965 Agreement which takes away the employees' rights to displace on any position his seniority entitles him to displace on, and be entitled to the provisions of Article IV, Sections 1 and 2, if unable to displace on a position within 30 miles of his residence.
  2. If the answer to the above is in the negative, shall R. P. Paul be allowed the difference between the first trick "FO" office, New London, Connecticut, rate of pay and the rate of the third trick White River Junction, Vermont, retroactive to January 1, 1969; shall H. E. Ryan be allowed the difference between the second trick "SA" office, St. Albans, Vermont rate of pay and the rate of relief assignment No. 6, retroactive to May 11, 1969.

OPINION

OF BOARD: Claimant Paul was displaced from his position in St. Albans, Vermont, and thereupon displaced at White River Junction, Vermont, 117 miles away. Claimant Ryan was also displaced at St. Albans and he displaced at Montpelier, Vermont, 56 miles distant. In both cases Claimants took positions paying lower rates than their protected rates. The record indicates that changes in residence were required in view of the distances involved.

According to Carrier, once employees are displaced to locations necessitating a change in residence, they are obliged to take jobs with rates equal to or greater than their former rates, if available; otherwise the employees, voluntarily

selecting lower-paid positions, are to be compensated only at the rate of their new positions, pursuant to Article IV, Section 3.

Four positions were available to Claimants at distances from St. Albans ranging from 132 miles, to 236 miles, to 288 miles to 301 miles. Each paid the same or more as the St. Albans jobs. It is worthy of note, although not controlling, that each employee placed himself on the job closest to the position from which he was displaced.

Carrier cites Article IV, Section 1, which states that protected employees "shall not be placed in a worse position with respect to compensation" than their October 1, 1964 rates. Carrier did not place Claimant in a worse position, it was said; they did it to themselves, since they could readily have occupied positions paying more, which also required a change in residence. Thus, in accordance with Article IV, Section 4, this voluntary exercise of seniority to lower-rated positions means that the employee must be treated "as occupying the position which he elects to decline," according to Carrier.

The Organization contends that Article IV, Section 4's stricture cited by Carrier refers to loss of protected compensation solely where there is a failure to take a position not requiring a change in residence. As to Article IV, Section 1, it was said, Carrier's action in displacing these employees is what put them in a worse position; it was not the employees' action which had that result.

Article IV, Section 1, is the broad affirmation of rights guaranteed to employees under the February 7 Agreement. It is the heart of the Agreement, insuring continuation of the adjusted October 1, 1964, rate for all protected employees.

The basic guarantee set forth is illuminated, amplified and/or restricted by various provisions of the Agreement and the Interpretations. One such is in Article IV, Section 4. An employee may properly be placed in a "worse position" if he fails to exercise seniority to a better-paying job than the one he chooses to retain. But this limitation is specifically circumscribed so that it applies only if the available job "does not require a change in residence."

A corollary to this is that if a change in residence is required, then the employee cannot be treated as occupying the position which he elects to decline. Nothing in the Agreement indicates that employees must protect their rate by selecting a position no matter where it is located throughout the entire seniority district.

Were employees obliged to select a position in this way, regardless of the need to change residence, it would have been pointless to include the phrase in Article IV, Section 4, concerning when the protected rates cease. As Carrier reads the provision, nothing at all is served by the reference to a change in residence. But it cannot be assumed that the language employed was intended to be devoid of meaning and would be read the same way, whether or not reference was made to a change in residence.

Moreover, use of a single, specific condition demonstrates an intent not to make the provision applicable to situations which do not come under the condition. General application certainly cannot be inferred when only a particular qualification is mentioned. If the loss of compensation were to be applicable whether or not a change in residence was necessary, why was this one condition specified in Article IV, Section 4?

Consequently, it must be held that an employee, who cannot place himself on a job which does not require a change in residence, is not obliged to seek out a position paying the same or a higher rate than the one at which he is protected.

A W A R D

1. The Answer to Question No. 1 is  
No, provided the employee is obliged  
to change his residence.
2. The Answer to Question No. 2 is Yes.

  
Milton Friedman  
Neutral Member

Dated: October 12, 1972  
Washington, D. C.