AWARD NO. 323
Case No. TC-BRAC-116-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE) Atchison, Topeka and Santa Fe Railway Company and TC Division, BRAC

QUESTIONS AT ISSUE:

1. (a) Was Claimant H. S. Eubanks "required to move" from Hemet when the previous incumbent on the Hemet position, T. O. Figgins, returned to work at Hemet?

   (b) Did Carrier violate the Agreement by refusing to maintain Claimant's guaranteed compensation?

2. If the answer to the above question is in the affirmative, is Claimant entitled to the difference between what Carrier has paid him and his guaranteed rate effective sixty days from date claim was filed (May 21, 1969)?

OPINION OF BOARD: When the Agent-Telegrapher at Hemet, California, T. O. Figgins, was removed from service in April, 1966, as the result of a formal investigation, Claimant, who was Agent-Telegrapher at San Jacinto, successfully bid for that position. The Hemet job paid $3.0828, while the San Jacinto job then paid $3.0228.

Mr. Figgins subsequently was reinstated. The record does not disclose why. But Carrier asserts it was in accordance with Article V of the schedule agreement which provides that if charges are not sustained, the employee "will be returned to former position," and anyone consequently displaced "may either (1) return to his former position or (2) take his place on the extra list." Carrier maintains that Claimant's return to San Jacinto "was a requirement and obligation by which he was bound" in accordance with Article V of the schedule agreement.

One question in this case is whether Article IV, Section 3, of the February 7 Agreement applies. Was Claimant's return to San Jacinto a voluntary exercise of seniority, or was Mr. Figgins' return to Hemet voluntary? In either of such cases, Claimant's compensation would not be preserved.

The reinstatement of Mr. Figgins was not a voluntary exercise of seniority unless, for example, this was taken to mean that after a wrongfully discharged employee was found innocent, he "voluntarily" reclaims his position. After all, Carrier initiated the discharge.

While he may choose not to return to work after discharge, the reinstatement of a wrongfully discharged employee cannot be characterized as voluntary. Carrier effectuated the reinstatement, thus displacing Claimant. Otherwise every action of employees may be construed as voluntary in the sense that they choose to work for the employer when they could leave their jobs altogether.

Since Mr. Figgins did not voluntarily exercise seniority, Claimant's return to San Jacinto was not "by reason of a voluntary action." Claimant actually could not have utilized the right in Article V of the schedule agreement to go on the extra list rather than to return to his former position. Had he done so, he would have lost his protected status by failing to place himself on a regular position available to him.

Meanwhile, upon Claimant's departure from San Jacinto, the position there was jointly re-evaluated. The rate was made 13 cents per hour less than it had been. Carrier asserts that this joint action in reducing the rate was justification for not continuing Claimant's protected rate on his return.

Regardless of the going rate of the San Jacinto position, Claimant is entitled to maintenance of his guaranteed rate. The downward adjustment does not thereafter deprive a former incumbent of his protected rate, whether he works at San Jacinto or is required to take any other position paying less than his guarantee. Thus, if another employee had been bumped into the San Jacinto position, he would still have maintained his protected rate, despite the reduced rate

at San Jacinto arrived at by mutual agreement. Claimant is entitled to no less because he was the former incumbent at the higher rate.

A W A R D

The Answer to the Questions is Yes.

Milton Friedman
Neutral Member

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