

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Brotherhood of Railway, Airline and Steamship Clerks,
TO) Freight Handlers, Express & Station Employees
DISPUTE) and
Los Angeles Union Passenger Terminal

QUESTIONS
AT ISSUE:

1. Did the Carrier violate the February 7, 1965 Agreement when it terminated the protected status of the following named employees?

GROUP ONE

Leslie Minnifield
Melvin N. Swearingin
C. Cheathum
Harry E. Warford

GROUP TWO

Loxie C. Scott	Herman J. Moore
Calvin Holland	Jerrie C. Stephenson
Vito J. Rosati	Jose V. Munoz
P. Henderson	Robert Turner
J. L. Reynaud	Robert T. Law
Wm. T. Clark	Lee Ward
Willie Powels	S. O. Jackson
Julius C. Davis	Ozell Williams
W. D. Pierce	Clifton C. James
John J. Fruge	Charley H. Wilson
Luther L. Neal	Armin O. Joenson
Doyle Shaw	Charlie Wilson
Aleck S. MacLennan	Johnnie Johnson
Tony Soliz	Dennis Woods
Albert E. Martini	Edward R. Jones
James E. Stanley	E. Johnson
Raymond E. Mitchell	Jonny R. Jackson
Lee Sterling	

GROUP THREE

Anderson Rose	J. Conrad
Bennie Glascoe	Levester Page
Paul Richards	Charles Davis
Herman Gellman	K. D. Ogden
Joseph Scott	T. De Bellis
Johnny Chavez	John O'Leary
George J. Perez	N. S. Garrett

AWARD NO. 339
Case No. CI-92-W

GROUP THREE (Cont'd.)

Harvey D. Mack	Thomas Strode
Will Anderson	Joseph S. King
D. W. Marshall	Virgis Telsa
R. D. Aubolee	John F. Kinney
W. S. Marshall	Billie Jean Thompson
F. D. Brooks	Henry Knight, Jr.
C. Mins	Walter Thompson
Lucioes Bryant	Dorothy Knostman
John E. Morgan	Louis N. Warden
Edward Misiah Anderson	Leon H. Grubbs
Wesley Mosely	Charles Williams
W. James	Rodolfo C. Gonzalez
Wesley Hart	Frederick B. Williams
Joseph A. Smith	Sam L. Green
David Key	Harry Zeidman

2. If the answer to the above question is in the affirmative, shall Carrier be required to restore the names of the above listed employees to the protected list of employees and to compensate them for any loss of compensation and/or benefits due under the provisions of the February 7, 1965 Agreement?

OPINION

OF BOARD: The Carrier herein is a Union Passenger Terminal jointly owned by three Railroads. It had endured a significant and substantial decline in the volume of business over a period of years. One of the factors contributing to the decrease in its volume of business resulted from a change in mail handling procedures instituted by the U.S. Post Office. The rearrangement diverted a large quantity of mail formerly handled by Terminal employees directly to Post Office employees. Consequently, the Carrier was compelled to adjust its forces to meet the changed economic environment.

The Organization filed Claims in the instant dispute on behalf of three groups--all of whom were extra baggage and mail handlers. Group One Claimants voluntarily relinquished their regularly assigned positions and elected to place themselves on the extra or unassigned list in accordance with Rule 33(b) of the Schedule Agreement, for personal reasons. Group Two is composed of Claimants who were working from the unassigned list. They lost their protection for failure to bid on bulletined positions for which they were qualified and available to them in the exercise of their seniority rights, pursuant to the effective Agreement. Group Three consists of Claimants who were displaced from regular positions but, nevertheless, failed to exercise their seniority rights to displace junior employees occupying regular positions for which they were qualified.

AWARD NO. 339
Case No. CL-92-W

The Carrier in denying the instant Claims relies upon two defenses. The first involves a question of time limits and the second is predicated upon Article II, Section 1, of the February 7, 1965 National Agreement; as well as Question and Answer No. 3, of Section 1, Article II, of the November 24, 1965 Interpretations. Based upon a careful analysis of the submissions of the parties, it is our considered view that the instant dispute warrants a determination on the merits. Therefore, we shall refrain from commenting on the Carrier's time limit rule defense and proceed to discuss the merits issue.

The pertinent portion of Article II, Section 1, of the February 7, 1965 Agreement, is hereinafter quoted:

An employee shall cease to be a protected employee in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, or failure to retain or obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements, or failure to accept employment as provided in this Article. A protected furloughed employee who fails to respond to extra work when called shall cease to be a protected employee.

An adjunct thereto, is Question and Answer No. 3, of the November 24, 1965 Interpretations, to wit:

Question No. 3: What are the obligations of extra employees with respect to obtaining or retaining a position in order to remain a "protected employee?"

Answer to Question No. 3: If an extra employee fails to obtain a position other than a temporary position available to him in the exercise of his seniority rights in accordance with the existing rules or agreements, he will lose his protected status. It should be understood, however, that this does not prohibit the making of local agreements which will permit an employee to remain an extra employee if there is a mutual understanding that this action may be justified.

As previously indicated, Rule 33(b) of the Schedule Agreement, permits regularly assigned employees to revert to the unassigned list. The Group One Claimants signified their desire to do so, however, they were advised at that time that the Carrier would not waive forfeiture of their pro-

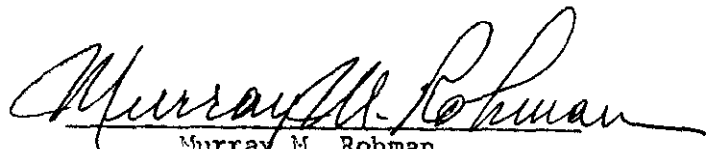
tected status by entering into a local Agreement. Consequently, these individuals lost their protected status. Further, Group Two Claimants failed to bid on regular positions available to them in the exercise of their seniority; and Group Three Claimants failed to displace on regular positions which they could have obtained by exercising their seniority.

Thus, in this posture, insofar as the Group One Claimants are concerned, the Carrier does not question the right of these Claimants to work from the extra list, as provided by the Schedule Agreement. However, the thrust of the Organization's Argument is predicated upon the concept of retaining protection. In this regard, the Interpretations do permit the parties to waive the loss of protected status by providing for the execution of a local agreement--by mutual consent--but such local Agreement was never consummated.

Moreover, it is our considered judgment, that the facts as portrayed herein conclusively reveal that each of the Claimants in Groups Two and Three failed to retain or obtain a position available to him in the exercise of seniority rights as provided by Article II, Section 1, of the February 7, 1965 Agreement. Accordingly, each of the Claimants forfeited his protected status. In support of this principle, we need cite only several of our own previous awards. In this connection see Award Nos. 39, 103 and 157. Hence, we are compelled to deny the instant Claims.

Award:

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


Murray M. Rohman
Neutral Member

Dated: November 14, 1972
Washington, D. C.