

NATIONAL RAILWAY LABOR CONFERENCE

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

WILLIAM H. DEMPSEY, Chairman M. E. PARKS, Vice Chairman
H. E. GREER, Director of Research J. F. GRIFFIN, Administrative Secretary D. P. LEE, General Counsel

April 19, 1973

Dr. Murray M. Rohman
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Texas Christian University
Fort Worth, Texas 76129

Mr. Nicholas H. Zumas
1224 - 19th Street, N.W.
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Mr. Milton Friedman
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New York, New York 10019

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. 345 to 354 inclusive, dated April 18, 1973, rendered by Special Board of Adjustment No. 605.

Yours very truly,



cc. Messrs. G. E. Leighty (10)
C. L. Dennis (2)
R. W. Smith (2)
S. Z. Placksin (2)
C. J. Chamberlain (2)
M. B. Frye
H. C. Crotty (2)
✓ J. J. Berta
T. A. Tracy (3)
M. E. Parks
J. E. Carlisle
W. F. Euler
T. F. Strunck

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES)
TO)
DISPUTE)
Brotherhood of Railway, Airline and Steamship Clerks, Freight
Handlers, Express and Station Employees
and
Bangor and Aroostook Railroad Company

QUESTIONS
AT ISSUE:

1. Did the Carrier violate the provisions of the February 7, 1965 Agreement, particularly Article II, Section 1 and Article IV, along with the Memorandum of understanding on Officials when it denied Mrs. Marion W. Foster, the "protected status" she held and refused to permit her following the work that formed part of her abolished position and further refused to compensate her as a protected employee for the period subsequent to October 30, 1970?
2. Shall the Carrier now be required to compensate Mrs. Foster for all wage loss suffered subsequent to October 30, 1970 and restore to her the protected status she held on February 7, 1965?
3. Shall the Carrier be required to serve proper notice and to make an Implementing Agreement under Article III of the February 7, 1965 Agreement and the Interpretations thereto of November 24, 1965?

OPINION

OF BOARD: Claimant was hired on May 27, 1943, as Record Book Clerk & Telephone Operator in the Car Service Department. On July 1, 1949, the Car Service Department was divided and Claimant was transferred to the Car Accounting Section. Subsequently, on October 1, 1951, Claimant voluntarily transferred to a vacancy in the Transportation Department. Thereafter, the Claimant on June 15, 1967, as alleged by the Carrier, to wit:

"left her position in the Transportation Department where her protected rate was \$2.7584, forfeiting nearly sixteen years seniority, to take another clerical position in the Accounting (Disbursement Section) Department, paying a rate of \$2.8240. She again forfeited seniority and her name was removed from seniority roster in Office of Superintendent Transportation. In this instance, as in all other voluntary changes, she had no seniority rights in that department, no right to bid on the job, only the right to the position ahead of a new employee."

The instant dispute arose as a result of the abolishment of Claimant's position on October 30, 1970, resulting in her being furloughed. Thereafter, the Organization filed a claim on November 6, 1970, which was denied on the same date. On November 18, 1970, the Claim was appealed to

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Manager of Personnel and on March 12, 1971, the instant Claim was denied. On April 21, 1971, the Organization appealed the declination to the Vice President and General Counsel. Included in said appeal is the following, viz:

"Without waiver thereof, it is apparent Carrier has violated time limits in its decision."

Thereafter, the Carrier declined the appeal on August 17, 1971.

A review of the Carrier's Submission reveals the following statement, to wit:

"The Organization states that the Carrier, on more than one occasion, violated time limits. There is no basis for this statement nor was this mentioned until the Organization submitted its Ex Parte submission."

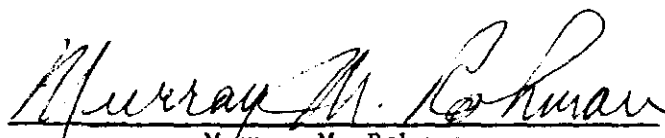
We do not believe that the Carrier is implying that the appeal letter contained in the Submission, dated April 21, 1971, is fraudulent. That letter expressly stated that the Carrier violated the time limit rule. In this context, we are compelled by the explicit language contained on Page 18 of the November 24, 1965 Interpretations, to determine this aspect, viz:

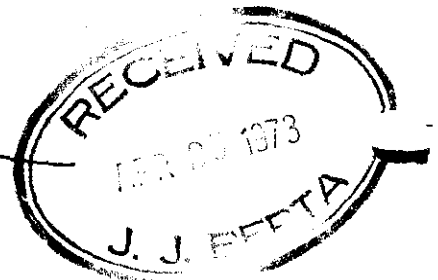
"Individual claims for compensation alleged to be due pursuant to the Agreement shall be handled in accordance with the rules governing the handling of claims and grievances, including time limit rules, ---."

Furthermore, the Carrier argues that we should confine our decision to the Questions-At-Issue; and the time limit aspect was not stated therein. However, in Award No. 325, similarly, the Questions-At-Issue did not raise a time limit violation, nevertheless, the Award was based on a time limit violation. Therefore, it is our considered judgment that the Claim for compensation is valid up until August 17, 1971, due to the failure of the Carrier to deny said Claim within the time limit rule. However, insofar as the merits of the dispute are concerned, that portion of the claim is denied.

Award:

The answers to the Employee's Questions are that the Claim for compensation is sustained until August 17, 1971, on the basis that Carrier violated the time limit rule; and questions relative to the merits of the dispute are answered in the negative.


Murray M. Rohman
Neutral Member



Dated: Washington, D. C.
April 18, 1973