

PARTIES) The Chesapeake and Ohio Railway Company
TO THE) and
DISPUTE) Brotherhood of Maintenance of Way Employees

STATEMENT
OF CLAIM:

Is W. F. Hardin a protected employee and is he entitled to be reimbursed for the loss of earnings suffered subsequent to being furloughed effective at the close of work on November 5, 1971?

OPINION

OF BOARD: Claimant's position as Pumper at Shelby, Kentucky, was abolished. According to the Organization the abolishment was improper, since pumping work remained to be done and was done by a non-bargaining unit employee. Moreover, the Organization reasons, since it was improper to abolish the position the Claimant was under no obligation to exercise his seniority to obtain another position. He could simply wait, meanwhile retaining his protected status, despite Article II, Section 1, which provides, in part:

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...

According to the Organization the key words in the foregoing provision are those underlined. Rule 2(h) of the Rules Agreements requires Pumpers to displace "when they do not stand to work in such groups." Thus, the Organization argues, the rule requires displacement only when Claimant does "not stand to work." But there was Pumper's work for him to do, it was said, and therefore he stood to work as a Pumper and could not displace elsewhere.

However, the underlined portion of Article II, Section 1, refers to the method of obtaining a position in the exercise of seniority. It does not fix preconditions which Carrier must meet before seniority is to be exercised.

A job is abolished with finality when Carrier abolishes it. If subsequent challenge proves that Carrier was wrong, appropriate redress may be forthcoming. In this case, Claimant may be entitled to return to work as a Pumper, if the Claim filed with the Third Division on the abolishment itself were sustained. As the Organization sees it apparently, it is not enough that Carrier found there was no job for Claimant as a Pumper; it became an arguable question, and the employee was therefore not required to follow the procedures mandated when a job is abolished. In other words, each employee will determine for himself whether Carrier was right or wrong, in tune with the Agreement or in violation of it, and he will then act in accordance with his finding.

The February 7 Agreement's provisions on the benefits and the obligations of protected employees must be observed before it is decided who is right and who is wrong, not after that decision is ultimately made. Employees are not relieved of their contractual obligations because an act of Carrier is of questionable legitimacy. They cannot, for example, obey only those instructions which they have decided are valid. The act of abolishment having occurred, the obligation under a provision like Article II, Section 1, becomes operative. An employee must obtain a position available to him, if he is to retain his protected status.

Had the parties intended such a requirement to become effective only when all prior issues were settled, they could have said so. Yet no distinction is made with respect to the reason why an employee is left without a position. It may be for a reason acceptable to the employee and the Organization, unacceptable to them, or of uncertain justification.

In any case, the employee must meet his responsibilities if he is to retain his protected status. He can grieve Carrier's action, if he chooses, by pursuing a course leading to the proper forum. But the merits of a job abolishment like this are not a question under the February 7 Agreement, and the Organization has recognized this by filing a claim on that account with the Third Division.

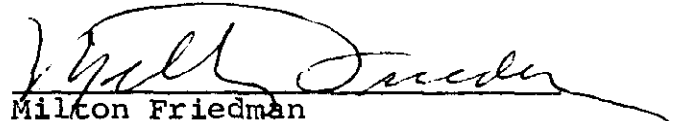
Claimant wilfully and knowingly refused to work, except on his Pumper's position. He simply sat back and did not work. Since he failed to obtain a position which was

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available to him in the exercise of his seniority, he accordingly has lost his protected status.

AWARD

The Answer to the Question is No.


Milton Friedman
Neutral Member

Dated: Washington, D. C.
October 8, 1973