

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Hotel and Restaurant Employees and Bartenders International
TO) Union
DISPUTE) and
Union Pacific Railroad Company

QUESTIONS AT ISSUE: (1) Whether the employee, J. R. Broadnaux, is entitled to have his protected compensation determined under Section 2, rather than Section 1, of Article IV of the February 7, 1965 Agreement.

(2) If the answer to Question 1 is in the affirmative, whether and to what extent the carrier is now required to reimburse the employee for the difference between protected compensation determined under Section 2, rather than Section 1, of Article IV of the Agreement.

OPINION OF BOARD: Carrier contends that the claim for compensation herein must fail because it was not filed timely in accordance with the schedule agreement and the February 7, 1965 Agreement. The schedule agreement requires that a grievance or claim must be filed within sixty days "from the date of occurrence."

Carrier further contends that Claimant was properly compensated as a protected employee under the Provisions of Section 1 of Article IV of the February 7, 1965 Agreement, and that Claimant was not entitled to protected status under the provisions of Section 2 of Article IV.

Claimant held a regularly assigned position as a Second Cook until that position was abolished on September 5, 1964. His seniority entitled him to bid in a regular assignment as Fourth Cook and he could have held that Fourth Cook assignment as of October 1, 1964, (the determining date with respect to job protection under the February 7, 1965 Agreement). However, Claimant did not bid on the Fourth Cook assignment, and instead chose to work other positions or vacancies which he filled temporarily pending assignment by bulletin or pending the exercise of seniority by senior men.

As to Question One

Section 1 of Article IV covers employees "who hold regularly assigned positions on October 1, 1964."

Section 2 of Article IV covers "all other employees."

Pertinent to our inquiry, therefore, is whether or not in fact Claimant held a regularly assigned position as Fourth Cook on October 1, 1964. Claimant asserts that he did not. Carrier asserts that he did.

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Carrier's letter to Claimant dated April 26, 1972, contains the following:

"In reviewing our file on the matter I find that your regularly assigned position as a Second Cook was abolished on September 5, 1964 and instead of exercising your seniority on a Fourth Cook's position --- the only position on which your seniority would permit displacement --- you chose to work on a temporary vacancy which had a higher rate of pay than the Fourth Cook's position. However, on October 1, 1964, the determining date with respect to job protection under the February 7, 1965 Agreement, you were entitled to a regular assignment by virtue of your superior seniority and you were accorded a fully protected status. It was our position that the intent of the Agreement required us to accord one employee full protection for each regular position in existence on October 1, 1964 and this, of course, was done on a seniority basis." (Underscoring added.)

As can be seen, Claimant was not in fact assigned to a Fourth Cook's position; he was entitled to it by virtue of his seniority. Carrier argues that this was a "constructive regular assignment," and therefore Claimant was entitled to protection as a regularly assigned employee under Section 1. The Board disagrees. It is clear that Claimant did not hold a regular assignment on October 1, 1964, and Carrier cannot unilaterally impose a regular assignment on Claimant in order to avail itself of the opportunity to pay less.

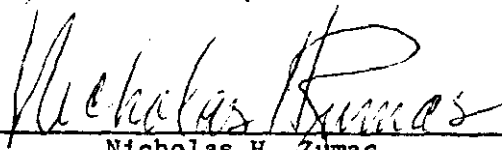
Our Award Nos. 130 and 207 cited by Carrier are distinguishable in that in both of those cases the Claimants had in fact held regular assignments on October 1, 1964.

As to Question Two

It is clear from the record that Claimant failed to file and process his claim within the time required under the schedule agreement and the mandate of the February 7, 1965 Agreement. Under the circumstances, the Board cannot consider the claim for compensation set forth in Question Two. Award Nos. 131, 353 and 354 of this Board.

Award

1. The Answer to Question One is in the affirmative.
2. The Answer to Question Two is in the negative.



Nicholas H. Zumas

Dated: Washington, D. C.
July 26, 1974

