

SPECIAL BOARD OF ADJUSTMENT NO. 605

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

QUESTIONS AT ISSUE: 1. Did Carrier violate the terms of the February 7, 1965 National Agreement, and in particular, Article II, Section 1, thereof and the Interpretation of November 24, 1965 when, following disqualification of Jewel A. Quinn from position of Clerk-Messenger, St. Louis, Missouri, on July 28, 1974, it failed to notify him of the only available position on which he could exercise seniority, and then notified him that he had forfeited his protected rate by reason of his failure to exercise seniority to the position of Porter at Mitchell, Illinois?

2. Shall the Carrier now be required to restore Mr. Quinn to protected status and reimburse him for all compensation due beginning July 28, 1974, and continuing thereafter until Carrier complies with the provisions of the Agreement of February 7, 1965?

OPINION

OF BOARD: Claimant has a seniority date as of September 27, 1952; and was a protected employee pursuant to the February 7, 1965 National Agreement. On June 13, 1974, Claimant held a regular assignment as freight house stowman at St. Louis, Missouri, when due to a decline in business, the position was abolished. The Carrier alleges that Claimant was then qualified to displace on position of Porter at Mitchell Yard, St. Louis Terminal. However, Claimant elected to displace a junior employee on Clerk-Messenger position at St. Louis, although not qualified, "he was treated thereafter for protective purposes", as occupying the Porter position.

From June 13 to July 8, 1974, Claimant broke in on the Clerk-Messenger position; and on July 11, 1974, was assigned to that position. Thereafter, Claimant worked the Clerk-Messenger position from July 11 to July 27, 1974, when Claimant was disqualified. Moreover, the Organization concedes that such "disqualification was made pursuant to Rule 7 of the Agreement and was mutually agreed to by all parties concerned". Hence, Claimant reverted to the status of a furloughed unassigned employee, subject to call for work in line with the effective Agreement.

The thrust of the instant Claim faults the Carrier in the following, as hereinafter quoted, to wit:

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"---failed to advise Mr. Quinn of any position(s) occupied by junior employees for which he (Quinn) was qualified, even though the Assistant Terminal Manager 'pulled out' the seniority roster and the positions list, and went through them. It is certainly strange that the Assistant Terminal Manager would go out of his way in the first instance to assist Mr. Quinn in displacing on a position for which he was not qualified, and then at a later date, say absolutely nothing to Mr. Quinn about exercising seniority on the Porter position at Mitchell, Illinois which was occupied by a junior employee."

Furthermore, the Organization alleges that throughout the handling of this dispute on the property, "Carrier has asserted that Mr. Quinn elected to go furloughed and work extra rather than obtain a regular assignment". More importantly, the Organization argues that:

"Mr. Quinn should have been advised of the isolated Porter position at Mitchell, Illinois, in the same manner that he was advised of the Clerk-Messenger position since Carrier evidently felt that he was qualified to displace on the Porter position. Certainly, by not doing so, Carrier has violated the principles of free and honorable men."

Unquestionably, we were intrigued by the statement regarding the alleged violation as it impinged on the principles of free and honorable men. In this regard, we failed to note any assertion by the Organization that the Carrier exercised duress, undue influence, mental or physical coercion, threats, fraud, or similar tactics.

Thus, we note that the Carrier asserts as follows, viz:

"Claimant could have displaced the occupant of Job No. 020, Porter at Mitchell Yard, St. Louis, Missouri; he failed to do so and elected to assume a furloughed status. Because of his failure to obtain and retain a regular assignment in line with his seniority, he forfeited his protected status under Article II, Section 1 of the Agreement of February 7, 1965, ---:"

The crux of the Carrier's defense to the instant Claim is reflected in the following, viz:

"The truth of the matter is, Clerk Quinn did not want to work the position of Porter at Mitchell Yard and he intentionally avoided exercising seniority to that position. He decided to assume a furloughed status in order to perform extra and relief work at other, more convenient locations in Carrier's St. Louis Terminal."

More importantly, the Carrier espouses a principle with which we are ineluctably impelled to agree, as reflected in the following statement, to wit:

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"The exercise of seniority is an individual employee's prerogative, and responsibility therefore is a function which can be executed by the individual employee only. Neither the Carrier nor the employee's representative can effect an exercise of seniority for him. Thus, the responsibility of the individual employee to exercise or not to exercise seniority to an available position cannot be shifted to the Carrier or anyone else."


In addition, the Carrier argues as follows, viz:

"The fact is that bulletins advertising and assigning positions are posted on bulletin boards and the rules relied on by the employees do not require the Carrier to go beyond posting the bulletin as required by the rule."

Moreover, the Carrier has cited numerous Awards of our Board to the effect that, failure to obtain and retain a regular assignment in line with an employee's seniority will result in forfeiture of protected status, pursuant to the February 7, 1965 Agreement. See Award Nos. 39, 96, 103, 104, 157, 170, 171, 212, 266, 317, 339, 346, 363 and 366.

AWARD:

The answer to the questions at issue is in the negative.

  
Murray M. Rohman  
Neutral Member

Dated: Washington, D. C.  
July 2, 1976