

# NATIONAL RAILWAY LABOR CONFERENCE

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

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CHARLES I. HOPKINS, Jr. Chairman

ROBERT BROWN, Vice Chairman

W. L. BURNER, Jr., Director of Research

J. F. GRIFFIN, Director of Labor Relations

D. P. LEE, General Counsel

T. F. STRUNCK, Administrator of Disputes Committees

June 17, 1977

Mr. Robert M. O'Brien  
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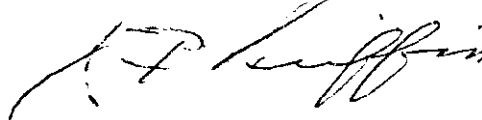
Mr. Irwin M. Lieberman  
91 Westover Avenue  
Stamford, Connecticut 06902

Mr. Nicholas H. Zumas  
Suite 505  
1140 Connecticut Avenue, N. W.  
Washington, D. C. 20036

Gentlemen:

There is attached copy of Award No. 411, dated June 16, 1977, rendered by Special Board of Adjustment No. 605 established by Article VII of the February 7, 1965 National Agreement.

Yours very truly,



cc: Chairman - Employees' National  
Conference Committee (10)

Messrs:

Fred J. Kroll  
C. J. Chamberlain  
H. C. Crotty  
R. W. Smith  
E. J. Neal  
S. G. Bishop  
M. B. Frye  
W. W. Altus, Jr.  
✓ J. J. Berta  
R. K. Quinn, Jr.  
W. F. Euker  
T. F. Strunck

SPECIAL BOARD OF ADJUSTMENT NO. 605

CASE CL-111-W  
Award No. 411

PARTIES )  
TO )  
DISPUTE )

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS

- and -

KANSAS CITY TERMINAL RAILWAY COMPANY

QUESTION AT ISSUE:

"(1) Did the Carrier violate the provisions of the February 7, 1965 Agreement, particularly Article II, Section 1 and Article IV thereof when it denied C. N. Brown, Claimant, the protected employee pursuant to Article IV, Section 1, for the period subsequent to July 7, 1975?

(2) Shall the Carrier be required to compensate Claimant C. N. Brown for each day subsequent to July 7, 1975, that he was denied the full benefit and allowance prescribed in the February 7, 1965 Agreement by restoring to him the protected status that he held on that date?"

OPINION OF BOARD:

The essential facts giving rise to the instant claim are uncontroverted. Claimant held a regular assignment as a Messenger in the Carrier's Mechanical Department on October 1, 1964 thereby establishing his protective status as provided by the February 7, 1965 Job Stabilization Agreement. On October 5, 1967 he transferred to the Mail and Baggage Department as a Mail Handler where he remained until June 10, 1975 when he was affected by a force reduction. Claimant then displaced on a position in the Purchasing and Stores Department on June 12, 1975 but was displaced on June 16, 1975. He subsequently displaced on a Mill Street Yard Clerk position but was disqualified consistent with the requirements of the Clerks Schedule Rule 12. Claimant thereafter entered bids on six bulletined positions open to him but was denied any of the positions account he was not qualified. He was thus placed in a furloughed status though he made himself available for any work that was available to him in his craft. On August 21, 1975 Claimant accepted a full time position under the Fireman and Oiler Agreement where he has been continuously employed.

The position of the Employees in the instant dispute is two-fold. First they contend that Carrier failed to compensate Claimant as a protected employee as required by Article IV, Section 1 of the February 7, 1965 National Agreement subsequent to July 7, 1975, the date on which he was placed in a furloughed status. They argue that Claimant's inability to hold a position available to him was not of his own doing. Rather, it was caused by the actions of the Carrier. The Employees further aver that merely because Claimant accepted a position in another craft effective August 21, 1975, this nonetheless did not relieve the Carrier of their obligation to accord him the protective benefits provided by the February 7, 1965 Agreement. They insist that Claimant did not voluntarily accept the laborer's position, and thus did not relinquish his status as a protected employee.

Carrier retorts that Claimant was not entitled to the protective benefits of the February 7, 1965 Job Stabilization Agreement since he failed to retain a position available to him in the exercise of his seniority rights as required by Article II, Section 1 of that Agreement. The Carrier further maintains that when Claimant accepted a position under the Fireman and Oiler Agreement on August 21, 1975 he was thereafter not subject to the Clerks' working Agreement, and was therefore not entitled to the benefits of the February 7, 1965 Agreement.

For the period July 7, 1975 when Claimant was furloughed, to August 21, 1975 when he accepted a position under the Fireman and Oiler Agreement, it is the opinion of this Board that Claimant was a protected employee as contemplated by the February 7, 1965 Agreement, and as such, he should have been compensated pursuant to Article IV, Section 1 of that Agreement. Award 194 of this Board clearly supports the Employee's position that Claimant was indeed a protected employee during this period.

However, we agree with the Carrier that when Claimant accepted a position under the Fireman and Oiler Agreement effective August 21, 1975 he was thereafter not entitled to the benefits of the February 7, 1965 Agreement. Article IV, Section 5 of that Agreement provides, in clear and unambiguous language, that "A protected employee shall not be entitled to the benefits of this Article... during any period in which he occupies a position not subject to the working Agreement." Thus when Claimant accepted a position under the Fireman and Oiler Agreement he ceased to occupy a position subject to the Clerks' working Agreement. The Employees argue that Article IV, Section 5 is inapplicable to the dispute at hand since Claimant was forced to take a position in another craft, and did not do so of his own volition. Article IV, Section 5, however, does not contain such an exception, and in any event, we find that when Claimant accepted a position under the Fireman and Oiler Agreement he did so voluntarily.

This Board further holds that the Awards of this Board relied on by the Employees, viz. Award Nos. 53, 183 and 234, are inapposite to the dispute before us. In those Awards the Carriers recognized that the Claimants were entitled to protective benefits, but they then sought an offset against the guarantee for compensation earned by them elsewhere. Yet in the instant case, Carrier has denied that Claimant was entitled to protective benefits while he was not working under the Clerks Agreement. More in point, we hold, is Award No. 362 of this Board, and we subscribe to the reasoning therein.

It should be noted, parenthetically, that when Claimant accepted a position under the Fireman and Oiler Agreement his protective status was not permanently terminated. Rather it is merely suspended for the period of time in which he works under that Agreement.

AWARD

The Questions at Issue are disposed of as per Opinion.

  
ROBERT M. O'BRIEN  
Neutral Member

Dated: Washington, D. C.  
June 16, 1977