

SPECIAL BOARD OF ADJUSTMENT NO. 605

AWARD NO. 430  
CASE NO. CL-118-W

PARTIES TO DISPUTE:

HOUSTON BELT & TERMINAL  
RAILWAY COMPANY

- and -

BROTHERHOOD OF RAILWAY, AIRLINE  
AND STEAMSHIP CLERKS, FREIGHT  
HANDLERS, EXPRESS AND STATION  
EMPLOYES

QUESTIONS AT ISSUE:

1. Did Carrier violate the provisions of the February 7, 1965 National Agreement, as amended January 30, 1979, when it failed and refused to compensate Clerk N. J. Paul his established protective rate of pay for September 17, 18, 19, 22, 23, 24, 25, 26, 29, 30 and October 1, 1981, due to Carrier requiring him to break-in on the position of Utility Clerk No. 476; the only, regular 40-hour per week assignment his seniority permitted him to hold and occupy at the time this dispute came into being?
2. Shall Carrier now be required to compensate Claimant his daily protective rate of pay for each day as set forth in question Number 1, above?

OPINION OF BOARD:

Claimant entered service of Carrier in January 1973 but is a "protected employee" for purposes of the February 7, 1965 National Agreement, by dint of the Memorandum Agreement between these parties dated January 30, 1979, reading in pertinent part as follows:

IT IS AGREED that the provisions of Article I, Sections 1, 3, 4 and Article IV, Sections 1 and 2 of Mediation Agreement A-7128, dated February 7, 1965, are hereby amended to provide:

A. Employees who do not have a protected status on the date of this Agreement and who were in active service on or before January 1, 1975, will become protected employees effective January 1, 1979.

The claim is well within our jurisdiction and Carrier's motion to dismiss therefore must be denied.

Claimant was a regularly assigned relief employe on Job No. 423 until he was displaced by a senior employe in early September 1981. He then displaced a junior employe from a position of Utility Clerk, Job No. 476, 11:00 PM to 7:00 AM at Rush Avenue Callers Office. Carrier apparently accepted his displacement notice without demurre, but when he reported to work the Supervising Chief Clerk required Claimant to "break-in" for the first eleven (11) days on the job. It is not clear whether or how much Claimant was compensated for working those 11 days, but we do know that he did not receive an amount equal to his "protected rate", which was at that time \$79.03 per day. Claimant submitted time slips for the days in question, each of which were denied by local management. Timely appeal was taken by the Organization and final denial made by the Director of Labor Relations on March 12, 1982, as follows:

Dear Mr. Brown:

In conference on March 9, 1982, we discussed claim of Clerk N. J. Paul in connection with his breaking in at Rusk Avenue on various dates in September 1981.

After a careful review of the facts involved in this case, I fail to see any basis for such a claim, as there were other assignments Mr. Paul could have worked on which he was qualified. Certainly, it is not our policy to pay break-in pay under the circumstances in this case.

As you are aware, break-in pay is allowed at one-half of the rate of the assignment worked. Accordingly, we fail to see any basis for Mr. Paul's claim as presented and it is respectfully declined.

In subsequent correspondence, the Organization took exception to certain of Carrier's factual allegations, as follows:

This has reference to your letter of March 12, 1982, confirming conference March 9, 1982, in which we discussed claim of Clerk N. J. Paul in connection with his protected rate each day September 17, 18, 19, 22, 23, 24, 25, 26, 29, 30 and October 1, 1981.

We cannot agree with your above mentioned letter. Clerk Paul was assigned to Relief Position 423 and was displaced by senior employee T. Mize. Clerk Paul then displaced Clerk Barboza at Rusk Avenue on Utility Clerk 11:00 p.m. to 7:00 a.m. This was the only position on which Clerk Paul could displace. Clerk Paul subsequently was displaced from Utility Clerk Position and had to displace on the Guaranteed Board. At the time he displaced on the Utility Clerk Position there was no position on which he could have displaced. If there was, would appreciate you advising.

Under the circumstances there should be no doubt that Clerk Paul is due his protected rate on the dates he was required to break-in on Utility Clerk Position at Rusk Avenue.

Please advise.

\* \* \*

This has reference to your letter of March 12, 1982, regarding claim of Clerk N. J. Paul for protected rate while breaking in at Rusk Avenue.

In your above mentioned letter you stated that break in pay is allowed at one-half of the rate of the assignment worked; accordingly there is no basis for the claim. There is no agreement, verbal, written or otherwise, in connection with payment of one-half rate when breaking in. We are aware that at times when Carrier requires or requests an Extra Board employee to break in they do allow such employee four (4) hours pay for eight (8) hours breaking in. These are employees who are on the Extra Board and are not protected employees under the February 7, 1965, Agreement, As Amended. We know of no occasion when a protected employee was allowed only one-half of his protected rate. If there had been such a situation, we would certainly have filed a claim. In addition, there have been several employees in the Crawford Street Freight Office who were allowed their protected rate when Carrier required them to break in, therefore, we do not see why it is a problem when an employee is required to break in at Rusk Avenue.

In handling on the property, Carrier made bare assertions that it has no liability to Claimant because he could have been displaced onto other full-time positions for which he was qualified without additional training. When put to its proof, however, Carrier failed to provide probative evidence to support this critical point. The January 1982 seniority roster proffered by Carrier as evidence is neither relevant nor material to the job opportunities available to Claimant in September 1981. On this record, therefore, we find effectively un rebutted the Organization's claim that Utility Clerk No. 476 was the only 40-hour per week assignment which Claimant's seniority entitled him to hold and occupy at that time. See SBA No. 605, Awards 102 and 135. Carrier accepted Claimant's displacement notice, he worked for eight hours on each of the dates in question, and Carrier was obligated to pay him at least his "protected rate" for providing that service. As we cannot be sure whether or to what extent Claimant was compensated, we shall sustain the claim for the protected rate less compensation, if any, he was paid by Carrier on the eleven (11) dates at issue.

AWARD

Claim sustained to the extent indicated in the Opinion.

Dana E. Eischen *jsk*  
Dana E. Eischen, Chairman

Date: May 21, 1984