SPECIAL BOARD OF ADJUSTMENT NO. 605

AWARD NO. 434
CASE NO. CL-123-W

PARTIES TO DISPUTE:

TERMINAL RAILROAD ASSOCIATION
OF ST. LOUIS

- 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 by Agreement dated July 20, 1979, when it refused and failed to establish a protective rate of pay for Mr. C. R. Heisinger as provided by the Agreement, as amended? (Carrier's File 012)

2. Shall Carrier now be required to establish Mr. Heisinger's protective rate of pay to be that of the rate of his average monthly earnings in the preceding calendar year or the preceding twelve (12) months in which he performed service or was compensated for vacation pay, and compensate him for all protective pay benefits due beginning July 1, 1982?

OPINION OF BOARD:

C. R. Heisinger (Claimant) established a seniority date of April 10, 1964 under the BRAC Agreement on Master Roster 1. He worked as a Clerk until June 15, 1977 when he was promoted to the position of Yardmaster, but retained his accrued clerical seniority pursuant to Rule 66 of the BRAC Agreement. He worked as a Yardmaster for about two years until that position was abolished by Carrier in July 1979. At that time, Heisinger returned to service in the clerical craft or class but lacked sufficient seniority to hold a regular job. He was placed in furlough status and protected whatever extra work he could get.

On July 23, 1982 the Organization sought to have Claimant placed on the list of protected employes subject to the benefits of the February 7, 1965 National Agreement, as amended by these parties in Memorandum Agreement of July 20, 1979 Carrier declined and also refused to recognize Claimant's request for protective pay benefits computed on the basis of his last twelve (12) months service as Yardmaster.

In Award No. 433 (Case No. CL-122-W) involving these same parties and a related issue, we were required to determine the intent of the contracting parties from external evidence, since no express language applied directly to that case. The present dispute may be distinguished on the ground that the agreed-upon Interpretations between the original contracting parties deal directly with the issue now before us:

> Article I - Protected Employees
>
> Section 1
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> Question No. 9: Can employment in more than one craft be counted in determining protected status?
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> Answer to Question No. 9: Ordinarily no; however, in cases such as promotion of a telegrapher to train dispatcher, promotion of a clerk to yardmaster, etc., where the seniority in the craft from which promoted is retained, employment in the higher classification will be counted.
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> Article IV - Compensation Due Protected Employees
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> Section 2
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> Question No. 1: In determining the base period earnings under Section 2 of Article IV, may compensation earned in more than one craft be included?

> Answer to Question No. 1: Under defined conditions set forth in Question and Answer No. 9 of the Interpretation of Article I, Section 1, employes may qualify as protected employes on the basis of employment which includes service in specified kinds of crafts other than the craft in which the employe is to be protected. To the extent that an employe whose guarantee is governed by Section 2 of Article IV has compensated service in such other craft, such service will also be included in determining the base period average earnings and hours paid for. However, his base period average monthly earnings shall be computed by taking his average hourly earnings in the base period in the craft in which he is protected (adjusted to include subsequent general wage increases), multiplying by the total number of hours paid for in the base period in both crafts and dividing by 12. Correspondingly, in determining whether the compensation guarantee has been met by actual service paid for in any month after February 1965, and in determining any additional payment guaranteed, the earnings from actual service paid for will be considered to be the average hourly earnings for that month in the craft in which the employe is protected multiplied by the average hours paid for in both crafts in the base period."

The foregoing Interpretations have the same force and effect of the provisions of the February 7, 1965 National Agreement thus interpreted. When read together with the terms of the Amended Agreement of July 20, 1979, they leave no doubt that Claimant Heisinger was a "protected employe" entitled to be placed upon the list of protected employes with a protected rate established at the rate of his average monthly earnings in the preceding calendar year or twelve (12) months in which he performed service or was compensated for vacation pay as a Yardmaster. The service as Yardmaster, although outside the clerical craft or class, is mentioned expressly by the parties in their agreed-upon Interpretations and therefore, unlike in Award

No. (Case No. CL-122-W), we are neither required nor at liberty to devine any other intent of the parties.

AWARD

Question No. 1 is answered in the affirmative.

Question No. 2 is answered in the affirmative.

Dana E. Eischen, Chairman

Date: May 21, 1984