

Department. Claimant's abolished position and the new Compliance Examiner job had the same duties, hours of work and monthly pay rate. Both were PADO positions. The only difference between the two assignments was that a Compliance Examiner was subject to possible transfer while a Car Accountant was required to travel. However, the Carrier alleged that the Car Accountant job was also subject to possible future transfers. Before assuming the new Compliance Examiner post, Claimant revoked her acceptance of the position. Instead, Claimant exercised her Car Accounting Department seniority to a fully covered Equipment Road-Bill and Voucher position with a daily rate of \$103.14. On September 26, 1984, Claimant petitioned for protective benefits measured by the wage difference between the Equipment Road-Bill and Voucher position she occupied on September 1, 1984 and her protected rate (\$108.91 per day). The Carrier denied her September claim and claims covering the following months.

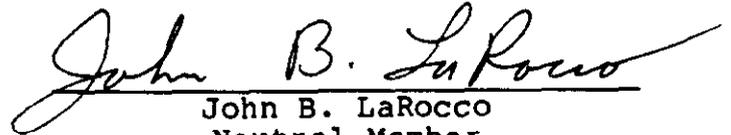
The Organization contends that the abolition of Claimant's regular position forced her to exercise her seniority to the highest rated position on her seniority district. Furthermore, absent an Implementing Agreement, Claimant had no obligation to accept a position in the new Compliance Examination Department because not only did she lack seniority in the Compliance Examination Department but also the offered position was exempt from the promotion, assignment and displacement rules. Thus, Claimant was relegated to exercising her seniority per Schedule Rule 15 when the Carrier abolished her prior, partially exempt position.

The Carrier views Claimant's action as a voluntary exercise of her seniority inasmuch as Claimant declined an opportunity to acquire seniority in the new department on a position not requiring a change in residence which carried the same duties and rate of pay as Claimant's abolished position. According to the Carrier, Claimant made a voluntary, normal seniority bid causing a reduction in her protected rate (to the Equipment Road-Bill and Voucher Clerk pay rate) in accord with Article IV, Section 3 of the February 7, 1965 Agreement as amended.

Paragraphs 3 and 4 of the August 14, 1984 Agreement granted Claimant seniority in the new Compliance Examiner seniority district and gave her, in essence, a right of first refusal to a new position in the Compliance Examination Department which was substantially equivalent, if not identical, to her abolished position. Although the Compliance Examiner was a PADO position, the August 14, 1984 Agreement gave Claimant a preferential assignment right to the new job. Thus, when the Carrier abolished Claimant's Car Accountant job, a position with compensation equal to or greater than her protected rate was made available to her. Passing over the higher rated Compliance Examiner position, Claimant, by her own choice, exercised her seniority to a lower rated job. Article IV, Section 3 permitted the Carrier to adjust Claimant's protected rate to the rate of pay of the position which she voluntarily obtained even though a higher rated position was available to her. See Award No. 193.

AWARD

The Answers to Questions 1, 2 and 3 are "No."



John B. LaRocco
Neutral Member

Dated: July 29, 1987