

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Transportation-Communications International
TO THE) Union
DISPUTE) and
) The Atchison, Topeka and Santa Fe Railway Company

- QUESTIONS AT ISSUE:
1. Did Carrier violate the provisions of the February 7, 1965 Mediation Agreement, as amended, when it refused to compensate D. L. Hladky a daily make-up allowance based upon the position he held on March 3, 1985 when he obtained five (5) years of service (Freight Bill Clerk Position No. 6985 - \$94.77 per day), plus subsequent general wage increase, after being displaced prior to April 1, 1985 and titleholder of Assorter Position No. 6940 - \$89.71 per day on April 1, 1985?
 2. Shall Carrier be required to compensate D. L. Hladky a daily make-up allowance of \$5.06 for each workday commencing April 1, 1985, continuing until such time Claimant is titleholder of a higher rated position?
 3. Shall Carrier now be required to pay an appropriate per annum interest rate on the amounts wrongfully withheld beginning thirty (30) days after date of claim?

OPINION
OF THE BOARD: Claimant acquired a March 3, 1980 seniority date in the Revenue and Customer Accounting Seniority District. Thereafter, Claimant performed five years of continuous service for the Carrier. On his fifth anniversary (March 3, 1985), Claimant was a regularly assigned Freight Bill Clerk. The daily rate of pay for the Freight Bill Clerk position was \$94.77. Prior to April 1, 1985, Claimant was displaced from the Freight Bill Clerk job and he exercised his seniority to Assorter Position No. 6940, which was the highest rated position available to him, paying

\$89.71 per day. Claimant was regularly assigned to the Assorter job on April 1, 1985.

Claimant initiated claims for protective benefits under the February 7, 1965 Mediation Agreement, as amended, for the difference in pay between the Freight Bill Clerk position (\$94.77) and the Assorter position (\$89.71) for the months of April and May, 1985. Contending that Claimant's daily protective rate was \$89.71, the Carrier denied the claims.

The parties concur that Claimant attained protected status under the February 7, 1965 Mediation Agreement, as amended, but they disagree over exactly when Claimant became a protected employee. The Organization submits that Claimant became a protected employee on March 3, 1985 while the Carrier asserts that Claimant did not attain status as a protected employee until April 1, 1985.

Article I, Section 1(e) of the amended February 7, 1985 Job Stabilization Agreement reads:

"Employees hired on or after January 1, 1980, who acquire five (5) years continuous employment relationship in the clerical craft will become protected employes on the first of the month immediately following the month in which they acquire five (5) years continuous employment relationship in the clerical craft, unless they are not regularly assigned on the date they are eligible to become protected employes, in which event they will become protected employes on the first of the month immediately following the month when recalled to service and assigned to a regular position in accordance with existing rules of the Clerks' Agreement."

The Organization argues that Claimant satisfied the two qualifying criteria for becoming a protected employee on March 3, 1985. The Organization points out that on March 3, 1985, Claimant had accumulated five years of continuous service and was assigned to a regular position. The Organization focuses on the Article I, Section 1(e) language stating "...the date they are eligible to become protected employes..." as the time for determining the amount of an employee's protective guarantee. The Organization submits that the language referring to the first month following the time an employee becomes eligible for protection governs the time he begins to receive protective benefits as opposed to the time he acquires protected status. The Organization concludes that an employee's protected rate is the rate of the regular assignment which the employee holds on the date he becomes eligible for protection, in this case, March 3, 1985.

The Carrier contends that the Organization's interpretation of Article I, Section 1(e) renders superfluous the clause reading "...will become protected employes on the first of the month immediately following the month in which they acquire five (5) years continuous employment..." An employee becomes protected on the first of the month immediately following the month that he completes five years of continuous service provided he holds a regular position on the first of the month after the month he accrues a five year employment relationship. In this instance, Claimant accumulated five years of service as of March 3, 1985, and based on that service, he became a protected employee on the first of the next month, that is, on April 1, 1985.

The superficial question in this case is what is the amount of Claimant's protective guarantee? However, Claimant's protective rate is predicated on the rate of the position he occupied on the date he became a protected employee. See Article IV, Section 2 of the February 7, 1965 Mediation Agreement, as amended. Thus, as discussed above, the underlying contract interpretation issue is when did Claimant become a protected employee: March 3, 1985 or April 1, 1985? To properly interpret the Agreement and to answer the questions at issue, we must carefully dissect the very precise language adopted by the parties in Article I, Section 1(e).

Under Article I, Section 1(e), employees who are hired on or after January 1, 1980 (like Claimant) must meet a single threshold requirement before they have an opportunity to be eligible to become protected employees. They must accumulate five years of continuous service with the Carrier. Article I, Section 1(e) also contains a condition precedent to an employee's acquisition of protected status. The proviso is that the employee must be regularly assigned. However, it can only be determined if the employee has satisfied the condition precedent after ascertaining the date he is "...eligible to become protected..." (In any event, there is no doubt that Claimant herein satisfied the condition precedent inasmuch as he held a regular assignment on both March 3, 1985 and April 1, 1985.) Once employees meet the threshold criterion, they become eligible to be a protected employee "...on the first of the month immediately following the month in which they acquire five (5) years continuous employment

relationship..." Thus, the operative eligibility date or the earliest date a worker can actually attain protected status is the first day of the month immediately after the month in which an employee reaches his fifth anniversary of continuous employment. As the Carrier persuasively contends, any other construction of Article I, Section 1(e) would render superfluous the above quoted clause. The parties do not write precise and detailed contract terms only to have arbitration boards disregard their language. Contrary to the Organization's argument, Section 1(e) does not address the time an employee begins receiving benefits. Section 1(e) only specifies when an employee is vested with protective status. The Organization's interpretation of Section 1(e) confuses potential eligibility for becoming a protected employee with the actual attainment of protected status.

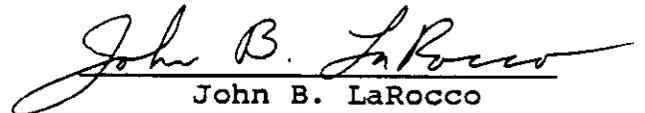
Applying our analysis of Section 1(e) to the facts herein, Claimant was eligible to become a protected employee on April 1, 1985 which was the first day of the month following the month (March, 1985) in which he accumulated five years of continuous service. Since Claimant was regularly assigned on April 1, 1985, he became a protected employee on his earliest eligibility date. His protective rate was fixed according to the rate of the regular position he held on April 1, 1985, i.e., the Assorter job.

The drafters of protective agreements must set an arbitrary date for a worker to become a protected employee. In all probability, the negotiators wanted to avoid cumbersome administrative and bookkeeping chores that would arise if workers became protected employees in the middle of the month. Thus, the

parties agreed to a reasonable system whereby no worker could actually attain protected status except on the first day of a calendar month.

AWARD

1. The Answer to Question No. 1 is No.
2. Question No. 2 is moot.
3. Question No. 3 is moot.


John B. LaRocco
Neutral Member

Dated: November 7, 1988