

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. Is the Carrier in violation of the provisions of the February 7, 1965 Mediation Agreement, as amended effective January 1, 1980, when it required A. Y. Grondin, on the Manager-Sales and Service Los Angeles Seniority District, to accept a temporary vacancy on the Communications Department Seniority District or forfeit the earnings available on this vacancy from her monthly protective benefits?
 2. Should the Carrier be required to compensate A. Y. Grondin for all loss of compensation as a result of the Carrier taking credit against her protective benefits when she elected to not take this temporary vacancy?
 3. Should the Carrier be required to pay 18% per annum interest on the amount due A. Y. Grondin as a result of said loss?

OPINION

OF THE BOARD: On December 20, 1985, the Carrier notified Claimant, an off-in-force-reduction employee who held seniority on the Manager-Sales and Service Los Angeles Seniority District, that Stenographer position No. 6019 on the Communications Department Seniority District would be vacant for six to eight weeks because the incumbent was taking maternity leave. The Carrier specifically warned Claimant that if she did not protect the temporary vacancy beginning on January 2, 1986, her failure to fill the job would adversely affect her protected status. In addition, the Carrier clearly informed Claimant that by working the temporary assignment in the Communications

Department, she would maintain her seniority on the Manager-Sales and Service Los Angeles Seniority District. Claimant decided not to fill the temporary Stenographer vacancy.

Claimant filed the appropriate forms claiming protective benefits for January and February, 1986. The Carrier denied the claims, contending that Claimant's protective status was suspended under Article II, Sections 1 and 3 of the February 7, 1965 Mediation Agreement, as amended on this property.

The Organization asserts that Claimant could decline the temporary assignment without any detrimental impact on her protected status because working the Stenographer job would have required her to permanently transfer her seniority to the Communications Department Seniority District. In addition, the Organization charges that the Carrier did not follow existing seniority rules when it filled the temporary vacancy as mandated by Article II, Section 1 of the amended February 7, 1965 Agreement. Specifically, the Organization alleges that the Carrier failed to first bulletin the short vacancy in the Communications Department per schedule Rule 11.

The Carrier contends that it can rightly assign off-in-force-reduction employees to any temporary assignment that does not require them to cross craft lines in accord with Article II, Section 3 of the February 7, 1965 Mediation Agreement as amended. According to the Carrier, the final clause of Section 3 obligating protected employees to work temporary assignments is separate and distinct from the provision controlling the filling of vacation, holiday and sickness vacancies. Based on its bifurcated

interpretation of Article II, Section 3, the Carrier concludes that the phrase "...in accordance with existing seniority rules..." modifies the latter, but not the former, contract clause. Put differently, the Carrier contends that it can fill temporary assignments without strictly adhering to existing seniority rules so long as the temporary assignment does not compel the employee to cross craft lines. Working the Stenographer position would not require Claimant to cross the clerical craft boundary. Moreover, the Carrier submits that since there were not any qualified employees on the Communications Department seniority roster to fill the vacancy, it could assign the position without regard to seniority per Rule 11(h) of the working Agreement. Finally, the Carrier emphasizes that it told Claimant that she would not be transferring her seniority to the Communications Department simply because she temporarily filled the Stenographer position.

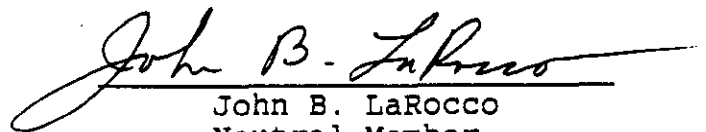
The parties executed a single seniority Memorandum of Agreement on May 22, 1980. Although they amended the single seniority Memorandum of Agreement on December 19, 1980 (providing that off-in-force-reduction employees, who protect short vacancies on other seniority districts "...will be governed by Rule 5-A of the Clerks' Agreement..."), the Organization and the Carrier developed a mutual understanding that off-in-force-reduction employees would not transfer their seniority when they protected vacancies on another seniority district if the vacancies were temporary. Otherwise, the parties would have effectively denigrated the Implementing Agreement provisions in Article III of the February 7, 1965 Agreement. Nevertheless, schedule Rule 5 was

inapplicable to Claimant's situation since she was not being transferred to a new seniority district. In accord with the parties' mutual understanding, the Carrier assured Claimant that by temporarily filling the Stenographer position in the Communications Department, she would retain her seniority on the Manager-Sales and Service Los Angeles Seniority District. Regardless of whether or not the Carrier properly interpreted Article II, Section 3, the record reflects that the Carrier complied with schedule Rule 11 and thus, directing Claimant to protect the vacancy was consistent with existing seniority rules.

Since Claimant failed to accept employment as provided under Article II, Section 3, the Carrier properly denied her protective benefits pursuant to Article II, Section 1.

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