SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE) Transportation-Communications International Union
and
Missouri-Kansas-Texas Railroad Company

QUESTIONS AT ISSUE:

1. Did the Carrier violate the provisions of the February 7, 1965 Mediation Agreement, as amended, when it treated G. R. Brown as occupying a higher-rated position which would have required a change in residence?

2. Shall Carrier now be required to allow G. R. Brown his protected rate of Mobile Agent, Wichita Falls, Texas, beginning August 11, 1985?

OPINION OF THE BOARD: Claimant, who holds a July 7, 1969 seniority date, is a protected employee under the February 7, 1965 Job Stabilization Agreement with amendments effective February 22, 1980. Claimant's protective rate, amounting to $2,768.98 per month, is predicated on the rate of a Mobile Agent Position at Wichita Falls, Texas, which Claimant occupied on January 9, 1980.

The Carrier abolished Claimant's Livestock Clerk Position No. 4046 at Dennison, Texas, at the end of his tour of duty on August 5, 1985. On August 11, 1985, Claimant displaced a junior employee from Relief No. 4 Position, also located at Dennison. With his seniority, Claimant could have attained a higher rated relief position at Waxahachie, Texas. Waxahachie is 107 normal travel route miles from Dennison.

Claimant applied for protective benefits for August, September, October and November, 1985. Although the record is unclear, the Carrier apparently paid Claimant the difference between the rate of the Waxahachie, Texas position and Claimant's protective guarantee. The record does not contain any evidence that Claimant filed for protective pay subsequent to November, 1985. Thus, this is not a continuing claim.

The Organization and the Carrier raise the same arguments that they advanced in Award No. 476. In addition, the Organization points out that if Claimant were to commute from Dennison to Waxahachie, he would have to drive through the entire Dallas metropolitan area twice each day. The Carrier recognized that taking the Waxahachie position would, without doubt, require Claimant to change his residence, but it nevertheless submits that he was obligated to acquire the position because the 30-mile yardstick in Interpretation No. 3 under Article III is not relevant to the application of Article IV, Section 4.

We extensively discussed the change of residence issue in our Award No. 476. In this case, Waxahachie is a substantial distance from Dennison and both parties concur that if Claimant had exercised his seniority to the Waxahachie job, it would have required him to change his residence. Moreover, a daily round-trip commute of 214 miles through a congested metropolitan area would have rendered it impractical, if not impossible, for Claimant to maintain his residence at Dennison. While the Carrier recognizes that Claimant would have had to change his

residence, it asserted that Claimant was still obligated to take the highest rated position on his seniority district (unless he held a position equal to or exceeding his guarantee). We disagree. As we observed in Award No. 476, the Carrier's position is contrary to the express language in Article IV, Section 4. Also, under the Carrier's theory, employees would be in constant upheaval, often moving hundreds of miles whenever a higher rated position opened up on their seniority district, to maintain the full amount of their protective guarantees. Such a result is hardly conducive to job stability, the purpose of the February 7, 1965 Agreement.

Therefore, Claimant is entitled to the difference between the rate of the Waxahachie job and his relief position in Dennison. If not already paid, he is also entitled to the full difference between his protective guarantee and the position he held in Dennison from August 11, 1985 through the end of November, 1985. While we are answering the second question at issue affirmatively, our answer is restricted to the period from August 11, 1985 through November, 1985. Since this claim does not go beyond November, 1985, the Board need not address or consider the Carrier's argument that its liability was tolled when the Organization requested (and the Carrier granted) several extensions of the time limit on progressing this claim to this Board.

AWARD

1. The answer to Question at Issue No. 1 is Yes.

2. The answer to Question at Issue No. 2 is Yes to the extent consistent with our opinion.

Dated: April 14, 1989

John B. LaRocco
Neutral Member