

SPECIAL BOARD OF ADJUSTMENT NO. 605

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

QUESTIONS AT ISSUE:

1. Did the Carrier violate the provisions of the February 7, 1965 Mediation Agreement, as amended, effective January 1, 1980, when it declined the adjustment claimed by R. L. Alvis at Pueblo, CO, for April, 1992?
2. Shall the Carrier now be required to compensate Claimant Alvis a proper adjustment for protective benefits for the month of April, 1992?

**OPINION OF
THE BOARD:**

Claimant held a seniority date of July 3, 1961 on the Colorado Division Station Department Seniority District. In early 1992, Claimant resided at Pueblo, Colorado and, due to a surplus of employees on the seniority district, he was in off-in-force-reduction status.

At the same time, the Carrier was experiencing a shortage of employees at Albuquerque, New Mexico, on the New Mexico Division Station Department Seniority District. Therefore, pursuant to notice dated February 12, 1992, the Carrier informed the Organization of its intent to transfer Claimant from Pueblo, Colorado, to Mini-Zone Extra Board Crew Clerk Position No. 6406, an advertised temporary vacancy on the New Mexico Division Station Department Seniority District.

The Carrier forwarded the Organization a proposed implementing agreement, dated March 17, 1992, to effect Claimant's transfer but the Organization's General Chairman failed to execute the Agreement. The Organization rejected the implementing agreement contending that the Carrier may transfer Claimant to another seniority district only to place him on an advertised permanent vacancy. Claimant seeks protective benefits for April 1, 1995.¹

Article III, Section 1 of the amended February 7, 1965 Job Stabilization Agreement compels the Organization to enter into implementing agreements when the Carrier transfers work or employees to congregate adequate forces at a particular location to meet the Carrier requirements of service. The issue regarding whether the Carrier has the right to permanently transfer off-in-force-reduction employees across seniority districts to a temporary vacancy has already been decided by a Special Board of Adjustment interpreting the same Agreement language between the Brotherhood of Railway Clerks and the Chesapeake and Ohio Railway Company. *Special Board of Adjustment, BRAC v. C&O* (Scheinman, 1984). The Special Board of Adjustment aptly observed that nothing in Article III, Section 1 limits its application to permanent vacancies. Rather, the language broadly allows the Carrier to transfer employees "throughout the system." The Special Board of Adjustment also noted that employees' job security will be protected when the temporary assignments expire, which is especially apropos in this case since Claimant's 1961 seniority date will surely permit him to successfully bid on many permanent positions on the new seniority district. We should follow precedents like the ruling of the *BRAC v. C&O Board of Adjustment* rulings which interpret language identical to

¹ Apparently, in mid-April, 1992, Claimant acquired a regular position in Colorado which ended his status as a surplus or off-in-force-reduction employee.

the language presented to this Board herein. Absent a showing that the Special Board's decision was palpably erroneous, adhering to precedents brings stability to the labor/management relationship. If the Organization disagrees with the result, its remedy is at the bargaining table.

Furthermore, the Organization does not have any right to intransigently refuse to enter into an implementing agreement since the Carrier was legitimately attempting to bring adequate forces to Albuquerque to meet its needs. The Organization has not disputed that there was a genuine demand for clerical employees at Albuquerque while there was a surplus of employees on the Colorado Division Station Department Seniority Roster. Therefore, so long as the Carrier was not engaging in a sham transfer, Article III, Section 1 mandated the Organization to enter into the proposed implementing agreement.

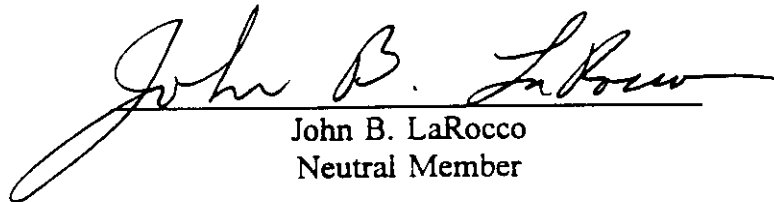
The Organization's primary contention is that the Carrier could not suspend Claimant's protective benefits because Question and Answer No. 3 under Article II does not require an employee to exercise his seniority to a temporary vacancy to retain a position. Suffice it to state, Question and Answer No. 3 interprets Article II and not the Organization's Article III obligation to enter into implementing agreements. Moreover, as discussed in the preceding paragraph, once the transfer was completed, Claimant would be in a seniority district where he would be able to exercise his ample seniority to many regular positions. Also, as the Carrier points out, the adjective "regular" does not appear before the word "position" in the first sentence of Article II, Section 1.

Therefore, the Carrier could suspend Claimant's protective benefits in accord with Article II, Section 2 since he was a protected employee who failed to accept employment on the New Mexico Division Seniority District as provided by the proposed implementing agreement.

AWARD

1. The Answer to Question at Issue No. 1 is No.
2. Question at Issue No. 2 is moot.

Dated: July 24, 1995



John B. LaRocco
Neutral Member

C - MAF, JM, RI, WAB, SVP (DR) DE
GRIFFITH

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KCT

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A. K. GRADIA
Director of Labor Relations

September 30, 1996

Ms Priscilla C. Zeigler
Staff Coordinator - Arbitration
National Mediation Board
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Suite 250 East Tower
Washington, DC 20572

Dear Ms Zeigler:

NA - 2/7/65
SRA - 605
AWARDS

Enclosed is a copy of the following Awards rendered by Special Board of Adjustment No. 605, established by Article VII of the February 7, 1965 National Agreement:

<u>Award No.</u>	<u>Case No.</u>	<u>NMB Case No.</u>
503	SG-45-W	2
504	SG-46-W	3
506	SG-47-W	4
507	SG-48-W	5
508	SG-49-W	6
509	SG-67-W	24
510	SG-75-W	32

Very truly yours,

A. K. Gradia

A. K. Gradia

Enclosures

cc: Messrs. S. E. Crable (3)
R. A. Scardelletti (10)
M. A. Fleming (2)
W. D. Pickett (2)
I. Monroe (2)
J. B. LaRocco (1)