

Award No. 28
Case No. 57

PUBLIC LAW BOARD NO. 1946

PARTIES
TO
DISPUTE:

Brotherhood of Railway, Airline and
Steamship Clerks, Freight Handlers,
Express and Station Employees

and

Southern Pacific Transportation Company,
Texas and Louisiana Lines

STATEMENT
OF CLAIM:

Claim of the System Committee of the Brotherhood
that:

(1) Carrier violated rules of the Clerks' Agreement, including but not limited to Addendum No. 1, Article II, Section 12(d), when at close of business December 7, 1976, it abolished Timekeeper Position No. 065 occupied by M. Natale, at Houston, Texas, when it did not have sufficient credits to abolish that position.

(2) Carrier shall be required to re-establish Timekeeper Position No. 065 and restore Claimant to that position.

(3) Carrier shall be required to compensate and reimburse M. Natale for any loss in earnings and expenses for each and every day commencing December 8, 1976 and continuing thereafter so long as Timekeeper Position No. 065 is abolished and M. Natale is held off of this position.

(4) Carrier shall be required to reimburse and compensate all other employees adversely affected as a result of this violative action for all losses in earnings and expenses incurred.

(5) Carrier shall be required to return all employees adversely affected to positions held at the time Carrier exceeded its quota of attrition credits at no cost to the employees, all employees adversely affected shall be made whole.

(6) In addition Carrier shall be required to pay interest in the amount of 2 percent compounded monthly on all sums due Claimants as a result of this violative action.

FINDINGS: By reason of the Agreement dated April 20, 1977, and upon the whole record and all the evidence, the Board finds that the parties herein are employee and carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

Here, Claimant exercised her seniority and displacement rights, as provided in Item 2, Section 1(a) of Article IV of the TOPS Agreement when her position was abolished. She displaced Clerk Roger Knight who elected to resign and accepted severance pay, as provided in Item 3, Section 1(a) of said Article IV.

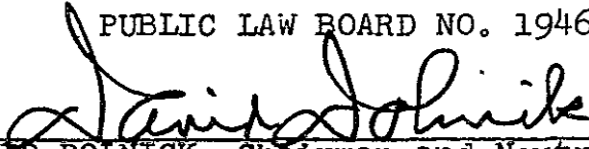
The basic issue here is the same as in Case No. 56. All of the reasons and conclusions reached in said Case No. 56 are applicable for a determination of this dispute and are affirmed.

For all of the reasons stated in said Case No. 56, the Board finds that the Carrier did not violate the Agreement, that Carrier has the right to include for attrition determination those employees who resign to accept severance pay. It follows that the claim has no merit.

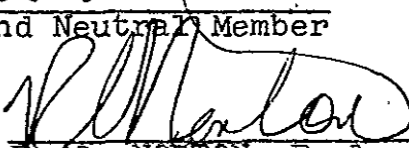
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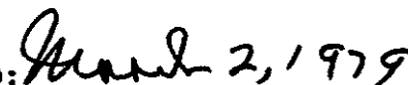
Claim denied.

PUBLIC LAW BOARD NO. 1946


DAVID DOLNICK, Chairman and Neutral Member


H. A. SHIVER, Carrier Member

 - Dissenting
R. O. NORTON, Employee Member

DATED:  March 2, 1979

EMPLOYEE MEMBER'S DISSENT

TO AWARDS 27 AND 28

PUBLIC LAW BOARD NO, 1946

It was not the intent of the Rule, nor was it ever applied in this fashion until 1976, six years after "TOPS" (September 16, 1971) that Carrier could abolish in excess of 8% of the base number of positions in any calendar year. However, in the year 1976, Carrier abolished 38 positions, four more than what was permitted under the 8% limitation applied to the 429 existing permanent positions. The Board never extended the scope of its jurisdiction to that issue, although this was the issue, and the decision should have been based upon that issue, not that as stated by the Majority:

"The real basic issue is whether or not an employee who accepts severance pay pursuant to the provisions of Article IV of the TOPS Agreement has 'resigned' within the meaning and intent of Section 12(c) of Article II of that Agreement. The determination of that question is relevant to a calculation of attrition credits used to abolish positions," (Page 3, first paragraph of Award 27)

The "real issue" was framed on the property at the outset when Division Chairman Graeter set it forth in his initial claim thusly:

"At the beginning of the year 1976, there were 429 permanent positions on Seniority District No. 1 of the Southern Pacific Transportation Company-Texas and Louisiana Lines. Under the Agreement signed September 16, 1971, Addendum No. 1 known as the TOPS Agreement, Carrier had the right to abolish 8 percent of the permanent positions in the year 1976, that being a total of 34 permanent positions on Seniority District No. 1 on the Texas and Louisiana Lines of the Southern Pacific Transportation Company. Carrier exceeded that 8 percent when Position No. 066 was abolished at the close of business on December 7, 1976."

Petitioner stated at Page 3, first paragraph of its submission:

"Both parties agreed in conference on November 18, 1977, that the question to be submitted to your Honorable Board in this case was . . . 'Does the 8% limitation apply when reducing positions in excess of the number required in the application of paragraphs (a) and (d) of Section 12 in Article II of the TOPS Agreement...'".

The answer propounded by the Majority begs the "real issue". Thus, the question as propounded was never answered. Moreover, Section 12(c), Article II, TOPS Agreement states:

"One attrition credit shall be allowed for each employee who vacates a permanent assignment by reason of..."

No assignment was vacated; Carrier abolished Position 066, after which the incumbent thereof elected to take separation pay. Hence, the Carrier put the cart before the horse

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in its endeavor to improperly secure an attrition credit. The act of separation came after the act of abolishment. We ask the question: How can one vacate a position that does not exist?

The Majority erred grievously in its decision; therefore, we can not accept this Award as being a valid and binding interpretation of the Agreement, hence our dissent.



R. O. Norton
Employee Member
Public Law Board No. 1946

March 9, 1979