

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Brotherhood of Railway, Airline and Steamship Clerks,
TO) Freight Handlers, Express and Station Employees
DISPUTE) and
New York, New Haven and Hartford Railroad Company

QUESTIONS

- AT ISSUE: (1) Did the Carrier violate the February 7, 1965 Mediation Agreement and the existing rules of the current Clerks' Agreement by failing and refusing to afford Mr. L. Severson, Seniority date, January 2, 1945, continued employment, and,
- (2) Shall Carrier now be required to pay Mr. L. Severson \$21.9224 per day, commencing June 26, 1966 and each day thereafter until the Carrier and the Brotherhood successfully conclude the handling of this matter.

OPINION OF BOARD: One of the reasons the Carrier initially declined the original claim was postulated on the ground that the National Agreement of February 7, 1965, was not effective on this property per order of the U.S. District Court, until July 1, 1965. Further, it was the Carrier's position that the August 19, 1965 letter agreement, "contemplated that there would be no application of the February 7 Agreement to any changes which may have occurred prior to July 1, 1965."

In view of Award No. 25, rendered by Special Board of Adjustment No. 605, this portion of the Carrier's argument is now academic. Hence, the basic question posed herein revolves around Article II, Section 1, of the February 7, 1965 National Agreement. Specifically, under what circumstances, relevant herein, does a protected employee displaced because of a reduction-in-force, lose such status? Section 1 provides that such will occur "in case of his resignation, death, retirement, dismissed for cause in accordance with existing agreements, or failure to retain or obtain a position available to him in the exercise of his seniority rights, or failure to accept employment as provided in this Article."

The Carrier argues that a failure by the employee to obtain a position available to him in the exercise of his seniority rights will cause the employee to lose his protected status. Therefore, Rule 45 of the effective Agreement is applicable upon the employee only and, it emphasizes, that such obligation is confined solely to the employee. In this regard, the pertinent portion of Rule 45 of the effective Agreement provides as follows:

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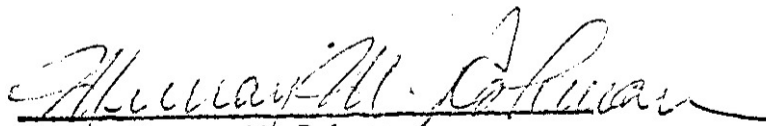
"If right of selection is not made within such time limit, the employee affected will be assigned to the position filled by the junior employee in the seniority district whose position he is qualified to fill; failing to accept such assignment the employee will lose his previously established seniority."

Conversely, the Organization argues that Article II, Section 1, places an obligation on both parties to abide by the effective agreement. Hence, the Organization urges that pursuant to Rule 45, it was incumbent upon the Carrier to assign the Claimant to the junior position on his roster that he was qualified to perform, when he failed to exercise his seniority rights. Thereafter, in the event the employee failed to accept such assignment, he would then lose his established seniority.

It appears to us that this question has been partially answered in Award No. 4. It is also our view that there is a concomitant relationship insofar as this provision is concerned. "In accordance with existing rules or agreements," require a mutual adherence to the provisions of the effective agreement on the property. Hence, under Rule 45, it was obligatory upon the Carrier to assign the Claimant to a position he was qualified to fill.

Award

Answer to questions 1 and 2 is in the affirmative.


Murray M. Rohman
Neutral/Member

Dated: Washington, D.C.
March 7, 1969