

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Brotherhood of Railroad Signalmen
TO) and
DISPUTE) Baltimore and Ohio Railroad Company

QUESTION

AT ISSUE: Must Carrier now pay to Mr. David F. Lee -- a "protected employee" who was not recalled to service until August 9, 1965 -- an amount of money equal to that which he would have earned as a Signal Maintainer, if he had been properly recalled on March 1, 1965, and retained in service continuously thereafter?

OPINION

OF BOARD: The facts are not in dispute: Claimant was a "protected employee" as of October 1, 1964 under the provisions of Section 1 of Article I of the February 7, 1965 Agreement. Claimant was regularly assigned and held the position of Signal Maintainer at Cottage Grove, Indiana. On February 16, 1965, Claimant's position was abolished. Since he was unable to displace on any position in his seniority district, Claimant took a position with Carrier as a brakeman on March 1, 1965. He was returned to service as a Signal Maintainer on August 9, 1965.

The Organization contends that under the terms of the February 7, 1965 Agreement, Carrier is obligated to pay Claimant for the 115 days he did not work as a Signal Maintainer.

Carrier takes the position that since Claimant worked continuously as a brakeman from March 1, 1965 to August 9, 1965, and was compensated more than what he would have received during the same period as a Signal Maintainer, he was not entitled to be compensated additionally. Carrier concedes that Claimant was not compelled to accept the brakeman's position in order to retain his protective status under the February 7, 1965 Agreement.

In its submission Carrier states: "The Carrier is fully aware that it has no lawful right to compel an employee protected under the February 7 Agreement to accept work under another collective bargaining agreement, but when the offer of such employment is made and the individual employee accepts the offer, the Carrier satisfies its obligations under the February 7 Agreement, so long as he continues in such employment at a rate of compensation equal to or in excess of his guaranteed rate."

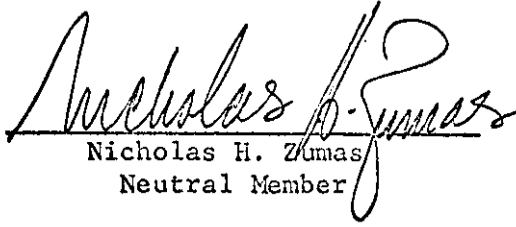
The Board finds that there is no such qualification under the terms of the February 7 Agreement -- whether the employee is compensated by the Carrier under a different bargaining agreement, receives

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compensation as a result of employment outside the industry, or even receives compensation under the terms of an insurance policy. As such the protected employee is entitled to compensation under the February 7 Agreement without offset.

AWARD

The answer to the question submitted is in the affirmative.


Nicholas H. Zumas
Neutral Member

Dated: Washington, D. C.
April 23, 1969