

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Brotherhood of Maintenance of Way Employes
TO THE) and
DISPUTE:) St. Louis Southwestern Railway Lines

QUESTIONS (a) Are Messrs. H. P. Dean and J. E. Phelps
AT ISSUE: protected employees as contemplated within
Article I, Section 1 of the February 7, 1965
Agreement

and

(b) Should Messrs. H. P. Dean and J. E. Phelps
be returned to active service.

OPINION OF BOARD: The two employees had been in active service on
October 1, 1964, and qualified for protected status.
They were furloughed on December 31, 1964. In
accordance with the rules then in effect, they chose not to
displace junior employees, but complied with the requirements
for retaining their seniority. Carrier did not recall them to
service on March 1, 1965, on the ground that both of them had
failed to exercise displacement rights within ten days after
December 31, 1964, in accordance with Article II, Section 1.

During March, 1965, the Employees requested Carrier
to restore the two men to service, but the request was denied.
The matter was appealed to the Manager Personnel, the highest
officer of the Carrier handling such claims. The appeal requested
restoration of protected status and pay for time lost. Carrier
denied the appeals in June, 1965, and in August, 1966, advised
the Employees that further action on the claims was barred, since
they had not been appealed to a tribunal within nine months.
The Employees did not present the matter to the Disputes Committee
until October, 1967.

The threshold question is whether the Employees have
lost their rights to appeal to this Committee because the nine-
month time-limit rule was not observed.

Significantly, the submission filed by the Employees
with this Committee makes no reference to a claim for compen-
sation. The issues presented are limited to whether the two
men are protected employees and whether they should be returned
to active service. Thus, although the claim made on the property

originally sought compensation as well, the questions submitted to this Committee are purely ones of interpretation of the February 7, 1965 Agreement and no more. This is acknowledged in Carrier's submission.

Where claims for compensation are involved, time-limit rules are to be applied, according to the Interpretations of November 24, 1965. But where the question solely concerns the meaning or interpretation of the February, 1965, Agreement, time-limit rules are specifically waived. By abandoning the compensation aspect of the claim, the Employees have presented the issue in such a way that a determination on the merits is not barred by the lapse of time.


With respect to the substantive issue, Article I, Section 1, of the Agreement of February 7, 1965, defines the requirements necessary for one to be a protected employee: Employees "will be retained in service" if they were in active service on October 1, 1964, if they had at least two years of employment relationship, and if they had at least 15 days of compensated service in 1964. Messrs. Dean and Phelps qualified on this score. Section 1 also states that "such employees who are on furlough as of the date of this Agreement will be returned to active service before March 1, 1965." The two employees were on furlough on February 7, 1965, but they were not returned to active service by March 1.

Carrier relies on Article II, Section 1, which describes how "an employee shall cease to be a protected employee." One such cause is failure to exercise seniority rights to obtain an available position. According to Carrier, protected status can be lost prior to February 7, 1965, because the date for acquisition of protection was fixed as October 1, 1964.

However, October 1, 1964, is used only to measure who will be protected by the February Agreement. If October 1, 1964, had been the effective date on which protection was acquired, obviously there could have been no subsequent furloughs of protected employees. The Agreement provides that employees furloughed after October 1, 1964, "will be returned to service." This obligation is flat and unqualified. No deprivation of protected status was envisaged for furloughed, qualified employees if prior to February 7, 1965, they complied with the rules in not displacing a junior employee. The provision that protected status "shall cease" was designed to describe how such status is lost after February 7, 1965, the date it became operative.

AWARD

The answer to Questions (a) and (b) is "Yes."


Milton Friedman, Referee

Washington, D. C.
May 9, 1969