Award No. 77
Case No. SG-5-SE

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Brotherhood of Railroad Signalmen and The Chesapeake and Ohio Railway (Chesapeake District)

QUESTION AT ISSUE: Is Carrier required to compensate Signal Helper Roy Hill, at the rate of pay he was receiving as of October 1, 1964, plus any other increases in pay to which he was entitled as a result of negotiated agreements, for the period of time commencing October 29, 1965 and continuing until such time as the Carrier takes the necessary action to afford him full time employment?

OPINION OF BOARD: Claimant was furloughed as a Signal Helper on the Ashland Division as of April 30, 1964. His seniority date on that roster was April 5, 1945. He was not recalled to work on the Ashland Division during the remainder of 1964. The record shows that Claimant voluntarily went to work on the Russell Division (adjacent to the Ashland Division) on September 16, 1964, and worked there through the remainder of 1964. He acquired no seniority on the Russell Division.

Under the provisions of the February 7 Agreement, was Claimant a "protected" employe? Clearly he meets two of the three conditions of Section 1, Article I. He had more than the required two year employment relationship, and had worked more than 15 days in 1964 prior to October 1, 1964. We must therefore determine whether Claimant was in "active service" as of October 1, 1964. In Award No. 51 this Board held that a furloughed employe is not protected by virtue of the fact that he was working on October 1, 1964. A furloughed employe must have averaged at least 7 days work for each month furloughed during 1964. It is clear that if Claimant could combine his employment on both the Ashland and Russell Divisions he would have qualified.

Since the February 7 Agreement is silent on this point, we turn to the November, 1965 Interpretations. Question and Answer No. 10 under Section 1, Article I read:

> 'Question No. 10: Can employment in more than one seniority district in the same craft on the same carrier be counted in determining protected status?

"Answer to Question No. 10: Yes, provided the employe acquired and retained seniority on each seniority district or roster or was transferred to another seniority district or roster at the request of management for temporary service. Otherwise, no."

The record shows that Claimant did not acquire seniority on the Russell Division, and did not work there at the request of Carrier.

AWARD

The answer to the Issue to be Resolved is in the negative.

Nicholas H. Zumas
Neutral Member

Dated: Washington, D.C.
May 26, 1969

Dissent follows

Dissent to Awards Nos. 70, 71,
72, 73, 74, 75, 76 & 77
Cases Nos. SG-15-W, SG-5-W,
SG-14-W, SG-16-W, SG-17-W, SG-3-SE,
SG-4-SE & SG-5-SE

SPECIAL BOARD OF ADJUSTMENT NO. 605

Dissent of Labor Members

Awards Numbers 70, 71, 72, 73 and 74 involve the same question: May the carrier, without benefit of an implementing agreement, temporarily transfer employees from one seniority district to another when both the carrier and the representative of the employees are signatories to the February 7, 1965 Agreement.

In his opinion in Award No. 70 the Neutral Member adverts to agreements of 1950 and 1961 authorizing temporary transfers of employees between seniority districts as supporting the carrier contentions. But his Award does not rely on such an agreement as having survived the unqualified provision of the November 24, 1965 Interpretation to Article III, Section 1. This Interpretation makes no exception whatever to the requirement of an implementing agreement: "Whenever the proposed change involves the transfer of employees from one seniority district or roster to another * * *." There is no requirement that the transfer be permanent and no allowance for its being temporary.

Thus, since the Neutral Member's conclusion is flatly contrary to the express language of the Interpretations, the next question is what conditions give rise to such a strong inference as to require disregard of plain language. We submit that the basis of any inference evaporates upon examination.

First, it is said that the first sentence of page 11 of the Interpretations "contemplate[s] changes under Section 1, Article III without an implementing agreement." Of course it does. This merely evidences the fact that the organizations, regrettably but admittedly, did not prevail in their contention that Article III, Section 1 required an implementing agreement whenever a technological, operational or organizational change might be made. But when the first sentence on page 11 refers to instances in which an implementing agreement is not required "under Item 1 hereof," it cannot possibly give rise to an inference that there is some unexpressed exception to the unqualified language in Item 1 quoted in the second paragraph of this opinion. Yet this Award is predicated in part upon drawing such an inference.

Next, it is asserted that "if temporary work [transfers of employees?] required an implementing agreement, Section 3 of Article II would be surplusage, because everything could be handled under the provisions of Section 1 of Article III." This is obviously not so, both because the uses of employees under Section 3 of Article II would not involve technological, operational or organizational changes, as would all changes to which Section 1 of Article III

is addressed, and because many of the assignments authorized by Section 1 of Article II would not be permissible without that section under the various rules agreements. The organizations only ask that assignments under that section be confined within seniority districts as well as craft lines, as is clearly required by the phrase "in accordance with existing seniority rules."

Finally, it is contended that these Awards derive some support from Awards 32 and 66. We must admit that there is more substance to this contention than to any other basis that has been advanced to support these Awards. We feel strongly that Awards 32 and 66 were wrong and cannot accept them as controlling precedents. However, those cases involved assignments to different occupations within the craft on a different seniority roster but within the same geographic area. Now the precedent of those cases is being invoked in an effort to justify the moving of employees from one division of a railroad to another. By this means, a requirement of permanence is being injected into a change typical of those to which Article III, Section 1 was directed.

Award Number 75 is in a case that is here only because the organization felt it necessary to bring it here to dispel uncertainty as to the rights of employees. It should never have been necessary to bring it here.

What is involved is this: The carrier and the organization have apparently found it mutually advantageous to fill positions in the signal repair shops by voluntary bidding of experienced signalmen. These jobs are on a separate seniority roster and hence assignment to such a job involves surrender of the bidder's seniority on the roster on which he accumulated his experience. This arrangement was in effect long before the February 7, 1965 Agreement was made and so far as we know was entirely satisfactory to both parties.

But along comes the February 7, 1965 Agreement containing, in Section 1 of Article II, a provision designed to prevent an employee from maintaining his protected status while living in voluntary idleness at the carrier's expense. It was not designed to have anything to do with the kind of case involved in this Award. Nevertheless the carrier, for no better reason, apparently, than to oppose the organization position, disputes the organization contention that surrender of seniority on one roster in order to acquire seniority on another does not involve surrender of protected status.

The fact that in the four and a half years that have elapsed since the February 7, 1965 Agreement was made no concrete case has arisen in which a protected employee has bid in a job on the signal shop roster is eloquent testimony to the fact that the carrier's contention and the Neutral Member's holding operate only to frustrate the agreement the parties have long found to their mutual advantage. We can confidently predict that, in view of Award No. 75, no protected employee will bid on a job in the signal shop.

Perhaps enough time has elapsed since employees were able to acquire protected status so that the carrier can now man its signal shops with experienced signalmen who have no protected status to be sacrificed under this Award. We hope not and that the carrier will soon be seeking an agreement that will rectify the stupidity of this Award. If this does not happen, it will be only because the time is overdue for revising the February 7, 1965 Agreement which denies protected status to people with six and two-thirds years of employment because that is not long enough.

Award No. 76 reemphasizes the error of Award No. 7. Whether the abolition of a job is a technological change depends on circumstances not necessarily inherent in the fact that a job was abolished. But an operational and organizational change is inherent in the very fact that a job is abolished: work that was formerly performed on the job either is not being performed anymore or is being performed someplace else. This is true even if the work formerly performed on the job has disappeared.

Award No. 77 follows Awards Nos. 51 and 52. We had hoped that our dissent to those Awards would avoid repetition of the error. Although our hope has been frustrated, we are no less firm in the views there expressed.

But the error has been doubly compounded in this case. The claimant in this case not only had more than the required two years of employment relationship on October 1, 1964, had worked more than 15 days in 1964 prior to October 1, 1964 and was actually working on October 1, 1964, but also could have met the requirement applicable to employees furloughed on October 1, 1964 of having worked an average of at least seven days for each month furloughed in 1964 if only he were permitted to count all his work on two divisions on the same carrier in the same craft.

On the question of whether service on the two divisions may be counted, admittedly, Question and Answer No. 10 of the Interpretations under Section 1, Article I is controlling. Under this governing rule all the service can be counted if either he acquired and retained seniority on the Russell Division or worked there at the request of management. We feel that under the rules agreement he was entitled to seniority on the Russell Division and certainly he worked there at the request of management. Obviously he was not an interloper.

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August 21, 1969

Mr. C. L. Dennis
Mr. H. C. Crotty
Mr. A. R. Lowry
Mr. C. J. Chamberlain
Mr. R. W. Smith

SUBJECT: Dissents to Awards No. 70, 71, 72, 73
74, 75, 76 and 77
Disputes Committee No. 605
(Signalmen Cases)

Dear Sirs and Brothers:

I am attaching hereto dissents to Awards No. 70, 71, 72, 73, 74, 75, 76 and 77 in connection with Awards issued by Referee Zumas all of which are contrary to our understanding of the interpretation of the agreement.

Fraternally yours,

G. E. Leighty

Chairman
Five Cooperating Railway Labor Organizations

Enclosure

cc: L. P. Schoene
F. T. Lynch

Seniority Roster

Adjusted to Include Transferred Protected Employes

Employe No.		Seniority Date	
1	P	7-1-46	
2	P	9-1-47	
3	P	8-1-48	
4	P	3-1-49	
5	P	2-1-50	
6	(U)	11-1-51	
7	P	12-1-52	
8	P	4-1-53	
9 *	P	4-2-53	(8-1-49)
10 *	P	4-3-53	(6-1-52)
11	(U)	7-1-62	
12 *	P	8-1-62	(8-1-62)
13	(U)	10-1-63	
14	(U)	7-1-64	
15	(U)	8-1-65	

P = Protected employe.

U = Unprotected employe.

*Transferred from another seniority district. Date in parentheses is seniority date on seniority district from which transferred.

Referee Dreier — said, at morning session on June 9-69, at Wash. D.C. that the above is precisely what he intended. by Awards 78 - thru 89

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