

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) Chicago and North Western Railway Company  
TO THE ) and  
DISPUTE ) Brotherhood of Maintenance of Way Employees

QUESTION Does the attached implementing agree-  
AT ISSUE: ment proposed by the carrier fully  
comply with the provisions of Article  
III of the Agreement, and if not, in  
what respect should it be changed  
before transferring employees on the  
basis of these provisions?

OPINION 1. The issue which runs through this series  
OF BOARD: of cases is whether the February 7, 1965, Agreement  
permits the Carrier to transfer protected employees  
to a new roster and place them ahead of the unprotected em-  
ployees with seniority on that roster.

The Agreement specifically grants Carrier  
the right to transfer protected employees. There is no rea-  
son to believe that this right was designed to be virtually  
meaningless, as it would be if the result was to freeze all  
unprotected employees by placing the newly transferred pro-  
tected employees below them.

Objections have been made by the Employees  
to proposed transfers when men are on furlough or where the  
force is allegedly adequate. However, Article III, Section  
4, specifically denies the Committee jurisdiction over "the  
right of the Carrier to make the change."

Seniority rules long in existence provide  
that when employees are added to a roster, their seniority  
begins as of the date they start work there. These rules  
contain no authorization for Carrier to mandate transfers.  
However, the February 7, 1965, Agreement not only authorizes  
Carrier to transfer protected employees and to rearrange  
forces in accordance with it, but Article III, Section 5,  
states that this "shall not constitute an infringement of  
rights of unprotected employees who may be affected thereby."  
This provision was designed to modify the existing rules.

While the nature of any "infringement" is not described, it is therefore unlikely that Article III meant to favor unprotected employees who had less seniority compared with protected transferees who had greater seniority on their own rosters. Consequently Carrier's proposed Article IV must be deemed proper in placing the transferees below the junior protected man or subdivision #2 and above the unprotected men. In the conditions the Carrier describes all of the transferred protected men are senior to the unprotected men on the territory to which transferred.

2. The Interpretations of November 24, 1965, provide in Item 3 on page 11, as follows:

When changes are made under Item 1 or 2 above which do not result in an employee being required to work in excess of 30 normal travel route miles from the residence he occupies on the effective date of the change, such employee will not be considered as being required to change his place of residence unless otherwise agreed.

Carrier states that in this case no employee would be required to work in excess of 30 normal travel route miles from the residence he occupies. Therefore Article VI of Carrier's proposed Implementing Agreement is proper.

A W A R D

The answer to the Question is "Yes."

  
Milton Friedman, Referee