

SPECIAL BOARD OF ADJUSTMENT NO. 605

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

QUESTION

AT ISSUE: Is Signal Helper Rell Price entitled to preservation of compensation and other benefits under the February 7, 1965 Agreement?

OPINION

OF BOARD: Both parties to this dispute agree that Claimant is not a "protected" employee under the terms of the February 7 Agreement. There is no contention by the Organization that he should be, and it readily concedes, relative to the Issue To Be Resolved, that Signal Helper Rell Price is not "entitled to preservation of compensation and other benefits under the February 7, 1965 Agreement".

The Organization contends that the Disputes Committee has no jurisdiction to consider a matter concerned with an unprotected employee and seniority rights under the basic agreement.

Carrier states its position as follows:

- "1. Claimant did not meet the 'active service' requirements of Article I, Section 1, of the February 7, 1965, Agreement, and therefore did not qualify as an employee entitled to 'be retained in service subject to compensation' or any other benefits provided in the Agreement.
- "2. Claimant was not deprived of any employment to which his seniority entitled him when, under the circumstances, the Carrier used and compensated junior employees who had been listed as 'protected' employees under the provisions of Article I of the February 7, 1965 Agreement, and the claim is without merit and must be denied."

With respect to the question of the jurisdiction of the Disputes Committee to consider questions involving unprotected employees, Award 91 of this Board is persuasive. There it was held that "adjudication involving the February 7 Agreement and the November 24 Interpretations, and the relative rights of protected versus unprotected employees under them, properly comes before the Disputes Committee."

With respect to the question of whether the seniority rights of a senior unprotected employee are affected by the rights conferred upon junior protected employees under the February 7 Agreement, the Opinion in Award 91 is controlling. There the Board stated:

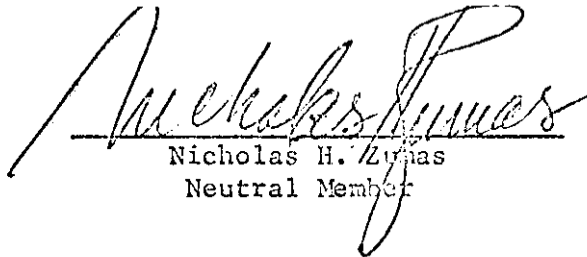
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"Although the claim is that of an unprotected employee who asserts a violation of seniority rights, its origin is in Carrier's contention that the February 7 Agreement provided certain superior rights for protected employees in connection with 'make-work.' It is this Committee's function to interpret the February 7 Agreement. The rules may become enmeshed in a case before us, and this has frequently occurred. But adjudication involving the February 7 Agreement and the November 24 Interpretations, and the relative rights of protected versus unprotected employees under them, properly comes before the Disputes Committee.

"Award No. 50 is not applicable. Not only did it concern 'the particular facts and circumstances of this case,' but the issue required an interpretation of the basic schedule agreement solely. Here, it is necessary to decide the preferential rights of a protected employee to 'make-work' under the 1965 Agreement. Carrier had not contended that it was justified because of the rules--but, in effect, because of Mr. Unger's status under the 1965 Agreement as an 'unassigned 'protected' employee.'" "

AWARD

Absent an implementing Agreement the seniority rights of a senior unprotected employee are not impaired in relation to a junior protected employee by virtue of the provisions of the February 7 Agreement.


Nicholas H. Zervas
Neutral Member