

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Brotherhood of Railway, Airline and Steamship Clerks,
TO) Freight Handlers, Express and Station Employees
DISPUTE) and
Baltimore and Ohio Railroad Company

QUESTIONS
AT ISSUE:

(1) Did the Carrier violate the provisions of the Agreement of February 7, 1965 and the interpretations thereto, particularly Article I, Section 1, when it refused to grant protected status to the following clerical employees at New York, N. Y. -

1. Dolphus Leath
2. Jesse Smith
3. William Gillard
4. John C. Holloway
5. Millard Reed
6. George Palmer
7. Toby Cardwell
8. William A. Felong
9. William J. Kohr
10. George W. Waring
11. William L. Ruffin

all of whom performed in excess of fifteen (15) days of compensated service during the calendar year 1965, and had an employment relationship of not less than two (2) years as of October 1, 1964, and were on extra lists pursuant to the applicable rules and practices of the Clerks' Agreement, and were working or were available for calls for service and expected to respond when called?

(2) Shall the Carrier be required to establish for each of these employees (named in Question #1) "protected" status as of March 1, 1965 and pay to each of them amounts sufficient to render them whole with respect to any losses sustained since March 1, 1965?

OPINION
OF BOARD

The pertinent portion of Article I, Section 1, in issue herein of the February 7, 1965 National Agreement, defines active service as follows:

". . . all extra employees on extra lists pursuant to agreements or practice who are working or are available for calls for service and are expected to respond when called, and where extra boards are not maintained, furloughed employees who respond to extra work when called, and have averaged at least 7 days work for each month furloughed during the year 1964."

The facts indicate that each of the claimants worked in excess of 15 days in 1964, but less than 84 days. The Carrier depicts the instant dispute as one wherein

The Employees contend that they were on an extra list and needed but 15 days service in 1964 to qualify for protection. The Carrier maintains they were furloughed employees who responded for extra work and needed 84 days service during 1964.

The Carrier, further, defines a true extra board as one which

. . . contemplates a specified group of employees to be used to fill vacancies, normally on a first in, first out basis, the number of such employees to be regulated by agreement as the available vacancies fluctuate. Prior to March 1, 1947, no such "extra board" or "extra lists" existed on this property for clerks.

In addition, the parties, effective March 1, 1947, negotiated Rule 37(h), which provided, in essence, rules governing the manner of working extra forces will be established in writing. Thereafter, the Carrier alleges, only one true extra list was ever established--at Connellsville, Pennsylvania, on August 16, 1948. It does concede that prior to March 1, 1947, it was the practice to utilize furloughed clerks for extra work on the system.

Basic to the Carrier's position is the fact that these Claimants were not on an extra list or extra board--even if they were to be considered extra employees--as an extra list or extra board could only be established by agreement.

In turn, the Organization vigorously refutes the Carrier's arguments by direct reference to Article I, Section 1, of the National Agreement. Pursuant thereto, Section 1, previously quoted, provides for "extra employees on extra lists pursuant to agreements or practice." (Underline added.) In support of its argument, the Organization marshals the following documents:

1. Seniority lists for the years 1964, 1965, 1966, 1967, and 1968, describing the Claimants herein as "Xtra Stowman," whereas other employees are described as "Furloughed" or specific positions, such as "Tallyman," "Cooper," "Yard Clerk," etc.

2. Reference to Rule 37(h), quoted by the Carrier, also contains the following additional paragraph:

Note--It is not permissible for a regular assigned employee to voluntarily give up a position and go on an extra list or take a furlough, except by agreement between the proper officer and the Division Chairman.

3. Rule 10(e) of the effective Agreement between the parties provides as follows:

(e) When it is necessary to start additional forces after the usual starting time, every reasonable effort will be made to give this work to the senior extra men. (Underline added.)

Note --The terms "platform positions" and "starting forces," as used in this rule, mean receiving clerks, tallymen, and Group 3 positions. The four-hour basis only applies to Group 3 positions and Extra Tallymen who do not hold sufficient seniority to entitle them to a position in Group 3. (Underline added.)

4. In addition, the Organization cites a letter, dated March 6, 1957, from Manager Labor Relations, a portion of which is hereinafter quoted:

With respect to other than freight house forces, it is our position that the Understanding at the top of Page 37 of our agreement applies wherever employees were worked on an extra basis prior to March 1, 1947--as was the case at all of these locations--whether the extra board from which they were working was publicly posted or was merely a list in a supervisor's desk which he used in calling clerks for extra service or to fill vacancies.

Do these documents support the Organization's contentions that the Claimants were on extra lists pursuant to the practice? On the basis of the facts indicated in this record, we are compelled to recognize that the parties herein considered the Claimants as being on an extra list or extra board, pursuant to practice. It is our considered view that the probative evidence is overwhelmingly in favor of the Organization.

One other matter remains to be considered, i.e., the claims of Dolphus Leath and Jesse Smith. Both Claimants secured outside employment from July, 1964, to March, 1965. Although they affirm that they were available but not called, the fact remains that they were unavailable during this period of time.

In view of our conclusions reached herein, with the exception of Dolphus Leath and Jesse Smith, the Claimants are entitled to protection as extra employees.

Award

Answer to question (1) and (2) is in the affirmative, with the exception of Dolphus Leath and Jesse Smith.


Murray M. Rohman
Neutral Member

Dated: Washington, D.C.
August 7, 1969