COOPERATING RAILWAY LABOR ORGANIZATIONS

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December 5, 1969

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

SUBJECT: Disputes Committee #605
Awards #149 through 154
(Signalmen Cases)

Dear Sirs and Brothers:

I am enclosing herewith copies of Awards #149 through 154 signed by Referee Zumas on November 12, 1969. We reserve the right to dissent on Award #152 and may write a dissent in connection with that Award because it attempts to interpret the Schedule Agreement rather than the February 7, 1965 Agreement.

Fraternally yours,

G. E. Leighty

Chairman
Five Cooperating Railway Labor Organizations

cc: L. P. Schoene
Frank T. Lynch

Award No. 149
Case No. SC-11-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Brotherhood of Railroad Signalmen
and
Baltimore and Ohio Railroad Company

QUESTIONS AT ISSUE: Did Carrier violate and does it continue to violate the February 7, 1965 Mediation Agreement inasmuch as Mr. C. O. Fowble, Assistant Signalman, was furloughed on March 15, 1965?

Should Mr. Fowble now be recalled to service?

Should Mr. Fowble now be allowed eight (8) hours' pay at his applicable rate for each day commencing March 16, 1965, and continuing so long as this violation exists?"

OPINION OF BOARD: The facts are not in dispute. Claimant held a May 8, 1943 date as a Signalman/Signal Maintainer. In May 1957, while working as a Signal Maintainer, Claimant became disabled because of a heart condition. Later that year he was permitted to resume work as a Signal Maintainer on a restricted basis (primarily because, as Carrier contends, there were two Signal Maintainers in adjoining districts to help him). In October, 1959, due to a reorganization of Signal forces, the two adjacent Signal Maintainers were not available to assist Claimant. Because of this and the fact that Claimant's physical condition remained unchanged, he was allowed to obtain a position as Assistant Signalman in a gang. He held the position of Assistant Signalman on October 1, 1964 and hence qualified as a protected employe under the February 7 Agreement.

On March 16, 1965 Claimant's position as Assistant Signalman was abolished due to a force reduction. Despite Claimant's seniority, there were no positions available because of his physical restriction. On May 25, 1965 he returned to work as an Assistant Signal Maintainer when the Signal force was again increased. The claim in this dispute covers the period from March 16, 1965 to May 25, 1965.

Carrier, in denying the claim, takes the position that before Claimant can continue to be "protected" he must have the capacity to exercise seniority; and Carrier is not required to maintain positions in order to continue protected benefits where an employe is unable to exercise seniority due to disability. Since Claimant's loss of time between March 16, 1965 and May 25, 1965 was due solely to his physical disability under Article IV, Section 5, of the February 7 Agreement, Carrier concludes that there is no basis for the claim.

The Organization's rejoinder to Carrier's position is taken from its Submission:

> "Carrier relies on Article IV, Section 5; however, it can readily be seen this rule has no application in the instant situation. It provides, 'A protected employe shall not be entitled to the benefits of this Article during any period in which he fails to work due to disability.'
>
> "This situation was brought about by Carrier's arbitrarily taking Mr. Fowble out of service; it was not caused by his failure to work. He was ready, willing, and able to work; Carrier denied him the right to do so. It cannot, therefore, rely on Article IV, Section 5 in support of its actions." (Underscoring included.)

As we interpret the February 7 Agreement, Claimant is not deprived of his protected status because his physical limitations prevent him from obtaining another position in the exercise of seniority. He was apparently qualified at all times to hold the position of Assistant Signalman despite all physical impediment. Stated another way, his heart condition did not prevent him from maintaining the position of Assistant Signalman, his protected position as of October 1, 1964; he was prevented from maintaining that position because it was abolished by Carrier. This rationale is consistent with that in Award No. 136 of this Board which stated:

> "Claimant's failure to work as a watchman certainly was not due to his physical condition, but to a reduction in force."

Award No. 136 further held that physical incapacity to perform the work of another position is not grounds for loss of protected status or of compensation due protected employes. While there were separate contracts with the Carrier in that dispute, the effect is the same.

AWARD

1. The answer to question (a) is in the affirmative.

2. The answer to question (b) is moot since Claimant was recalled to service on May 25, 1965.

3. The answer to question (c) is in the affirmative.

Nicholas H. Zumas
Neutral Member

Dated: Washington, D. C.
November 12, 1969