

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES)
TO)
DISPUTE)
Brotherhood of Railway, Airline & Steamship Clerks,
Freight Handlers, Express and Station Employees
and
Monon Railway

QUESTIONS

AT ISSUE:

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- (1) Did Carrier violate the provisions of Article 1, Section 1, of the Agreement when it abolished the position of employee G. E. Dragoo and failed to retain him in compensated service from October 29, through December 2, 1965?
 - (2) Did Carrier violate the provisions of Article IV, Section 1, of the Agreement when it failed to compensate G. E. Dragoo, commencing December 5, 1965, at the normal rate of compensation attached to the position to which he was regularly assigned on October 1, 1964?
 - (3) Shall Carrier now be required to properly compensate G. E. Dragoo in accordance with the provisions of Article IV, Section 1, commencing October 29, 1965 and for each work day thereafter that he did not receive compensation as set forth in this Article?

OPINION

OF BOARD:

Claimant, on October 1, 1964, was a protected employee regularly assigned to the Storekeeper position at Bloomington. On October 22, 1965, this position was abolished. Although he had not previously worked in a freight office nor performed any of the duties of a rate clerk, nevertheless, he sought to displace on the Rate Clerk's position at Bloomington. Despite his lack of knowledge of the duties involved in this position, he was permitted to demonstrate his fitness on the position for several days. However, on November 1, 1965, the Agent disqualified him. Upon failure to displace on other positions in his seniority district, he was furloughed.

Thereafter, he attempted to qualify for a Cashier position which was expected to become vacant shortly. Here, too, he was found wanting and the incumbent of the Rate Clerk position was then assigned to fill it, as he had previously worked such position. Consequently, the Rate Clerk position was again vacant.

On December 2, 1965, as the only bidder on the vacant Rate Clerk position, Claimant was awarded the bid despite his previous disqualification and continued lack of knowledge in the position.

Thereafter, the Organization filed the instant claim alleging a violation of Article IV, Section 1, of the February 7, 1965 National Agreement. The basis for the Organization's claim is predicated on that portion which provides "- - - shall not be placed in a worse position - - -."

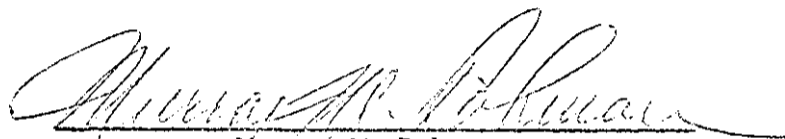
In turn, the Carrier defends its action on the basis of Article II, Section 1, of the National Agreement, to wit: "An employee shall cease to be a protected employee in case of . . . failure to retain or obtain a position available to him in the exercise of his seniority rights in accordance with existing rules" In order to support this contention, the Carrier alleges that the Claimant could have displaced on a number of positions in his seniority district. It specifically enumerated the Chief Crew Caller position, General Clerk-Typist position, which was a retitling of his former position of Bill and Voucher Clerk and Diesel Shop Clerk position, all at Lafayette; "as well as several positions of Yard Clerk at other points in his seniority district on which he could have qualified in a very short time."

Thus, two issues are raised by the Carrier's innocuous statement that the Claimant could have qualified in a very short time. The first goes to the crux of the problem herein, whereby the Organization insists that in a "very short time" the Claimant could also have qualified on the Rate Clerk position which was denied him. While it may have been possible for the Claimant to have acquired the ability to perform the Rate Clerk position on November 1, 1965, Rule 8 of the effective Agreement, provides for the utilization of the factors of seniority, fitness and ability, with Management to be the judge, subject to appeal. Despite the right of appeal, the record is barren of any dispute regarding Management's decision not to award the Rate Clerk's position to Claimant based on lack of ability.

The second element is contained in the Organization's apparent restriction of the availability of the Claimant from displacing on a position at other locations in his seniority district. The Carrier has alleged that a number of positions were available at Lafayette on which the Claimant could have exercised displacement rights. In this posture, we are constrained to support the Carrier's decision in view of Award Nos. 39, 45 and others.

Award

Answer to Questions (1), (2) and (3) is in the negative.



Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
November 17, 1969