SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees.
and
Penn Central (former New York, New Haven and Hartford Railroad Company)

QUESTIONS AT ISSUE:

(1) Did the Carrier violate the terms of the Mediation Agreement when it failed and refused to properly compensate Mr. L. C. Bauby, seniority date 4-3-1955, on the New Haven Ticket Office Roster?

(2) Shall Claimant Bauby now be paid $24.188 per day commencing September 12, 1965, under the terms of the Mediation Agreement?

OPINION OF BOARD:

With great difficulty, we were able to glean from the Parties' submissions, the following facts:

On April 21, 1965, the position of Clerk-Ticket Seller was awarded to a new employee, W. P. Contois. On September 11, 1965, the latter resigned. Prior to this date, the Claimant held the Regular Relief Position No. 1, as Ticket Seller. Following the resignation of Contois, the Carrier abolished Relief Position No. 2, and rearranged and readvertised the work assignments of Positions 005, 006, 008 and Relief No. 1. Thereafter, Claimant bid for Position 008 with a rate of $115.91. In this regard, the Carrier alleges that Claimant could have bid on Relief Position No. 1, with rate of $116.62. Of course, if the Organization's position is sustained, we would necessarily apply Article IV, Section 4, provided that the record supports the Carrier in this respect.

The question presented herein is whether Article IV, Section 3, of the February 7, 1965 National Agreement, is applicable to the Claimant. The parties are in agreement as to the Carrier's right to abolish an unneeded position. However, the Carrier argues, further, that as a result of the resignation of Contois and the concurrent abolishment of Relief Position No. 2, it "necessitated the reassignment of hours and rest days of four of the remaining positions."

The significance of the Carrier's action is further emphasized by the fact that inasmuch as the Organization failed to refute the necessity aspect, it is deemed to be admitted. We repeat, the Carrier asserts that upon the failure of the Organization to rebut its assertion that the reassignment of the other four positions was occassioned by the resignation of Contois and abolishment of one job, ipso facto, the Carrier is cleared of a violation of Article IV, Section 1.

In effect, the Carrier states the procedural rule to be applied is that a failure to deny each and every allegation is tantamount to an admission. Therefore, having failed to deny the necessitous character of the various reassignments, it stands to reason that the Claimant's bid was a voluntary

move. Hence, he "- - - will be compensated at the rate of pay and conditions of the job he bids in - - -."

Who has the burden of proving an allegation? In our view, the party who alleges a defense is required to carry the burden of proof. In the instant situation, the Organization concedes the Carrier has the right to abolish an unnecessary position. Thereafter, was the rearrangement and reassignment of four other jobs a voluntary action of the Claimant? Of course, in order to protect his status, the Claimant exercised his seniority and bid for one of the reestablished jobs. Whether his seniority entitled him to bid for the $116.62 rate instead of the $115.91 rate, can readily be determined on the property.

In summary, it is our view that the Claimant's exercise of seniority did not fall within the voluntary action contemplated by Article IV, Section 3.

Award:

The answer to question (1) and (2) is in the affirmative. However, subject to a determination pursuant to Article IV, Section 4.

Murray M. Rohman
Neutral Member

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