

AWARD NO. 165
Case No. SG-21-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Union Pacific Railroad Company
TO THE) and
DISPUTE) Brotherhood of Railroad Signalmen

ISSUE IN
DISPUTE:

Claim on behalf of Mr. G. R. Hendricks for the difference in rate of pay between that of Relay Repairman and Signal Inspector (including subsequent general wage increases), beginning on August 22, 1966, and continuing until he is returned to a position of Signal Inspector or an equal rate of pay.

OPINION OF BOARD: When a hot box detector was installed in Gooding, Idaho, the CTC Maintainer's position, which was held by C. L. Peterson, Jr., was reclassified to CTC Carrier Maintainer. Although Carrier had been willing to come to an agreement with the Employees to retain Mr. Peterson in the new position, the Employees insisted that it be bulletined.

As a result of the bulletin, it was successfully bid by C. E. Dawson, who had greater seniority than Mr. Peterson. Mr. Peterson, whose original position was now non-existent, displaced another employee and the chain of displacements ended with Claimant, a protected Signal Inspector, bumping into a Relay Repairman position.

The issue to be determined is whether Claimant is entitled to guaranteed compensation as a Signal Inspector or he has lost that right pursuant to Article IV, Section 3, which provides in part:

Any protected employee who in the normal exercise of his seniority bids in a job or is bumped as a result of such an employee exercising his seniority in the normal way by reason of a voluntary action, will not

be entitled to have his compensation preserved as provided in Sections 1 and 2 hereof, but will be compensated at the rate of pay and conditions of the job he bids in...

Mr. Dawson did not bump Mr. Peterson out of a position by voluntary exercise of seniority. The CTC Carrier Maintainer position was up for bid. Once it had been created, Mr. Peterson had no right to it unless he were the senior qualified bidder. He was not. Having no position, he was obliged to use his seniority to displace another employee and this involuntary action precipitated the series of bumps which culminated in Claimant's displacement.

That Carrier was willing to skirt the schedule agreement by agreeing with the Employees to retain Mr. Peterson in the new position, while the Employees were unwilling, does not in some way demonstrate that Mr. Peterson was displaced by the Employees' voluntary action. The party which insists upon the application of a mutual agreement does not thereby become individually and separately responsible for what ensues.

Thus the problem is not to determine responsibility for the bulletining. The fact is that Mr. Peterson lost his position as a result of it. It is true that Mr. Dawson bid voluntarily, but he did not bump Mr. Peterson. The latter had no claim to the CTC Carrier Maintainer position since he lacked the seniority to obtain it. Carrier had effectively disestablished Mr. Peterson from his CTC Maintainer position once it created the new one and filled it in accordance with the schedule agreement. All that followed was due to this.

An employee who has no contractual right to a position is not displaced when another voluntarily exercises his seniority to bid into it. It must be held that Mr. Peterson's loss of his CTC Maintainer position was due to Carrier's action, and the series of bumps did not result from a displacement due to voluntary exercise of seniority.

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A W A R D

Claim sustained.

Milton Friedman
Milton Friedman
Neutral Member

Washington, D. C.
December 8, 1969

Interpretation given

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(INTERPRETATION)
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SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Union Pacific Railroad Company
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ISSUE IN
DISPUTE:

The question submitted to this tribunal in this case was a claim for the difference in pay between that of Relay Repairman and Signal Inspector, including subsequent general wage increases, beginning August 22, 1966, and continuing until the Claimant was returned to a position of Signal Inspector or an equal rate of pay. Award No. 165 sustained that claim. However, a dispute arose afterward on the property because the Organization was not satisfied with the manner in which Carrier tried to apply the Award, as explained hereinafter.

OPINION

OF BOARD: Award No. 165 sustained the claim for the retention of the guaranteed compensation of Claimant G. R. Hendricks, an employee working as a Relay Repairman who is protected as a Signal Inspector. However, the parties were unable to agree on the manner of calculating the compensation due him. Carrier offset the overtime earnings which Claimant had on his Relay Repairman position and the Organization contended that this was improper.

The Signal Inspector is paid on a monthly salary basis. The Relay Repairman is paid on an hourly basis.

The Organization's contention is summed up in the following statement in its brief:

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Claimant Hendricks had worked a normal work week of five days on the Signal Inspector position. Therefore, when Carrier requires him to work overtime on the hourly rated position, and then applies overtime pay for that work toward the guarantee, he is placed in a worse position. In effect, he is being required to perform free overtime service.

However, Carrier cites Rule 10(f) of the Schedule Agreement which provides that Signal Inspectors are "assigned one regular rest day per week, Sunday if possible." Rule 39 lists the Signal Inspector's salary and contains a note that "all monthly rates of pay are based on 211 hours per month," which was subsequently adjusted for holidays to 211 2/3 hours.

Thus it must be determined if a monthly position based upon 211 2/3 hours, with overtime specified on the seventh day, should be treated for the purposes of the February 7 Agreement as a five-day position, whether or not it ordinarily works only a five-day week.

It is acknowledged that Signal Inspectors receive no overtime pay if and when they are required to work beyond a five-day forty-hour week. Carrier argues that this occurs in emergency situations, in travel, in writing reports, in meeting with supervision, and the like. The Organization suggests it is seldom. Carrier asserts that whether or not the additional time is actually worked, the salary was designed to cover all such hours in excess of 40 per week.

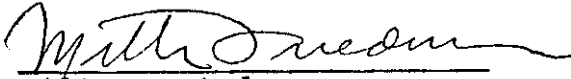
This is not a situation in which an employee with guaranteed compensation based on a 40-hour position works on a lower-rated position and puts in overtime hours, which Carrier then seeks to offset against the guarantee. Claimant Hendricks does not hold a protected 40-hour position. He may on occasion, frequently, or always have worked 40 hours but he was being paid for 211 2/3 hours, according to the schedule agreement.

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As in Award 229, to pay him separately for some occasional hours in excess of 40 per week beyond his monthly guarantee would be to treat him more favorably than if he continued to hold the Signal Inspector position, where circumstances might cause him also to work over 40 hours. If that occurred, a Signal Inspector would receive no additional pay besides his monthly salary. Thus, unless the hours on the Relay Repairman position exceeded those which can be required of a Signal Inspector, there are no persuasive grounds for complaint.

A W A R D

Claimant's overtime pay as a Relay Repairman may be offset in computing the guarantee due him.


Milton Friedman
Neutral Member

Dated:
Washington, D. C.
November 17, 1971