

COOPERATING RAILWAY LABOR ORGANIZATIONS

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Code 202 RE 7-1541

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Code 202 547-7540

January 6, 1970

Subject: Dispute Committee No. 605
Awards 170 through 177
(Clerks Cases)

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

Dear Sirs and Brothers:

I am enclosing herewith copies of Awards Nos. 170 through 177 signed by Referee Rohman on December 17, 1969. While we do not agree with some of these Awards we do not feel it necessary to write any dissents to them.

Fraternally yours,

G. E. Leighty


Chairman
Five Cooperating Railway Labor Organizations

Encl.

cc: Mr. L. P. Schoene
Mr. F. T. Lynch

GEL/np

SPECIAL BOARD OF ADJUSTMENT NO. 605

 PARTIES)
TO)
DISPUTE)
Brotherhood of Railway, Airline & Steamship Clerks,
Freight Handlers, Express and Station Employees
and
Penn Central (former NYC-Southern District)

QUESTIONS
AT ISSUE:

- (1) Did the Carrier violate the February 7, 1965 Stabilization of Employment Agreement on December 29, 1966 and thereafter when it removed Mr. J. N. Brocklesby from the status of a protected employee and refused to pay him, Brocklesby, the protected rate due him under the Agreement?
- (2) Shall the Carrier now be required to restore Mr. J. N. Brocklesby to the status of a protected employee, with all rights and privileges unimpaired, and to compensate him \$22.134 (plus all subsequent general increases) for December 29, 1966, and the same each day thereafter, five days per week, Monday through Friday?

OPINION
OF BOARD:

On September 9, 1966, Claimant's position as Cashier-Yard Clerk at Kenton, Ohio, was abolished. As there were no juniors whom Claimant could displace on the basis of his seniority, he was furloughed and available for extra work.

The parties are in agreement that Claimant was a protected employee pursuant to the provisions of the February 7, 1965 National Agreement. In fact, he received protected compensation through December 28, 1966. Hence, the instant dispute was precipitated by events which occurred subsequently.

Prior to December 22, 1966, a Bill Clerk position at Marion, Ohio, was first advertised to employees holding point seniority at Marion. Failing to receive any bids, the Carrier on December 22, 1966, readvertised the position to employees on the Central Division, Ohio Sub-Division. Again, no bids were received and a new employee was hired to fill the vacancy.

Thus, the issue presented herein is whether the Claimant forfeited his protected status pursuant to Article II, Section 1, of the February 7, 1965 Agreement. Specifically, the Carrier argues that Claimant failed to obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements.

Basic to the instant dispute is the question of point versus division seniority. We are mindful of Question and Answer No. 2, Article II, Section I, of the November 24, 1965 Interpretations, hereinafter quoted:

"Is a position on another seniority roster with respect to which an employe holds no seniority, but with respect to which he holds preferential rights to employment as against a non-employe, a position available to such employe in the exercise of his seniority rights as that term is used in this Section?

No."

Thus, if Claimant held no seniority rights on the Ohio-Central Division, Ohio Sub-Division, the December 22 advertisement would have no effect upon him, insofar as protective benefits are concerned. Conversely, if Claimant held seniority on that Division and failed to obtain a position pursuant to Article II, Section 1, it would be possible for him to lose his protected status.

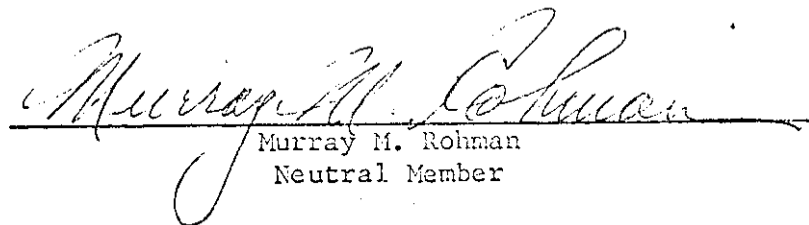
Therefore, relevant to the instant controversy is the issue whether Claimant held both point and division seniority. In support thereof, the Carrier cites Rule 7 of the Schedule Agreement. Without quoting verbatim therefrom, first, it provides for bulletining at the point of vacancy and second, in the group of seniority districts. In fact, the Organization concedes as much in the following:

"This position had been bulletined to the employees on the point roster at Marion, Ohio and when no bids were received the position was advertised to the division as provided in existing Rules Agreement."

In summary, it is our view, that on the initial advertisement at Marion, Claimant was not obligated to bid, pursuant to Question and Answer No. 2 of the Interpretations. However, when the Carrier readvertised on the division, Claimant was obligated to bid in order to maintain his protected status, inasmuch as he held seniority thereon, pursuant to the Rules Agreement.

Award:

The answer to Questions (1) and (2) is in the negative.


Murray M. Rohman
Neutral Member

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