

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES)
TO)
DISPUTE)
Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees.
and
Baltimore and Ohio Railroad Company

QUESTIONS
AT ISSUE:

- "(1) Did the Carrier violate the provisions of the Agreement of February 7, 1965 and the interpretations thereto, particularly Article II, Section 1, when it removed the protected status from Mr. T. V. Dusch, a Group 3 (Laborer) employee at DuBois, Pennsylvania?
- "(2) Shall the Carrier be required to reinstate the protected status to Mr. Dusch and pay all compensation due, beginning May 22, 1965, and continuing until the Carrier complies with the provisions of the Agreement of February 7, 1965?"

OPINION
OF BOARD:

The Claimant is a protected employee and holds only a Group 3 seniority. On February 10, 1965, his position was abolished and he reverted to a furloughed status, available for extra work at Du Bois. Thereafter, four new Group 1 yard clerk positions were established at Butler. These, as well as an existing yard clerk vacant position were advertised and only one bid received.

As a result of discussions with the Organization, the Carrier agreed to readvertise the vacancies. In addition, the Claimant was personally contacted by both the Carrier and the Organization. Upon failure of the Claimant to bid on the readvertised positions, his protected status was terminated.

The Organization contends herein that the Carrier violated Article II, Section 1, of the February 7, 1965 National Agreement, as well as Rule 31 of the Schedule Agreement. Insofar as Rule 31 is concerned, the Carrier argues that it is applicable only to "qualified unassigned employees having Group 1 seniority who stood to be recalled under Rule 31."

Underlying the instant dispute is the question whether it was necessary for the Carrier to enter into an Implementing Agreement. Stated in the alternative, could the Claimant, holding seniority in Group 3, be required to bid for a vacancy on a Group 1 seniority roster, without an Implementing Agreement? Obviously, the latter question requires a negative answer.

The next query posed is whether the Carrier entered into an Implementing Agreement. Previously, we indicated that upon failure to receive bids on the initial bulletin, discussions were held with the

Organization wherein it was agreed that the Carrier would readvertise the vacancies, as well as personally contact Claimant. Necessarily, we are required to determine not only whether the Carrier entered into an Implementing Agreement but also the nature of the agreement. In this regard, the November 24, 1965 Interpretations, sheds some light with respect thereto. On Page 10 thereof, the following statement is pertinent herein:

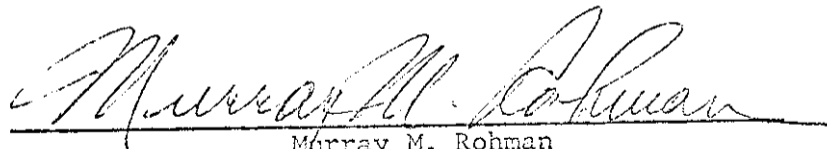
"The language above quoted is intended to mean that seniority districts or rosters existing on the effective date of the February 7, 1965 Agreement are not to be changed insofar as the application of the aforesaid agreement is concerned, except as the result of an implementing agreement or other agreement mutually acceptable to the interested parties."
(Underline added).

In our view, the parties on May 21, 1965, arrived at a mutually acceptable agreement which was thereafter implemented by the Carrier through a special bulletin readvertising the positions at Butler.

It is, therefore, our considered judgment that the Carrier did not violate the provisions of the February 7, 1965 National 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