

Q.H.

SPECIAL BOARD OF ADJUSTMENT NO. 605

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

QUESTIONS
AT ISSUE:

- (1) Did the Carrier violate the terms of the Mediation Agreement currently in effect as of July 1, 1965, when it failed to enter into an implementing agreement covering the transfer of clerical work from one seniority district to another?
- (2) Did the Carrier violate the terms of the Mediation Agreement when it failed and refused to properly compensate Mr. J. Gaughan, seniority date 10-6-38, on the New Haven Division Roster?
- (3) Shall Claimant Gaughan now be paid \$22.3424 per day commencing February 11, 1966, and continuing until violation is corrected?

OPINION
OF BOARD:

On January 12, 1965, the parties entered into a Memorandum of Agreement establishing the Central Billing Department as a new seniority district at New Haven. Thereafter, at various times, billing work performed at freight stations were transferred to the Central Billing Department. However, on November 15, 1965, the Organization informed the Carrier that, henceforth, if the Carrier desired to transfer work, it would insist upon an implementing agreement pursuant to Article III, of the February 7, 1965 National Agreement. Nevertheless, on January 1, 1966, the Carrier abolished the clerical positions at Holyoke, without an implementing agreement. Upon abolishment of Claimant's position at Holyoke, he exercised his seniority and displaced a junior on a Clerk position at Easthampton. However, Claimant was disqualified within the thirty day period due to his inability to perform the duties and was furloughed.

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Thus, two issues are presented for our consideration in the instant dispute. The first issue involves the question of an implementing agreement pursuant to Article III, of the February 7, 1965 Agreement. In this regard, we adhere to our Award Nos. 43 and 124, wherein we indicated that an implementing agreement was not required where only work was transferred.

The second issue involves Article II, Section 1, of the February 7, 1965 Agreement: "--failure to retain or obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements, or failure to accept employment as provided in this Article." Inasmuch as the Carrier denies that Rule 8, is applicable herein, therefore, we confine our analysis to Rule 45.

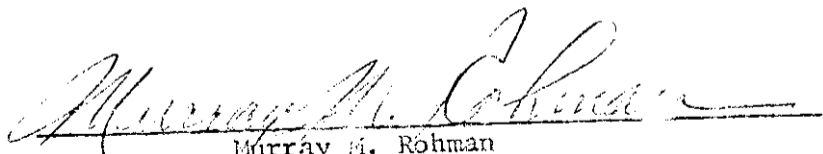
In Award No. 33, we carefully examined Rule 45, involving the same parties. We therein stated that "---under Rule 45, it was obligatory upon the Carrier to assign the Claimant to a position he was qualified to fill." On October 26, 1966, the Carrier advised Claimant he was being recalled to a permanent vacancy at Poughkeepsie, under the provisions of Rule 45. Notwithstanding such notice, Claimant declined to accept the proffered assignment.

Therefore, it is our considered view that upon failure of Claimant to accept the assignment on October 26, 1966, the instant claim may only be sustained to that date, at the rate of the position held on October 1, 1964, plus subsequent general wage increases.

AWARD

The answer to Question (a) is in the negative.

The answer to Question (b) and (c) is in the affirmative to the extent that Claimant is entitled to be compensated to October 26, 1966, at the rate of the position held on October 1, 1964, plus subsequent general wage increases.


Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
January 19, 1970