

Award No. 228
Case No. TCU-97-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Wichita Union Terminal Railway Company
TO THE) and
DISPUTE) Transportation-Communication Employees Union

QUESTIONS

AT ISSUE:

1. Does G. P. Gragg, who had more than two years of employment relationship with the Carrier as of October 1, 1964, qualify as a protected employee under Article 1, Section 1?
2. If the answer to the above is in the affirmative, is G. P. Gragg entitled to preservation of compensation under Article IV?
3. If the answer to (2) above is in the affirmative, shall Carrier be required to reimburse G. P. Gragg for preservation of compensation under Article IV?

OPINION

OF BOARD: From December, 1944, to October, 1963, Claimant performed work under the jurisdiction of the Clerks and had a seniority date of December 23, 1944. She also performed relief service in positions covered by the Telegraphers' agreement beginning in 1958; Carrier's submission states that "when extra and/or off-in-force-reduction clerical employees were available to relieve her, she was allowed to protect vacancies on the telegraph service positions."

Claimant always returned to her clerical position upon completion of the relief function. This continued until her Clerk's position was abolished in October, 1963. On October 18, 1964, she forfeited her Clerk's seniority and Carrier inadvertently, it was said, gave her a Telegrapher seniority

date of November 9, 1963. In 1965 Claimant obtained an assignment as a Telegrapher-Clerk and retained it until the position was abolished in November, 1967.

The issue to be resolved is whether or not Claimant had two years or more of employment relationship as of October 1, 1964, as a Telegrapher and was therefore a protected employee under the February 7, 1965 Agreement.

The Organization contends that Claimant's work as an extra, in which she responded to all calls, manifested an employment relationship, although she did not acquire seniority as a Telegrapher. In accordance with Question No. 5 on Page 3 of the Interpretations, seniority is not synonymous with "employment relationship."

Carrier argues that since she worked as a Clerk until October, 1963, possessing seniority in that unit until October, 1964, she could not have acquired the necessary two years of employment relationship as a Telegrapher prior to October 1, 1964. Carrier also states that Claimant did not meet the "active service" requirement of Article I, Section 1, because whenever she was used as Telegrapher between 1958 and 1963 she retained rights under the Clerk's agreement and was used as a Telegrapher only if she could be relieved of her clerical assignment.

On the property the Organization's letter of January 16, 1968, to the Carrier stated that Claimant asserted, as follows:

I worked as an extra telegrapher from October 1958 until October 28, 1965, being on continuous call and working all extra work in this office without missing a call.

"Active service" is defined in Article I, Section 1, "to include all extra employees on extra lists pursuant to agreements or practice who are working or are available for calls for

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service and are expected to respond when called..." The record indicates that Claimant did, in fact, respond when called and she thus was in active service as a Telegrapher on October 1, 1964.

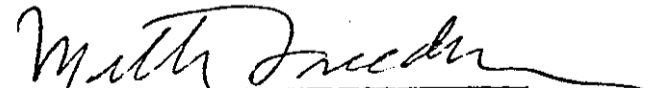
No claim is made that the employee had an employment relationship based upon work in two crafts which, with certain exceptions, cannot be combined in calculating employment relationship, according to Question No. 9 on Page 4 of the Interpretations. For it is as an extra employee under the Telegraphers' agreement that Claimant certainly met the requirement for two-years' employment relationship as of October 1, 1964. The fact that she also worked as a Clerk and held Clerk's seniority does not mean that she could not have had the necessary employment relationship as a Telegrapher. After all, if she had responded to all calls as an extra Telegrapher for two years, she would not be disqualified by virtue of her having also done other work outside the railroad industry during this period. Thus, that she was simultaneously on the Clerk's seniority list did not thereby diminish her rights as a Telegrapher under the February 7 Agreement.

The Organization cites Awards 34 and 161 of this Committee in support of its position. Award 34 concerns work performed outside any bargaining unit but appears to rest on other evidence as well. Award 161, however, is directly in point in holding that an employee performing extra work over a period of two years within the craft, despite extra work in a shopcraft organization in the same period, has established the necessary employment relationship. That finding is consistent with the February 7 Agreement and there is no basis for departing from it.

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A W A R D

1. The answer to the Question is Yes.
2. G. P. Gragg is entitled to preservation of compensation under Article IV from November 17, 1967 on.
3. In accordance with the foregoing, the answer to the Question is Yes.


Milton Friedman
Neutral Member

Washington, D. C.
November 16, 1970

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