

# NATIONAL RAILWAY LABOR CONFERENCE

1225 CONNECTICUT AVENUE, N.W., WASHINGTON, D. C. 20036/AREA CODE: 202-659-9320

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March 10, 1971

Mr. Milton Friedman  
850 - 7th Avenue  
New York, New York 10019

Dr. Murray M. Rohman  
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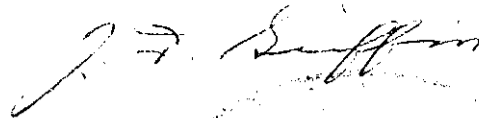
Mr. Nicholas H. Zumas  
1225 - 19th Street, N. W.  
Washington, D. C. 20036

Gentlemen:

This will supplement our previous letters with which were forwarded to you copies of Awards of Special Board of Adjustment No. 605 established by Article VII of the February 7, 1965 Agreement.

There is attached copy of Award No. 239, dated March 8, 1971, rendered by Special Board of Adjustment No. 605.

Yours very truly,



cc: Messrs.

G. E. Leighty (10)  
H. C. Crotty (2)  
✓ J. J. Berta (2)  
T. A. Tracy (3)  
J. W. Oram  
W. S. Macgill  
M. E. Parks  
J. E. Carlisle  
W. F. Euker  
T. F. Strunck

AWARD NO. 239  
Case No. MW-11-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) Erie Lackawanna Railway Company  
TO THE ) and  
DISPUTE ) Brotherhood of Maintenance of Way Employees

QUESTION

AT ISSUE: Should Mr. Quattrone be paid at  
the rate of \$2.7768 per hour for  
the year 1965?

OPINION

OF BOARD: Claimant is a protected employee by virtue of the position  
he held as a Welder at Jamestown, New York on October 1, 1964.  
While working there for some three years, he resided at Salamanca, New York, which is about 34 rail miles and 38 highway miles away. His seniority as a Welder is as of 1962.

According to Carrier, Claimant is not entitled to the preservation of his protected rate as a Welder because in 1965 he failed to exercise seniority rights to secure another available position, not requiring a change in residence. Resolution of this case is facilitated by the situation of another employee, Mr. Coffey, who also lives in Salamanca. He has Welder's seniority dating from 1943, but, Carrier states, is protected as a Welder Helper. It appears, however, that Mr. Coffey's protected rate is an average rate, rather than that of either of the two classifications.

Claimant's position as a Welder was abolished on February 3, 1965. Carrier contends that he was obliged to bid on a position at Randolph, New York, about 17 rail miles from Salamanca; it had been bulletined in February, as it was again in March. Carrier also asserts that Claimant could have displaced a junior Welder at Jamestown on February 11, on which date Mr. Coffey displaced a Welder Helper at Salamanca and Claimant took a trackman position there.

The bulletin advertising the Randolph position expired on February 6. Consequently, it was not in effect on February 7, the date of the Agreement, and Article IV, Section 4, should not be given retroactive effect.

The evidence indicates that the March bulletining of the position at Randolph was never discussed on the property and was not raised in connection with this dispute until the matter was submitted to the Committee. It is well established that material facts which were not raised during discussions on the property do not constitute a proper basis for adjudication.

Essentially the issue therefore is whether Claimant was required to displace at Jamestown or had no such obligation because it would have required a change in residence. The Interpretations of Article III do not state that if an employee's work is "in excess of 30 normal travel route miles from the residence he occupies" he must always be considered as requiring a change of residence.

However, Carrier by its actions has helped define the provision in connection with this specific case by continuing the protected rate of Mr. Coffey who also failed to displace at Jamestown, in February, 1965. Instead, he took a Helper position in Salamanca without loss in protected rate. Yet his seniority enabled him to displace Claimant on June 16, 1965, when Claimant was holding a Welder's position in Salamanca. Mr. Coffey thus had a clear prior claim to the position in Jamestown as well as an obligation to take it, if it did not require a change in residence. It must therefore be inferred that Carrier did regard displacement at Jamestown by an employee residing in Salamanca as one which would necessitate a change in residence. Otherwise, Mr. Coffey would have been obliged to displace at Jamestown or suffer a diminution in compensation, pursuant to Article IV, Section 4. Neither occurred.

Because Mr. Coffey's protected rate was an average between that of Welder and Welder Helper, he is not freed from the obligation to secure a position which would not have required a change in residence if it "carries a rate of pay and compensation exceeding those of the position" which he elected to retain. Since Mr. Coffey was not treated "as occupying the position which he elects to decline" by virtue of failing to displace at Jamestown, it would be patently erroneous to make such a determination in connection with Claimant.

A W A R D

The answer to the Question is Yes.

  
Milton Friedman  
Neutral Member

  
Dated: March 8, 1971  
New York, New York