

AWARD NO. 250
Case No. TCU-13-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Portland Terminal Railroad Company
TO THE) and
DISPUTE) Transportation-Communication Employees Union

QUESTION
AT ISSUE:

With respect to Article I, Section 1,
is an employee a protected employee who
completed the filing of all the required
forms for employment application, passed
all the required examinations, and was
accepted for employment by the Carrier
on or before October 1, 1962?

OPINION

OF BOARD: The issue in this case is whether an employment
relationship commences when one completes his appli-
cation form and is fingerprinted or when he actually
goes to work for Carrier.

On October 1, 1962, Claimant had not yet begun actual
work. He had applied for employment on September 26, and was
examined by the Company's physicians and approved on that date,
subject to reading of his X-rays. The X-rays were approved the
following day. On September 28, he wrote to his then employer
resigning effective 11:59 P.M. September 30, 1962. He completed
his application for employment and was fingerprinted on October 1,
1962. He first performed service for Carrier on October 4, 1962,
acquiring a seniority date of October 4. Section 1 of the
February 7, 1965, Agreement provides that to be a protected
employee one must have two or more years of employment relation-
ship as of October 1, 1964.

On October 1, 1962, neither employee nor Carrier had
any obligation to one another. Neither had reason to believe
that a relationship had been established beyond that of applicant

and prospective employer. Claimant could have decided not to go to work for Carrier after all, and Carrier could have decided not to put him to work. Carrier owed Claimant nothing at that point. He had not begun to work and was not yet an employee to whom anything was due until October 4.

An employment relationship is not created by the filing of an application. Whether or not a stronger bond would be created by verbal "acceptance" of the application is immaterial here, since this record does not reveal when Carrier made the final review of the completed application and approved it. That may well have occurred after October 1.

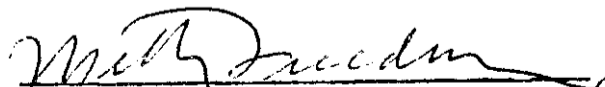
Certainly going on the payroll by performing service denotes the existence of an employment relationship. Whether or not there are other methods of establishing it prior to the start of actual work need not be explored in this case, since an individual's activities in going through the formalities to obtain a position is insufficient to establish that he has commenced the kind of "employment relationship" which the parties contemplated in Article I, Section 1.

To hold otherwise would raise serious questions, for it is conceivable that people may apply for employment, be interviewed and examined, etc., and not be put to work for substantially long periods of time afterwards, whether or not they continue to be employed elsewhere. In such cases, it must be shown that there is some nexus creating a genuine employment relationship as that term is used in the Agreement. None was shown in this case.

Consequently, it must be held that Claimant did not establish an employment relationship until October 4, 1962, when he first performed compensated service for Carrier. He therefore lacks the two-year relationship necessary to qualify under the February 7, 1965, Agreement.

A W A R D

The answer to the Question is No.


Milton Friedman
Neutral Member

Dated: July 8, 1971
Washington, D. C.