

AWARD NO. 256  
Case No. TCU-32-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) The Denver and Rio Grande Western Railroad Company  
TO THE ) and  
DISPUTE ) Transportation-Communication Employees Union

QUESTIONS

- AT ISSUE:
1. To avoid loss of protection or any part thereof under Article IV, is a displaced protected employee obligated to change his place of residence to obtain a higher rated position when a lower rated position is available to him not requiring a change in residence?
  2. Shall Carrier be required to compensate W. H. Ewald, Telegrapher, Salida, Colorado (retroactive to July 16, 1965), in accordance with Article IV, Section 1, as modified by Article IV, Section 4, the difference between the normal rate of compensation of his position October 1, 1964 (Manager-Wire Chief, Salida, Colorado) and that produced by the Relief Position at Salida, Colorado, the highest rated position available to Claimant Ewald not requiring a change in residence when his position was abolished July 15, 1965?

OPINION

OF BOARD: On July 15, 1965, Carrier abolished its relay office at Salida, Colorado, and established a telegraph office. As a result of the change, Claimant's position as Manager was abolished. According to Carrier, he could have bid a Manager's position in Denver but failed to exercise his seniority to obtain it.

AWARD NO. 256  
Case No. TCU-32-W

According to Article IV, Section 4, of the February 7 Agreement, no loss in compensation is imposed upon a protected employee who "fails to exercise his seniority rights to secure another available position" if a change in residence is required, as would have been true of the Denver job.

The highest-paying job established at Salida was that of Agent. Claimant did not bid on this job and would not have obtained it if he had, since it went to an employee senior to him. Carrier contends that under Article IV, Section 4, he must be treated as occupying the Agent's position, since he failed to bid on it.

The import of Article IV, Section 4, is that the compensation guarantee is affected when an individual could have obtained but failed to obtain a position, not when it was actually unobtainable had he placed a bid. That Section provides a penalty for failing to exercise seniority to secure a position. Going through the motions is not required. Carrier's view would necessitate exercises in futility, with employees bidding for jobs which are destined for others senior to them.

Certainly if a junior employee emerges with the position, Article IV, Section 4, applies, and the senior employee who failed to bid is thereafter treated as occupying that position. But the failure to place a bid, which is known to be fruitless, does not affect a protected employee's rights to his guaranteed compensation.

At the time of the change in 1965 Claimant also could have bid--and would then have obtained--the Relief Telegrapher's position at Salida. Instead he bid and obtained a lower-paying First Telegrapher position. The Organization acknowledges that thereafter he must be treated as occupying the higher of these two, since he elected to decline a position he could have had. Consequently, at this point Carrier was obligated to pay Claimant the difference between his protected rate as Manager and the rate of the Relief position he bypassed.

On March 12, 1967, the position of Agent at Salida was vacated. Claimant could have bid and obtained this position in the exercise of his seniority, and no change in residence was

AWARD NO. 256  
Case No. TCU-32-W

required. He did not do so and a junior employee secured the job. The Organization contends that the requirements of Article IV, Section 4, should not be applied to Claimant at this point. It asserts that the Agreement does not require an employee to bid again and again in order to obtain higher-paying positions. Carrier argues that there was precisely such an intent manifested in Article IV, Section 4; if employees were to be guaranteed a rate of pay they had a concomitant obligation to obtain the highest-paying positions available to them rather than sit back and collect the difference between a low-paying job and their guarantees.

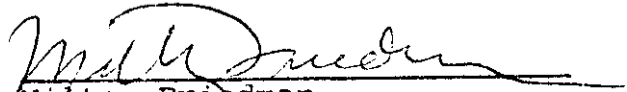
In this case it is not even necessary to decide whether employees must make "bid after bid" for higher-paying positions. The fact is that Claimant had not exercised seniority to obtain a position carrying "a rate of pay and compensation exceeding those of the position he elects to retain." Nothing in Article IV, Section 4, purports to give protected employees the right to "declination after declination" of higher-paying positions while they retain a still higher guaranteed rate of compensation.

Not even once did Claimant seek to narrow the gap between the rate of the relief job he declined in 1965 and the Manager's rate at which he was protected. Thus without regard to any obligation to place "bid after bid," Claimant certainly must be treated as occupying the position of Agent from March 12, 1967 on. He could have obtained that position by exercise of seniority, and he should have done so in accordance with Article IV, Section 4.

A W A R D

The answer to Question No. 1 is No.

The answer to Question No. 2 is Yes,  
for the period between July 15, 1965,  
and March 12, 1967 only.

  
Milton Friedman  
Neutral Member

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