

AWARD NO. 258
Case No. TCU-21-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) The Atchison, Topeka and Santa Fe Railway Company
TO THE) -Western Lines-
DISPUTE) and
Transportation-Communication Employees Union

QUESTION
AT ISSUE: To avoid loss of allowance as computed
under Article IV, Section 1, must an
employee who knows that his position
soon will be abolished, refrain from
applying for positions advertised to
be vacant?

OPINION

OF BOARD: Claimant occupied a position at Hazleton, Kansas,
when a position as Agent-Telegrapher at Freedom, Okla-
homa, became vacant. On September 7, 1965, Claimant
bid the vacancy and was awarded it on September 14, effective
September 20.

According to the Organization, Claimant knew at the
time he filed his bid that his Hazleton position was to be
abolished and he therefore would be required to exercise sen-
iority to obtain another position. It was for this reason, the
Organization said, that Claimant bid on the Freedom assignment.
Carrier contends that under Article IV, Section 3, Claimant is
not entitled to have his compensation preserved. His bid allegedly
was a normal exercise of seniority "by reason of a voluntary
action," since he had not been advised as of September 7 that
his position was to be abolished. That advice was conveyed to
him on September 10, several days after he made his bid.

If Claimant knew that the Hazleton position was being
abolished, his action three days prior to official notification
would not convert his bid into a voluntary exercise of seniority.

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The bid would not then fall within the restriction of Article IV, Section 3. The fact is that on August 18, 1965, the Kansas State Corporation Commission considered Carrier's application "to discontinue the services of its agent-telegrapher at its station at Hazleton, Barber County, Kansas." Authority to discontinue the station was granted and the order was mailed on August 27, 1965.

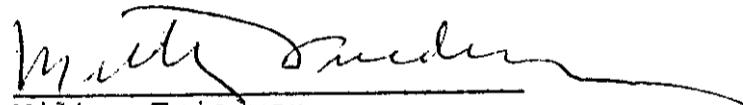
There is no reason to doubt that Claimant knew of the order by the time he made his bid on September 7. His position was indeed abolished on September 17. He remained there until that date, and his assignment in Freedom was effective on Monday, September 20.

At most what is involved here is a technical question and not one of substance. But under Article IV, Section 3, the determination must rest on the facts, not on appearances. When Claimant occupied the Freedom position, the Hazleton job had vanished, which proves his assertion of knowledge that this was to occur.

By September 17, Claimant would have been obliged to displace another employee. He anticipated this not due to voluntary choice but on the basis of sound information, although Carrier was not the direct source at the time. Under the circumstances, this case cannot be construed as one in which the employee has voluntarily exercised his seniority.

A W A R D

Under the specific facts of this case, the answer to the Question is No.


Milton Friedman
Neutral Member

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