NATIONAL RAILWAY LABOR CONFERENCE

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

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October 28, 1971

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Gentlemen:

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

There are attached copies of Awards Nos. 262 to 267 inclusive dated October 27, 1971, rendered by Special Board of Adjustment No. 605.

Yours very truly,

J. F. Griffin

cc: Messrs.
G. E. Leighty (10)
C. L. Dennis (2)
F. T. Lynch (2)
C. J. Chamberlain (2)
H. C. Crotty
A. R. Lowry
T. A. Tracy (3)
W. S. Macgill
G. M. Seaton, Jr.
M. E. Parks
J. E. Carlisle
W. F. Euker
T. F. Strunck
R. W. Smith
M. B. Frye
J. J. Berta

Award No. 262
Case No. CL-82-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Brotherhood of Railway, Airline and Steamship Clerks Freight Handlers, Express and Station Employes and Lake Superior Terminal & Transfer Railway Company

QUESTIONS AT ISSUE:

(1) Did the Carrier violate the provisions of the February 7, 1965 Agreement, particularly Articles I and IV, when it refused and continually refuses to compensate Robert W. Norberg, Relief Clerk, Superior, Wisconsin, commencing April 21, 1970 and each day thereafter for the difference between his guaranteed rate of the position to which assigned, plus subsequent general wage increases?

(2) Shall the Carrier now be required to compensate Robert W. Norberg for the difference in his protected rate of General Clerk and the rate of the position to which assigned, plus subsequent general wage increases commencing April 21, 1970 and each work day thereafter?

OPINION OF BOARD:

Article I, Section 3 of the February 7, 1965 National Agreement, provides that in the event a Carrier sustains a decline in business based on the formula contained therein, it may reduce protected forces. However, in order to avail itself of such relief, a Carrier is required to submit data based on gross operating revenues and net revenue ton miles. Needless to add, generally, short lines or terminal companies do not maintain such data. In recognition of this absence, the negotiators of the February 7, 1965 Agreement, attempted to solve this defect by issuing Question and Answer No.4 under Article I, Section 3, in the November 24, 1965 Interpretations. In substance, they stated therein that where such data may not exist, short lines or terminal companies, "should enter into local agreements for the purpose of providing an appropriate measure of volume of business which is equivalent to the measure provided for in Article I, Section 3."

We have included these prefatory statements as background material in order to place the instant dispute in proper perspective. During the years since the adoption of the February 7, 1965 Agreement and the November 24, 1965 Interpretations, the parties herein have discussed proposals for a substitute formula--although at a snail's pace. Thereafter, despite the failure of the parties to reach a mutual agreement on a substitute equivalent measure of volume of business, the Carrier on April 20, 1970, nonetheless, abolished Claimant's position. The Claimant was able, however, to displace a junior employee at a lower rate of pay. Thus, the Organization's claim seeks to have the Carrier compensate Claimant for the difference in the rates of the two positions.

In some respects, the instant dispute does not represent a novel situation. Our Board has previously grappled with the disputatious arguments of gross dilatory tactics or other impediments which contributed to a failure by the parties to mutually negotiate an equivalent formula for a decline in business. See Awards No. 119, 155, 156, 202, and 213. We would hastily add, however, that this dispute differs in one important respect from the aforementioned cases. In the previous cases, the parties requested that we determine whether the proposed substitute formula was equivalent to that contained in Article I, Section 3.

In the dispute before us now, we are not confronted with that question. Rather, the issue has been enlarged by initiating an abolishment of a protected employee's position prior to executing a local agreement.

The fact that the instant dispute is in this posture has caused us grave concern. The parties are fully familar with our admonitions as set forth in the previous cited awards. Nevertheless, an act is submitted to us now as a fait accompli.

We have carefully reviewed the arguments of both parties. As we have analyzed the facts, it appears to us that the parties were almost in agreement as to a substitute formula. Our initial reaction, at first blush, was to determine which party was the culprit and, accordingly, to respond to the Questions at Issue.

Upon reflection, we believe the function of our Board would be more meaningful and our efforts more significant and beneficial were we to strive to impress upon the parties the need to voluntarily comply with the purpose of Question and Answer No.4 of the November 24, 1965 Interpretations. Hence, we intend to disregard the acrimonious recriminations and accusations of the parties, for the present.

In this vein, without embellishing our remarks, we earnestly urge the parties to reach agreement on a substitute formula. Implicit in our gentle and conciliatory approach is the hope that neither party misinterprets nor underestimates what is contained herein. Thus, it is our considered opinion that the Question at Issue should be remanded to the parties for negotiation of a local agreement in accordance with the Interpretations. In addition, we shall hold in abeyance the question whether Claimant is entitled to additional compensation pending conclusion of an agreement for a substitute formula.

AWARD

1. The matter is remanded to the parties for negotiation of a local agreement in accordance with the Opinion.

2. We shall hold in abeyance the question whether Claimant is entitled to additional compensation pending conclusion of an agreement for a substitute formula.

Murray M. Rohman

Dated: Washington, D. C.
October 27, 1971

Murray M. Rohman
Neutral Member