

AWARD NO. 271
Case No. TCU-39-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Penn Central Company
TO THE) and
DISPUTE) Transportation-Communication Employees Union

QUESTION
AT ISSUE:

To avoid loss of protection or any part thereof under Article IV, was W. L. Fetty, a displaced protected employee, who was unable to obtain a position which did not require a change in residence (within 30 miles), obligated to acquire the highest rated position available to him requiring a change in residence (more than 30 miles distant)?

OPINION

OF BOARD: Claimant was displaced from his position as Agent at Lancaster, Ohio, by a supervisor who voluntarily exercised his seniority to return to the bargaining unit. Claimant's Lancaster rate was \$608.72 per month. He exercised seniority to obtain a relief position at Zanesville, Ohio, 43 miles from his residence. It paid \$517.96.

The letter agreement between the parties which is attached to the February 7 Agreement provides that if supervisors exercise their seniority rights to return to their craft, employees shall not be "adversely affected with respect to compensation... rights and privileges." It is plain that this excepts the voluntary return of supervisors to the unit from the effects of Article IV, Section 3.

It is agreed that there were no positions within "30 normal travel route miles" available to Claimant. But there were two positions paying higher rates than the Zanesville job which Claimant could have obtained by exercise of seniority. One of them had a rate of \$618.76.

Carrier contends that Claimant was obligated to take the highest paying position available to him. He cannot take the lowest paid position, according to Carrier, and expect to retain his guaranteed rate. The Organization maintains that Claimant was entitled to exercise his seniority to obtain any position at all, where one was not available without "a change of residence (within thirty miles)."

Article IV, Section 4, provides:

If a protected employee fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position he elects to retain, he shall thereafter be treated for the purposes of this Article as occupying the position which he elects to decline.

If an employee obtains a position not requiring a change of residence, he retains his protected compensation. If he fails to utilize his seniority to obtain such a position, or voluntarily bids into a lower position elsewhere, he does not retain his guarantee.

The Organization bases its case on the fact that Claimant had nowhere to go except to a location requiring a change in residence. When this is so, the Organization contends, any position he selects is sufficient to preserve his compensation.

However, Claimant was not in fact required to change his residence. He did not do so. He continued to maintain the same residence as he had when he occupied the Lancaster position. He has therefore transformed the question of whether or not he was required to move from the theoretical to the practical. In

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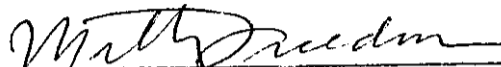
his case, under the given circumstances, no change in residence was required, for if it had been he would have been obliged to move and he would have done so.

Significantly, Article IV, Section 4, does not refer to positions more than 30 miles from an employee's residence, but refers to the requirement to move. The 30 miles is expressed in a special way in the Interpretations of November 24, 1965. The provision cannot be read to mean that a change in residence is required if an employee shows by his actions that it is not required. By staying put, Claimant has resolved the issue even though it thereby may leave it unresolved in other cases and it can be given no universal application.

The language on Page 11 of the November 24 Interpretations is couched in the negative: If it is 30 miles or less, an employee "will not be considered as being required to change his place of residence," but it does not explicitly say when that is required. Since Claimant did not move, he properly exercised his seniority rights to secure another available position upon being displaced, which did not require his change in residence. He is therefore entitled to continuation of his guaranteed compensation.

A W A R D

The Question as presented assumes facts not in evidence. The answer to the Question is that Claimant is a protected employee who is entitled to preservation of his normal rate of compensation, pursuant to Article IV, Section 1.



Milton Friedman
Neutral Member

Dated: Washington, D. C.

November 16, 1971