

AWARD NO. 273
Case No. TCU-84-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Chicago, Rock Island and Pacific Railroad Company
TO THE) and
DISPUTE) Transportation-Communication Employees Union

QUESTION
AT ISSUE:

Is A. J. Cousins entitled to separation allowance under the terms of the Agreement as a result of Carrier's action of abolishing his position at Kenneth-Lismore, Minnesota, and thereupon rearranging said position to become a part of a position at Lismore-Reading-Wilmont, Minnesota and also a part of a position at Hardwick-Luverne-Kenneth, Minnesota?

OPINION

OF BOARD: The issue arises under an implementing agreement dated April 1, 1966, which provides in part:

(5) The senior regular assigned occupant of the positions in the respective groups above listed may retain the said position or exercise seniority by using the procedure contained in Rule 33 of the current Telegrapher's Agreement. In the event he does not desire the consolidated position, then it will be offered to the next senior regular assigned occupant who may retain it or displace under the Agreement. In the event neither of the senior employees, or employee as the case may be, do not desire to retain consolidated position, then the junior occupant of the positions consolidated will be assigned thereto.

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(8) Any protected employee transferring to a new point of employment as a result of the operational and organizational changes made herein will be entitled to the benefits provided for in Article V of the Agreement made on February 7, 1965.

Carrier triplized a number of dualized positions. Three dualized positions which were being combined into two are involved in this case. They had been assigned as follows, shown in the order of the incumbents' respective seniority:

<u>Incumbent</u>	<u>Position</u>
Hansen	Luverne-Hardwick
Claimant	Kenneth-Lismore
McCann	Reading-Wilmont

Each of Claimant's two stations was added to one of the other groups, resulting in Kenneth-Luverne-Hardwick and Lismore-Reading-Wilmont. Pursuant to Section (5) of the implementing agreement, the more senior employee as between Hansen and Claimant was Hansen, and he elected not to occupy the triplized position in which his stations appear. Consequently, Claimant was assigned to Kenneth-Luverne-Hardwick and the most junior of the three, McCann, was assigned to the other triplized position.

The Organization contends that since Claimant was senior to Mr. McCann in a triplized position in which one of Claimant's stations appeared, Claimant had the right under Section 5 of the implementing agreement to retain it or to decline it. He chose to decline it and therefore is entitled to the separation allowance, similar to the treatment accorded Mr. Hansen. Under the Organization's approach, Mr. McCann would

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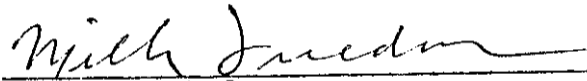
have been assigned to one triplized position and none of the three would have been available for the other. According to Carrier, Claimant was required to fill the position declined by Mr. Hansen, since there were three employees and two positions to be filled.

Either in viewing the two sets of triplized positions as a single group or in appraising each of them individually, Mr. Hansen had the right of first choice. Once he declined his consolidated position, Claimant was the junior occupant of it. Alternatively, since there were three employees and two positions to fill, the two junior of the three are assignable. The intent of the implementing agreement was that there would be at least one employee assigned to each position, whether by exercise of his seniority or by Carrier's assignment. Thus if Claimant could opt to depart, then Mr. Hansen would perforce be obliged to retain the position in which his stations appeared. The seniority concept was related to a juniority concept ensuring an incumbent, and as between these two Mr. Hansen had prior rights.

While Claimant was senior to one employee, he was junior to the other. Thus he cannot exercise his seniority in a situation where his juniority gives Carrier the right to assign him, for the last sentence of Section (5) indicates that Carrier retained the right to require one of the occupants to fill each position resulting from the triplization. In effect, Section (5) permitted exercise of seniority only where a less senior man was available, which means that Carrier had the right to assign two men to the two positions.

A W A R D

The answer to the Question is No.


Milton Friedman
Neutral Member

Dated: Washington, D. C.

November 16, 1971