Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12840
Docket No. 12692
95-2-93-2-115

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers' International Association
(
(The Atchison, Topeka and Santa Fe Railway
(Company

STATEMENT OF CLAIM:

"1. That beginning as early as November 1987, and continuing thereafter, the Atchison, Topeka & Santa Fe Railway Company, hereafter referred to as the Carrier, changed its operation in transferring work such as, but not limited to inspections, maintenance, repair, heavy overhaul and modifications of diesel locomotives, from the Cleburne, Texas shops to the Diesel facilities at San Bernardino, California, subsequently adversely affecting Sheet Metal Workers C.M. French, H. Stevens, L.D. Gant, R.L. Tubbs, Sr., G.G. Maples, A.L. Akins, Sr., T.A. Forsythe, J.A. Leverett, M.P. Scott, R.L. Tubbs, Jr., D.E. Cochran, B.W. Edwards, B.E. Jones, M. Vanzandt, C.L. Kirkpatrick, D.L. Stuart, P.G. Murphy, W. Brown, Jr. The aforementioned employees who were affected by abolishment of positions in Cleburne are entitled to protective benefits pursuant to Section 2(a) of the September 25, 1964 Agreement which requires provision of benefits to employees who are adversely affected by a transfer of work.

Sheet Metal Workers continuing to work subsequent to transfer but placed in a worse position are entitled to protective benefits under Article I, Section 2(b) of the September 25, 1964 Agreement, which requires provisions of benefits to employees who are adversely affected by the abandonment of a facility or a portion thereof, are: Sheet Metal Workers G.B. Anderson, M.G. Bass, J.E. Elmore, R.D. Gray, C.E. Lockett, J.C. Miller, Jr., B.D. Morris, J.D. Porter, N.R. Powell and W.H. Jowell and are hereafter referred to as claimants.

2. That the Carrier be required to provide the claimant, in each instance, the protective benefits of the controlling agreements that are applicable when employees are adversely affected by a change in the Carrier's operation, Article I, Section 2(a), and 2(b), including:

   1) 90 days compensation each at pro rata rate.

   2) displacement or separation at Claimants' election.

   3) any other benefits to which they are entitled should they be offered employment outside their seniority district; as the Carrier failed to issue proper notice as set forth in the applicable protective agreement."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The dispute was still pending with SBA No. 570 when on June 1, 1993, the parties at the National Level agreed that disputes of this type which had not been assigned to and argued before a Referee at SBA No. 570 could "be withdrawn by either party at any time prior to August 1, 1993." The Agreement allowed that "a dispute withdrawn pursuant to this paragraph may be refered to any boards available under Section 3 of the RLA . . . ." (underscore ours for emphasis)

This is another case involving the closing of the Carrier's Cleburne, Texas facility. Indeed, some of the same Claimants in this claim have also been included in another claim before this Board.

The key document triggering this claim was dated February 29, 1988. In that document, the Organization claims protective benefits for unnamed Sheet Metal Workers at Cleburne, Texas, asserting that the Carrier had failed to comply with the provisions of the September 25, 1964 National Agreement ("Agreement").

On January 18, 1989, Carrier denied the claims asserting that Sheet Metal Workers' furloughs were not the result of any of the operational changes listed in Article I, Section 2 of the Agreement. Rather, it claimed the furloughs arose because of an overall reduction in the volume of work, not a transfer of work as claimed by the Organization. On September 19, 1989, the Carrier supplemented its earlier denial by providing greater detail to support its contention that the furloughs occurred because of an overall reduction in the volume of work.

The basic question before the Board is whether the work at issue was transferred to other locations or simply decreased because of a lack of demand. We have carefully considered the evidence provided by the parties. This shows that locomotive re-manufacture ceased at Cleburne, Texas in early 1988. It also shows that a number of the Claimants listed by the Organization resigned from employment in 1987, that some transferred to other Carrier facilities, that others took a leave of absence, and that one took a disability retirement. In essence, a majority of the Claimants did not have an employment relationship with the Carrier at the time when the Organization made its initial claim on February 19, 1988.

The Organization claims that the employees were affected by "transfer of work" commencing in 1987. Controlling here are the first three sections of Article I of the Agreement, quoted verbatim below:

> "Article I (Employee Protection): Section 1:
>
> The purpose of this rule is to afford protective benefits for employees who are displaced or deprived of employment as a result of changes in the operations of the Carrier due to the causes listed in Section 2 hereof, and, subject to the provisions of this Agreement, the Carrier has and may exercise the right to introduce technological and operational changes except where such changes are clearly barred by existing rules or agreements.

* * * *

Section 2:

The protective benefits of the Washington Job Protection Agreement of May, 1936, shall be applicable, as more specifically outlined below, with respect to employees who are deprived of employment or placed in a worse position with respect to compensation and rules governing working conditions as a result of any of the following changes in the operations of this individual carrier:

a. Transfer of work;

b. Abandonment, discontinuance for 6 months or more, or consolidation of facilities or services or portions thereof;

c. Contracting out of work;

d. Lease or Purchase of Equipment or component parts thereof, the installation, operation, servicing or repairing of which is to be performed by the lessor or seller;

e. Voluntary or involuntary discontinuance of contracts;

f. Technological changes, and

g. Trade-in or repurchase of equipment or unit exchange.

Section 3:

> An employee shall not be regarded as deprived of employment or placed in a worse position with respect to his compensation and rules governing working conditions in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, or failure to work due to disability or discipline, or failure to obtain a position available to him in the exercise of his seniority rights in accordance with existing rules and agreements, or reductions in forces due to seasonable requirements, the layoff of temporary employees or a decline in a carrier's business, or for any other reason not covered by Section 2 hereof. In any dispute over whether an employee is deprived of employment or placed in a worse position with respect to his compensation and rules governing working conditions due to causes listed in Section 2 hereof, or whether it is due to the causes listed in Section 3 hereof, the burden of proof shall be on the carrier." (emphasis added)

Protection (separation, displacement or dismissal allowance) is provided only when an employee is affected by an operational change listed in Section 2, as explained above. We find that the abolished positions in this dispute were the result of an overall reduction in the volume of work or economic reasons (or a combination of both), depending upon the dates that the abolishments occurred. The assignment of locomotives for service and maintenance is not a transfer of work. For example, see SBA No. 570, Awards 557 and 571.

For all of the foregoing, the claim is denied.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 24th day of February 1995.