Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12841
Docket No. 12693
95-2-93-2-116

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 under the Agreement of September 25, 1964, as amended, the Atchison, Topeka, and Santa Fe Railway violated the provisions of Article I, Sections 6 and 7 when Carrier failed to provide the benefits of the herin before mentioned Articles and Sections of the September 25, 1964 Agreement when any employee is retained in the service of the Carrier involved in a particular coordination, and who is required to change his point of employment as a result of such coordination and is therefore required to move his place of residence and, is furloughed within three years after changing his point of employment, thus depriving the employee of employment as a result of a change in operations for any of the reasons set forth in Article 1, Section 2.

2. That accordingly, the Atchison, Topeka and Santa Fe Railway Company be ordered to make Sheet Metal Worker B.D. Morris whole by affording all benefits provided by the September 25, 1964 Agreement, including, but not limited to, coordination allowance/dismissal allowance or separation allowance."

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agreed that disputes of this type which had not been assigned to and argued before a Referee at SBA No. 570 could "be withdrawn by either party at any time prior to August 1, 1993." The Agreement allowed that "a dispute withdrawn pursuant to this paragraph may be refered to any boards available under Section 3 of the RLA .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)

The significant events leading to this claim began on June 23, 1989 when the Carrier issued a notice pursuant to Article I, Section 4 of the September 25, 1964 Agreement ("Agreement") of its intent to close its Cleburne, Texas, facility and transfer the work being performed by its Sheet Metal Workers to its facilities at Argentine, Kansas, and Barstow, California, on or about October 1, 1989.

The parties were not able to consumate an Implementing Agreement to transfer the work and employees. The Carrier then unilaterally effected the proposed Implementing Agreement which had been rejected by the Organization, but which was identical with respect to benefits and obligations as those signed by the other crafts. This resulted in the Claimant's transfer to Barstow after his position at Cleburne was abolished on September 30, 1986. The Claimant decided for the move to accept lump sum payments of $3,000.00 and $12,000.00 in lieu of moving expenses and real estate benefits.

On January 26, 1990, the Claimant's position at Barstow was abolished and he was furloughed and he returned to Cleburne, Texas. The Organization, on February 5, 1990, filed a claim on his behalf in which it asserted that the Claimant should be provided protective benefits pursuant to Article I, Sections 6 and 9 of the Agreement. The Carrier subsequently reimbursed the Claimant for expenses incurred in the move back to Cleburne. Therefore, the only issue before the Board is whether the Claimant is entitled to protection under Article I, Section 6 of the Agreement. The specific question is: Because the Claimant transferred to Barstow (a "transaction") and was subsequently furloughed at that location, is he entitled to protection?

The record shows that the Claimant was offered and refused two positions at Barstow that did not reduce his compensation, but were outside of his craft. The Board finds that these positions were "comparable" ones to the one held by the Claimant and from which he was furloughed, as that term has been construed in this industry. The term "comparable" has been defined, for example, in Issue No. 9 of the Amtrak C-1 Award involving the Cincinnati Union Terminal Company and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, 1973. There, the Arbitration Committee held in pertinent part,

> "that comparable employment does not require the proferred position be confined to the same craft or class."

This involved a comparison of a Mail & Baggage Handlers position with the Fireman's position.

Also, in a 1981 case, Rufus Bryant and Southern Railway Corporation, it was held in partinent part that:

> "The intent of Article I, Item 6(d) of Appendix C-1 is to permit affected employees the chance to work rather than to sit home idle and draw benefits as well as to permit mitigation of protective payments otherwise due a protected employee without a job. As pointed out by Referee Bernstein in Docket No. 66 before the Disputes Committee established by Section 13 of May 1936 Washington Job Protection agreement: reasonable doubts are to be resolved in favor of employment and maximizing of losses to both employees and Carriers."

The Board here follows these previous holdings that refusal of a comparable position ends entitlement to protection. Accordingly, the other elements presented by the parties in this matter will not be addressed.

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.