

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12966
Docket No. 12785
95-2-93-2-129

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

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers
(
(Atchison, Topeka and Santa Fe Railway
(Company

STATEMENT OF CLAIM:

"That the Atchison, Topeka, and Santa Fe Railway Company (hereinafter referred to as the Carrier) violated the provisions of Article 1 of the employee protection benefits of the September 25, 1964, Agreement contained in Appendix No. 7 of the Controlling Agreement, Form 2642-A Std., between the Atchison, Topeka, and Santa Fe Railway Company and its employees represented by the International Association of Machinists and Aerospace Workers (hereinafter called the Organization) when on October 8, 1990, the Carrier abolished all the machinist positions at Wellington, Kansas effective October 16, 1990, that were held at that time by T. L. Fritsch, T. V. Castillo, A. D. Barker, (hereinafter referred to as Claimants) and the Carrier only offered to accept applications from them for transfer to other locations which would require them to change their place of residence. The following machinists also held seniority at Wellington, Kansas and are adversely affected by the Carrier's action: G. M. Payne, A. L. Kerr, and P. B. Crawford (hereinafter also referred to as Claimants).

That, accordingly, the Carrier compensate Claimants at the pro-rata daily rate for eighty-five (85) days which represents the number of days which the appropriate ninety (90) days notice was abbreviated. Also, that the Claimants be accorded all employee protective benefits as set forth in above indicated Agreement provisions."

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.

On October 16, 1990 the Carrier abolished the last remaining machinist positions at its Wellington, Kansas repair facility. The Organization began the processing of this Claim on November 16, 1990.

It is the Organization's position that the Carrier violated Article I Section 2 (a) and (b) of the September 25, 1964 Agreement when it did not provide protection benefits to the Claimants. The pertinent portion of the Agreement reads as follows:

"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 the individual Carrier.

- (a) Transfer of work;
- (b) Abandonment, discontinuance for 6 months or more, or consolidation of facilities or services or portions thereof."

To support its case, the Organization has supplied newspaper clippings which quote a Carrier spokesperson as saying that the work at Wellington was being transferred to other locations, and that the job abolishments were permanent. The Organization also avers that subsequent to the abolishment of the last machinist jobs, the mechanical facility was torn down.

The Carrier argues that the furloughs were due to the lack of work. It cites figures that allege three hours or less of work was required of machinists on each shift.

After a thorough review of the record it is the opinion of the Board that the Organization has made a prima facie case that work was transferred from Wellington and that the facility was abandoned.

The Organization has claimed protective benefits for one employee furloughed in 1983 and another in 1988. This Board will deny any protection benefits to those employees as there is no showing of causal nexus of their furlough to the abandonment of the facility. However, this Board does find the three machinists furloughed on October 16, 1990 and the machinist helper furloughed August 27, 1990 are entitled to the protective benefits of the September 25, 1964 Agreement.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 1st day of November 1995.