

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12967
Docket No. 12786
95-2-93-2-189

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen &
(Oilers; System Council No. 19; AFL-CIO
(Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

"1. That the Atchison, Topeka and Santa Fe Railway Company violated Article I, Section 4, of the September 25, 1964 Agreement when they failed to give at least sixty (60) days' notice of the abolishment of jobs in Arkansas City, Kansas to the following Firemen & Oilers:

N. A. Balzer
D. N. Haines
P. L. Reinking
D. R. Cox

(2) That the Atchison, Topeka and Santa Fe Railway Company further violated the September 25, 1964 Agreement when they failed to provide protective benefits to the above-listed Firemen & Oilers who were deprived of employment as stated in one or more of the reasons set out in Article I, Sections 1, 2 and 3, of the September 25, 1964 Agreement.

(3) That accordingly, the Atchison, Topeka and Santa Fe Railway Company be ordered to make whole the above-named claimants by payment for time lost as a result of the abbreviated furlough notices; and, further, that the Atchison, Topeka and Santa Fe Railway Company be ordered to apply the protective benefits set forth in Article I, Sections 4 through 11, as applicable, of the September 25, 1964 Agreement, as amended."

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.

Prior to April 1989, four Laborers were employed at the Carrier's Arkansas City, Kansas facility. The Laborers, who are the Claimants herein, were responsible for various duties in connection with locomotive and car servicing and repair. On various dates in April 1989, the Claimants were furloughed in force reduction.

The Organization points to the total elimination of the Arkansas City repair track and car repair shed following the Claimant's furloughs. Buildings were torn down and equipment removed. According to the Organization, the work of fueling locomotives, formerly performed by the Claimants, was contracted to an outside firm.

The Organization cites an internal Carrier message reading as follows:

"The Ark City repair track was closed by force reduction 4-19-89, a complete total force reduction will occur at Arkansas City effective with close of shift May 1st, 1989."

The Organization considers this "abandonment" of the facility. In addition, the Organization contends that the work of servicing locomotive units has been transferred to Wellington, Newton and Oklahoma City. The Organization also notes the transfer of car repair work to Wellington.

On the basis of these and other related facts, the Organization argues that the Claimants are entitled to the protective benefits of the September 25, 1964 Agreement, in view of the changes in the Carrier's operation for the reasons set forth under Article I, Section 2, as follows:

"(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;"

The Organization also seeks pay for failure to provide the 60-day notice as required by the 1964 Agreement.

The Carrier first argues that the Arkansas City facility has not been abandoned in the meaning of the 1964 Agreement. The Carrier points to a Carmen crew, which continues to perform work at Arkansas City. In addition, as noted by the Organization, fueling is still undertaken at Arkansas City. The Carrier refers to previous Awards which hold that "demolition of buildings, in and of itself" does not prove that abandonment has occurred.

In its defense, but without making direct reference to the provision, the Carrier relies on Section 3 of the 1964 Agreement which states in pertinent part as follows:

"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 . . . a decline in a carrier's business."

In connection with this, the Carrier points to the abolishment systemwide of 253 positions in the period of March-June 1989, surrounding the time of the abolishment of the Claimants' positions. The Carrier alleges that the decision to cut forces was a result of the unfavorable business results of the first quarter of 1989. The Carrier connects the Claimants' furloughs, along with other force reductions, to adverse business factors.

In response to the Organization's contention that the Claimants' work was transferred to three other named locations, the on-property record shows no specific rebuttal.

The situation at Arkansas City has already been the subject of review. This was in Public Law Board No. 5468, Award 2, involving the Carmen craft. Significance must be given to this Award insofar as it has applicability here.

PLB No. 5468 found there was no "abandonment" of Arkansas City in view of the continuing existence of an emergency road crew. This continuing operation is obviously more directly related to Carmen than to the Claimants herein.

The remainder of PLB No. 5468 nevertheless is supportive of the claim, and the Board finds this reasoning applicable here as well.

As to transfer of work, as claimed by the Organization, the Carrier has failed to show that the Claimants' work simply disappeared or was not required to be performed elsewhere. In addition, there is the undisputed contracting of a portion of the Claimants' work.

Public Law Board No. 5468 found, as does this Board, that the Carrier has not directly related its general force reduction to the work assigned at Arkansas City. To quote Award 2 of PLB No. 5468:

" . . . there is no evidence to show that, but for the transfer of work to other of the Carrier's facilities, there was insufficient work at Arkansas City to retain Claimants in the employ of the Carrier. . . . The evidence of 'business decline' offered by the Carrier does not specifically address the question of the furloughs at Arkansas City by linking any 'business decline' to insufficient work at Arkansas City. . . ."

The limitation on benefits for one of the Claimants, as set forth in the Carrier's submission, is apparently the subject of a separate Claim and need not be resolved here.

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.