

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12812
Docket No. 12697
95-2-93-2-103

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

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

STATEMENT OF CLAIM:

- "1. That the Atchison, Topeka, and Santa Fe Railway Company (hereinafter referred to as the Carrier) violated Appendix 7, Article I, Sections 4 through 11 of the Agreement dated September 25, 1964, when Carrier transferred work from Cleburne, Texas, to Topeka, Kansas, without serving the appropriate notice to the Organization.
2. That all employees affected by this transfer of work from Cleburne, Texas, to Topeka, Kansas,

J. A. West	R. L. Loftis
T. M. Cavett	C. L. Reed
K. O. Homesley	R. Mitchell
C. E. Jackson	E. Richard
R. D. Wimberly	J. M. Vinson
J. D. Steadman	

(hereinafter referred to as Claimants) be accorded all employee protective benefits as set forth in the above indicated Agreement Provisions. Following this instant claim other claimants were laid off up to December 21, 1987."

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 therein.

Parties in said dispute were given due notice of 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agreed that disputes of this type which had not been assigned to and argued before a Referee at SBA No. 570 could "be withdrawn by either party at any time prior to August 1, 1993." The Agreement allowed that "a dispute withdrawn pursuant to this paragraph may be referred to any boards available under Section 3 of the RLA" (underscore ours for emphasis)

On July 20, 1987, a Carrier representative verbally advised the Organization that locomotive wheel and air brake valve work being performed at its Cleburne, Texas facility, would be transferred to its Topeka, Kansas facility effective on August 1, 1987. On August 13, 1987, the Organization wrote to the Carrier that it had failed to provide proper notice of the transfer of work pursuant to the September 25, 1964 Agreement.

On November 2, 1987, the Organization again wrote to the Carrier to state that eleven (11) Machinists had been "laid off as a result of" the transfer of work and senior employees had exercised their seniority. The Organization claimed that the Carrier was required to serve a written notice, as required by Section 4 of the September 25, 1964 National Agreement ("National Agreement") and that the eleven (11) employees were entitled to the protective provisions of that Agreement.

On January 4, 1988, the Carrier denied the Organization's claim which in pertinent part stated:

"I do not agree that the specific furloughs (11) mentioned in your November 9 letter were the result of the August, 1987 transfer of work. In fact, these employees were furloughed simply due to a lack of work and not for any of the operational changes set forth in the September 25, 1964 Agreement."

Subsequent, on January 27, 1988, the Organization pursued its claim when it in pertinent part stated:

"Your declination of the protective benefits for these eleven employees included in claim is neither logical nor reasonable. The work of eleven employees being transferred to Topeka, Kansas on or about August 1, 1987, eliminated the work of these employees. Naturally I agree with your statement that there was a lack of work, however, it was in direct relationship with the work that was transferred that caused this lack of work at Cleburne, Texas."

Following further correspondence and a conference on the claim held on February 26, 1990, the Carrier wrote to the Organization to state that, excluding the positions at the Cleburne facility, it had abolished forty-three (43) shop craft and laborer positions system-wide during September and October 1987 (the same period when the Claimants had been furloughed) and that another thirty-three (33) positions had been abolished during August and November 1987. It asserted that all of the reductions occurred because of economic reasons. There was no response on the property to the February 26, 1990 letter.

We agree with the Carrier in this matter. The Organization has not met its burden to present a prima facie case. The record on the property shows that the transfer of work was accomplished without any employee being displaced. It was unrefuted that there was a system-wide force reduction for economic reasons, and that the Claimants were displaced by senior employees. In effect, the furloughs occurred because of lack of work.

AWARD

Claim denied.

ORDER

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

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 26th day of January 1995.