Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12815
Docket No. 12700
95-2-93-2-102

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 under the Agreement of September 25, 1964, the Carrier improperly dealt with and thereby damaged Machinists Joseph S. Stvartax, R.E. Graefe and M.L. Mills following abandonment of Amarillo, Texas, rail mill and above Claimants were adversely affected by the exercise of seniority rights by employees from Amarillo Rail Mill.

2. That the Carrier violated Appendix 7, Article I, Section 7 (a) (c) and those employees so affected should receive the protective benefits as provided in September 25, 1964 Mediation 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 therein.

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agreed that disputes of this type which had not been assigned to and argued before a Referee at SBA No. 570 could "be withdrawn by either party at any time prior to August 1, 1993." The Agreement allowed that "a dispute withdrawn pursuant to this paragraph may be refered to any boards available under Section 3 of the RLA .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 Claimants were Welding Plant Maintainers employed by the Carrier at its Centralized Welding Plant ("CWP") at Amarillo, Texas. On July 5, 1988, the Carrier served notice that the CWP would be closed on or about October 3, 1988 and that the Claimants' positions would be abolished.

On July 11, 1988, the Organization wrote the Carrier. It asserted that, while the Carrier stated that its July 5, 1988 notice constituted a "notice" provided for in Article I, Section 4, Mediation Agreement Case No. A-7030, dated September 25, 1964, the Carrier failed to send it by certified mail and failed to provide a complete explanation of the proposed change in operation as required by the Mediation Agreement.

The Carrier in its response of July 19, 1988 in pertinent part stated:

> "I do not understand your contention that the notice served did not fulfill the Section A requirements of a 'full and adequate statement'. The facts are that (1) the plant will be closed in early October, 1988 and (2) all six existing Welding Plant Maintainer positions will be abolished. You, of course, are aware that existing Agreements provide that the Maintainer positions be split equally between the IAM and IBEW crafts; this means that, of the six Maintenance positions referred to in the bulletin, three of them are machinists.
>
> The welding plant notice appears to conform in format and information provided with other like notices on the Santa Fe. In fact, when drafting the bulletin notice pertaining to the welding plant, we reviewed the October 13, 1975 notice involving transfer of work from Bakersfield to Barstow. The only essential difference between that notice and the welding plant notice, other than the fact that the earlier notice was sent via certified mail, is that said earlier notice explained the need to transfer people; obviously, had transfer of work or any of the other operational changes other than closure (discontinuance of facility) set forth in the September 25, 1964 Agreement been applicable in the welding plant notice, we would most certainly have included facts pertaining to that (those) operational change(s) in our July 5, 1988 notice.

My point is that the 1975 notice apparently was sufficiently in compliance with the Section 4 requirements (at least I cannot find any evidence in my file of any complaints with respect to that notice) and so too does my July 5, 1988 notice appear to be in compliance.

On August 16, 1988, the Carrier by letter confirmed a discussion it had had with the Organization on July 26, 1988, concerning the CWP closing. In pertinent part that letter stated:

> 'During our meeting you were advised that the closure will result in Welding Plant employees exercising seniority at the locations and in the numbers indicated below:
>
> | | IBEW | IAM |
> |---|---|---|
> | Los Angeles | 1 | - |
> | Cleburne | - | 2 |
> | Arkansas City | - | 1 |
> | Amarillo | 2 | 1 |
> | Topeka | - | 2 |
>
> You were advised that we may be able to absorb a few of these Welding Plant employees at some of the above-mentioned locations without the necessity of furloughing employees thereat.
>
> You were also advised that we are offering employment as electricians and machinists in San Bernardino to those employees who will be furloughed as a result of Welding Plant employees exercising their seniority. It is our position that a rejection of such offer will result in retention of seniority but loss of any and all protective benefits to which they may be entitled under the September 25, 1964 Agreement.'

Subsequently, on September 29, 1988, in another letter to the Organization the Carrier in pertinent part stated:

> 'As you are undoubtedly aware, five welding plant maintainer positions were abolished effective the close of work September 30, 1988.

These five individuals hold seniority as follows and may exercise such seniority in accordance with Agreement rules:

	IBEW	IAM
Cleburne	-	1
Arkansas	-	1
Amarillo	2	1

We are also offering these five individuals the opportunity to accept a position at San Bernardino. If they accept, the Santa Fe will reimburse the employees for moving expenses, etc., in accordance with the "Gratuities" statement attached.

In the event any or all of these five maintainers elect to exercise seniority rather than accept a position at San Bernardino, the employees who would be furloughed as a result thereof will be offered a position at San Bernardino with the "Gratuities" statement being applicable. A rejection of the offer of a position in San Bernardino by an employee who would otherwise be furloughed will result in retention of seniority but loss of any and all protective benefits to which they may be entitled under the September 25, 1964 Agreement.'

On October 14, 1988, the Organization continued to reject the Carrier's explanation and progressed its claim when it in pertinent part stated:

'The above cited ninety (90) day notice given by the Carrier on July 5, 1988, leaves no doubt that an abandonment occurred at the Rail Welding Plant and the Carrier admission that protective provisions of the Mediation Agreement dated September 25, 1964, was placed in effect for employees adversely effected.

Article I, Section 6, of said Agreement states:

'Any employee who is deprived of employment as a result of a change in operations for any of the reasons set forth in Section 2 hereof shall be accorded a monthly dismissal allowance in accordance with the terms and conditions set forth in Section 7 (a) through (j) of the Washington Job Protection Agreement of May, 1936, reading as follows:

Section 7 (a)

Any employee of any of the Carriers participating in a particular coordination who is deprived of employment as a result of said coordination shall be accorded an allowance (hereinafter termed a coordination allowance) based on length of service, which (except in the case of an employee with less than one year of service) shall be a monthly allowance equivalent in each instance to sixty (60%) of the average monthly compensation of the employee in question during the last twelve months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the coordination. This coordination allowance will be made to each employee while unemployed by his home road or in the coordinated operation during a period beginning at the date he is first deprived of employment as a result of the coordination and extending in each instance for a length of time determined and limited by the schedule.'

Carrier offered Claimants a transfer to San Bernardino, California, some one thousand miles in distance which was rejected by all three Claimants. Claimants held no seniority at San Bernardino, Calif. and therefore were not required by the September 25, 1964 Agreement to transfer over one thousand miles from their present residences.

Article I, Section 7 (a) (c) states:

> 'An employee shall be regarded as deprived of his employment and entitled to a coordination allowance in the following cases:
>
> 1. When the position which he holds on his home road is abolished as a result of coordination and he is unable to obtain by the exercise of his seniority rights another position on his home road or a position in the coordinated operation, or
>
> 2. When the position he holds on his home road is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of such coordination, or by other employees, brought about as a proximate consequence of the coordination, and if he is unable by the exercise of his seniority rights to secure another position on his home road or a position in the coordinated operation.'

All three Claimants listed herein have lost their position on their home road because of senior employees exercising their seniority rights. This left Claimants without any junior employees with whom they could exercise their own seniority rights as they are junior employees. The Claimants only held seniority at Arkansas City, Cleburne and at Amarillo so therefore could only exercise seniority at those points and being the junior employees are at present off in force reduction. This being adversely affected.

The Claimants are also eligible for the protective benefits as provided under Article I, Section 7 of the September 25, 1964 Agreement which states:

> 'Any employee eligible to receive a monthly dismissal allowance under Section 6 hereof may, at his option at the time he becomes eligible, resign and (in lieu of all other benefits and protections provided in this agreement) accept in a lump sum a separation allowance determined in accordance with the provisions of Section 9 of the Washington Job Protection Agreement of May, 1936.
>
> Claimants are also eligible for the protective benefits a provided under Article I, Section 8 of the September 25, 1964 Agreement which includes free transportation, pensions, hospitalizations, relief, etc., as long as the Carrier provides these benefits to other employees.
>
> Since Claimants Stvartak, Graefe and Mills were adversely affected by the abandonment of the Amarillo Rail Welding Plant, as they were bumped by senior employees exercising rights over them as junior employees and are at present off in force reduction, this Organization demands the Carrier to provide the Claimants with all the protective provisions as stipulated by the September 25, 1964 Mediation Agreement.'"

Following further rejection of the claim by the Carrier, the Organization argued that when an employee's work is transferred, he "may be forced to transfer" to the facility to which the work has been transferred or to exercise seniority over junior employees. It contended that none of these conditions existed in the instant case. Accordingly the Organization asks that the claim be sustained.

The Board, after careful review of the record, holds that the claim must be denied. The threshold issue is whether the refusal to accept a transfer to the Carrier's facility at San Bernardino, California served to disqualify the Claimants from possible protection benefits afforded under Article I of the September 25, 1964 National Agreement. This question has been addressed and answered negatively on a number of occasions. See, for example, SBA 570 Awards 91, 240, 360, and 910.

Therefore, while the Board is not unmindful that the offer of transfer entailed a significant move on the part of the Claimants (one of whom accepted the transfer), we have no basis to reach a finding inconsistent with past holdings on this same issue.

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 26th day of January 1995.