

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12819
Docket No. 12730
95-2-93-2-70

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

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

STATEMENT OF CLAIM:

"A. That the Atchison, Topeka, and Santa Fe Railway Company (hereinafter referred to as the Carrier) violated the provisions of Article I 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) for the following named employees.

G. B. Soliz	D. R. Burt
T. A. Reynolds	J. W. Ferguson
C. W. Mosely	S. A. Stewart
L. W. Hall	C. C. Gillespie
D. J. Pacht	L. F. Sanchez, Jr.
R. L. Williams	F. E. Gillmore
R. J. Smith	L. W. Thomas
J. M. Woodward	P. A. Allen
G. D. Davis	C. R. Boyer
J. Lewis	R. C. Gibson
D. R. Tidwell	R. D. Davidson
T. E. Pritchard	S. Carter
C. B. Dollar	D. R. Brunson
D. W. Martin	M. D. Griffin
T. J. O'Neill	H. L. Harper
R. E. Anderson	

Machinist Apprentices

J. M. Woodward	D. E. Mitchell
J. R. Burgess	K. D. Wallis
T. W. Gillaspie	

Machinist Helper

R. D. Davidson

(hereinafter referred to as the Claimants), who were employed as machinists at Cleburne, Texas prior to the Carriers transfer of work beginning the summer of 1987, resulting in the abandonment of the facilities in the fall of 1989.

- B. That the Cleburne, Texas employees represented by this Organization who were improperly involved in the Carriers direct dealing in offering buyouts for \$20,000 in return for their resignations were denied the employees protection benefits of the September 25, 1964 Agreement contain in Appendix No. 7 of the 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) for the following named employees:

M. E. Stepp	M. G. Jones
C. D. Chasteen	W. Hinton
D. M. Chaney	J. R. Harris
O. W. McCoy	W. R. Mitchell
W. C. Williams	S. M. Jiles
R. E. Whitehead	M. D. Campbell
L. R. Boyd	T. Lee
W. F. Brinker, Jr.	D. P. Brewer
J. E. Underdown	H. D. Stephens
M. E. Sanders	M. D. Hall
D. C. Crow	J. A. Stubbe
B. G. Cooper	J. A. Martin, Jr.
J. G. Evetts	J. H. Green
T. F. Byran	R. Y. Sandefur, Jr.
J. D. Collier	J. D. Henson
J. L. Gray	B. J. Mills
S. L. Hardcastle	V. C. Bowles
H. P. Moore	A. L. Jowell
R. W. Wilkerson	J. W. Carlsen
J. K. Jones	R. L. Napps
C. L. Burt	H. W. McGonigill
S. D. Chambliss	J. M. Birdwell
R. A. Elam	K. C. Gist
B. J. Farrington	M. T. Caughman, Jr.
C. M. Cagle	C. R. Whiteside
C. E. Holland	

Machinists Helpers

A. D. Kennerson	R. Richard
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(hereinafter referred to as the Claimants) who were employed as machinists at Cleburne, Texas prior to the Carriers abandonment of the facilities in the fall of 1989.

- C. That the Claimants as referred to hereinabove be afforded all the benefits pursuant to Article I 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 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)

This dispute was triggered by a claim dated December 29, 1988. The Organization asserted that the Carrier transferred all of the heavy repair and classified locomotive overhaul work from its Cleburne, Texas facility to its San Bernardino, California, and Topeka, Kansas facilities. This action was taken without the required notice and was in violation of the September 25, 1964 National Agreement.

In its first detailed denial of the claim on August 25, 1989, the Carrier in pertinent part stated:

"Initially, your claim appears to be premised on alleged 'transfer of all heavy repair and classified overhauls on locomotives to its shops in San Bernardino***.' This obviously has reference to Locomotive Department work and not to Car Department work. Documents 1 through 6, referred to in your December 29 letter, pertain solely to Car Department Work and facilities. The citation of those documents have no bearing on locomotive work or facilities and falls far short of your obligation to set forth a prima facie support of your position.

As of late 1987, the authorized budget for the Santa Fe's entire 1988 locomotive program allowed for a total volume of locomotive overhauls in 1988 that was slightly over half of the number completed in 1987 at San Bernardino alone. It was this projection for a drastically reduced locomotive overhaul program, which was well within the capacity of the San Bernardino facility to handle, that was the cause of the force reductions at Cleburne. (See pages 6 through 8 of Sizemore's April 4, 1988 affidavit attached).

In fact, the only remanufactures done at Cleburne in 1987 were GE four axle FP 39-2 locomotives. It was expected in December that this manufacture program would be completed in early 1988 and, in fact, it was completed in February, 1988; there was no transfer of this work.

Your attention is directed to the December 3, 1987 bulletin describing upcoming changes at Cleburne. Following are pertinent excerpts from that bulletin:

'Santa Fe's heavy locomotive and car repair work may now be performed at two shops because scope of our equipment maintenance program has changed in recent years, said Fitzgerald.

For one thing, Fitzgerald said, Santa Fe is running out of suitable candidates for rebuilds among its active fleet of 1,637 diesel-electric locomotive units. Only 110 units are scheduled for remanufacturing or heavy repair in 1988; compared with 264 in 1987. Accomplishing most of our freight car repair at one location is feasible in good measure because of the changing nature of the car fleet. Flat cars for intermodal service, which is growing, require less heavy repairs than traditional box cars, which are gradually decreasing in numbers.

In addition, Fitzgerald said, Santa Fe's maintenance needs have decreased because the Railway is getting high utilization from its locomotive and needs a smaller fleet to operate trains.'

The above reflects that the phasing out of locomotive remanufacturing at Cleburne was due to an overall reduction of the volume of such work; it was not due to any transfer of work.

In light of that stated in the second paragraph of your December 29 letter, I will not dwell on your reference to the Railway Labor Act and to the Carrier's voluntary severance program. Suffice it to say that there was no violation of the Railway Labor Act; this is a minor dispute as is evidenced by the fact that this claim has been filed and progressed as a minor dispute. Nor did the voluntary severance program constitute "unlawful direct dealing" with the Claimants as you have alleged; the courts have so decreed.

In view of the fact that the Claimants' furloughs were not the result of any operational changes listed in Article I, Section 2 of the September 25, 1964 Agreement, no notice was necessary.

Without prejudice to my position that there is no merit to the claim, the claim is apparently in behalf of some improper Claimants. The Claimants include those whose names appear on the Cleburne seniority roster, as of December 29, 1988 "either presently working or in off in force reduction because of *** action on or about December 21, 1987***". I am unable to determine from your December 29 letter just who the claim is in behalf of; I assume it is in behalf of all the employees whose names appeared on the journeyman and helper rosters as of December 29, 1988. However, several of those whose names appeared on the roster as of December 29, 1988, are also Claimants in your November 9, 1987 claim (my file 21D-1300-20-56) contending that they were affected as result of alleged transfer of locomotive wheel and air brake valve work to Topeka (those Claimants were furloughed in September and October, 1987). If, in fact, it was your intent that those individuals be Claimants in both claims, your scattergun approach, in and of itself, is inappropriate, to say the least. Furthermore, it is clearly impossible for those individuals to have been affected by both alleged incidents; they would have had to have been affected by one or the other.

Also, there is absolutely no causal nexus between that which supposedly occurred on or about December 21, 1987 (see first paragraph of your claim letter) and those individuals furloughed earlier in 1987. In fact, in looking at the journeyman roster, there are some that were furloughed as far back as 1985 and 1986. Furthermore, claim in behalf of individuals "presently working" as of December 29, 1988, is not understood and appears to be improper. Assuming, arguendo, that your allegations with respect to December 21, 1987 changes are correct, it had no adverse affect on those who continued thereafter to work at Cleburne; therefore, there was no September 25, 1964 Agreement protection warranted.

Some of those employees may be affected, and therefore, entitled to Protection Agreement benefits as a result of the upcoming proposed October 1, 1989 Cleburne closure but they certainly weren't affected as a result of any alleged December 21, 1987 change, nor is there any causal nexus between any 1988 or 1989 furloughs with the alleged December 21, 1987 change."

Following further correspondence between the parties, much of which attempted to sort out the exact employment status of the Claimants and the status of the employment and work products of Cleburne back to 1985, the claim was processed to this Board for resolution.

To put this claim in its proper context, several observations are in order. The record shows that, beginning in September, 1987, a number of positions were abolished at the Cleburne facility (both machinists and other crafts) and a number of machinists were displaced by senior employees and were furloughed. The unrefuted evidence also shows that the Carrier had a business downturn and that a number of system-wide work force adjustments took place as a result. There is no evidence that these actions, prior to December, 1987, were connected to the October 1, 1989 closing of Cleburne. Indeed, there is a letter in the record to an employee, dated July 27, 1989, from the Organization that noted in part "that you were furloughed in August 7, 1987." Moreover, this letter, citing that date, does not support "a claim in your behalf as a result of transfer of work which is to occur on or about October 1, 1989."

The next significant event leading to this claim occurred in December, 1987, when the Carrier announced that its locomotive remanufacture and heavy repair would be done at its San Bernardino, California facility in the future. The Cleburne facility would continue to operate, but its locomotive remanufacturing activities were to be phased out and the work force reduced to two hundred twelve (212) by July 1, 1988. In that same month, the Carrier announced a Voluntary Resignation Program ("VRP") that offered certain inducements in exchange for a voluntary resignation.

The VRP was challenged by the Unions in a court of law and it was remanded to the parties and subsequently ruled upon by an Arbitration Board as well as a Public Law Board. See Award of Adjustment Board, December 7, 1992 (Suntrup) and PLB No. 5264, Award 1. Additionally, on this same point, a number of arbitral bodies have legitimized the right of an employee to resign for concession or considerations of a monetary nature. (See, for example, SBA No. 570, Award 680 and SBA No. 605, Award 474. Accordingly, these persons waived their rights (if any) to protective benefits.

Subsequently, the record shows that after the December 1987 VRP, a few positions were abolished at the Cleburne facility. Then, on June 23, 1989, the Carrier announced pursuant to Article I, Section 4 of the September 25, 1964 National Agreement, that the Cleburne Locomotive Maintenance and Inspection Terminal work being performed by Machinists would be transferred to its facilities at Temple, Texas; Argentine, Kansas, and Barstow, California on or about October 1, 1989.

On September 8, 1989, the parties consummated an Implementing Agreement pursuant to Section 11 of Article I of the September 25, 1964 National Agreement in connection with the Cleburne closing. It indicated that the work of forty-four machinists would be transferred to the three facilities noted above and spelled out the manner to be used in selecting the forty-four machinists to be transferred.

The Board, following a careful review of the record, finds that the Organization has not met its burden of proof. The claim at issue was filed in December, 1988, one year after the VRP. We find no evidence that the Claimants were adversely affected "in anticipation" of a transaction. As noted earlier, the Cleburne facility was not closed in 1987 or 1988. We find no evidence of a nexus between the Claimants and the closing in 1989.

AWARD

Claim denied.

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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.