Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12839
Docket No. 12681
95-2-93-2-107

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

PARTIES TO DISPUTE: (Sheet Metal Workers' International Association
(
(The Atchison, Topeka and Santa Fe Railway
(Company

STATEMENT OF CLAIM:

"1. That under the Agreement of September 25, 1964, as amended, The Atchison, Topeka, and Santa Fe Railway Company violated the provisions of Article I, Section 4, when it failed to give sixty (60) days, (ninety (90) days in cases that will require a change of employee's residence), written notice of the abolition of jobs as a result of changes in operation for any of the reasons set forth in Section 2 of the Agreement, at Cleburne, Texas. That effective May 31, 1989, The Atchison, Topeka, and Santa Fe Railway Company furloughed Sheet Metal Worker W. H. Jowell in anticipation of a change in operations (transfer of work and closing of facilities) at Cleburne, thereby adversely affecting Claimant Jowell and depriving him of the benefits of the Agreement.

That accordingly, the Atchison, Topeka and Santa Fe Railway Company be ordered to make Sheet Metal Worker W. H. Jowell whole by payment of time lost account of the abbreviated notice of abolishment of his position, and that he be afforded all of the benefits provided by the September 25, 1964 Agreement, including, but not limited to, coordination allowances, dismissal allowances or separation allowance.

2. By date of June 23, 1989, Notice of Intent was served and, on or about October 1, 1989 and continuing thereafter, The Atchison, Topeka, and Santa Fe Railway Company, hereafter referred to as the Carrier, changed its operation in transferring work (inspections, maintenance and repairs of diesel locomotives) from Cleburne, Texas, and asserting that the Sheet Metal Workers' work was transferred to Argentine, Kansas and Barstow, California, when it was blatantly apparent that the work was actually transferred to Argentine, Kansas and Temple, Texas. The above-mentioned change in operations has not only adversely effected the above-referred to Claimant but has also affected Sheet Metal Workers C.E. Lockett, J.C. Miller, Jr., N.R. Powell, R.D. Gray, G.B. Anderson, J.D. Porter, B.D. Morris, M.G. Bass and J.E. Elmore, and that the Carrier has refused to negotiate in good faith an Implementing Agreement for the transfer of the affected Sheet Metal Workers to the locations where the work was transferred, as required by the applicable Agreement.

3. That the Carrier be required to provide Claimant W.H. Jowell the protective benefits of the controlling agreements that are applicable when employees are adversely affected by a change in the Carrier's operation (transfer of work) including:

    1. Reinstatement with full pay effective June 1, 1989 to October 1, 1989, which is inclusive of wages from June 1, 1989 to June 23, 1989.

    2. 90 days compensation at pro rata rate.

    3. Opportunity to place himself, as his seniority will allow, at a location to which work was actually transferred.

    4. Any benefits to which he is entitled when offered employment outside his seniority point.

5. Displacement or separation at Claimant's election, as the Carrier furloughed this employee in anticipation of the November 1, 1990 transfer of work as per the June 23, 1989 Notice of Intent. Additionally, that the Carrier be required to provide claimants C.E. Lockett, J.C. Miller, Jr., N.R. Powell, R. D. Gray, G.B. Anderson, J.D. Porter, B.D. Morris, M.G. Bass and J.E. Elmore, the protective benefits of the controlling agreements that are applicable when employees are adversely affected by a change in the Carrier's operation (transfer of work) including:

   1. Opportunity to place themselves, as their seniority will allow, at a location to which work was actually transferred.

   2. Any benefits to which they are entitled should their seniority allow them to hold a position at a location not previously named in the June 23, 1989 Notice of intent."

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.

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)

On June 23, 1989, the Carrier issued a Bulletin Notice to all of its Unions that on or about October 1, 1989, it would close its Cleburne, Texas, Locomotive and Inspection Terminal ("Cleburne") and that the work would be transferred to "various locations."

On the same date, it sent a notice to the Organization pursuant to Article I, Section 4 of the September 25, 1964 Agreement ("Agreement") to advise that the work being performed at Cleburne by Sheet Metal Workers would be transferred to the Carrier's facilities at Argentine, Kansas, and at Barstow, California. The notice further indicated that four (4) Sheet Metal Workers would be offered an opportunity to transfer to Argentine, Kansas, and five (5) would be given a chance to transfer to Barstow. The Notice also provided that the parties would meet to commence negotiations on the requisite Implementing Agreement pursuant to the September 25, 1964 Agreement. Subsequently, while the evidence shows that the parties did meet and that various pieces of correspondence were exchanged between them, they did not agree upon an Implementing Agreement.

The Organization basically contends that the Carrier did not negotiate in good faith and that the Carrier's "Notice of Intent" of June 23 to close the Cleburne facility and to transfer work was defective, because it was not specific with regard to the positions involved. It argues that "under the circumstances," the dispute has been handled in the 'usual manner' as set forth in Article I, Section 12 and Article VI, Section 9 of the September 25, 1964 Agreement and therefore procedurally the matter has been properly progressed.

The Carrier, on the other hand, contends that a proper claim has not been advanced to the Division by the Organization. Simply stated, it argues that the parties were at an impasse with respect to negotiating the Implementing Agreement. The Carrier further argues that the dispute must be handled or progressed on the property "in the usual manner." It claims that the "usual manner" for resolving Article I disputes on the property was for the claim to be presented, a written declination provided, discussion of the claim in conference with the parties and then one or both of the parties would memorialize the conference by letter. These steps as argued by the Carrier were not taken.

We agree with the Carrier in this matter. With respect to the question of whether the Carrier negotiated in good faith, the parties could not agree on the terms of the Implementing Agreement. The other crafts signed their Implementing Agreements in September, 1989. We find no evidence that the Carrier did not negotiate in good faith. What we had was a situation where the parties did meet a number of times, exchanged correspondence and still were not able to reach agreement on an Implementing Agreement. Consequently, the Carrier unilaterally implemented a proposed Implementing Agreement which was identical in benefits and obligations to those signed by the other crafts. The Board notes that some of the Claimants did transfer to Barstow and Argentine.

With respect to the "usual manner" arguments, the Organization submits that the dispute arose because the Carrier did not set forth the proper locations to which the Sheet Metal Workers' work was to be transferred and that "under the circumstances" Article I, Section 12 is applicable to the dispute. That Section reads in part: "Any dispute with respect to the interpretation or application of the foregoing provision of Section 1 through 11 of this Article... shall be handled as hereinafter provided." It then refers to Article VI, Section 9, which reads as follows:

"Section 9 - Submission of Dispute

> Any dispute arising under Article I, Employee Protection, not settled in direct negotiations may be submitted to the Board by either party, by notice to the other party and to the Board."

We agree with the Carrier's basic contention on this issue. The evidence supports its statements concerning the "usual manner" of handling disputes arising on its property in cases involving Article I. We also note that the Carrier supported its position when in its letter of June 1, 1990, to the Organization, it further claimed that its officer was "...not aware of any prior instance in which this procedure has not been followed."

The Organization, in its reply dated June 12, 1990, stated that the Carrier's assertions about the "usual manner" of handling a dispute "[was] without basis." However, it did not provide any past examples that would support its assertion and only claimed that "under the circumstances" the matter had been handled properly pursuant to Article I, Section 12.

For all the foregoing, the claim is denied.

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 24th day of February 1995.