

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12844
Docket No. 12722
95-2-93-2-168

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

PARTIES TO DISPUTE: (International Brotherhood of Firemen
(and Oilers
(
(The 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 provide protective benefits to the following named Firemen and Oilers of Cleburne, Texas Santa Fe Shops 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:

L.W. Elmore
E.J. Thompson
W.L. Johnson
M.E. Harris
O.G. Tucker

2. That, accordingly, the Atchison, Topeka, and Santa Fe Railway Company be ordered to apply the protective benefits set forth in Article I, Sections 5 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.

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agreed that disputes of this type which had not been assigned to and argued before a Referee at SBA No. 570 could "be withdrawn by either party at any time prior to August 1, 1993." The Agreement allowed that "a dispute withdrawn pursuant to this paragraph may be referred to any boards available under Section 3 of the RLA" (underscore ours for emphasis)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 June 23, 1989, the Carrier issued a notice pursuant to Article I, Section 4 of the September 25, 1964 Agreement ("Agreement") of its intent to close its Cleburne, Texas facility and transfer the work being performed by laborers at that facility to its Argentine, Kansas and Barstow California activities on or about October 1, 1989.

Subsequently, the Carrier and the Organization negotiated an Implementing Agreement pursuant to the provisions of Article I, Section 11 of the Agreement, effective September 29, 1989. The Implementing Agreement, in pertinent part, provided that eight (8) of the twelve (12) active laborers would receive lump-sum separation allowances, two of the active laborers would transfer to the Carrier's Argentine facility and the remaining two active laborers would transfer to Barstow, California. Additionally, the Implementing Agreement also provided that those active employees who did not accept a transfer to the Carrier's two facilities would forfeit "all protective benefits."

Concurrently, on September 29, 1989, the Carrier, in a letter to the Organization, memorialized in further detail the actions contemplated with respect to the eight (8) lump-sum separation allowances that the parties had agreed to in their Implementing Agreement. The Organization agreed to the conditions specified by the Carrier.

On June 4, 1990, the Organization filed its claim on behalf of the five (5) Claimants in the case. Following further correspondence and contacts between the parties, the dispute was advanced to the Board for resolution. The Division, after careful review of all the evidence properly before it, finds that the Implementing Agreement of September 29, 1989 is dispositive of this claim for the reasons that follow.

Pursuant to Article I, Section 11 of the Agreement, the parties negotiated the Implementing Agreement. It specifically covered the five (5) Claimants in this dispute. Claimants Elmore and Thompson were on leave of absence (disability), receiving disability annuity benefits. At the time of the submission to the Division these two Claimants were still on leave of absence. Paragraph 9(g) of the Implementing Agreement provides that if these two Claimants returned to the service, they had transfer rights to Argentine or Barstow. Accordingly, their claim is denied.

With respect to the remaining three Claimants (Harris, Johnson, and Tucker), paragraphs 2 and 10 of the Implementing Agreement provide that the Claimants must bid on available positions at Argentine or Barstow. Failure to transfer, pursuant to paragraph 10 would "... result in forfeiture of all protective benefits." Accordingly, these claims are also denied.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 24th day of February 1995.