

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12961
Docket No. 12702
95-2-93-2-97

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(International Association of Machinists and
(Aerospace Workers, District Lodge No. 19
(AFL-CIO
PARTIES TO DISPUTE: (
(Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

"1. That during the month of April 1989, the Atchison Topeka and Santa Fe Railway Company (hereinafter referred to as the carrier) laid off in force reduction Arkansas City, Kansas, Machinists, L. A. Orman, W. D. Colquhoun, D. L. Rolland, H. L. Trent, M. A. Engbergand, K. F. Wallace (hereinafter referred to as claimants) and effective May 1, 1989, all mechanical department positions in Arkansas City, Kansas were abolished and facilities abandoned.

2. That the above named claimants were adversely affected by the carrier's action and are presently off in force reduction, having been denied any protective provisions of the Mediation Agreement of September 25, 1964, and that they be protected for carrier's violation of Appendix 7, Article 1, Section 1 through 11 of the above agreement.

3. Furthermore, the carrier did not give at least a sixty (60) day notice of abolition of jobs as a result of their changes of operation and decision to abandon the facility at Arkansas City, Kansas, as required by the September 25, 1964 Mediation Agreement.

4. That all claimants be afforded the protective provisions accorded under Appendix 7, Article 1, Employee Protection, Section 1 through 11 of 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 herein.

Parties to said dispute waived right of appearance at hearing thereon.

This dispute concerns the same situation reviewed in Public Law Board No. 5468, Award 2 (involving Carmen) and Second Division Award 12967 involving Laborers, namely, the Carrier's change in operations at its Arkansas City, Kansas facility in and around April 1989. The six Claimants, constituting the Machinist force, were laid off on various dates between March 31, 1989 and April 25, 1989.

In sum, the Organization contends that all forces have been removed from Arkansas City and "all facilities at this location have been torn down." At the time of the position abolishments in and around April 1989, a crew of three Carmen was retained for road service repair, using Carrier vehicles for this purpose. In addition, locomotive refueling was continued by use of an outside contractor.

Given these circumstances, the Organization argues that the facility has been subject to "abandonment", which is a basis for protective benefits under Article 1, Section 2 of the September 25, 1964 Agreement.

The Carrier, however, treated the matter as a typical force reduction. The Carrier argues that there has been no "abandonment", given the implementation of the road repair service and continued fueling. On this point, the Carrier points to Special Board of Adjustment No. 570, Award 71, involving the Carrier and the Carmen. There SBA No. 570 found no "abandonment", despite major curtailment of work at Chanute. The basis of the decision was that inspection and repair functions were ongoing, despite the force curtailment. This is in contrast to the circumstances here under review.

The Carrier also argues that the Claimants' furloughs were the result of "business factors". The Carrier refers to 253 system-wide position abolishment during the March-June 1989 period, based on business decline in the first quarter of 1989.

The Organization, without contradiction, points to the elimination of all mechanical forces and the demolition of most or all of the buildings. The Board takes note of other Awards which properly define "abandonment" in narrow fashion, and the Board does not seek to broaden such definition. Here, however, the Organization has demonstrated the elimination of all mechanical operations at Arkansas City. There remained (at the time of the force reduction) only an emergency crew working out of Arkansas City and a fueling operation contracted to an outside firm. The Board concludes that there has been an effective abandonment. With this established, the fact that the Carrier had simultaneously undertaken widespread force reduction does not defeat the effect of the "abandonment" provision of Article 1, Section 2 of the Agreement. The Board recognizes that demolition of buildings alone does not constitute abandonment. When this accompanies a cessation of all on-property activities, however, a different conclusion is warranted.

The Carrier refers to specific circumstances involving degree of eligibility for three of the six Claimants. These circumstances must necessarily be considered in determination of any benefits.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 1st day of November 1995.