

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12964

Docket No. 12772

95-2-93-2-132

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

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers
(
(Southern Pacific Transportation Company
((Western Lines)

STATEMENT OF CLAIM:

- "1. That on March 8, 1990, the Southern Pacific Transportation Company (hereinafter referred to as Carrier) changed its operations at Tucson, Arizona, by transferring work to El Paso, Texas, thereby furloughing Machinists R. H. Gutierrez and B. Carroll (hereinafter referred to as Claimant) effective March 14, 1990.
2. That due to the Carrier's change of operations and transfer of work to El Paso, Texas, Claimants were deprived of protection as set forth in Side Letter No. 10 of Memorandum of Agreement signed May 2, 1989, as well as the protective benefits set forth in Article 1, Sections 2, 3 and 4 of the Agreement dated September 25, 1964 (Case No. A-7030).
3. That, accordingly, the Carrier be ordered to provide Claimants protection commencing on March 14, 1990, as provided for in Side Letter No. 10 of the Memorandum of Agreement signed May 2, 1989, as well as Article 1, Sections 2, 3 and 4 of the September 25, 1964 Agreement (Case A-7030)."

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.

On January 1, 1989, the Carrier issued notice of its intent to transfer work from Tucson, Arizona to Houston, Texas. On May 2, 1989, the parties to this dispute entered into an agreement providing for the transfer of the work and two machinists to Houston. On March 8, 1990, the Claimants were furloughed at Tucson. On March 26, 1990, the Organization filed the instant claim, requesting the protective benefits of the September 25, 1964 Agreement be afforded the Claimants in accordance with Side Letter #10 of the May 2, 1989 Agreement. The pertinent portions of Side Letter 10 read as follows:

"This Agreement is made pursuant to Section 2(a), Article I of the Mediation Agreement of September 25, 1964, as amended, as a result of the transfer of certain work and duties of Mechanical Department employees pertaining to the maintenance of the road service locomotives from Tucson Locomotive Plant to the Southern Pacific (Eastern Lines) Houston Locomotive Plant.

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IT IS AGREED:

- (1) On or after May 2, 1989, the Carrier may commence the transfer of work as provided by this implementing agreement.
- (2) Five (5) Machinists are presently performing the maintenance of road service locomotives at the Tucson Locomotive Plant, and of those five, two (2) are to follow the work to Houston Locomotive Plant. It is not contemplated that any Machinist will be adversely affected as a result of the transfer of work. However, if a Machinist should be adversely affected, he shall be entitled to the protection as set forth in Article I of the September 25, 1964 Agreement. The determination of the identity of the affected employee will be by mutual agreement between the Carrier and the General Chairman of the Organization."

The Organization argues that Side Letter #10 provides protection for the Claimants. The Organization further argues that if Side Letter #10 does not apply, the Carrier violated the September 25, 1964 Agreement when it transferred work to El Paso, Texas.

The first issue before this Board is whether Side Letter #10 is applicable. The Claimants were furloughed some 10 months after the transfer of work from Tucson to Houston. The Organization has failed to produce any evidence to support its position that Side Letter #10 applies. Certainly, the alleged transfer of work to El Paso does not support its case that an Agreement dealing with the transfer of work to Houston should be governing.

Second, as to the violation of the September 25, 1964 Agreement, because of the alleged transfer of work to El Paso, the Organization must make a prima facie case that such transfer of work has occurred.

The Organization on April 26, 1990, contends the following work was transferred from Tucson to El Paso:

- "1. All MO-3 to 6 work on Locomotives class numbers 6300 and run throughs.
2. Repairs etc., to switchers formally maintained at Tucson, Arizona."

The Carrier denies the Organization's allegation. It avers that the only switchers maintained at El Paso are those that have always been assigned. The work on other locomotives are only done on a necessary basis. Many Boards have held that the mere alleging of a transfer of work is not sufficient to support a case. In Award 1031 of SBA No. 570, the Board held:

"The Board, after careful examination of the entire record of this matter, finds the major problem is the failure of the Organization to support, by any evidence whatever, the fact that it alleges that Claimants were furloughed, because it was either an abandonment or transfer of work, elsewhere. There simply is no evidence whatever in the file to support such a position. The Board notes that the lack of work established by Carrier does not trigger the protective provisions of the September 25, 1964 Agreement. This has been a subject of many prior Awards of this Board."

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The Organization has failed to identify a single locomotive repaired at El Paso as one that would have been inspected and repaired at Tucson. It has failed to meet its burden to produce a prima facie case that work was transferred from Tucson to El Paso.

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 1st day of November 1995.