Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12996
Docket No. 12883
96-2-94-2-30

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman 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 it failed to give the required sixty (60) day notice of the abolishment of the positions of Laborers A. W. Strait, L. M. Briley, L. M. Janney, P. B. Crawford, S. Atchley, J. Johnson, and S. Ybarra at Wellington, Kansas. The above named claimants were deprived of employment due to operational changes listed in Article I, Section 2(a) and (b) of the controlling Agreement.

2. That the Atchison, Topeka and Santa Fe Railway Company further violated the September 25, 1964 Agreement when they failed to provide protective benefits to the above named laborers when they furloughed them from their positions in Wellington, Kansas.

3. That, accordingly, the Atchison, Topeka and Santa Fe Railway Company be ordered to make the above named claimants whole by payment for lost time as a result of the abbreviated furlough notice, and further that the Atchison, Topeka and Santa Fe Railway Company be ordered to provide the applicable protective benefits as defined in Sections 4 through 11 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.

Claim of the Organization, dated November 20, 1990, is that the Carrier violated the Agreement in furloughing Claimants without providing protective benefits. The Organization alleges that the Carrier reorganized its operations with specific impact on Wellington, Kansas, wherein the Carrier transferred work to other locations and engaged in actions constituting abandonment, discontinuance for six months or more and or consolidation of facilities and services without providing effected employees their Agreement protective benefits. The Organization points to the September 25, 1964 Agreement which states:

> "The protective benefits of the Washington Job Protection Agreement of May, 1936 shall be applicable as more specifically outlined below, with respect to employees who are deprived of employment or placed in a worse position with respect to compensation and rules governing working conditions as a result of any of the following changes in operations of this individual carrier.
>
> (a) Transfer of Work
> (b) Abandonment, discontinuance for 6 months or more, or consolidation of facilities or service or portions thereof; ...."

As the Claimants were affected by the Carrier's actions at Wellington, the Organization further alleges violation of Article I, Section 4 in that Claimants were not given the sixty (60) days notice advising of their furloughs.

The Carrier argues on the property that the positions were abolished due to a lack of work. Therefore, no notice was required under the September 25, 1964 Agreement. The Carrier further maintains that it did not violate the Agreement in that there was no operational change, transfer of work, abandonment or consolidation which would trigger protective benefits. In fact, the Carrier argues that Claimants Crawford, Johnson and Atchley were improper Claimants due to lack of seniority or early 1980's furloughs, with the other four Claimants having their positions abolished due solely to insufficient work.

In a review of this record the Board has studied the evidence submitted by the Organization to determine if it is sufficient to establish that the Claimants' furloughs were traceable to an Article I, Section 2 (a) or (b) condition. The Organization provided half a dozen newspaper and radio transcripts from September to November 1990, which do state that the Carrier was undergoing a reorganization, would abandon track and decrease operations. In one announcement, the Carrier's Manager of Labor Relations discussed "... the termination and transfer of the employees" and noted that "... the work will be moved to other locations."

Moreover, the Organization supports its Claim that the furlough at the Wellington yard was due to Carrier violation of the Agreement with a full range of exhibits documenting with pictures the alleged abandonment. Those pictures submitted in March 1991 provide evidentiary proof that buildings and equipment that made the yard an active operational facility had been removed. The Organization alleges this is further proof of abandonment.

This Board has carefully studied all of the evidence presented by the Organization. It is essential before turning to the Carrier's allegations of insufficient work to determine that a case has been made by the Organization that the furloughs where caused by work transfer or abandonment within the language of Section 2 (b), Article I, supra. In our study of the record, we find no evidence that the alleged Carrier plans and actions constituted transfer or abandonment directly resulting in the Claimants' furloughs. Of the seven Claimants, two were furloughed over seven years earlier, one was a machinist, two were furloughed prior to this Claim and the two furloughed October 16, 1990 worked less than four hours a day. The removal of structures does not prove abandonment. The Organization did not provide evidence that work ceased to be performed at Wellington. A search of the record for operational changes which would have led to a transfer of the Claimants' work to another location has been made. No other location has been identified.

The Board's review, when focusing upon the necessity of the Carrier to dispute the allegations finds the following. The Carrier maintains that it changed from "captive power" to "road power" at Wellington. This has been studied and does not constitute a violation of the September 25, 1964 Agreement with regard to the instant Claim. More importantly, the Carrier argued that prior to the abolishment of laborer positions on October 16, 1990:

"... there was only one laborer assigned per shift. In fact, despite the fact that there was a three-shift operation at Wellington, there were no laborers assigned on the third shift and there were no laborers assigned on the first shift on Saturdays and Sundays or on second shift on Fridays and Saturdays. There was very little work being done thereat by laborers and other crafts. In fact, there was only an average of 2 ½ -3 hours of work being done per employee on each shift worked."

The Carrier also argues that after the force reduction, "... work continued to be performed at Wellington," including "... some of the work theretofore performed by claimants." The Carrier refutes the evidence presented by the Organization.

The Organization's letter of January 29, 1994, does not overcome the deficiencies in proof. A review of Special Board of Adjustment No. 570, Award 1067 and others finds that unlike this case, those Awards include the "location" where the work was transferred. This claim is denied as the evidence that Wellington was abandoned or that a transfer of work occurred is insufficient. The Organization did not rebut the Carrier's argument that there was a lack of work as the cause of furloughs. A lack of work does not trigger protective benefits.

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 9th day of April 1996.