Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13047
Docket No. 12837
96-2-93-2-205

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

PARTIES TO DISPUTE: (International Brotherhood of Firemen & Oilers
(
(CSX Transportation, Inc. (former
(Seaboard Coastline Railroad)

STATEMENT OF CLAIM:

"(1) That the CSX Transportation, (formerly Seaboard Coastline Railroad Company), violated the terms of Article I, of the September 25, 1964 Agreement when it failed to properly compensate Ms. L. J. Powers in accordance with Section 5 and other benefits set forth in Section 6 (a), (b) and (c) of the Washington Job Protection Agreement of May, 1936.

(2) That the CSX Transportation, (formerly Seaboard Coastline Railroad Company), in accordance with Article I, Section 5 of the September 25, 1964 Agreement be ordered to compensate Ms. L. J. Powers $602.99 which is the amount of compensation she was denied by the Carrier's improper application of the protective 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 were giiven due notice of hearing thereon.

The Claimant was placed in furlough status on March 8, 1991. She was later determined to be eligible for a dismissal allowance, providing her with protective benefits of 60% of her test period average. As a result of a claim raised on her behalf, it was determined that she should have been assigned to work on August 11-12, 1992, in place of another employee also on furlough who had been called to work 16 hours on each of these days.

The Carrier agreed that the Claimant should have worked these two days. Payment of 16 hours' pay was made to the Claimant. The parties have no dispute as to this aspect of the claim.

What remains is whether, for the month of August, the Claimant should receive 100% of the test period averages as being "continued in service", less her compensation for the two days, rather than 60% as an employee "deprived of service".

At the outset, the Carrier contends that the claim here must be barred, stating that the claim in its original form sought only pay for the two days and not for a change in the basis of a monthly allowance. The Board does not agree. A review of the claim shows that it concerns not only the failure of the Carrier to recall the Claimant for the two days, but it also makes reference to the 60% and 100% of test period average as a basis for payment and asks that the Claimant be "properly compensated".

The Carrier also argues that the Claimant received the 16 hours' pay simply because, as a furloughed employee, she was eligible for the work but was not recalled. The Carrier notes that she performed "no service" in the month when this occurred. Thus, the Carrier concludes that the Claimant was not "reemployed" but rather continued to be "deprived of employment".

The Board, as a preliminary finding, determines that the Claimant was entitled to the same status and benefits as if she had worked the two days in August to which she was entitled. There is no basis for awarding the two days' pay and then ignoring the effect, if any, on her status as a protected employee. This principle is set forth in Third Division Award 16844, where it was found that the Claimant should have been recalled to service at an earlier point. The question arose concerning the application of the payment for such period. Award 16844 states:

> "Under such circumstances Claimant must be held to have the status of rendering compensated service [during the 51 days when the Claimant was improperly denied service]. We, therefore, find and hold that Claimant... rendered de jure if not de facto compensated service in the 51-day period...."

The question remains, however, whether an employee in furlough status, recalled to service for part of a month, becomes entitled to protection for the month in question as a displaced employee, rather than continuing as a dismissed employee. In this instance, the Carrier paid the Claimant for the two days she was entitled to work, but continued to provide her with the 60% for the month in question. It is the Organization's position that because the Claimant "continued in service", if only for two days, then the monthly allowance at 100% applies, less the two days remuneration.

In further response to the Organization's position, the Carrier points to that portion of Section 6 of the September 25, 1964 Agreement (incorporating WJPA Section 7) which states:

> "(h) If an employee who is receiving a coordination allowance [60%] returns to service the coordination allowance shall cease while he is so reemployed and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a coordination allowance. During the time of such reemployment however he shall be entitled to protection in accordance with the provisions of [WJPA] Section 6."

Although the Carrier did not in fact use this calculation, the Carrier suggests that the Claimant might be entitled to the 100% calculation for two days and 60% for the remainder of the month. However, as argued by the Organization, the displacement allowance (100%) is solely a monthly allowance. The Board also sees no precedent for such daily calculation of protective benefits.

The compensation received by the Claimant for August 1992 logically placed her in a reemployment status for that month, and the claim is sustained for the monthly displacement allowance, less the two days pay received (and less the dismissal allowance already received).

The Board reaches this conclusion without reference to 1981 and 1987 correspondence which was included in the Organization's Submission, but not raised on the property during the claim handling procedure.

AWARD

Claim sustained.

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 25th day of September 1996.