

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10365) that;

1. Carrier violated the effective agreement when, effective April 5, 1988, it abolished all positions on the guaranteed extra board and then continued to fill these positions from the furloughed list.

2. Carrier shall now compensate the five (5) senior furloughed employees eight (8) hours' pay at the straight time rate of the position they would have worked, or the extra board guarantee rate, for April 5, 1988, and for each and every day thereafter that a like violation exists."

FINDINGS:

The Third 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 employees 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.

Effective March 28, 1988, the Carrier abolished nine regular Extra Board positions. The Organization thereafter filed a Claim challenging the Carrier's use of the five senior furloughed employees to fill temporary vacancies and perform extra work. The Carrier denied the Claim on grounds that the Agreement permits the Carrier to use furloughed employees to fill temporary vacancies, and that the employees affected when the Extra Board positions were abolished had since been working 40-hour weeks and had suffered no losses. The Carrier also contends that the Board does not have jurisdiction over this matter, and the Claim should be dismissed.

The Board has reviewed the record in this case, and we find that the Organization has not met its burden of proof that a violation of the Agreement has occurred. Therefore, the Claim must be denied.

The record reveals that the Carrier has established that it suffered a severe decline in business in late 1987. As a result, it was required to make force reductions in all departments of the Carrier which affected a number of clerical positions. In March 1988, it abolished nine Extra Board assignments, of which only five were filled at that time. The Organization admits that there was a general reduction in force at that time and does not deny the existence of the downturn in business.

The Carrier has established that it has a right to reduce its forces when there is an established loss of business. Article I, Section 2, states in part:

"In the event of a decline in the Carrier's business in excess of five percent (5%) in gross operating revenues and the number of total cars handled in any thirty (30) day period compared with the average of the same thirty (30) day period for the sixty (60) calendar month period during the Years 1976 through 1980, a reduction in the force of the employees covered by this Agreement may be made at any time after said thirty (30) day period below the number of employees entitled to preservation of employment under this Agreement to the extent of one percent (1%) for each one percent (1%) the said decline exceeds five percent (5%). Advance notice of any such reduction shall be given as required by the current scheduled Agreement between the parties"

The Organization relies in large part on Third Division Award 26557, issued in 1987, in another case between these two same parties. That case involved the Carrier's failure to establish a permanent Switching Information Clerk position despite the fact that Extra Board employees were regularly filling that position. This Board sustained the Claim in that case. However, we must note that the first sentence in that Award was:

"In March, 1984, Carrier began to experience a dramatic increase in traffic and it became necessary to work additional Switching Information Clerk assignments." (Emphasis ours.)

As stated above, the case at hand involves a severe downturn in business. We recognize that furloughed employees were brought back to perform work, but that fact alone does not establish a violation of the Agreement. Moreover, we should note that there was no loss in pay involved here.

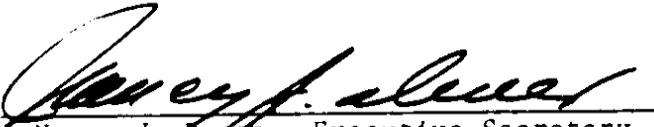
For all of the above reasons, the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of August 1992.