Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 40598
Docket No. MS-41162
10-3-NRAB-00003-010002

The Third Division consisted of the regular members and in addition Referee Martin W. Fingerhut when award was rendered.

(Sharon C. Crump
PARTIES TO DISPUTE: (
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

"1. On February 23, 2009, Carrier violated the Implementing Agreement between Kansas City Southern Railway Company and the Transportation Communications Union dated November 24, 2008 and other rules of the KCS/TCU collective bargaining agreement, including but not limited to Addendum #31, by forcing Sharon Crump into furlough status.

2. The Carrier violated Agreements between TCU/KCS Railroad, the fact that there was great disparity between jobs transferred to Kansas City in comparison to jobs that were in Shreveport CSC at the time of transfer, proves it was technological and not as many clerks were wanted or needed by the Carrier placed me into forced furloughed status according to Addendum 31 no.3. There was disproportionate number of Severance Packages offered versus the abolished jobs. Severance Packages were not offered on one for one basis per job abolishment, forcing Claimant into furlough status according to Addendum 31 no.2. Also not giving a 31 day notice of abolishment, forced Claimant into furlough status, which was not in accordance with the November 24th implementing Agreement. The Carrier also released Claimant while allowing junior employees to continue to work; and not allowing Claimant to exercise seniority, and return to duty, forced Claimant into furlough status which violates seniority rights Rule 17 of collective bargaining

agreement. As stated in my 02/08/09 canvas information, I did not select to decline my job, I did not select, request or except voluntary furlough, however I did select the offer that was made by the Carrier to remain in Shreveport on my current position in District 3 and should have been allowed to keep my job with KCS in Shreveport, in accordance with November 24 agreement made between the Carrier and the Union, which would have placed Claimant in forced furlough status and a protected employee. According to the collective bargaining agreement, Addendum 31(3) which reads: Employees listed on Attachment A reduced to furlough status as a result of the introduction and use of technological advances will be protected at their current step rate at the time of furlough. Carrier shall be required to compensate Sharon Crump as a protected employee, continuous full salary and benefits."

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 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 given due notice of hearing thereon.

There are a myriad of issues presented by both sides in the claim before the Board. According to the Carrier, resolution of the dispute requires the Board to consider only one of its contentions. The Carrier argues that Special Board of Adjustment No. 605, not this Board, is the proper forum for reaching the merits.

The genesis of this case was a notice served by the Carrier upon the Transportation Communications International Union (TCIU) on October 27, 2008. The TCIU is the collective bargaining representative of the Petitioner, Sharon C. Crump. The notice asserted that it was served in accordance with Article III, Section 2 of the Mediation Agreement dated February 7, 1965. The Carrier recited that it intended to transfer work and employees from Shreveport, Louisiana, to Kansas City, Missouri. The transfer would result in the termination of operations and closing of its Customer Service Center in Shreveport concurrent with the inauguration of operations at the Customer Solutions Center in Kansas City. The Carrier anticipated that the change would result in the abolishment of 25 clerical positions at Shreveport and the transfer of 23 clerical positions from Shreveport to Kansas City.

Pursuant to the requirements of the February 7, 1965 Agreement, Implementing Agreements were entered into by the Carrier and TCIU on November 24, 2008, and January 26, 2009. The Implementing Agreements, inter alia, set forth the terms and conditions relating to the work to be transferred, including the selection of forces, allocation of seniority, moving expenses, and transfer allowances.

One of the clerical positions at Shreveport in the Customer Service Center was held by the Petitioner. In essence, the Carrier took the position that the Petitioner's job in Shreveport had been abolished, that her seniority level required her to accept an offered position in Kansas City, that such offer had not been accepted, and under the provisions of the February 7, 1965 Agreement, the Carrier had the right to furlough the Petitioner at Shreveport with no obligation to provide protective benefits as set forth in the February 7, 1965 Agreement.

The Petitioner disagreed with the Carrier. In essence, she challenged the Carrier's assertion that its actions were authorized by the February 7, 1965 Agreement and, furthermore, even if the February 7, 1965 Agreement were applicable, the Carrier had neither complied with its terms, nor with the requirements contained in the Implementing Agreements. While the Petitioner's claim also included alleged Carrier violations involving other provisions of the Collective Bargaining Agreement between the Carrier and the Organization, it is clear that the fundamental issue on the merits required an interpretation of the February 7, 1965 Agreement and the attendant Implementing Agreements. It is no less clear, however, that the parties to the February 7, 1965 Agreement did not desire the Board to be utilized to settle

disputes over the meaning or application of that Agreement. Thus, Article VII Section 1 of the February 7, 1965 Agreement provides:

> "Section 1. Any dispute involving the interpretation or application of any of the terms of this agreement and not settled on the carrier may be referred by either party to the dispute for decision to a committee consisting of two members of the Carriers' Conference Committees signatory to this agreement, two members of the Employees' National Conference Committee signatory to this agreement, and a referee to be selected as hereinafter provided. The referee selected shall preside at the meetings of the committee and act as chairman of the committee. A majority vote of the partisan members of the committee shall be necessary to decide a dispute, provided that if such partisan members are unable to reach a decision, the dispute shall be decided by the referee. Decisions so arrived at shall be final and binding upon the parties to the dispute."

The remaining four sections of Article VII set forth precise procedures for submitting disputes to the Disputes Committee, including the makeup of the Committee. Indeed, pursuant to those provisions Special Board of Adjustment No. 605 was created for the sole purpose of hearing disputes under the February 7, 1965 Agreement. SBA No. 605 has issued no fewer than 518 Awards over the years interpreting that Agreement.

Notwithstanding, were the Board to reach the merits of this particular claim, based upon our careful review of the record, which reveals no violation of the Agreement, we would of necessity have to deny the claim. In this case a denial will serve as well as a dismissal.

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 Third Division

Dated at Chicago, Illinois, this 27th day of August 2010.