

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES)
TO .)
DISPUTE)
Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
and
New York Central Railroad (Western District)

QUESTIONS
AT ISSUE:

- (1) Did the Carrier act contrary to the provisions of the National Employment Stabilization Agreement, when, during the period of July 17, 1965 to August 23, 1965, they reduced forces and adversely affected "protected employees" at Fairlane, Ohio, claiming that a partial shut-down of the Ford Motor Plant at that point came within the meaning and intent of Article I, Section 4, of said Stabilization Agreement?
- (2) Shall the Carrier now be required to compensate M. P. Berkmyer, M. E. Baumann, C. D. Ryan, and W. E. Shively, for their loss of earnings during this period?
- (3) Shall the Carrier also be required to compensate C. D. Ryan and W. E. Shively in accordance with the Stabilization Agreement for the days they took as vacation during that period for the purpose of preserving as nearly as possible, their normal pay for that period, and that such days be restored to them as vacation days still to be allowed?

OPINION
OF BOARD:

Prior to the period from July 17, 1965 to August 23, 1965, the Carrier was alerted that the Ford Motor Company Plant at Fairlane, Ohio, would substantially reduce its production, to put into effect retooling operations. Pursuant to such information, the Carrier abolished the positions of the Claimants herein. In accomplishing this reduction in force, it relied upon the provisions of Article I, Section 4, of the February 7, 1965 National Agreement, the applicable portion quoted hereafter:

"--- a carrier shall have the right to make force reductions under emergency conditions such as flood, snowstorm, hurricane, earthquake, fire or strike ---"

Hence, the question raised herein is whether a partial reduction in one plant's operation -- albeit the only industry in the immediate vicinity -- complies with the specified requirement described above as an emergency condition. The parties to the February 7, 1965 National Agreement, visualized the problem arising from an emergency and, therefore, provided that a Carrier shall have the right to make force reductions. This, however, begs the question, what is an emergency? Rather than resort to the normal dictionary meaning, they agreed, "such as flood, snowstorm, hurricane, earthquake, fire or strike?". Does a partial reduction of production in one plant, under the circumstances herein, fall within the expressed conditions? The answer is apparently no. We would even apply the rule

of eiusdem generis which states that where a general statement -- emergency conditions -- is followed by specifics -- flood, etc. -- the specific limits the general. Hence, it is our conclusion that partial curtailment of production in the Ford Motor Plant cannot be considered an emergency as contemplated by Article I, Section 4.

Furthermore, Article I, Section 3, is inapplicable, as there is no proof of a decline in business in excess of 5% in the average percentage of both gross operating revenue and net revenue ton miles in any 30-day period.


The Carrier also argues that Article IV, Section 5, is pertinent herein -- furloughed because of a reduction in force resulting from seasonal requirements. The Carrier alleges that "employees at Fairlane were furloughed during a similar period in the 12 months preceding the date of the Agreement, February 12, 1965". In response thereto, the Organization avers that this is the first instance in which the Carrier has raised this defense. This argument was not raised on the property, nor is there any substantiation of such on the part of the Carrier.

We believe the Organization's contention that the Carrier has merely alleged a statement without supporting its allegation, is well taken. We recognize that on this aspect, the Carrier has the burden of proof and it has failed to furnish one iota of evidence to support such contention.

Lastly, we do not find any basis to support the Organization's Questions at Issue No. (3).

Award

The answer to question (1) and (2) is in the affirmative.
The answer to question (3) is in the negative.


Murray M. Rohman
Neutral Member

Dated: Washington, D.C.
August 7, 1969