

AWARD NO. 148
Case No. MN-44-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Butte, Anaconda and Pacific Railway Company
TO THE) and
DISPUTE) Brotherhood of Maintenance of Way Employees

QUESTION (A) Should the Carrier have restored to serv-
AT ISSUE: ice on April 17, 1968 all of the Maintenance
of Way employees who were laid off in force
reduction on July 15, 1967 and

(B) Are the following named employees entitled
to compensation for eight (8) hours daily for
each work day of their former work week assign-
ments for which they have not received compen-
sation since April 17, 1968:

R. W. Benner	A. J. Immonen	J. A. Porter, Jr.
G. J. Smet, Jr.	R. P. Cortez	J. P. Kopp
G. M. Fries	P. M. Harrington	A. W. Carle
H. P. Lorello	D. T. Murray	J. J. Wyant
J. M. Patrick	J. J. Murphy	W. E. Penny
A. A. Hill	J. J. Bradley	L. A. Stone
H. Gonzales	L. J. Cook	Christ Valdez
H. H. Forsyth	J. U. White	W. C. Cook
S. Girardi	D. F. Weist	P. J. Cannon
E. E. Gardener	K. F. Mitchell	A. D. Peterson
A. E. Davies	R. L. Jones	J. W. Harrington
L. E. Hammond	C. J. McCabe	

OPINION

OF BOARD: Carrier transports raw materials and finished pro-
ducts for The Anaconda Company. When the copper strike
was set for July 14, 1967, Carrier on July 10 posted a notice of
general force reduction effective July 15 "due to threatened strike
action by various unions against The Anaconda Company." When
the strike ended, Carrier posted the following, on April 18,
1968: "Notice released by this office July 10, 1967 is cancelled,
effective 12:01 A.M., Monday, April 22, 1968." Some employees
were restored to service on various dates beginning April 17.

According to the Employees, Carrier based the fur-
loughs on Article I, Section 4, the emergency provision of the

February 7, 1965, Agreement, which specifically lists strikes as an example of an emergency, and which provides that when "operations are restored employees entitled to preservation of employment must be recalled upon the termination of the emergency." However, Carrier contends that it acted under Article I, Section 3, which permits reduction in the number of protected employees based upon a decline in business; its business not only disappeared in July, 1967, but remained on a greatly diminished basis after the end of the copper strike in April, 1968.

Elements of both Section 3 and Section 4 appear to have been invoked by Carrier. For example, Section 3's notice period was utilized, since notice was given in accordance with the current schedule agreement and not with Section 4's permissible 16-hours; all employees were furloughed, which is permissible only under Section 4, while Carrier contended that it was the decline in business, a Section 3 reason, which caused the lay-offs.

However, the February 7, 1965, Agreement does not permit Carrier to invoke parts of each. Further, Carrier is required to comply with the requirements of the Section under which it is acting. Although Carrier argued throughout that it was proceeding under Section 3, its furlough of all employees was solely a Section 4 option. Under Section 3 all employees may not be laid off, since that provision authorizes proportional reduction in forces to the extent of a decline in business exceeding 5%.

In addition, Section 3 requires specific calculations which were not made. Questions No. 2 and No. 3 on page 7 of the Interpretations of November 24, 1965, provide that the information on which a reduction in force is based must be supplied to the Employees promptly, as soon as it is available. That Carrier a year later included calculations for April and May, 1968, in its submission to this Committee (and then without showing any specific relationship between the decline in business and the number of employees furloughed), was not compliance with the explicit requirements of Section 3.

Since both the original notice and the nature of the general force reduction from July 14, 1967 to April 22, 1968, demonstrate that Section 4 was invoked, Carrier was obliged to recall all protected employees "upon the termination of the emergency." Although Question No. 1 on page 6 of the Interpretations indicates that Section 3 may be invoked even after

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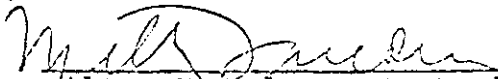
a Section 4 reduction in force, to do this still requires compliance with Section 3, and not mere assertions. There was no such compliance during the year following April, 1968. Protected employees have a guarantee of compensation which is waived only under certain specific conditions. Carrier's failure to observe those conditions obliges it to comply with the contractual guarantee.

In its Submission Carrier contends that in any case six of the Claimants are not protected employees. Even at this late date Carrier gives no support at all for that assertion. It never raised the question on the property, although each Claimant was named in the initial claim on May 22, 1968. The place to raise and resolve a factual issue is on the property. Protected status is frequently a question of interpretation as well as a matter of accepted fact, and this issue cannot therefore be resolved merely by referring the matter back to the parties for mutual determination of a fact. Since there is no present basis for doubting the Employees' assertion on the property that all Claimants are protected employees, each is held to be entitled to compensation.

The evidence demonstrates that the general recall date was April 22, 1968, as shown in Carrier's notice, although some employees returned to work on April 17. Consequently, the claim is allowed from April 22 only.

A W A R D

1. The answer to Question (A) is that Carrier should have restored to service on April 22, 1968, all of the Maintenance of Way employees who were laid off in force reduction on July 15, 1967.
2. The answer to Question (B) is that the named employees are entitled to compensation for eight (8) hours daily for each workday of their former work week assignments for which they have not received compensation since April 22, 1968.


Milton Friedman, Neutral Member

Washington, D. C.
Dated: October 29, 1969