

AWARD NO. 341
Case No. MW-22-SE

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Terminal Railway Alabama State Docks
TO THE) and
DISPUTE) Brotherhood of Maintenance of Way Employes

QUESTION

AT ISSUE: Are protected employes Woodrow Lee, Johnny Wesley Ward, Corty Brooks, C. B. Taylor, Clifton Taylor, L. V. McCann and Robert McSwain entitled to be compensated at their respective rates of pay for all time lost from October 8, 1971 through November 5, 1971?

OPINION

OF BOARD: Article I, Section 4, permits a carrier to reduce the number of protected employees under specific conditions. There must be an emergency, "such as flood, snow-storm...or strike." The emergency must cause operations to be suspended in whole or part. And, due to the emergency, the work which would be performed by the laid-off employees "no longer exists or cannot be performed."

It is significant that a strike, or any emergency situation as such, is not a basis for cutting off protected employees. The emergency is merely the trigger which may set off certain conditions, and it is these conditions which authorize reductions in force while the emergency persists.

Each of the conditions is a factual matter, to be proved by a carrier seeking to justify the temporary release of protected employees. It must be established, as any question of fact is established, by persuasive evidence on the property.

Carrier's action in this case therefore is to be measured by such criteria. However, the facts on the property showed only that when a longshoreman's strike threatened, in areas throughout the country but not on these docks, Carrier utilized it as the basis for laying off a group of men including the protected Claimants.

No effort was made on the property to prove that operations were being suspended in whole or in part; the fact that laid-off Maintenance of Way Employees were told not to work is not evidence that any operations were being suspended. The suspension of operations must be shown in the usual manner, by reference to a reduction or elimination of Carrier's operations, such as a decline in number of trains or their disappearance altogether due to the strike.

Evidence along these lines was not produced at any time, until belatedly Carrier's submission to this Committee contained requests from firms on the docks to suspend certain work. This is an untimely introduction of proof and an Award cannot be based upon it. The untimeliness of the assertions is shown by the equally untimely rebuttal of the Organization, when it argued that the firms cited are, in fact, part of the Alabama State Docks themselves.

Similarly, Carrier never showed that the work no longer existed or could not be performed. The docks were not picketed. Work proceeded. Particularly with Maintenance of Way work, which involves maintenance and repair, specific proof should be forthcoming to establish its non-existence. The untimely reference to declining revenues is also not a matter which can properly be considered by the Committee.

Awards of the Third Division, flowing from Article VI of the August 21, 1954, agreement's provisions dealing with such emergencies as strikes, support the Organization's position. These awards, including 11214, 14834 and 15858, uphold the view that a strike, per se, is not a basis for reducing forces. The 1954 agreement's language is the same as Article I, Section 4, of the February 7 Agreement in vital respects.

Award 15858 stated that "the burden of proof is on the Carrier to show by a preponderance of evidence" that Carrier's operations must be suspended because of the strike and the work no longer exists." In the instant case Carrier has not met that burden. For submission of evidence to this Committee, which had not previously been considered on the property, cannot form the basis for a denial award.

The mere existence of a strike of longshoremen elsewhere, which may or may not have had an impact upon this

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Carrier, must be shown to come within the Agreement's criteria by hard facts. A strike is not automatically a proper basis for furloughing protected employees. Since Carrier relied merely upon the fact that a strike was threatened and did occur, it must be held that the right to reduce forces of protected employees under Article I, Section 4, has not been established.

AWARD

The Answer to the Question is Yes.


Milton Friedman
Neutral Member

Dated: December 18, 1972
Washington, D. C.

