

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Brotherhood of Railroad Signalmen
TO) and
DISPUTE) Baltimore and Ohio Railroad Company

QUESTION (a) Carrier violated the current Signalmen's Agreement,
AT ISSUE: particularly Appendix 'G', Protected Employees, dated
February 7, 1965.

(b) Carrier should now be required to compensate Signal
Maintainer S. R. Brooks his protected rate of pay for 6
days on which he was furloughed."

OPINION Claimant, a protected employee, held a regular assignment as a
OF BOARD: Signal Maintainer on the Carrier's Pittsburgh Division-East
End. This position was one of a group of twenty-five signal
positions which were abolished allegedly as a consequence of severe winter
weather conditions. These abolishments took place on a gradual basis.
Claimant's position was abolished effective with the close of business,
February 17, 1977 and he remained on a furlough status on February 18, 22,
23, 24, 25 and 28, 1977.

Petitioner takes the position that Carrier's mere reference to
severe winter conditions was insufficient since there was no offer of any
evidence that Claimant's work no longer existed or could be performed. It is
also alleged that the initial reason included a decline in business by
Carrier which must be established by evidence which was not done in this
case.

Carrier asserts that Claimant's position was abolished under
the provisions of Section 4 of Article I of the February 7, 1965 Agreement
under the emergency conditions therein. Carrier points out that the
Petitioner has never challenged or questioned the fact that an emergency
condition existed or challenged Carrier's right to abolish Claimant's
position if, indeed, Carrier's operations were suspended in whole or in part.
Carrier states that Claimant's position was properly abolished in accordance
with Section 4 of Article I and that the only issue before this Board is the
consideration as raised by Petitioner of whether Carrier's right to effect
force reductions under emergency conditions required Carrier to prove that
"Claimant's work no longer existed or could not be performed".

As part of its position, Carrier states that Section 4 of
Article I of the February 7, 1965 Agreement as well as its predecessor,
Article VI of the August 21, 1954 Agreement were modified by the Agreement of
November 16, 1971. In that last Agreement, Article VI of the 1954 Agreement
was revised to provide for no advance notice before effecting force
reductions due to emergency conditions. As a second revision, the
requirement that Carrier be obligated to support its position that the work
performed which was involved in the force reduction no longer exists or
cannot be performed was deleted. Carrier avers that the significant changes
mandated by the November 16, 1971 revision affect the February 7, 1965
Agreement as well.

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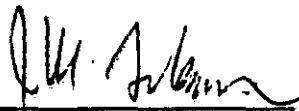
A significant argument made by Carrier is that Petitioner is tardy in its argument that proof must be furnished that the work no longer existed or could not be performed as a result of the emergency. No such position was taken during the handling of the dispute on the property.

An examination of the handling of the dispute on the property indicates that the only argument relating to this matter made by Petitioner was in the June 27, 1977 letter when it stated "Insofar as Section 4, was the operation on this particular section of the Railroad suspended in whole or in part and would it come under the word 'emergency'." This requested information was furnished by Carrier in its letter dated October 13, 1977 when it made it clear that the operations on the Pittsburgh East Division had been suspended due to the severe winter weather conditions. No further issue was raised while the claim was being handled on the property in this regard. It is well established in numerous decisions by this Board that material facts or arguments which were not raised during discussions on the property do not constitute a proper basis for further adjudication (see Awards 239, 341, 365 and others).

The issue of whether or not the work no longer existed or could be performed was not raised during the handling of this dispute on the property. During the handling on the property, Carrier explained that due to the severe winter storm, its operations had been suspended. This fact had never been challenged by Petitioner. It must be concluded therefore that Carrier was within its rights under Section 4 in abolishing the position for the days involved.

AWARD

The questions are answered in the negative.



M. M. Lieberman
Neutral Member

Dated: March 29, 1979