SPECIAL BOARD OF ADJUSTMENT NO. 605

Award No. 425
Case No. H&RE-32-W

Parties to Dispute

Chicago, Rock Island and Pacific Railroad Company
(William M. Gibbons, Trustee)

and

Hotel & Restaurant Employees and Bartenders
International Union

Questions at Issue:

The following questions are those presented in the Employees' Submission:

1. Were the employee listed in the Claim originally filed by the Organization in their behalf covered by the provisions of the National Job Stabilization Agreement dated February 7, 1965, on January 11, 1979, the date they were furloughed, and did the Carrier violate the terms of that Agreement between the parties when it failed to compensate these employees as protected employees under the provisions of the Agreement?

2. Shall the Carrier now be required to restore all employees listed in the Claim to protected status and pay them all compensation due beginning January 11, 1979, the date of furlough, continuing such payments thereafter in accordance with the provisions of the Agreement of February 7, 1965?

Opinion of the Board

On August 15, 1977, Carrier petitioned the Interstate Commerce Commission (ICC) to discontinue operation of its remaining passenger trains 5 and 6 between Rock Island, Illinois, and Chicago, Illinois; as well as passenger trains 11 and 12 between Peoria, Illinois, and Chicago, Illinois. On October 20, 1978, the ICC issued a final decision granting Carrier's request,

permitting a complete cessation of its inter-city passenger train service operations.

There were nine Dining Car employees in the Food Services Department that were affected by the closing down of passenger train service.

Carrier completely discontinued its inter-city passenger train service effective January 11, 1979. By letter dated January 31, 1979, Carrier's Vice President-Staff advised the Organization's General Chairman as follows:

> "Please be advised that on January 11, 1979, when intercity passengers trains 5 and 6 between Rock Island, Illinois, and Chicago, Illinois (and 11 and 12 between Peoria, Illinois and Chicago, Illinois), were discontinued, intercity passenger and dining service business on the Rock was wholly and completely closed out. Accordingly, the Job Stabilization Agreement dated February 7, 1965, no longer applies to afford benefits to dining car employees after January 11, 1979."

The Organization protested Carrier's discontinuance of Job Stabilization benefits in letter dated March 7, 1979, addressed to Carrier's Director of Labor Relations. Carrier's Director of Labor Relations responded to the Organization's March 7 letter by letter dated April 30, 1979, advising that the Organization's claim was improperly filed and thus barred from further handling under Rule 11-1/2 (Time Limit on Claims and Grievances) of the Agreement between the parties since it was not addressed to the appropriate Carrier Officer authorized to receive claims.

Rule 11-1/2 states, in pertinent part:

"(a) All Claims or grievances must be presented in writing by or on behalf of the employee involved, to the Officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based..."

Neither Carrier's Vice President-Staff (in his letter of January 31, 1979) nor Carrier's Director of Labor Relations (in his letter of April 30, 1979) identified the appropriate Carrier Officer with whom a claim should have been filed.

On June 21, 1979, apparently after determining the appropriate Carrier Officer was for filing claims, the Organization's General Chairman submitted this claim with Carrier's Manager-Suburban Operations. On August 15, 1979, Carrier's Manager-Suburbuan Operations declined the claim citing Rule 11-1/2 of Agreement.

Carrier contends that the claim now before this Committee should be dismissed because it was not timely submitted to the proper Carrier Officer designated to receive claims under the Time Limit on Claims and Grievances of the Agreement between the parties (Rule 11-1/2.)

Alternatively, and on the merits, Carrier contends that the February 7, 1965 Mediation Agreement no longer applied to Claimant's because of the complete cessation of Carrier's intercity passenger service operation.

Carrier is correct in its assertion that the Time Limit Requirements of the Schedule Agreement between the parties are applicable. The interpretation of the February 7, 1965, Mediation

Agreement (dated November 24, 1965) reads in pertinent part:

> "Individual claims for compensation alleged to be due pursuant to the Agreement shall be handled in accordance with the rules governing the handling of claims and grievances, including time limit rules, provided that the time limit on claims involving an interpretation of the Agreement shall begin to run until 30 days after the interpretation is rendered."

However, in this dispute, the Board finds that both Carrier's Vice President-Staff and its Director of Labor Relations acted in bad faith by failing to advise the Organization as to the name of the proper Carrier Officer designated to receive such claims, and waiting until April 30, 1979 to respond to the General Chairman's March 7, 1979 letter advising that the claim was improperly filed. The April 30, 1979 letter was well after the sixty day time limit set forth in Rule 11-1/2. Carrier cannot now attempt to avail itself of the time limit provisions of the rule.

On the merits, the Board finds that the February 7, 1965, Agreement did not provide protection to employees where operations cease, and there was no place where seniority could be exercised. Where there is a complete abandonment and not merely a decline in business, the protective provisions of the February 7, 1965, Agreement have no force or effect.

In Award No. 408 this Board stated, in pertinent part:

> "A thorough review of the record at hand compels this Board to conclude that the February 7, 1965, Stabilization Agreement was intended to provide protection to employees in the event of a decline in the Carrier's business. Said Agreement was not intended, in our opinion, to accord protection to

employees when the work previously performed by them disappears entirely. The February 7, 1965, Agreement simply did not address the question of what was to happen when there was a complete cessation of the Company's business."

See also Award Nos. 352, 409, and 373 of this Board.

The Board agrees with Carrier that the guarantees provided were never intended as gratuities to able and qualified employees nor can they be considered in any form of a pension. Carrier is not required to maintain guarantees indefinitely when circumstances remove the possibility of any meaningful service in exchange for such guarantees. With absolutely no possibility of a resumption of Carrier's intercity passenger service, Claimant had no place else to exercise seniority. The fact that it was Carrier, and not a third party, that initiated the abandonment is not relevant in determining the rights of the employees under the February 7, 1965, Agreement.

AWARD

Both of the Questions at Issue are answered in the negative.

Nicholas H. Zumas, Neutral Member

Date: May 8, 1981