

SPECIAL BOARD OF ADJUSTMENT NO. 605

AWARD NO. 436
CASE NO. CL-74-E

PARTIES TO DISPUTE:

THE CHESAPEAKE AND OHIO
RAILWAY COMPANY

- and -

BROTHERHOOD OF RAILWAY, AIRLINE
AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION
EMPLOYEES

QUESTIONS AT ISSUE:

- 1) Did the weather conditions existing at the Carrier's Barboursville, West Virginia Reclamation Plant on February 10, 1977 constitute an emergency as defined in Section 4 of Article 1 of the February 7, 1965 Agreement?
- 2) If the answer to Question 1 is in the negative, shall the Carrier be required to compensate the employees hereinafter listed for all losses sustained during the period from February 11, 1977 through February 28, 1977, as a result of having been denied protective benefits.

OPINION OF BOARD:

In February 1977 Claimants Macki, Rice, Templeton, Bates and Wetherholt held regular clerical positions at Carrier's Barboursville, West Virginia Reclamation Plant (BRP) and Claimant Newman was on furlough. All seven Claimants were protected employees under the February 7, 1965 Agreement, as amended by Memorandum Agreement of March 1, 1973. On February 4, 1977 Carrier issued a five-day notice abolishing the six clerical positions at the BRP effective with the close of business on February 10, 1977. Thereafter, the Claimants, including Newman, were recalled for service effective March 1, 1977.

On that date, BRAC Local Chairman filed claims for protected pay benefits but Carrier denied these on grounds that the abolishments were privileged under Article I, Section 4, and therefore Claimants were not entitled to protective benefits for claim dates, by operation of Article I, Section 5. The Organization denies that a bona fide weather emergency existed which caused the abolishment, and therefore appealed the claim to this Board for disposition. Article I, Section 4, at issue, reads as follows:

"Section 4.

"Notwithstanding other provisions of this Agreement, a carrier shall have the right to make force reductions under emergency conditions such as flood, snowstorm, hurricane, earthquake, fire or strike, provided that operations are suspended in whole or in part and provided further that because of such emergencies the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed. Sixteen hours advance notice will be given to the employees affected before such reductions are made. When forces have been so reduced and thereafter operations are restored employees entitled to preservation of employment must be recalled upon the termination of the emergency. In the event the carrier is required to make force reductions because of the aforesaid emergency conditions, it is agreed that any decline in gross operating revenue and net revenue ton miles resulting therefrom shall not be included in any computation of a decline in the carrier's business pursuant to the provisions of Section 3 of this Article I."

Countervailing assertions and proffered evidence of the parties places in issue the factual questions whether emergency conditions such as snow storms cause suspension in whole or in part of Carrier's operations and that because of such emergencies the work which would be performed by Claimants no longer existed or could not be performed between February 11-28, 1977. Prior awards of this Board place the burden of proof in such cases upon the Carrier as to the existence of "emergency conditions" and the causal relation-

ship to the reduction of protected employees required in the provisos of Article I, Section 4. See Awards 342 and 422. The extent of this burden, and other controlling principles, are set forth with particularity in Award No. 342, as follows:

Article I, Section 4, permits force reductions in emergencies, such as strikes. It also conditions force reductions on the provisos "that operations are suspended in whole or in part," and that the work "no longer exists or cannot be performed." The Agreement consequently does not anticipate that, whenever there is an emergency, carriers may use it as the basis for furloughing protected employees. Not the emergency as such authorizes the layoff, but compliance with the provisos. All of Article I, Section 4, must be applied and each requirement must be met. These are factual matters which must be established by evidence, not by assertion, conjecture or probability.

Otherwise, whenever there were an emergency, a carrier could use it as a device to reduce forces of protected employees who otherwise must be retained in compensated service under Article I, Section 1. Hence the significance of the requirement that the work no longer exists and cannot be performed. For, if there is no established disappearance or diminution of work due to the emergency, protected employees must continue to be compensated.

On the present record, Carrier has made out a persuasive case for the existence of a weather-related emergency, i.e., the severe winter snow storms which battered the East coast in December 1976 and January 1977. It is obvious that heavy snowfall, winds and sub-freezing temperatures created abnormal adverse conditions for operations, which were beyond Carrier's control. We also find well-founded Carrier's argument that this emergency situation did not terminate the moment the last snowflake fell or the temperature rose above freezing point. See SBA No. 605-245 and Awards 2-6412, 3-20614, 4-3424. Throughout handling on the property and before this Board Carrier stated that all scheduled maintenance and construction work on the C&O territory was

suspended during January-February 1977 because Engineering Department fire forces were occupied fully with emergency snow and ice removal. We are persuaded of the causal link between the suspension in part of Carrier's operation and the resultant diminution of work for Claimants to perform at the BRP due to the emergency. In our judgment, Carrier has met the burdens of proof imposed by Article I, Section 4 and Award No. 342 of this Board

AWARD

Question No. 1 is answered in the affirmative.

Dana E. Eischen *per*
Dana E. Eischen, Chairman

Date: May 21, 1984

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B.M.W.E.
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O. M. BERGE
PRESIDENT