

SPECIAL BOARD OF ADJUSTMENT NO. 605

AWARD NO. 439
CASE NO. CL-129-W

PARTIES TO DISPUTE:

ST. JOSEPH TERMINAL
RAILROAD COMPANY

- and -

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

QUESTIONS AT ISSUE:

1. Are the Interlocking Control Operators at the St. Joseph, Missouri Bridge, St. Joseph, Missouri, i.e., V. L. Gould; N. W. Rodes; A. A. Steppe and C. W. Taylor, eligible for all the benefits of the February 7, 1965 Job Stabilization Agreement, as amended May 16, 1980, due to the temporary closing of the Bridge on December 8, 1981?
2. If the answer to Question #1 is in the affirmative, can the Company require these protected off-in-force reduction employees to displace upon positions more than 30-miles from their furloughed point under Article II, USE and ASSIGNMENT OF EMPLOYEES AND LOSS OF PROTECTION, Section 2 of said Agreement?
3. If the answer to Question #2 is in the negative, then are the Claimants in this case entitled to the "actual necessary expenses" they encountered by the arbitrary and capricious actions of the Company in forcing them to displace to positions 105-miles distant from their furloughed point and should the Company be barred in the future from requiring the incumbents to displace more than 30 miles from the St. Joseph Bridge?

OPINION OF THE BOARD:

The four Claimants in this matter were assigned as Interlocking Control Operators at the turnspan bridge across the Missouri River at St. Joseph, Missouri. They were all employees with many years of seniority and were protected under the February 7, 1965 Stabilization

Agreement (as amended on May 16, 1980). The Missouri River is closed to commercial navigation during the winter months due to low water and ice accumulation. According to Carrier, traffic is not permitted after December 15th of each year (although traffic may cease earlier) and the traffic resumes March 1st. The Union maintains that the Carrier had no firm or "set" policy with respect to the treatment accorded the Interlocking Control Operators during the annual shut-down of river traffic.

On December 8, 1981 Carrier notified the Claimants that their positions were abolished due to the annual temporary shut-down of the bridge. According to Petitioner, Carrier also notified the claimants that they would have to exercise their seniority to Marysville, Kansas (a distance of 105 miles) which was the closest location where positions existed which Claimants could fill in accordance with their seniority. They were also advised, according to the Organization, that if they failed to displace they would forfeit their protective allowances during the period of their furlough. Carrier does not agree with this version of the facts and states that the Claimants were told that they were free to exercise their seniority in accordance with the basic Schedule of Work Rules, and if not they would not be eligible to draw protective benefits during the period of shut-down of the bridge. Carrier stated that this was because the force reduction was the result of seasonal requirements.

The record reveals that three of the four Claimants worked on the bridge in question during the period immediately prior to February 7, 1965; the three employees had no earnings during the months of January

and February 1965. Further, the history indicates that none of the claimants either worked on the bridge or received protective benefits during the months of January and February 1980, the period immediately preceding the May 16, 1980 agreement amending the Job Stabilization Agreement of 1965.

It is the basic position of Petitioner that all employees who have met the prerequisites of the Stabilization Agreement are covered by all the terms of that agreement, including employees characterized as Seasonal Employees. For that reason it is argued by Petitioner that the Claimants herein, since they were indisputedly protected employees became "off-in-force" protected employees when their positions were abolished. For that reason it is urged that the provisions of Article II Section 2 of the amended protective agreement are applicable. That provides:

"When on off-in-force reduction protected employe is entitled to compensation under this Agreement, he may be used in accordance with existing seniority rules for vacation relief, or sick relief, or for any other temporary assignments within a 30-mile radius of his headquarters point, provided such assignment does not require the crossing of craft lines except as specifically provided for in this agreement."

In addition the Organization insists that the exception contained in Section 5 of Article IV of the amended agreement does not preclude the seasonal employees from the protective benefits specified in Article II. Section 5 of Article IV provides:

"A protected employee shall not be entitled to the benefits of this Article during any period in which he fails to work due to disability, leave of absence, military service, or other absence from the Carrier's service, or during any period in which he occupies a position not subject to the working agreement (except as provided in Article II) or his protected status is suspended; nor shall a protected employee be entitled to the benefits of this Article IV during any period when furloughed because of a reduction in force resulting from seasonal requirements (including lay-offs during Miners Holiday and the Christmas Season) or because of reductions in forces pursuant to Article I, Section 3 and 4, provided however, that employees furloughed due to seasonal requirements shall not be furloughed in any 12-month period for a greater period than they were furloughed during the 12 months preceding the date of this agreement."

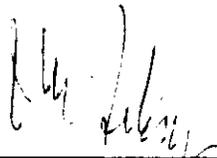
Carrier makes the point that the four Claimants were clearly seasonal employees as provided for in the 1965 Agreement and its amendment in 1980 (in accordance with the agreed Interpretation of the 1965 Agreement). Carrier merely used the years 1977, 1978 and 1979 to determine whether or not the Claimants were indeed seasonal in lieu of 1962, 1963 and 1964. In that context Carrier argues that Clerk Roades had only eight days of compensated service during the period the bridge was closed in 1977, 1978 and 1979; Clerk Gould had 21 days, Clerk Steppe had nine days and Clerk Taylor had 27 days during the same period. Carrier also notes that the service indicated for the four clerks occurred because they chose to exercise their seniority to other positions during the periods in question. Carrier contends that it never required Claimants to exercise seniority at another location when the bridge was closed and for the most part they remained furloughed with no compensation. While Carrier agrees that employees are not required to exercise their seniority beyond a 30 miles radius under the amended agreement, in this instance Claimants are only entitled to the guarantee specified in Article IV, Section 5 of the Agreement.

The Board views the issues presented as being in part at least dependent on the characterization of the Claimants as either regular employees or seasonal. Based on the history of the positions as well as the specific experience of the Claimants during the period 1977-1979, it is the Board's view that these employees are all seasonal. This is a factual determination (see Award No. 274). With this determination, it is apparent that rulings on the questions posed in this dispute must be qualified as applicable to seasonal employees. Thus, with the qualification indicated, the answer to the first question must be affirmative.

With regard to the second question raised, it is obvious that Carrier, under the amended Agreement (particularly Article II, Section 2) cannot require protected off-in-force employees to displace on positions more than 30 miles from their furloughed point. However, in view of the finding that the Claimants herein are seasonal employees, they are not covered by the provisions of Article II, Section 2, since the Board finds that the exception provided in Article IV, Section 5 does not apply to seasonal employees. The phrase "the guarantee may also be suspended for seasonal requirements" is a special provision, not related to the preceding exception, and is applicable to seasonal employees such as those in this dispute. The seasonal employee (furloughed for seasonal reasons) must be guaranteed employment or protection equal to the seasonal employment in the 1979 seasonal employment period.

Concerning the third question posed, Claimants are not entitled to the "actual and necessary expenses" they incurred in their displacement 105 miles from their furlough point. First, there is absolutely no evidence of record to establish that Carrier forced the employees to displace at the distant point. Further, this Board has held on many occasions that expenses will not be paid to employees in the exercise of seniority, but would be paid if they were incurred at the direction of management (see Award No. 97 among others).

Award: With the qualifications noted in the Opinion, the questions must be answered: Question No. 1 - affirmative. Question No. 2 - Negative. Question No. 3 - Negative.



I. M. Lieberman, Chairman

Date: 5-27-85