

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Transportation-Communications International Union
TO THE) and
DISPUTE) The Chicago and Illinois Midland Railroad Company

- QUESTIONS AT ISSUE:
1. Did the condition of the Illinois River between January 22, 1985 and March 4, 1985, constitute an emergency as defined and interpreted under the provisions of Article I, Section 4 of the February 7th, 1965 Agreement so as to permit the force reductions instituted by the Chicago & Illinois Midland Railway Company during that period of time?
 2. If the answer to Question 1 is in the negative, is the Chicago & Illinois Midland Railway Company now required to compensate the Claimants named in BRAC cases 3261, 3261-1, 3267, 3268, 3269 and 3275 (Carrier file MP-BRAC-303) the protective benefits due while furloughed during the period between January 22, 1985 and March 4, 1985?

OPINION

OF THE BOARD: Transporting coal for the Commonwealth Edison Company represents a great preponderance of the Carrier's business. In addition to running a 121-mile railroad network, the Carrier staffs and operates, pursuant to a contract with Commonwealth Edison, the Havana, Illinois Coal Transfer Plant. The Organization represents plant employees. At the transfer plant, these employees unload unit coal trains into dumpers and the commodity is loaded onto barges to be shipped on the Illinois River waterway to Commonwealth Edison electric generating stations. During many winters the river freezes, necessitating a cessation of barge operations.

On January 19, 1985, the temperature in the Peoria-Havana, Illinois area plummeted from seven degrees above zero to

eighteen degrees below zero. The next day, the low temperature was minus twenty-two degrees. The cold snap precipitated freezing conditions on the Illinois River. For safety reasons, the barge company ceased operations. Since the company did not resume operating barges on the Illinois waterway until March 4, 1985, the Carrier did not run any coal trains into the coal transfer plant from January 22, 1985 through March 4, 1985. On January 22, 1985, the Carrier issued bulletins furloughing virtually all of the transfer plant employees (leaving only a skeleton force for maintenance purposes) pursuant to the emergency force reduction provisions of schedule Rule 19. Consequently, the Carrier suspended the protective benefits of the furloughed workers under Article I, Section 4 of the February 7, 1965 Job Stabilization Agreement, as amended on this property. While the record is not entirely clear, apparently all plant workers returned to work on or about March 4, 1985. Pursuant to the notice provisions of schedule Rule 19 and Article I, Section 4, the Carrier abolished the transfer plant positions approximately sixteen hours after issuing the January 22, 1985 bulletins. Claimants are the fifty workers adversely affected by the force reduction at the transfer plant.

Article II, Section 4 of the amended February 7, 1965 agreement provides:

"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."

The Organization argues that the Carrier used cold weather conditions as a pretext for suspending the protection of employees when the barge company made an economic decision to cease its barge operations. The Organization asserted that the Carrier never before invoked the emergency provisions of Article I, Section 4 when freezing river conditions interrupted shipping on the Illinois waterway. Besides the absence of a genuine emergency, the Organization argues that the Carrier failed to satisfy the two provisos set forth in Article I, Section 4. Although the barge company which transports Commonwealth Edison's coal ceased operations, the waterway was open and other barges hauled bulk commodities, including coal, during February, 1985. Also, the Organization submits that plant workers could have continued to unload coal trains since there was ample storage space at the transfer plant. Finally, the Organization avers that once the Carrier chose to rely on the emergency provisions of Article I,

Section 4 it is barred from belatedly utilizing the decline in business formula contained in Article I, Section 3 of the February 7, 1965 Agreement, as amended, to justify its suspension of employee protective benefits.

At the onset, the Carrier contends that the Board should disregard the Organization's documentary evidence showing that shipping continued on the Illinois waterway during February, 1985 because the Organization did not present the evidence on the property. Nevertheless, the Carrier characterized the sudden freezing of the Illinois River as an emergency causing the barge company to wholly suspend its operations. NRAB Third Division Award No. 15607 (Lynch). The Carrier emphasizes that it lacked control over either the icy river conditions or the barge company. With the cessation of river traffic, the Carrier was forced to divert coal trains to locations other than Havana. Alternatively, the Carrier submits that it properly triggered Article I, Section 3 to reduce the number of employees entitled to protective benefits. Finally, even if this Board should sustain the claim, the Carrier points out that one Claimant forfeited his protective status in 1984, another Claimant was on vacation, and a third Claimant worked a higher rated job.

The threshold question before this Board is whether the freezing conditions on the Illinois River constituted a true emergency within the meaning of Article I, Section 4 of the amended February 7, 1965 Job Stabilization Agreement. Article I, Section 4 lists, as examples, four occurrences which constitute an emergency. Since the Carrier raises Article I, Section 4 as an

affirmative defense to justify its suspension of Claimants' protective benefits, it has the burden of coming forward with some evidence to show that freezing conditions on the Illinois River is an emergency equivalent to the types of events set forth in Article I, Section 4. The examples given in the Agreement are all natural disasters or unforeseen, unusual phenomena. The record reflects that the Illinois River frequently freezes during winter weather which disrupts barge operations. There was a severe cold wave on January 21 and 22, 1985, but even the Carrier's evidence discloses that the temperatures were not much lower than the year before. In our view, it is difficult to characterize normal winter weather as an unexpected or unusual occurrence. In addition, Carrier train lineups show that the Carrier was anticipating an imminent river freeze with the resulting suspension of barge traffic. The record also shows that when the Illinois River froze during prior winters, the Carrier did not invoke the emergency provisions of Article I, Section 4. Although there are some procedural defects in the record accumulated by the Organization, we can consider the issue of how the parties handled the previous river freezings because the Carrier was well aware of how it addressed the periodic and expected cessation of barge operations during past winters. In summary, the Carrier has not shown why this river freeze is different from past winters when the barge company ceased transporting coal on the Illinois River.

The Carrier also relied on Article I, Section 3, albeit as an afterthought, to support its suspension of Claimants' protective benefits. Contrary to the Organization's argument, the

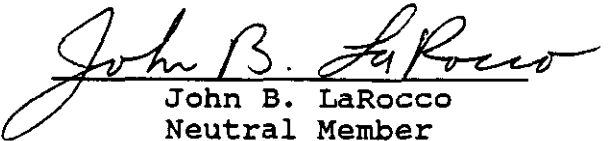
Carrier may properly cite alternative provisions of the Agreement to defend this claim especially since the Carrier persuasively argued that it invoked the decline in business formula when the river froze during prior winters. The Organization failed to refute the Carrier's contention. Also, it did not take exception to the Carrier's computation of the quantum decline in business due to the barge company's cessation of its barge operations. The Carrier suffered an 82.5% reduction in business during February, 1985. The parties had a mutual understanding that so long as the Carrier gave affected employees at the transfer plant five days' advance notice before the calendar month that the Carrier would invoke the decline in business formula, Article I, Section 3 of the Agreement permitted the Carrier to temporarily suspend protective benefits for workers according to the decline in business formula. In this instance, the Carrier's January 22, 1985 notice was sufficiently in advance for the Carrier to suspend Claimants' protective benefits during February, 1985 and, to a lesser extent, during March, 1985.

To reiterate, since the Carrier did not show that the river freeze was an emergency within the meaning of Article I, Section 4, Claimants' protective status could not be suspended until February 1, 1985.

AWARD

1. The Answer to Question No. 1 is No.

2. The Answer to Question No. 2 is Yes, for the period from January 22, 1985 through January 31, 1985, with the exception of Claimant Weaver, who worked a higher rated position; Claimant Imlay, who was on vacation; and Claimant Wilson, who had previously forfeited his protected status. For February and March, 1985, Claimants' entitlement to protective benefits, if any, is governed by application of the decline in business provision of Article I, Section 3 of the amended February 7, 1965 Agreement.


John B. LaRocco
Neutral Member

Dated: November 7, 1988