

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Transportation-Communications International Union
TO THE)
DISPUTE) and
)
) Atchison, Topeka and Santa Fe Railway Company

ORGANIZATION'S QUESTIONS AT ISSUE:

1. Did Carrier violate the provisions of the February 7, 1965 Mediation Agreement, as amended, beginning September 1, 1989, when it relocated janitorial work within the city limits of Amarillo, Texas, after abolishing all Janitor/Mail Handler positions at the General Office Building and refused to permit the occupant of one of these positions, C. L. Lovejoy, to follow this work?
2. Did Carrier violate the provisions of the February 7, 1965 Mediation Agreement, as amended, beginning September 1, 1989, when it refused to permit C. L. Lovejoy to perform the remaining janitorial work that had been relocated from the Amarillo General Office Building and declined his claims for protective benefits pursuant to Article IV?
3. Shall Carrier now be required to pay protective benefits to C. L. Lovejoy beginning September 1, 1989, and continuing so long as this janitorial work remains to be performed?

CARRIER'S QUESTIONS AT ISSUE:

1. Did Carrier violate the provisions of the February 7, 1965 Mediation Agreement, as amended, beginning September 1, 1989, when as a result of a complete cessation of work within the Amarillo General Office Building Carrier abolished the remaining janitorial position which was occupied by C. L. Lovejoy?
2. Did Carrier violate the provisions of the February 7, 1965 Mediation Agreement, as amended, when it declined C. L. Lovejoy's claim for protective benefits for the month of September 1989 pursuant to Article IV as a result of the cessation of work?
3. Shall Carrier now be required to pay protective benefits to C. L. Lovejoy for the month of September 1989 as a result of the cessation of work in the Amarillo General Office Building?

**OPINION OF
THE BOARD:**

Claimant, who was a protected employee under the amended February 7, 1965 Job Stabilization Agreement, held a September 12, 1952 seniority date on the Building Superintendent's Seniority District. Effective August 31, 1989, the Carrier abolished Claimant's Janitor/Mail Handler position at the Carrier's facility located on Polk Street in Amarillo, Texas. Subsequent to September 1, 1989, Claimant could not procure another position on his seniority district because there were not any positions left on the district.

Pursuant to appropriate Implementing Agreements, on or about September 1, 1989, the Carrier transferred work and workers from the eleven story Polk Street Building in Amarillo to office complexes in Albuquerque, New Mexico and Topeka, Kansas. After the transfer of work, the Carrier retained one exempt employee to act as caretaker of the Polk Street building while it attempted to sell it. The exempt employee maintained the ventilation, heating and air conditioning for the microwave room, kept the building heated in cold weather and performed some minor plumbing repairs. The caretaker did not perform any janitorial duties in the building. The Carrier emphasized that, prior to September 1, 1989, Claimant had been assigned to perform custodial functions on one floor of the Polk Street building but after the transfer of work to the two distant points nobody performed janitorial duties on Claimant's floor or any other floor in the building.

The Organization alleged that the Carrier transferred some work from the Polk Street building to a much smaller office facility on

Fillmore Street in Amarillo. According to the Organization, the single employee stationed at Fillmore Street performs janitorial work. Alternatively, the Organization charges that the Carrier uses an outside contractor to perform the janitorial service. Thus, the Organization concludes that, at least, a modicum of work survived the closure of the Polk Street building and thus, Claimant retains an opportunity to work.

On the other hand, the Carrier denies that any of its employees occupy an office on Fillmore Street. The Carrier submits that immediately before September 1, 1989, it moved its remaining Polk Street employees into leased office space on Taylor Street in Amarillo. The Carrier stresses that the janitorial work performed on Taylor Street is beyond the Carrier's control and, more importantly, is not being performed by any employee of the Carrier. The Carrier explained that a former employee relieves the exempt caretaker in the Polk Street building. Finally, regardless of whether any janitorial work is being performed at Taylor Street, the Carrier contends that Claimant's seniority district is restricted to the Polk Street location. Since there has been a complete cessation of janitorial work at Polk Street, Claimant lacks any future work opportunity.

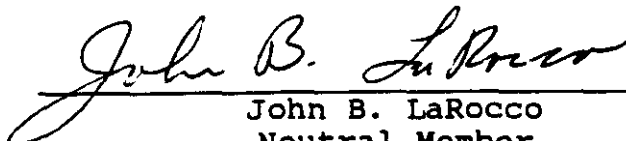
This Board has held in several prior decisions that a protected employee who lacks any meaningful future work opportunity on his seniority district is not entitled to protective benefits. [See Special Board of Adjustment No. 605, Award Nos. 352, 373, 408 and 409.] In this case, the closure of the Polk Street office building rendered it impossible for Claimant to return to work. Special Board of Adjustment No. 605, Award No. 435. Even if, as the Organization

argues, Claimant's seniority extends to any office facility in Amarillo as opposed to just the Polk Street facility, the janitorial work which he previously performed has permanently vanished. The Organization has not presented any evidence that the caretaker has been performing any custodial duties or, that a Carrier employee is performing janitorial services at any other Amarillo office occupied by Carrier employees. The exempt employee (caretaker) continued to perform the same work that he did before the workers were transferred to Albuquerque and Topeka. In sum, Claimant's work did not survive the closure of the Polk Street Building. Public Law Board No. 3545, Award Nos. 17 and 18 (Lieberman).

AWARD

1. The Answer to the Organization's First Question at Issue is No.
2. The Answer to the Organization's Second Question at Issue is No.
3. The Organization's Third Question at Issue is moot.
4. The Answer to the Carrier's First Question at Issue is No.
5. The Answer to the Carrier's Second Question at Issue is No.
6. The Carrier's Third Question at Issue is moot.

Dated: September 29, 1992



John B. LaRocco
Neutral Member