

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) Transportation-Communications International Union  
TO THE )  
DISPUTE ) and  
)  
) Norfolk Portsmouth Belt Line Railroad Company

QUESTIONS AT ISSUE:

1. Is Carrier misapplying Article I Section 3 of the February 7, 1965 Agreement, as amended, by failing to count all cars over its connections when computing decline in business?
2. Is Carrier misapplying Article I Section 3 of the February 7, 1965 Agreement, as amended, by not counting as protected employees the number of protected employees previously reduced from those entitled to protective benefits due to decline in business?
3. Shall Carrier now recompute the decline in business formula beginning with the month of June, 1990 and each subsequent month as called for in Article I Section 3 of the February 7, 1965 Agreement, as amended, and allow all protective benefits claims declined on the basis of the improper decline in business computations?

OPINION OF  
THE BOARD:

Effective November 20, 1984, the parties on this property substantially revised the decline in business formula set forth in Article I, Section 3 of the February 7, 1965 Job Stabilization Agreement. The amended Article I, Section 3 provides:

In the event of a decline in the Carrier's business in excess of 5% in cars over its connections with all lines in any calendar month compared with the average of the same calendar month for the preceding two calendar years, the number of protected employees, excluding those whose protected status has been suspended, will be reduced to the extent of one percent for each one percent the said decline exceeds 5%. When the number of protected employees is reduced as provided for herein, the junior protected employees will not be entitled to protective

benefits. Upon restoration of Carrier's business employees entitled to protective benefits under this Agreement shall have such rights restored in accordance with the same formula within 15 calendar days.

Beginning in June, 1990, the Carrier experienced a severe decline in business. For the first time, the Carrier applied the above quoted, amended decline in business provision. Two separate disputes arose.

A. Issue No. 1

In computing the decline in the number of cars handled, the Carrier counted only loaded, revenue-producing cars. The Organization points out that the language of amended Article I, Section 3 plainly mandates that the Carrier count all cars, both loaded and empty cars. The Carrier contends that the underlying intent of the negotiators who wrote the revised decline in business formula contemplated counting only cars which generated revenue because a decrease in revenue accurately measures a decline in business. The Carrier further contends that counting all empty cars is particularly onerous with regard to empty rack cars. Between the receipt of the cars from the NS and the ultimate placement of the cars at Ford Motor Company, the empty rack cars returning from Ford Motor Company are moved to and from CSX Transportation. The two connections with CSX are for maintenance and inspection purposes and are non-revenue movements.

When construing contract language, this Board must attribute to the words, used by the parties, their plain, usual and ordinary meaning. In this case, the negotiators of amended Article I,

Section 3 clearly and unambiguously provided that the decline in business formula would include ". . . cars over its connection with all lines. . ." This phrase does not draw any distinction between empty and loaded cars or between revenue-producing and non-revenue cars. Indeed, the language clearly manifests that the Carrier must count all cars at every connection with all lines. It may be that the formula will occasionally operate in a harsh fashion, especially with regard to the empty rack cars destined for the Ford Motor Company. However, this Board may not add to or modify clear and concise contract language. Neither may this Board dispense equity between the parties. The Carrier's remedy is to seek, through negotiations, a modification in the decline in business formula. Moreover, the 1984 negotiators undoubtedly realized that the Carrier, a switching road, would handle a large number of empty cars. In any event, this Board need not consider the Carrier's argument concerning the underlying intent of the drafter of the amended Article I, Section 3, since the contract language is patently clear. Negotiating history may not alter or vary clear language in the Agreement.

B. Issue No. 2

The second dispute in this case involves the proper interpretation and application of the clause ". . . excluding those whose protected status has been suspended . . ." in amended Article I, Section 3.

As the business downturn continued through the successive months subsequent to June, 1990, the Carrier adjusted the base

number of protected employees by excluding those protected employees who, as a result of applying the decline in business formula during the previous months, were no longer entitled to receive protective benefits. The Organization argues that the base number of protected employees must remain constant and is only reduced when a protected employee has lost protective status pursuant to Article II Section 1. The Carrier responds that if the Organization's interpretation is applied, the clause at issue in Article I, Section 3 would be rendered meaningless because the protective status of employees can be suspended only by operation of the decline in business formula. The Carrier stresses that Article II Section 1, determines whether the protected status of a protected employee is terminated.

Like our analysis of the first issue herein, this Board need not go any further than the agreement language, itself, to resolve this dispute. Aside from the decline in business provision, the Organization has failed to point out any other term in the amended Job Stabilization Agreement which provides, not for the forfeiture of protective status, but for the suspension of protective benefits. Therefore, the exclusion for those employees whose protective status has been suspended can only refer to those employees who are no longer entitled to protective benefits under a prior application of the decline in business formula during the same business downturn. In addition, the Organization's interpretation that the base number of employees must remain constant conflicts with the introductory clause to the penultimate

sentence in Article I, Section 3. The introductory clause, which states: "When the number of protected employees is reduced as provided for herein . . .", connotes a decrease in the base of protected employees for purposes of applying the decline in business formula. The language in the penultimate sentence specifically refers to reducing protected employees "herein." The word "herein" clearly means a reduction in the base of all employees as defined earlier in Article I, Section 3.

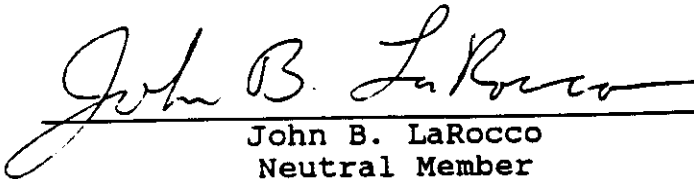
The Organization relies on the interpretation to Award No. 1 of Special Board of Adjustment No. 608 (Kasher). A careful reading of that decision reveals that Board No. 608 did not interpret the clause ". . . excluding those whose protected status has been suspended." Rather, the Board defined the breadth of the base of protected employees by holding that the base includes protected employees who have not claimed protective benefits.

Finally, the Carrier explained how it would restore the protective benefits of protected employees if and when business conditions improve. This Board notes that the Organization has taken an exception to the formula advocated by the Carrier for restoration of protective benefits. The issue of how to restore the benefits to protected employees who have endured a suspension of benefits upon an increase in business is not before this Board. Nothing in this opinion should be construed to either condone or nullify the Carrier's proposed method for determining, on a monthly basis, how many protected employees are again entitled to protective benefits if and when business conditions improve.

AWARD

1. The Answer to the First Question at Issue is Yes.
2. The Answer to the Second Question at Issue is No.
3. The Answer to the Third Question at Issue is Yes to the extent necessary to comply with this Board's Answer to the First Question at Issue.

Dated: September 29, 1992

  
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John B. LaRocco  
Neutral Member