SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
TO THE) and
DISPUTE) KANSAS CITY TERMINAL RAILWAY COMPANY

QUESTION AT ISSUE:

1. Is the Carrier required to return Mr. N. L. Gray to his position as Station Maintainer in Building 105 and compensate him for all wage loss suffered. Or, in the alternative is Mr. N. L. Gray entitled to protection under the February 7, 1965 Mediation Agreement when his position of Station Maintainer at Kansas City Terminal Union Station Complex was abolished due to the sale of the Union Station Building even though work was available to him in Building 105 which remained under the Kansas City Terminal control?

2. If the answer to either of the questions in Part 1 is in the affirmative, is N. L. Gray entitled to compensation commencing November 1, 1990, the date he was furloughed and continuing?

OPINION OF THE BOARD: Claimant is a station maintainer with a seniority date of March 17, 1960. At the time of this dispute, Claimant was in an off-in-force reduction status.

In January 1986, the Carrier moved its general offices from Kansas City Union Station. In March 1989, the lease of the last tenant at the Union Station expired and a two month process of

closing the building began. Of the four station maintenance employees who closed the building, all were furloughed except Claimant. Claimant remained on duty to maintain the sump pumps at the station, but in June 1990, his reporting point was changed to the dispatch center one block away from the station. In October 1990, the Carrier completed the transfer of its interest in the Union Station. Claimant was furloughed in November 1990.

The Carrier and Organization have not entered into an implementing agreement to transfer Claimant to a different department. Claimant rejected various offers of buy-out or employment in other departments. Other employees of the Maintenance Department had transferred to the Signal Department. By the end of 1993, the Traffic Control Center will have relocated to a leased building where the lessor is responsible for the provision of maintenance services.

The position of the Organization is that the Carrier must return Claimant to his work as a station maintainer and compensate him for lost wages, or else provide protection under the February 7, 1965 Mediation Agreement. The Organization contends that work still exists for Claimant and that his position was improperly abolished. The Organization asserts that other crafts are performing work within the scope of Claimant's agreement on a daily basis. The Organization contends that the instant claim was filed timely and properly progressed.

The position of the Carrier is the instant claim is without merit because there has been a cessation of work at Union Station and there is no other work available for Claimant anywhere else on the property that is within the scope of his agreement. The Carrier further contends that Claimant is not eligible for protective benefits. The Carrier contends that it worked vigorously to find other employment for Claimant since it knew that the time would come when the Union Station was finally sold. It undertook steps including offering to transfer him to another department, which offer was rejected. The Carrier rejects the Organization's assertion that work within the scope of Claimant's agreement is performed daily and it contends that no support for this assertion was offered on the property or in any submission. The Carrier argues that it is well established by awards of this Board that it has no obligation to a claimant where, as here, there is no possibility of a resumption of service in exchange for guarantees. In short, the Carrier argues that since November 1990 there has not been, is not now, and in the future will not be any meaningful work within the scope of Claimant's agreement and, therefore, seeks dismissal of the instant claim.

At the hearing, the Carrier waived all questions as to arbitrability based on an assertion of untimely action by the Organization.

After considering the entire record, the Board finds that the instant claim must be denied. There is substantive, credible

evidence in the record that the Carrier is not required to return Claimant to duty, compensate him for lost wages, or provide him protection. There is no evidence of a violation of the controlling agreements or applicable decisions.

It is clear that the Carrier may furlough employees when no further work remains. There was a complete cessation of work at Union Station and the no work was available at other points within the scope of Claimant's agreement. Claimant rejected the offer to move to another department where work continued. There is no credible evidence to support the Organization's assertion that the work performed by Claimant's agreement continued to be performed daily. As the Carrier argues, there is no work remaining and no remotely reasonable prospect that it will reappear in the foreseeable future. The Carrier has acted reasonably and there is no evidence that its actions are arbitrary, capricious, or discriminatory.

AWARD

The answer to both of the Questions posed is "No."

Nicholas H. Zumas, Neutral

Date: 1-13-94