

PUBLIC LAW BOARD 2470

CASE NO. 109

G-AANYD (84-5) Q3

BROTHERHOOD OF RAILWAY, AIRLINE AND
STEAMSHIP CLERKS :

and :

SEABORAD SYSTEM RAILROAD :

STATEMENT OF CLAIM

1. Carrier violated the New York Dock Labor Protective Conditions as imposed by the Interstate Commerce Commission and Finance Docket 30053 by failing to compensate Clerk J. A. Singleton for the month of August 1983, and each subsequent month thereafter until the violation is curtailed.

2. As a result of Carrier's Notice of January 13, 1983, Carrier shall compensate Clerk Singleton her monthly guarantee, being \$1,695.57, based on 162.33 average hours per month, less any railroad earnings."

OPINION OF THE BOARD

Pursuant to the provisions of New York Dock, the parties negotiated an Agreement effective August 1, 1983. At that time, the Claimant was a Transcriber in Jacksonville, Florida and on August 8, 1983, the Carrier issued a notice to abolish six transcriber positions in that seniority district. The parties agreed on August 12, 1983 to certain rules. Nonetheless, the Claimant was unable to retain a position due to insufficient seniority and she became an unassigned Employee on August 16, 1983. The Claimant has submitted claim forms for the difference between the test period average and actual railroad earnings, which claims have been denied.

The Organization argues that the Claimant was adversely affected by a "transaction" on August 1, 1983 and she subsequently became a "dismissed" Employee when six positions were abolished. In this regard, the Employees refer to a July 13, 1983 Agreement which transferred work and positions of two Clerk-Stenos from Louisville, Kentucky to Jacksonville, Florida. That document required that Employees adversely affected as a result of the reorganization and coordination will receive the benefits

imposed by the New York Dock provisions.

On September 9, 1983 the Carrier declined the claim, stating in part that there had been a general decline in business which affected every department of the railroad and thus, the Claimant was not adversely affected as a result of implementation of the real estate/TPC agreement and therefore Claimant was not entitled to New York Dock protective provisions. But the Employees deny that a decline in business caused the abolishment of the position.

The Carrier concedes that there was a transaction. But in order to be a "dismissed Employee", as that term is used in the New York Dock conditions, the Employee must have been deprived of employment with the railroad as a result. Instead, the Carrier insists that the Claimant's position was abolished due to the economic recession which required a reduction of clerical employees. Interestingly, notwithstanding the language of the New York Dock conditions, Public Law Board 2807 (which resolved a dispute between these same parties,) held that the burden of proof to show that an Employee has been adversely affected must rest with the Organization as the party alleging the violation. The Board finds it unnecessary to explore that concept because we feel that factual determination will control the dispute.

While the matter was under review on the property, the Carrier specifically stated as a basis for its declination that the Employee was adversely affected by a general decline in business rather than by the "transaction". As the matter was progressed, the Claimant continued to assert that there had been a violation of the New York Dock provisions. However, we are unable to find as a matter of record that she set forth the basis for that conclusion and accordingly, the Carrier's assertion that the decline in business caused the adversity stands un rebutted.

Findings

The Board, upon consideration of the entire record and all of the evidence finds:

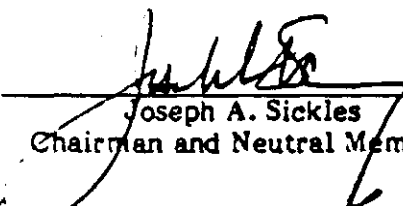
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.


This Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due and proper notice of hearing thereon.

Award

1. Claim dismissed.


Joseph A. Sickles
Chairman and Neutral Member


J. T. Williams
Carrier Member


L. E. Boshert
Organization Member

5/9/85
Date