SPECIAL BOARD OF ADJUSTMENT
ESTABLISHED PURSUANT TO
SECTION 11 OF THE
NEW YORK DOCK II CONDITIONS

CASE NO. 6

PARTIES ) BROTHERHOOD OF RAILWAY CARMEN OF THE UNITED STATES
) AND CANADA
TO )
)
DISPUTE ) SEABOARD SYSTEM RAILROAD

STATEMENT OF CLAIM:

"Claim for all compensation lost by furloughed upgraded Carmen Apprentice J. A. Frazier and A. G. Mayer account their being denied the compensation provided to them from 12:01 P.M., September 19, 1982, through 9:30 P.M., September 22, 1982, as provided for in the provisions of the Conditions of the New York Dock Agreement and the Coordination Agreement of April 15, 1981." (BRC File 88-1022-T-316; L&N File 16-App.C(83-49))

BACKGROUND:

Claimants were furloughed from the service of the Carrier and were being compensated for the protective benefits contained in New York Dock Conditions in connection with the coordination of the B&O-L&N TOFC ramps under the Implementing Agreement of April 15, 1981, as further described in Case No. 1.

The Carrier reduced the Claimants protective benefits by three days' pay (September 20, 21 and 22, 1982) when it considered them to be unavailable service because of pickets being present on the property as a result of a strike by the Brotherhood of Locomotive Engineers from 12:01 A.M., September 19, through 9:30 P.M., September 22, 1982.

POSITION OF THE EMPLOYEES:

It is the position of the BRC that the Carrier action was in violation of the provisions of Section 5, Article 1, of the New York Dock Conditions and the Coordination Agreement of April 15, 1981.

Section 5, Article 1, of the New York Dock Conditions reads, in pertinent part, as follows:

"5. Displacement allowances - (a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to

> obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced."

As concerns the April 15, 1981 Agreement, the BRC maintains the Carrier was in violation of Section 8, which reads as follows:

> "8. Nothing in this implementing agreement shall be interpreted to provide protective benefits less than those provided in the New York Dock Conditions or exclude coverage to those covered by New York Dock Conditions imposed by the I.C.C. and incorporated herein by paragraph one."

The BRC contends that the Claimant would not have been able to obtain a position producing any compensation on the dates in question regardless of whether there was a strike or not, because they were still furloughed and that the strike by the Brotherhood of Locomotive Engineers did not reduce or lessen the availability of the Claimants. It does submit, however, that had the Claimants been recalled to service prior to the strike, then it would be reasonable to assume that their benefits would have been affected.

The BRC makes the further argument that the Claimants are entitled to all compensation due them during the period in question on the basis of it being contended Claimants were in no different position than an employee who was on vacation during that period of time and who had not been denied benefit of payment for vacation purposes.

POSITION OF THE CARRIER:

Basically, it is the position of the Carrier that it has the right to reduce protective guarantees during periods of an employee's unavailability, and that as concerns the present situation, "it is generally assumed that union members in the railroad industry will not make themselves available by crossing picket lines." In this regard, it states the National Railroad Adjustment Board "has denied many claims based on the fact that Union Members in the railroad industry will not make themselves available by crossing picket lines."

In support of the above contention, the Carrier makes reference to Award No. 2 of Special Board of Adjustment No. 805 (Referee O'Neill) wherein it says the Board "recognized the right of the Erie Lackawanna to reduce merger guarantees during a month in which a two-day strike occurred (February 1971)." Further, "The Signalmen did not dispute that Carrier's right to make the reductions, but they contended the method used by the Carrier in calculating the reductions was improper." In this same regard, the Carrier states the Board held: "We find this method of proportionate deduction is reasonable and equitable and not inconsistent with the agreement. The claims will be denied."

FINDINGS:

The Board has not been furnished with copy of the complete record in the Carrier referenced Special Board of Adjustment No. 805 Award and, therefore, has no way of knowing whether the facts and circumstances in that dispute were the same or materially different from those here before this Board. For example, we understand the issue before Special Board of Adjustment No. 805 concerned guarantees for signalmen as related to a strike by the Brotherhood of Railroad Signalmen and involved the employees not having worked on two days because of the strike. We do not know if they were active or furloughed employees.

In our opinion, since the Carrier was not able to establish in the dispute before us that Claimants had been in a position to make a choice as to whether they would or would not have crossed the picket line, we think it evident the Carrier remained obligated to continue the Claimants' protective benefits. The claim will be sustained.

AWARD:

Claim sustained.

Robert E. Peterson, Chairman
and Neutral Member

J. T. Williams, Carrier Member

R. P. Wojtowicz, Employee Member

Jacksonville, FL
May 29, 1985