

AWARD NO. 253  
Case No. TCU-29-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) Erie Lackawanna Railroad Company  
TO THE ) and  
DISPUTE ) Transportation-Communication Employees Union

QUESTION

AT ISSUE: Are employees who were adversely affected by the change in employment resulting from Carrier's action of abolishing the position of Agent-Operator at Lake Ariel, Pennsylvania, a former Erie Railroad position, and transferring the work of said position to occupants of positions at Scranton, Pennsylvania, former Delaware, Lackawanna and Western Railroad positions, entitled to the protection afforded employees by the Memorandum of Agreement of September 11, 1961?

OPINION

OF BOARD: The Organization's submission opens with the following statement:

This dispute involves the Washington Job Protection Agreement and Agreements dated subsequent to September 13, 1960, the date the Interstate Commerce Commission approved and authorized merger of the properties and franchises of The Delaware, Lackawanna and Western Railroad Company into the Erie Railroad Company...

In this transaction, identified as Finance Docket No. 20707, the Commission imposed for the protection of employees adversely affected as a result of the merger the protective conditions imposed in the New Orleans Union Passenger Terminal Case, 282 ICC 271.

Subsequently, on September 11, 1961, the parties entered into a memorandum agreement "made in connection with the merger." It defined the seniority districts as those "which existed prior to the merger," and provided for dovetailing. The agreement contained a variety of protective provisions. Article III of the memorandum agreement stated that "any change in employment by reason of this merger...shall be subject to the procedures set forth in Sections 4 and 5 of the Agreement of May, 1936, Washington, D. C."

The claim which is submitted here arises under the 1961 memorandum agreement. It is not based upon rights accruing to employees under the February 7 Agreement. The Organization notes that Article VI, Section 3, of the February 7, 1965, Agreement provides that "Section 13 of the Washington Job Protection Agreement is abrogated and the disputes provisions and procedures of this Agreement are substituted therefor." According to the Organization, jurisdiction over the memorandum agreement thus is vested in this Committee.

A threshold question must be resolved before the Disputes Committee may act under Article VI, Section 3, of the February 7 Agreement with respect to pre-existing Agreements. It must be determined whether the 1961 agreement still prevails and is to be enforced, or whether the parties instead are subject to the substantive provisions of the February 7 Agreement.

Article VI, Section 1, of the February 7, Agreement provides:

Any merger agreement now in effect applicable to merger of two or more carriers, or any job protection or employment security agreement which by its terms is of general system-wide and continuing application, or which is not of general system-wide application but which by its terms would apply in the future, may be preserved by the employee representatives so notifying the carrier within sixty days from

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the date of this agreement, and in that  
event this agreement shall not apply on  
that carrier to employees represented by  
such representatives. (Underlining added.)

On February 7, 1965, the 1961 agreement was in effect and it was "applicable to a merger of two or more carriers." It was also a job protection or employment security agreement which was of "continuing application," within the concept set forth in Award No. 120. Thus, it meets the definitions covered by Article VI, Section 1.

Under that provision such agreements did not survive unless the Organization gave the requisite notice to the Carrier within 60 days of February 7, 1965. Failure to notify the Carrier of a desire to preserve a pre-existing agreement meant that it would not continue to apply and the February 7, 1965 Agreement would control.

Since the Organization failed to give the Article VI, Section 1, notice, the 1961 agreement was not preserved. Consequently claims based upon it may not be handled by this Committee. In the absence of any claim of violation of the February 7, Agreement, the Question must be answered in the negative.

A W A R D

The answer to the Question is No.

  
Milton Friedman  
Neutral Member

Dated: July 8, 1971  
Washington, D. C.