Award No. 348
Case No. CL-82-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
and
Lake Superior Terminal and Transfer Railway Company

QUESTION AT ISSUE: Question No. 2 - Award No. 262, Case No. CL-82-W reads as follows:

2. Shall the Carrier now be required to compensate Robert W. Norberg for the difference in his protected rate of General Clerk and the rate of the position to which assigned, plus subsequent general wage increases commencing April 21, 1970 and each work day thereafter?

OPINION OF BOARD: On October 27, 1971, we rendered the following Award No. 262, to wit:

Award

"1. The matter is remanded to the parties for negotiation of a local agreement in accordance with the Opinion.

"2. We shall hold in abeyance the question whether Claimant is entitled to additional compensation pending conclusion of an agreement for a substitute formula."

The above Award was promulgated upon the failure of the parties to negotiate an Agreement for a substitute measure of volume of business equivalent to that provided in Article I, Section 3 of the February 7, 1965 National Agreement; as well as Question and Answer No. 4 thereof, of the November 24, 1965 Interpretations. Despite the absence of such agreement, on April 20, 1970, the Carrier abolished Claimant's position, however, he was able to displace a junior employee at a lower rate of pay. Consequently, we remanded the matter in order to provide the parties an opportunity to negotiate a local agreement as contemplated by the Interpretations. In due course, the parties successfully negotiated and executed an Agreement on February 11, 1972, which provided for a substitute equivalent measure of volume of business for the one contained in Article I, Section 3.

We are more convinced now that our decision to remand was proper and judicious. We would also add our compliments to the parties for their efforts in mutually resolving at least one aspect of a most difficult and protracted dispute.

Notwithstanding, the parties have failed to dispose of the second phase of their differences, i.e., whether Claimant is entitled to any additional compensation. Hence, the matter was resubmitted to us for disposition of that portion of the award relating to the monetary claim which was held in abeyance. In this posture, we believe it appropriate to quote a portion of our comments contained in Award No. 119, to wit:

> "In our view, Section 3 of Article I, specifies a criterion which may be applied in the event of a decline in business so as to permit Carriers to reduce forces. An anticipatory decline is permissible -- aware, of course, that in the event subsequent conditions did not substantiate the anticipated decline, those individuals who were improperly removed, would be compensated retroactively.
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> "In the instant dispute, however, a different situation exists due to the inability of terminal companies to utilize the formula prescribed in Section 3. Predicated upon this fact, the November 24, 1965 Interpretations specifically provided for such contingency by including an admonition that these companies 'should enter into local agreements.' This counsel is directed at the Carrier and makes it obligatory and mandatory -- not permissive. On the other hand, does such requirement prevent the Carrier from anticipating a decline in business? We believe that Question and Answer No. 2 is required to be read in conjunction with No. 4. However, the Answer to Question No. 2, also provides that such information supporting the decline in business will be furnished as soon as available."

In our view, Award No. 119, established the principle that a short line or terminal Company is privileged to reduce its forces in anticipation of a decline in business on the condition that subsequent data justified the reduction. Moreover, in order for a Carrier to avail itself of an anticipatory condition, it must establish by concrete proof that it followed the required procedures stated in Article I, Section 3 of the February 7, 1965 Agreement. In the instant matter, our searching and careful analysis of the record has failed to reveal sufficient probative evidence that the Carrier complied with the preliminary requirements pertaining to the obligatory advance notice essential to effectuate a valid reduction in forces. Consequently, we are compelled to conclude that the Carrier did not properly accomplish the alleged reduction in force contemplated by Article I, Section 3 of the February 7, 1965 Agreement.

Therefore, it is our considered judgment that Claimant is entitled to receive the difference in rates from the period commencing on April 21, 1970, to the effective date of the substitute formula Agreement -- February 11, 1972.

Award:

The answer to the question previously held in abeyance in Award No. 262, whether Claimant is entitled to additional compensation, is in the affirmative.

Claimant shall be paid the difference in rates from the period commencing on April 21, 1970, to the effective date of the substitute formula Agreement -- February 11, 1972.

Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
April 18, 1973