AWARD NO. 408
Case No. CL-110-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
and
Kansas City Terminal Railway Company

QUESTIONS AT ISSUE:

(1) Does the February 7, 1965 Agreement apply to the employes of the Baggage and Mail Department of the Kansas City Terminal Railway Company?

(2) Does the loss of a mail contract, between the U.S. Postal Service and the Kansas City Terminal Railway Company, nullify the provisions of the February 7, 1965 Agreement?

(3) Are the employes of the Kansas City Terminal Company who were employed in the Baggage & Mail Department and who qualified as protected employes under the provisions of the February 7, 1965 Agreement, entitled to continue receiving the benefits flowing from that Agreement until such time as they are deprived of those benefits under the express terms of such Agreement?

OPINION OF BOARD: The Kansas City Terminal Railway Company is admittedly a party to the February 7, 1965 Stabilization Agreement. Inasmuch as the Terminal did not have any net revenue ton miles or gross operating revenue, however, the parties hereto had negotiated a substitute formula as required by Article I, Section 3 of the February 7, 1965 Agreement and the November 24, 1965 Interpretations. Due to the United States Postal Service terminating the mail handling contract with the Terminal, the Terminal closed their Mail and Baggage Department on July 1, 1975. Accordingly, all positions in the Mail and Baggage Department were abolished effective June 30, 1975. As a result, approximately two hundred employees in the Terminal's Mail and Baggage Department were furloughed effective June 30, 1975.

It is the Organization's position that the Terminal is still actively engaged in business notwithstanding that cancellation of the United States Postal Service contract with the Terminal relative to the handling of mail indeed resulted in a major loss of business for the Terminal. They submit that when the parties negotiated the substitute formula agreement, said agreement applied to the Terminal Company in its entirety, not merely to separate Departments thereof. Thus, the Organization contends that the February 7, 1965 Agreement applied to the Mail and Baggage Department as an integral part of the Terminal Company, not as a separate and distinct facility as now contended by the Company. Accordingly, it is their opinion that inasmuch as

the Terminal Company is still engaged in business, the February 7, 1965 Agreement remains in full force and effect; and that the employees entitled to protection thereunder should have been retained in service until retired, discharged for cause, or otherwise removed by natural attrition as required by the February 7, 1965 Agreement. Thus, when the employees heretofore working in the Mail and Baggage Department were furloughed on June 23 and on June 30, 1975, the Terminal Company thereby violated the provisions of the February 7, 1965 Agreement since said employees were protected employees as provided by that Agreement and are thereby entitled to be returned to service and compensated as provided by that Agreement.

The Terminal Company retorts, however, that the Mail and Baggage Department was one of several facilities owned and operated by them, but was a separate and distinct facility from the others. There was one separate seniority roster for the Mail and Baggage Department employees, although all employees had a common seniority date. None of the employees in the Mail and Baggage Department, however, had displacement rights to any other Department in the Terminal Company. The Terminal Company maintains that the February 7, 1965 Agreement provides protection to employees in the event of a decline in business. However, when an entire facility is terminated, such as occurred in the instant case when the Company completely terminated their Mail and Baggage facility, they assert that the February 7, 1965 Agreement is thereby inapplicable. Inasmuch as the Claimants could not exercise their seniority to other Departments within the Terminal Company, the Terminal Company thereby had no effective claim to their service, and as a result, the protective benefits provided by the February 7, 1965 Agreement were thereby inapplicable to those employees furloughed as a result of the loss in mail handling business.

A thorough review of the record at hand compels this Board to conclude that the February 7, 1965 Stabilization Agreement was intended to provide protection to employees in the event of a decline in the Carrier's business. Said Agreement was not intended, in our opinion, to accord protection to employees when the work previously performed by them disappears entirely. The February 7, 1965 Agreement simply did not address the question of what was to happen when there was a complete cessation of the Company's business. And merely because the Terminal Company was still engaged in activities separate and apart from mail handling, this nonetheless does not alter the fact that the mail handling work previously performed by the Claimants was completely abolished when the United States Postal Service vitiated their contract with the Terminal Company.

Although the facts in Award No. 352 of this Board are distinguishable from those now before us, this Board nonetheless considers the reasoning enunciated in Award No. 352 applicable to the instant dispute. There, the Board held that the parties did not contemplate a complete cessation of Carrier's business when they negotiated Section 3 of Article I of the February 7, 1965 Agreement. This Board concurs in the reasoning therein and deems it applicable to the instant case. Accordingly, when the Terminal Company completely closed their Mail and Baggage Department effective July 1, 1975, we hold that the protective provisions of the February 7, 1965 National Agreement

were thereby inapplicable to those employees furloughed as a result of the closing of the Company's Mail and Baggage facility. It matters not that the Terminal Company is still a corporate entity engaged in other business separate and distinct from mail handling. The Claimants who were furloughed on June 23 or June 30, 1975 held seniority in the Mail and Baggage Department, and were at this time unable to exercise their seniority to positions in any of the other facilities maintained by the Terminal Company. In the light of this, this Board must find that the Terminal Company was not required to accord them the protective benefits required by the February 7, 1965 Agreement. Their work simply ceased to exist and there was no reasonable likelihood that they would ever be recalled to mail and baggage service as contemplated by Section 3 of Article I of the February 7, 1965 Agreement.

AWARD:

Question No. 1 answered in the affirmative.

Question No. 2 disposed of as per Opinion of the Board.

Question No. 3 answered in the negative.

Robert M. O'Brien
Neutral Member

Dated: Washington, D. C.
March 17, 1977