Award No. 415
Case No. CL-114-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE ) Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express & Station Employes and Los Angeles Union Passenger Terminal

QUESTIONS AT ISSUE:

1. Did the Terminal violate the Agreement on March 13, 1976, and subsequent dates when it instituted a force reduction, abolished positions, furloughed employes and thereafter discontinued making payment of allowances and benefits due them under the provisions of the February 7, 1965 Agreement?

2. Shall the Terminal now be required to allow claim presented on behalf of each and every employe protected under the provisions of the February 7, 1965 Agreement (Claimants are listed on Attachment "A" of the initial claim) for restoration to employment and payment of all wages, benefits, allowances and protective payments due, beginning March 13, 1976, and continuing thereafter for as long as such employes retain their protected status?

OPINION OF THE BOARD: The Carrier is a Terminal Company jointly owned by the Southern Pacific Transportation Company (Pacific Lines); the Atchison, Topeka and Santa Fe Railway Company; and the Union Pacific Railway Company. The Terminal Company was established in 1939 in order to consolidate into one terminal the passenger train service of the foregoing Carriers. By Agreement signed October 5, 1965, the Terminal Company and the Organization agreed to apply the provisions of the February 7, 1965 Natonal Agreement (including the interpretations dated November 24, 1965) to employees represented by the Organizaton at the Terminal. Unfortunately, the Organizaton and the Terminal Company never entered into a local agreement for the purpose of providing an appropriate measure of volume of business which is equivalent to the measure provided for in Article I, Secton 3 of the February 7, 1965 National Agreement consistent with Question and Answer No. 4 of the November 24, 1965 interpretations. On several occasions the parties attempted to enter into such a local agreement but they were unable to do so.

The facts evidence that the three (3) proprietary Carriers no longer operate passenger train service into the Terminal since the National Railroad Passenger Corporation (Amtrak) assumed operation of all passenger trains into and out of the Terminal on May 1, 1971. Additionally, the U. S. Postal Service by letter dated February 20, 1976, notified the Terminal Company that effective March 13, 1976, the exchange of mail between the Terminal and the Los Angeles Post Office would be terminated. This notice by the U. S. Postal Service eliminated the volume of mail formerly handled by the Terminal Company's Mail and Baggage Department. By letter dated March 4, 1976, the Organization was notified that in view of the fact that there was no work to be performed by employees in the Mail Department, all Mail Department related positions were to be abolished and employees so affected were to be furloughed from the Terminal.

Effective March 13, 1976, all the positions at the mail-handling facility were abolished and the Terminal Company retained only a minimal complement of employees.

It is the Organization's position before this Board that although the U. S. Postal Service terminated its mail operations with the Terminal Company, this did not cause the Terminal to go out of business. Rather, to this day the Terminal is still operating as a legal entity although it is admittedly no longer performing any passenger or mail-handling work. According to the Organization, the provisions of the February 7, 1965 National Agreement are therefore applicable to those employees who were furloughed from the Terminal effective March 13, 1976. Inasmuch as the Terminal still exists as a legal entity and operates with a number of employees, the Organization asserts that the Terminal is required to grant all protected employees the benefits prescribed by the February 7, 1965 Agreement. The Organization claims that not only does the National Agreement require the Terminal Company to afford protected employees the benefits thereof, but it was further obligated to do so pursuant to an oral commitment made by it in 1965 that there would be no forced reductions by reason of a decline in business until a substitute formula was agreed to. Therefore, the Organization declares that the Terminal violated the February 7, 1965 Agreement when it instituted a forced reduction effective March 13, 1976, thereby abolishing positions and furloughing employees without providing them the benefits of said Agreement. The Organization requests that these protected employees be restored to employment and be paid all wages, benefits, allowances and protective payments due them commencing March 13, 1976, and continuing thereafter for as long as said employees retained their protected status.

The Carrier intially avers that the instant claim submitted by the Organization is procedurally defective as it is vague and indefinite. Carrier insists that the Organization has failed to identify the affected employees, and that said employees are not easily ascertained nor readily identifiable. It therefore states that the claim must be dismissed since it did not comply with Article V, Secton 1(a) of the August 21, 1954 Agreement. And if not dismissed, Carrier argues that the claim should be denied inasmuch as the provisions of the February 7, 1965 Agreement are inapplicable here. It contends that effective March 13, 1976, its mail-handling facility was completely shut down when the U. S. Postal Service terminated its mail contract with the Terminal which, of course, it had a legal right to do. And it was this mail-handling facility that provided the sole basis for the claimed employees' employment at the Terminal.

Therefore, after the mail-handling facility was shut down, there simply was no work available for the Claimants at the Terminal. Carrier argues that it is thus impossible to restore Claimants to employment at the Terminal as requested by the Organization. Moreover, Carrier argues that this Board has previously held that where a facility is completely shut down, the provisons of the February 7, 1965 Agreement are not applicable. Hence, since the Terminal's mail-handling facility was completely shut down upon termination of its mail contract with the U. S. Postal Service, the Carrier opines that the protective provisions of the February 7, 1965 Agreement were inapplicable to those employees who were furloughed as a result of this loss of business.

This Board has previously held that the Feburary 7, 1965 Stabilization Agreement was intended to provide protection to employees in the event of a decline in Carrier's business. However, the Agreement was not intended to accord protection to employees when the work previously performed by them disappeared entirely. It has been held that 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. Simply stated, the parties did not contemplate a complete cessation of a Carrier's business when they negotiated Section 3 of Article I of the February 7, 1965 Agreement. (See Award Nos. 352, 408, and 409 of SBA No. 605.)

Based on the reasoning of those previous Awards, it is the opinion of this Board that the provisions of the February 7, 1965 Agreement are inapplicable to the dispute at hand. Due to a termination of its

mail-handling contract with the U. S. Postal Service this date. Thus, when the Terminal's mail-handling facility was completely shut down, there remained no work for the Claimants to perform since the mail-handling facility provided the sole basis for their employment with the Terminal Company. Consequently, insofar as they were concerned, there was indeed a complete cessation of Carrier's business although it is true that the Carrier continued to exist as a legal entity after March 13, 1976. However, although the Terminal Company still exists as a corporate entity, it is not engaged in any mail-handling work. The remaining business of the Terminal has nothing to do with the former mail-handling facility or with mail-handling. There is therefore no work for Claimants to perform with the Terminal Company; nor is it likely that they would ever be recalled to mail and baggage service with the Carrier.

The Organization's request to restore the Claimants to employment with the Terminal Company is therefore, in our view, an inappropriate remedy.

While it is certainly true that the Terminal Company agreed orally in 1965 to enter into a local agreement as required by Question and Answer No. 4 of the interpretations dated November 24, 1965, the parties' failure to negotiate a substitute loss of business formula does not alter the conclusions reached by the Board. Obviously, when the Terminal Company made that oral commitment in 1965 it did not contemplate that it would be losing all of its passenger business as well as all of its mail-handling work as subsequently occurred. Moreover, inasmuch as all passenger business and all mail-handling work previously performed by the Terminal Company has now ceased to exist, it would be an exercise in futility for this Board to now order a substitute criteria to be agreed to by the parties. Since all the mail-handling work previously performed by the furloughed employees has ceased to exist, there is no employment to which the Claimants could be restored, nor would it be appropriate for this Board to order a substitute criteria since the Terminal Company's mail-handling facility is no longer in existence. This Board must therefore reluctantly conclude that we simply lack authority to grant the relief sought by the Organization and we must decline the claim as a result.

AWARD

Question No. 1 answered in the negative.
Question No. 2 answered in the negative.

Robert M. O'Brien, Neutral Member

Dated at Washington, D. C.
January 15, 1979