

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Brotherhood of Railway, Airline and Steamship Clerks,
TO) Freight Handlers, Express & Station Employees
DISPUTE) and
Grand Trunk Western Railroad Company

QUESTIONS (1) Did the Carrier violate the provisions of the February 7,
AT ISSUE: 1965 Agreement, as amended, particularly Article IV, Section 1,
when it refused to compensate Mr. A. Piwaron his protected rate
of pay for September 30, 1977 to November 14, 1977, claiming
that an emergency occurred, within the meaning and intent of
Article 1, Section 4 of the Stabilization Agreement, at
Milwaukee, Wisconsin?

(2) Shall the Carrier be required to compensate Mr. Piwaron for
his loss of earnings during this period?

OPINION OF THE BOARD: The Carrier operates car ferry service across Lake Michigan
between Muskegon, Michigan and Milwaukee, Wisconsin. It has a
fleet of two vessels -- the S.S. Madison and the S.S. City of
Milwaukee. In July of 1977, the U.S. Coast Guard was conducting its annual
inspection of the S.S. Madison when it discovered serious corrosion in the
bilge area. The Coast Guard took the S.S. Madison out of service. The Coast
Guard also conducted an inspection of the S.S. City of Milwaukee, and it too
was found to have corrosion in the bilge though not as serious as the
condition discovered in the S.S. Madison.

On September 23, 1977, the S.S. City of Milwaukee was taken out
of service so that necessary repairs could be made. Also on September 23,
1977, Claimant was notified that his position would be abolished upon
completion of his tour of duty on September 29, 1977. Claimant was employed
as Chief Yard Clerk in Carrier's Freight Office at Milwaukee, Wisconsin.
Carrier claims that the preponderance of clerical work at this Freight Office
is generated by its car ferry operation.

Claimant has a seniority date of October 2, 1956, and is thus a
protected employee as the term is used in the February 7, 1965 National
Agreement, as amended on this property by Article IV, Section 1 of the Clerks'
Agreement. Inasmuch as Claimant was unable to exercise his seniority to
another position, he submitted a claim for compensation for all days lost due
to his layoff effective September 29, 1977. It should be noted that Claimant
was returned to service on November 14, 1977, the date the S.S. City of
Milwaukee was returned to service. Carrier denied the claim contending that
an emergency condition existed when the Coast Guard removed the S.S. City of
Milwaukee from service due to defects found in that vessel.

Section 4 of Article I of the February 7, 1965 National Agreement, as amended on this property, allows the Carrier to make force reductions under emergency conditions such as flood, snowstorm, hurricane, earthquake, fire or strike; provided that operations are suspended in whole or in part; and that because of such emergencies the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed.

The issue that must be decided herein is whether an emergency condition existed in September, 1977, which therefore allowed Carrier to furlough the Claimant. Of course, whether an emergency exists must be determined from the circumstances surrounding each particular case. Further, the party who claims that an emergency existed bears the burden of proving same. It is the considered opinion of this Board that no emergency condition was present in September, 1977, as that term is used in Article I, Section 4 of the February 7, 1965 Agreement.

Initially this Board finds that when the parties employed "flood, snowstorm, hurricane, earthquake, fire or strike" in Article I, Section 4, as emergency conditions, it was not their intent to exclude other circumstances from constituting an emergency condition. Such an enumeration was merely intended to be descriptive of conditions under which Carrier shall have the right to make force reductions. Yet all the stated examples of an emergency condition have a singular attribute, viz. they constitute circumstances beyond the control of the Carrier. In our view, the emergency condition asserted by the Carrier in this dispute was not a circumstance beyond the Carrier's control, however.

Carrier was required to take the S.S. City of Milwaukee out of service when corrosion was discovered in the bilge area. Clearly, proper repair and maintenance of its vessels was not a condition beyond Carrier's control. Presumably, with careful monitoring the deterioration in the bilge area would have been discovered and corrected. Failure to do so must lie with the Carrier for it was Carrier that had custody and control of the vessel during the period when the corrosion occurred. Carrier was required to maintain its vessels in operable condition. Its failure to do so cannot translate into an emergency condition as contemplated by Article I, Section 4.

This Board further concludes that merely because the Interstate Commerce Commission declared an emergency, its determination is not binding on this Board. The standards utilized by the Interstate Commerce Commission in exercising the authority vested in it do not parallel the criteria used by the parties in Article I, Section 4.

Based on the evidence submitted to us, this Board is impelled to conclude that when Carrier furloughed Claimant effective September 29, 1977, an emergency condition did not exist as that term is used in Article I, Section 4 of the February 7, 1965 Agreement. Accordingly, the claim must be sustained.

AWARD:

- (1) Question No. 1 answered in the affirmative.
- (2) Question No. 2 answered in the affirmative.


Robert M. O'Brien
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Neutral Member

Dated: *December 28, 1979*