

SPECIAL BOARD OF ADJUSTMENT NO. 605

AWARD NO. 432  
CASE NO. CL-120-W

PARTIES TO DISPUTE:

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

- and -

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP  
CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION  
EMPLOYEES

QUESTIONS AT ISSUE:

1. Did the Carrier make a technological change which caused Ms. Paula D. Smith to lose her position as Steno-Clerk (Position GM-38)?
2. If the answer to Question No. 1 is in the affirmative, shall the Carrier now afford Ms. Smith the protective benefits of the February 7, 1965 Agreement as amended, commencing on November 9, 1981, and continuing for as long as she is adversely affected?

OPINION OF BOARD:

Paula Smith is a "protected employee" under the terms of the February 7, 1965 Agreement, as amended June 8, 1979 by these parties. She was hired in January 1974 and, as of Fall 1981, she was working as a Clerk-Steno at Carrier's Gary, Indiana offices. As a consequence of a series of job abolishments and relocations at Gary in October-November 1981, Claimant was displaced from Clerk-Steno Position No. GT-612 by a senior employee and, in turn, she displaced a junior employee from Clerk-Steno Position No. GM-38. So far as the record shows, each of those abolishments and displacements were consistent with the notice requirements of the Schedule Agreement rules.

The record thus shows that on October 22, 1981 Carrier announced the abolishment, effective October 30, 1981, of Clerk-Steno Position No. GT-514 held by J. Wefler-Berg (seniority date of August 6, 1973). The abolishment of several other positions also were announced October 28-30, 1981. Among these latter were the October 30, 1980 announced abolishment of Position No. GM-38, Clerk-Stenographer in the General Car Foreman's office, effective November 6, 1980. That announcement was sent to BRAC and to the then-incumbent employe of Position No. GM-38, J. Maichen (seniority date February 22, 1977). Also on October 30, 1981, in the midst of these abolishments, Carrier announced simultaneously with the abolishment of GM-38 the creation of a new Clerk-Steno position in the General Car Foreman's office. The new position, GM-39, was bulletined with a higher rate of pay than GM-38 and duties described as follows:

"Must be expert stenotypist capable of maintaining speed of 150 WPM and must be expert typist minimum of 70 WPM, A Rating. Must be capable of taking and transcribing formal investigations. Handling clerical work incidental to the employment of personnel and maintaining employe records. Miscellaneous stenographic and clerical work as directed."

Against this background, a series of displacements and dislocations occurred which resulted in Ms. Smith eventually filing a claim for protected benefits. Specifically, when Clerk-Steno GT-514 was abolished, the senior incumbent, J. Wefler-Berg, moved on October 29, 1981 to displace Claimant P. D. Smith from Clerk-Steno GT-612, effective November 2, 1981. Claimant in turn promptly moved on October 29, 1981 to displace J. Maichen effective November 2, 1981 from GM-38. Maichen, who had received notice that GM-38 was going to be abolished anyway on November 6, 1981, moved promptly on

October 30, 1981 to displace P. Murrow (seniority date October 27, 1977) from Position GT-508. In the meantime, Carrier had posted on October 30, 1981 the vacancy announcements for the Position GM-39. The three applicants for that position, in seniority order, were Claimant P. D. Smith, J. Maichen and P. Murrow. After reviewing credentials Carrier on November 5, 1981 awarded the position to J. Maichen because Claimant, the senior applicant, lacked the necessary stenotyping skill. GM-38 then was abolished on November 6, 1981 and Claimant, unable to hold another position in the exercise of her seniority, was placed in furlough status. Three days later BRAC Local Chairman filed a claim for protective benefits on grounds that Smith had been adversely affected by a "technological change" made by Carrier, i.e., the addition of stenotype machine skills to the required job duties of Steno-Clerk in the General Car Foreman's office. The claim received first denial on the property January 12, 1982, as follows:

Reference is made to your letter dated December 23, 1981 wherein you appeal a claim

"...in behalf of Steno-Clerk Paula D. Smith for any and all compensation due her as a protected employee, pursuant to the provisions of the February 7, 1965, National Job Stabilization Agreement; as amended, to be determined by a joint check of the Carrier's records, commencing November 9, 1981, and for each and every day thereafter that a like violation occurs."

A review of the facts in this case reveals that Position GM-38 was abolished in accordance with Rule 19(a). Special Board of Adjustment No. 605 has held that such abolishments are not a technological change within the meaning and intent of Section I of Article III of the February 7, 1965 National Agreement (see Award Nos. 7, 76, 167, 289 et al).

In accordance with Rule 19(b) the remaining work of abolished Position GM-38 was assigned to Position GM-39 with a rate of pay in excess of the rate of the abolished position (see SBA No. 605 Award Nos. 286 and 404).

Claimant was furloughed as part of a force reduction (see attached copy of Mr. Habic's letter to you dated December 1, 1981) made pursuant to Article I, Section 3 of the February 7, 1965 National Agreement, as amended (see attached statement covering the decline in business calculations for November 1981 versus June 1979).

Without prejudice to the above, facts indicate, through no fault on the part of the Carrier, Claimant's failure to obtain Position GM-39, a position available to her in the exercise of her seniority rights, was due to her lack of possessing the necessary stenotyping skill. Accordingly, under Article II, Section I of the February 7, 1965 National Agreement she is not entitled to the benefits claimed (see SBA No. 605 Award Nos., 39, 303, 418, et al).

In view of the foregoing, your claim is respectfully declined.

As the parties recognize through extensive citations of prior authoritative decisions, the principles governing the present case have been pretty well established by SBA No. 605. On the one hand, Carrier correctly looks to Award Nos. 7, 76, 167, 289 and 412 for the proposition that abolishment of a job, consistent with the notice requirements of the Schedule Agreement, is not per se a "technological change". Also, it should be obvious that any dispute concerning the propriety under the Schedule Agreement of selecting a junior applicant over Claimant for Position GM-39 is not justiciable before this Committee. See Award Nos. 284, 318 and 407. On the other hand, BRAC looks for support of its position in Award No. 194 of this Committee and in the controversial decision of SBA No. 570 Award No. 4, from which both the Carrier and Organization members dissented in part. At bottom line, therefore, the present dispute narrows to whether, as BRAC contends, Claimant's adverse situation was caused by a "technological change"; or whether, as Carrier contends, Position GM-38 was abolished as part of a reduction in force as

permissible under Article I, Section 3, the so-called decline in business formula. A careful review of the events leading to the abolishment of GM-38 effective November 6, 1981, especially the timing and sequence of events, persuades us to the latter view and requires us to deny this claim.

We reiterate the finding of this Committee in previous cases that Article I, Section 3 of the February 7, 1965 Agreement does not mention abolishment of positions but rather deals with reductions in forces in accordance with a decline in business formula, and subsequent recall of employees "entitled to preservation of employment" As did the Board in Award No. 369, we stop short of finding equivalence between the terms "job abolishment" and "reduction in forces...below the number of employees entitled to preservation of employment under this Agreement...". In the present case, however, as in Award No. 369, it cannot be gainsaid that Carrier as of November 1981 was "reducing forces" in accordance with Article I, Section 3. Nor is it denied that under the "decline in business formula" thereof, 160 protected employees could have been furloughed in November 1981. Most importantly, it is not denied that Claimant ranked twenty-four (24) in seniority among thirty-five (35) employees furloughed in Seniority District No. 24 in November 1981. All these data were furnished to the Organization in handling on the property, without effective refutation, and therefore "must be assumed to reflect a decline in business sufficient to warrant the layoff of Claimant." See Award No. 369. Obviously Claimant fell within that class of employees described in Article IV, Section 5 of the February 7, 1965 Agreement: "...nor shall a protected employee be entitled to 'protective pay' benefits when furloughed...because of reductions made pursuant to Article I, Section 3." On the record before us we cannot find that Claimant's loss of

Position GM-38 was caused by a technological change, but rather are persuaded she was caught in a reduction in force made pursuant to the decline in business provisions in Article I, Section 3.

AWARD

Question No. 1 is answered in the negative.

Question No. 2 is obviated by the answer to Question No. 1 and the language of Article IV, Section 5 of the February 7, 1965 Agreement, as amended.

Dana E. Eischen /sk  
Dana E. Eischen, Chairman

Date: May 21, 1984