Award No. 469

Case No. SG-43-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) BROTHERHOOD OF RAILWAY SIGNALMEN
)
TO THE) and
)
DISPUTE) ELGIN, JOLIET & EASTERN RAILWAY

QUESTION AT ISSUE:

(a) Carrier violated the parties' Schedule Agreement, particularly Section 1 of Article I and Section 1 of Article IV of the National Mediation Agreement of February 7, 1965, Case No. A-7128 (Rule 82, Item 2--Supplement No. 4, of the parties' EJ&E Schedule Agreement) when at close of work on dates shown below, Claimants named below were furloughed from their positions of Signal Maintainer as a result of Carrier's abolishment Bulletin No. 1497 dated July 23, 1986 reading in pertinent part: "Effective at completion of tour of duty Friday, August 1, 1986 all Signal positions, Group 1, Rules 1 thru 8, are abolished...."

Claimant	EJ&E	Date Position Abolished	Last Date Worked	Protected Rate of Pay
R. J. Johnson	63710	08-01-86	09-03-86	$13.29
J. R. Lunsford	63664	08-01-86	09-04-86	$13.29
R. W. Fisher	50007	08-01-86	08-01-86	$11.70

(b) Carrier should now be required to make Claimants named above whole with respect to their compensation guaranteed by the Agreement of February 7, 1965.

(c) Inasmuch as this is a continuing violation, said claim is to cover period of time from date last worked shown above until Carrier takes necessary corrective action to comply with the parties' Agreement.

OPINION OF BOARD:

Claimants are signal employees of the Elgin, Joliet and Eastern Railway Company (hereinafter "EJ&E" or "Carrier"). The Carrier is part of U.S. Diversified Group which is an operating group of USX Corporation. United States Steel is also a subsidiary of USX, and is Carrier's major customer.

Pursuant to Carrier's Bulletin No. 1497, dated July 23, 1986, Claimants' positions along with six other signal positions were abolished, and Claimants were placed on furlough effective August 1, 1986. All nine of these signal employees were covered by provisions of the National Agreement dated February 7, 1965. The reduction in force which led to the furloughs was ordered in anticipation of the cessation of operations by U.S. Steel on August 1, 1986 due to a labor dispute and related picketing by the United Steelworkers Union at its South and Gary facilities.

Also on July 23, 1986, the Carrier advertised six signal positions, five of which had the same hours, rest days and territories as the abolished positions.

Following a protest of the abolishment of Claimants' positions by the Organization dated July 30, 1986, the Carrier responded with the following explanation on August 19, 1986:

> The reduction in force made basis for you letter was as a result of a decline in the Carrier's business.
>
> United States Steel, the Carrier's major customer, ceased

operations on August 1, 1986 due to a labor dispute.

The advance notice of the force reduction to which you refer, was given as required by our current schedule agreement. Your particular attention is called to Rules 43 and 45 thereof.

Also, while five of the six new positions advertised did have the same hours and rest days as previous positions, the territories of all but one were different. There were no changes as contemplated by Article XII of the January 8, 1982 National Agreement. The new positions were advertised and assigned in accordance with Rules 30, 31, 32, 33 and 38.

The Carrier's action was governed by Article I, Section 3 of the February 7, 1965 National Job Stabilization Agreement, as amended, which permits the reduction in forces below the number of employes entitled to preservation of employment thereunder. Further, your attention is directed to Article IV, Sections 3, 4 and 5 which limit Section 1 benefits.

The following information is provided pursuant to your request.

1.

NAME	PROTECTED HOURLY RATE OF PAY*
P. E. Sampson	$13.29
E. F. Meyer	$13.29
A. G. Umek	$13.29
S. Vale	$13.45
D. L. Schurg	$13.29
J. F. Manning	$13.29
R. J. Johnson	$13.29
J. R. Lunsford	$13.29
R. W. Fisher	$11.70

*includes $.13 per hour COLA

2. Decline in Carrier's Business

3. The provisions of Article II, Section 1 of the Agreement do require a furloughed employe protected under Article I, Section 1, to respond to a call for extra work in order to preserve the protected status. Isolated instances should be handled on an equitable basis in the light of the circumstances involved.

Claimants were recalled to service on October 3, 1986. The record is silent on the resolution of the labor dispute between U.S. Steel and the Steelworkers.

On October 8, 1986, the Carrier presented the following computation on reduced business:

	August 1963 & 1964 Avg.	August 1986 Actual	Difference	% Change ()-Decrease
Revenue Ton Miles	76,481,000	26,623,556	(49,857,444)	(65.19%)
Gross Operating Revenue	$3,748,330	$2,843,801	($904,529)	(24.13%)
Total % Change				(89.32%)
divided by				x2
				(44.66%)
Less				5.00%
Net Allowable % Reductions in Protected Employees				(39.66%)

Relevant provisions of the February 7, 1965 Agreement are:

Article I

Protected Employees

Section 1--All employes, other than seasonal employes, who were in active service as of October 1, 1964, or who after October 1, 1964, and prior to the date of this Agreement have been restored to active service, and who had two years or more of employment relationship as of October 1, 1964, and had 15 or more days of compensated service during 1964, will be retained in service subject to compensation as hereinafter provided unless or until retired, discharged for cause, or otherwise removed by natural attrition. Any such employes who are on furlough as of the date of this Agreement will be returned to active service before March 1, 1965, in accordance with the normal procedures provided for in existing agreements, and will thereafter be retained in compensated service as set out above, provided that no back pay will be due to such employes by reason of this Agreement. For the purpose of this Agreement, the term "active service" is defined to include all employes working, or holding an assignment, or in the process of transferring from one assignment to another (whether or not October 1, 1964 was a work day), all extra employes on extra lists pursuant to agreements or practice who are working or are available for calls for service and are expected to respond when called, and where extra boards are not maintained, furloughed employes who respond to extra work when called, and have averaged at least 7 days work for each month furloughed during the year 1964.

Section 3--In the event of a decline in a carrier's business in excess of 5 percent in the average percentage of both gross operating revenue and net revenue ton miles in any 30-day period compared with the average of the same period for the years 1963 and 1964, a reduction in forces in the crafts represented by each of the organizations signatory hereto may be made at any time during the said 30-day period below the number of employes entitled to preservation of employment under this Agreement to the extent of one percent for each one percent the said decline exceeds 5 percent. The average percentage of decline shall be the total of the percent of decline in gross operating revenue and percent of decline in net revenue ton miles divided by two. Advance notice of any such force reduction shall be given as required by the current Schedule Agreements of the organizations signatory hereto. Upon restoration of a carrier's business following any such force reduction, employes entitled to preservation of employment must be recalled in accordance with the same formula within 15 calendar days.

* * *

Article IV

Compensation Due Protected Employes

Section 1--Subject to the provisions of Section 3 of this Article IV, protected employes entitled to preservation of employment who hold regularly assigned positions on October 1, 1964, shall not be placed in a worse position with respect to compensation than the normal rate of compensation for said regularly assigned position on October 1, 1964; provided, however, that in addition thereto such compensation shall be adjusted to include subsequent general wage increases.

Section 5--A protected employe shall not be entitled to the benefits of this Article during any period in which he fails to work due to disability, discipline, leave of absence, military service, or other absence from the carrier's service, or during any period in which he occupies a position not subject to the working agreement; nor shall a protected employe be entitled to the benefits of this Article IV during any period when furloughed because of reduction in force resulting from seasonal requirements (including lay-offs during Miners' Holiday and the Christmas Season) or because of reductions in forces pursuant to Article I, Sections 3 or 4, provided, however, that employes furloughed due to seasonal requirements shall not be furloughed in any 12-month period for a greater period than they were furloughed during the 12 months preceding the date of this agreement.

Section 6--The carrier and the organizations signatory hereto will exchange such data and information as are necessary and appropriate to effectuate the purposes of this Agreement.

Applicable Agreement Rules are:

Rule 38
Establishing Positions

Nothing herein shall be so construed as to prohibit the management from establishing positions covered by this agreement.

Rule 43
Abolishing Positions

Nothing herein shall be so construed as to prohibit the management from abolishing positions covered by this agreement. Work covered by this agreement shall not be removed therefrom except by mutual consent of the parties hereto.

Applicable provisions of the November 24, 1965 Interpretation Agreement are:

Questions 3 and 4 -

Question No. 1: What is the relationship between the force reductions permitted under Section 3 and those permitted under Section 4?

Answer to Question No. 1: A carrier can reduce forces in the application of Section 3 if a sufficient decline in business is anticipated regardless of the cause or causes of such decline. However, if the carrier elects to abolish jobs under the provisions of Section 4, decline in business resulting from the emergency situation there involved will not be included in calculating the percentages for purposes of Section 3.

Question No. 2: What is a carrier required to do to support its claim of the right to make force reductions in pursuance of Section 3?

Answer to Question No. 2: Section 3 permits force reduction in anticipation of decline in business with the understanding that carriers will support the percentage of force reduction by furnishing pertinent information to the organizations' representatives as soon as available. If it should develop that the percentage of business decline did not occur as anticipated, employes improperly deprived of work will be made whole.

The position of the Organization is that the Carrier violated Article I, Section 1 and Article IV, Section 1 when it abolished Claimants' positions thereby not retaining protected employees in their positions until "retired, discharged for cause, or otherwise removed by natural attrition." Further the Organization claims that the Carrier violated Article I, Section 3 by failing to furnish the necessary evidence of the decline in its business to support the abolishment of position which evidenciary showing is required by the Agreement.

The position of the Carrier is that it did not violate the February 7, 1965 Agreement. Specifically, the Carrier maintains that it had the right to abolish Claimants' positions, that it did so with the requisite advance notice and in circumstances allowed by the Agreement, and that it provided to the Organization the justification of the reduction in force that is required by the Agreement. Further, the Carrier asserts that in order to preserve protected status, a furloughed employee, like Claimants here, is required to respond to an extra work call with isolated incidents of an employee's non-response to be handled in an "equitable fashion." The Carrier also maintains that the January 8, 1982 National Agreement is inapplicable because the reduction in force was not the result of a technological, operational or organizational change covered by that agreement.

After considering the entire record, the Board finds that the instant claims must be denied. There is substantial, credible evidence in the record that the Carrier did not violate the Agreement.

The decline in its business is clearly identified as a legitimate basis for abolishing positions, and is an exception to the provisions of Article I, Section 1. The Carrier cited the decline in its business as the basis for the abolishment of Claimants' positions. Abolishment of positions in anticipation of a decline in business is well within the contemplation of the Agreement as the Interpretation Agreement clearly sets forth in its Questions and Answers. The Carrier has presented persuasive proof that it provided sufficient notice as required by the Agreement, and the failure to name each employee is not fatal to that position. In its letter of October 8, 1986, the Carrier showed a decline in business amounting to more than 44% as compared to the 1963/64 average for the month of August. Pursuant to Article I, Section 3, the net allowable percent reduction in protected employees is about 39%. Of the nine protected employees, three employees, Claimants here, constitute approximately 33% to 34%, and are clearly within the allowable 39%.

In light of the Carrier's permissible reduction in force within the provisions of the Agreement, there is no reasonable basis for the Organization's claim that Article IV, Section 1 was violated, because Article IV, Section 5 makes it clear that a protected employee is not entitled to the benefits of Article IV when furloughed pursuant to Article I, Section 3 or 4.

AWARD

Claims denied.

Nicholas Zumas

Nicholas H. Zumas, Neutral Member

Date: 1-4-89