Award No. 486

Case No. SG-44-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) BROTHERHOOD OF RAILROAD SIGNALMEN

TO THE) and

DISPUTE) BOSTON AND MAINE CORPORATION and

MAINE CENTRAL RAILROAD COMPANY

QUESTION AT ISSUE

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Boston and Maine Railroad Company (B&M) and the Maine Central Railroad Company for the following:

1) Are employees of the B&M and MEC (See Appendix I), who have been furloughed from their respective railroads due to GTI's leasing of the B&M and MEC to GTI's wholly owned subsidiary the Springfield Terminal Co. (ST) and who otherrwise meet the eligibility requirements of the February 7 Agreement, entitled to decline and/or relinquish employment with the ST and still receive compensation as provided for in Article IV of the February 7 Agreement.

2) Are the 'decline in business' provisions of Article I Section 2 applicable in this instant case and is the Carrier justified in invoking said provisions to deny claimants protective benefits?"

APPENDIX "I"

Employee Name	Railroad
F. R. Strout	Maine Central
L. P. Caret	" "
R. H. Sawyer	" "
F. A. Stacey	Boston and Maine
W. E. Auger	" "
R. A. Russett	" "
J. E. Marrottee	" "
J. N. Markeseines	" "
A. J. Fiset	" "
D. R. Russett	" "
C. Horton	" "
M. E. Hinkell	" "

W. B. Delaney	" "
K. C. Poore	Maine Central
P. C. Lawrence	" "

OPINION OF BOARD:

During 1986 and 1987, the Boston and Maine Corporation ("B&M") and Maine Central Railroad Company ("MEC") (hereinafter "Carriers") and other carriers, not parties, entered into a series of lease agreements with Springfield Terminal Railroad Company ("ST"). B&M, MEC and ST are all owned by Guilford Transportation Industries ("GTI"). GTI is not a party to this dispute. Pursuant to the leases, B&M and MEC leased all of their trackage and railroad equipment to ST. With the exception of two maintenance of way employees not involved in this dispute, the Carriers furloughed all their railroad employees and ceased to operate railroads. In its brief, the Carriers state that the purpose of the leases was to improve the "transportation function and economic vitality of their New England rail system by operating the lines under the collective bargaining agreement in place between the United Transportation Union (UTU) and the ST."

In its review of the lease agreements, the Interstate Commerce Commission ("ICC") imposed labor protection conditions pursuant to Mendocino Coast Ry. Inc. -- Lease and Operate, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980) and Norfolk and Western Ry. Co. -- Trackage Rights -- BN, 354 I.C.C. 605 (1978) as modified in Mendocino Coast, supra., with additional protective provisions as to timing and implementing agreements. The ICC characterized the labor protection conditions as "extraordinary." An implementing agreement was imposed through binding arbitration, pursuant to

one of the options set forth by the ICC. Part of the award was vacated on appeal to the ICC as inconsistent with the ICC's order as to rates of pay and work rules. The ICC subsequently accepted the Carriers' plan to offer positions on the ST to former employees of the B&M and MEC.

On February 14, 1989, in an amended collective bargaining agreement with between the UTU and the ST and pursuant to the appeals to and orders of the ICC, the Carriers' seniority rosters were dovetailed with the roster of existing ST employees. The Carriers' furloughed employees were again offered jobs on the ST under provisions of the amended UTU-ST agreement. Most, including Claimants, accepted.

The Carriers are signatories to the February 7, 1965 Mediation Agreement ("February 7 Agreement") which provides:

ARTICLE II

Use and Assignment of Employes

And Loss of Protection

> Section 1 - An employe shall cease to be a protected employe in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, or failure to retain or obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements, or failure to accept employment as provided in this Article. A protected forloughed employe who fails to respond to extra work when called shall cease to be a protected employe. If an employe dismissed for cause is reinstated to service, he will be restored to the status of a protected employe as of the date of his reinstatement.
>
> Section 2 - An employe shall cease to be a protected employe in the event of his failure to accept employment in his craft offered to him by the carrier in any seniority district or on any seniority roster throughout the carrier's railroad system as provided in implementing agreements made pursuant to Article III

hereof, provided, however, that nothing in this Article shall be understood as modifying the profisions of Article V hereof.

Section 3 - When a protected employe is entitled to compensation under this Agreement, he may be used in accordance with existing seniority rules for vacation relief, holiday vacancies, or sick relief, or for any other temporary assignments which do not require the crossing of craft lines. Traveling expenses will be paid in instances where they are allowed under existing rules. Where existing agreements do not provide for traveling expenses, in those instances, the representatives of the organization and the carrier will negotiate in an endeavor to reach an agreement for this purpose."

Claimants are former employees of the Carriers. The unchallenged statement in the Organization's brief is "[n]one of the Claimants resigned, died, retired or were dismissed for cause in accordance with existing rules. Neither did they fail to retain or obtain a position available to them in the exercise of their seniority in accordance with existing rules or agreements nor failed to accept employment, either temporary or permanent in accordance with Article II."

In its letter dated October 27, 1987, the Organization states that, "All jobs have been abolished on both the B&M and MEC." In its letter dated March 14, 1988, the Organization further states, "...there are no positions on the B&M and MEC.... They [Claimants] refused employment with a different carrier, the ST and they were not offered employment in their craft since, as [GTI] pointed out, the ST has no craft distinctions."

The position of the Organization is that Claimants are protected employees under the February 7 Agreement and should be compensated as such.

The Organization cites language from various ICC proceedings to suggest that the Carriers and/or GTI have behaved in bad faith.

The Organization further contends that Claimants have been placed in a worse position as to compensation, working conditions and benefits as a result of the positions offered them on the ST. The Organization argues that there are no employment opportunities with the Carriers and that therefore Claimants are entitled to labor protection benefits, because there is no way that they can accept employment under Article II of the February 7 Agreement. Following that line of reasoning, the Organization also maintains that "if no employment is available under existing agreements on seniority lines, and if the Carrier refuses to negotiate an implementing agreement to transfer employees over seniority lines, then the employees by nature of no jobs or place to go to become eligible for protection under the Agreement."

Finally, the Organization maintains that the Carrier has failed to prove that it suffered a decline in business. The Organization, therefore, rejects the contention that positions were abolished due to a loss of business; but rather, it argues, was the result of operational changes.

The position of the Carriers is they had no obligations under the February 7 Agreements once they left the railroad business and ceased to employ railroad workers. The Carriers contend that the February 7 Agreement does not provide protection for a one-time covered employee forever unless he engages in the conduct described in Article II, Section 1 or unless the carrier suffers a decline in business.

The Carriers cite several factually similar awards from this Board and asserts that this Board has rejected a "broad" view of the February 7 Agreement. The Carriers contend that the February 7 Agreement gave then-employed rail workers "certain protections in exchange for the railroads' rights to make technological changes pursuant to implementing agreements with the affected workers' unions." Employees could be transferred within the system so long as the terms of such changes were agreed to by the Organization and were pursuant to the allowed technological, operational or organizational changes by the carrier. The Carriers maintain that the terms of the "bargain" could apply only when there was something for both sides to do: employees able to work and carriers making changes to their rail operations to employ those employees.

The awards cited also emphasize the refusal by this Board to apply February 7 Agreement protections in situations where the carrier went out of its business and the work "disappear[s] entirely." In these situations, there is no place to which seniority may be exercised. The Carriers contend that the situation in this case is the same as the cases cited in which there are no longer any railroad employees, any collective bargaining agreement or any active seniority rosters. The Carriers cannot take advantage of the February 7 Agreement in that they cannot make technological, operational or organizational changes on the railroads because they no longer have railroads or employees. Since the Carriers are no longer in a position to obtain any benefits from the February 7 Agreements, they no longer have any obligations under it.

The Carriers draw an important distinction as to the equities in this case. Unlike many of the awards cited, all employees here have the opportunity to work at their old jobs and salaries.

The Carriers also contend that if the February 7 Agreement offered protection to workers under the facts here, Claimants have no entitlement to benefits under that Agreement. The Carriers assert that for the Organization to distinguish the line of awards cited from the case at hand, it would have to show that the Carriers were not truly out of the railroad business and that, therefore, the workers affected by the leases were covered by the February 7 Agreement. The Carriers contend that the transactions in this matter have been found repeatedly to be bona fide and shift the railroad work from the Carriers to the ST. Further, the Carriers argue, the Organization admitted that fact in its October 27, 1987 letter. There it argued that Article II, Section 2 (which relieves a carrier of providing protection benefits if specified employment offered by carrier is not accepted) was not applicable to any of the workers because, the Organization asserted, all jobs on the Carriers had been abolished. Rather, the Carriers contend, Article II, Section 2 does not apply because, as the Organization asserts in its letter of March 14, 1988, there are no positions on the Carriers.

Finally, the Carriers maintain that the dovetailing of the seniority roster of their former employees with the UTU roster of existing ST employees constitutes an implementing agreement.

After consideration of the entire record, the Board finds that the instant claims must be denied.

The position presented by the Carrier is sound and persuasive. While its "quid pro quo" argument is somewhat colloquial, the fact is that the Carriers are without means of affording employment because they are no longer in the railroad business. The Carriers cannot make changes in their rail operations that affect employees and cannot transfer employees around the system or let employees exercise seniority around the system because there simply is no system left.

Although the Organization suggests some collusion between the Carriers and the ST such that the Carriers are not out of the railroad business, the Organization relies considerably on that same assertion for its argument that its members have not run afoul of Article II, Section 2. The Carriers and the ST are different carriers. Since there are no jobs on the Carriers, there can be no obligations for them under the February 7 Agreement.

AWARD

The answer to Question 1 is "No."

Question No. 2 is moot.

Nicholas H. Zumas, Neutral Member

Date: 7-8-91