

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) Transportation-Communications International  
TO THE ) Union  
DISPUTE ) and  
)  
) Belt Railway Company of Chicago

QUESTIONS AT ISSUE:

1. Did Carrier incorrectly calculate the "Decline in Business Formula" as provided for in the February 7, 1965 Agreement as amended September 9, 1982, on and after the month of April 1988?
2. If the answer to Question No. 1 is in the affirmative, shall the Carrier now recalculate said decline in business for April 1988 and months subsequent thereto and compensate those employees who were improperly furloughed and/or denied benefits in accordance with said Agreement?

OPINION OF  
THE BOARD:

The decline in business formula set forth in Article I, Section 3 of the original February 7, 1965 Job Stabilization Agreement was, from a practical standpoint, inapplicable to the Carrier because it is a terminal railroad. One of the factors in the decline in business formula, "Net Revenue Ton Miles," was rendered meaningless when applied to a terminal railroad. On February 24, 1982, the parties amended the February 7, 1965 Job Stabilization Agreement to provide for, among other subjects, a revised decline in business formula in which the factor designated as "Total Cars Handled" replaced "Net Revenue Ton Miles." Article I, Section 2 of the

February 24, 1982 Agreement reads:

In the event of a decline in the Carrier's business in excess of five per cent (5%) in gross operating revenues and the number of total cars handled in any thirty (30) day period compared with the average of the same thirty (30) day period for the sixty (60) calendar month period during the Years 1976 through 1980, a reduction in the force of the employees covered by this Agreement may be made at any time after said thirty (30) day period below the number of employees entitled to preservation of employment under this Agreement to the extent of one per cent (1%) for each one per cent (1%) the said decline exceeds five per cent (5%). Advance notice of any such reduction shall be given as required by the current scheduled Agreement between the parties. Upon restoration of the Carrier's business following any such force reduction, employees entitled to preservation of employment must be recalled in accordance with the same formula within fifteen (15) days.

During April, 1988, the Carrier experienced a 26.11% decline in its gross operating revenue compared to the average for the five Aprils from 1976 through 1980 and a 0.41% decrease in cars handled compared to the average for the same month during the five year base period.

The Carrier added the two percentages together (26.52%) and subtracted the five percent buffer to reach a total decline in business of 21.52%. Since there were nine protected patrol employees, the Carrier suspended protective benefits for one police officer.

The Organization submits that the Carrier should have divided the percentage declines in gross operating revenue and total cars handled by two and then subtracted the five percent cushion. Under the Organization's interpretation of the formula,

the net decline in business would not be high enough for the Carrier to suspend the benefits of any protected patrol employee.

The Carrier continued to apply its interpretation of the formula in subsequent months and affected police officers timely filed claims contesting the Carrier's action. During the ensuing months, the Carrier's business decreased to a level that, under its interpretation of the formula, protective benefits were suspended for more than fifty percent of the protected police officers. However, figures submitted by the Organization indicate that the Carrier's business seemed to have increased during Summer, 1989.

The Organization asserts that the Article I, Section 2 decline in business formula ought to be interpreted according to the rule of reason. Since the contract provision sets forth two measurements for determining a decrease in business, it is logical to divide the total percentage decline by two to reach the net business decline. Under the Carrier's illogical interpretation, the formula could evince a one hundred percent decline in business although the Carrier would be maintaining one-half of the total business it had during the base period.

From the Carrier's perspective, the bargaining history of Article I, Section is critical to ascertaining its meaning. During the negotiations leading to the February 24, 1982 Agreement, the Carrier wanted to exclude low revenue bridge movements, which constituted about one-third of all cars handled, from being counted in the total cars handled factor. In exchange

for eliminating the divisor of two in Article I, Section 3 of the February 7, 1965 Job Stabilization Agreement as well as expanded sickness and health benefits, the Carrier agreed to count all cars within the factor of total cars handled. Now, according to the Carrier, the Organization is improperly trying to rejuvenate the divisor of 2, which was eliminated in the decline in business formula in the February 24, 1982 Agreement. The Carrier submits that it is logical to take the sum of the two factors without any divisor because not only was the divisor deleted but also bridge movements currently constitute about two-thirds of all cars handled.

This Board finds that the Carrier properly applied the revised decline in business formula.

The Organization is improvidently asking this Board to add the word "average" or a clause comparable to the divisor phrase found in Article I, Section 3 of the February 7, 1965 Job Stabilization Agreement to Article I, Section 2 of the February 24, 1982 Agreement. This Board is powerless to add to the explicit terms of the Agreement. Moreover, the parties knew how to construct a mathematical formula using an average or mean calculation since they specifically provided for an average in the base period business level calculation. If they had wanted to retain the divisor of two, they would have written the divisor into the formula for measuring the level of business after 1982. The omission of the divisor of two in the amended Agreement on

this property manifests the parties' intent to do away with an average calculation.

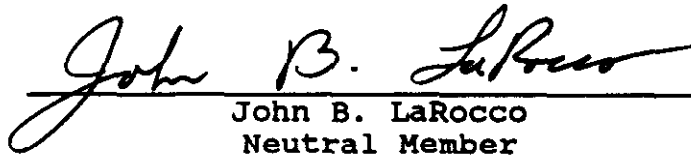
Furthermore, the express language of Article I, Section 2 supports the Carrier's interpretation. The two factors are separated by the term "and," which usually signifies that the two factors should be added together. Again, if the parties wanted to modify the conjunction "and," they could have inserted a provision providing that the factors should be analyzed separately.

Finally, contrary to the Organization's argument, the instant formula contains a semblance of logic. It is true that the protective benefits for all protected patrol employees could be suspended while the Carrier continues to operate. Nevertheless, if the Carrier experienced a sharp, fifty-five percent decline in its business, the negotiators reasonably concluded that the Carrier could suspend the protective benefits for one hundred percent of protected employees especially when one of the factors used to determine declines in business included a substantial number of low revenue movements. The negotiators undoubtedly realized that a severe financial strain on a small, terminal railroad would justify a temporary but total suspension in protective benefits.

AWARD

1. The Answer to the first Question at Issue is No.
2. The second Question at Issue is moot.

Dated: September 26, 1991

  
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John B. LaRocco  
Neutral Member