

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Transportation-Communications International
TO THE) Union
DISPUTE) and
)
) Elgin, Joliet and Eastern Railway Company

QUESTIONS AT ISSUE:

1. Did Carrier violate the effective February 7, 1965 Agreement, as amended, when it failed to retain Clerk J. Love in service on and after September 9, 1988, and/or compensate her in accordance with the provisions thereof?
2. Shall Carrier now return Ms. Love to service and compensate her for September 9, 1988, and thereafter, in accordance with the provisions of Article IV, Section 1 of said February 7, 1965 Agreement?

OPINION OF

THE BOARD: On this property, the parties amended the February 7, 1965 Job Stabilization Agreement on June 8, 1979 and April 13, 1982. In both amendments, the parties revised the decline in business formula. At the time of the most recent amendment, Claimant was one of 66 protected employees on furloughed status. While the record is not entirely clear, Claimant apparently remained in furloughed status until May 2, 1988, when the Carrier assigned her to the position of Assistant Head Clerk-Interline. The Carrier disqualified Claimant from this position on September 9, 1988.

According to the Carrier, Claimant was assigned to another vacancy on or about June 15, 1989. During the interim, the

Carrier neither retained Claimant in service nor paid her protective benefits. In essence, Claimant was in furloughed status.

The Organization initiated a claim alleging that Claimant was entitled to be retained in service subsequent to September 9, 1988, inasmuch as the formula disclosed that the Carrier had not suffered a decline in business. The Carrier declined the claim because the total number of protected employees furloughed during September, 1988 had not increased and, in the Carrier's view, the reduction in force and recall provisions in the decline in business article are to be applied on a percentage rather than an individual basis.

Paragraph F of the June 8, 1979 Memorandum of Agreement amended the decline in business formula set forth in Article I, Section 3 of the February 7, 1965 Job Stabilization Agreement by substituting the terms "both gross operating revenue and net revenue ton miles" with "gross operating revenue and revenue cars handled." In addition, the term "previous year" replaced the years 1963 and 1964 in the original decline in business formula. In the April 13, 1982 Agreement, the parties further revised the decline in business formula as follows:

In the event of a decline in Carrier's business in excess of 10% in the average percentage of gross operating revenue and revenue cars handled in any 30-day period compared with the average gross operating revenue as adjusted for the per cent increase in the BLS Consumer Price Index (CPI-W) and revenue cars handled for the preceding sixty (60) calendar months, a reduction in forces may be made at any time during the said 30-day period below the number of employees

entitled to preservation of employment under this Agreement to the extent of one per cent for each one per cent the said decline exceeds 10%. The average percentage of decline shall be the total of the per cent of decline in gross operating revenue and per cent of decline in revenue cars handled divided by 2. Advance notice of any such force reduction shall be given as required by the current Schedule Agreement between the parties. Upon restoration of Carrier's business following any such force reduction, employees entitled to preservation of employment must be recalled in accordance with the same formula, using the same figures as applicable to the reduction in force, within 15 days.

It is further agreed that the decline in business formula in the February 7, 1965 Agreement as amended on June 8, 1979 known as the Job Stabilization Agreement (Supplement No. 8) as it relates to the return of protected employees from a furloughed status shall be interpreted as follows:

Upon restoration of Carrier's business, employees entitled to preservation of employment must be recalled in accordance with the same figures upon which the original reduction in force was made within 15 calendar days.

This shall only apply to reductions in force made prior to May 1, 1982.

At the onset, this Board overrules the Carrier's procedural objections and finds that the Organization properly initiated this claim on October 28, 1988. The Organization's prior correspondence constituted mere inquiries about Claimant's status. Thus, the claim was properly progressed on the property.

The Organization argues that Claimant, a protected employee, was recalled to a regular assignment in May, 1988. After her disqualification, she did not have any displacement rights and thus, the Carrier was obligated to retain her in service. The Organization asserts that once the Carrier recalled her to

service, it should have thereafter applied the 1982 decline in business formula. Inasmuch as this formula did not reflect a decrease in business, the Carrier was barred from furloughing Claimant in September, 1988.

The Carrier contends that the April 13, 1982 amendment expressly provided that employees, including Claimant, on furloughed status prior to May 1, 1982, would be recalled according to the decline in business formula set forth in the 1979 amendments. The Carrier argues that the 1982 decline in business formula is inapplicable until all protected employees furloughed prior to May 1, 1982 have been recalled to service under the old formula. While the record is unclear, the Carrier asserts that there were approximately 29 such employees still on furloughed status as of September, 1988. Also, the Carrier pointed out that there were four employees senior to Claimant on furloughed status during 1988 and 1989. Alternatively, the Carrier argues that Claimant held a temporary vacancy in 1984 and under the Organization's interpretation, she should have thereafter remained in service had she been subject to the new formula. The Carrier submits that the Organization acquiesced in the Carrier's practice of applying the old formula. The Carrier reiterates that the 1982 formula is inapplicable until the entire group of employees who were on furloughed status as of May 1, 1982, is returned to service.

The literal language in the decline in business provision in the April 13, 1982 Agreement lends considerable support to the

Organization's position. While the 1978 decline in business formula controls the rate for recalling employees furloughed due to a pre-May 1, 1982 force reduction, the Agreement is silent concerning whether or not, once recalled, and, then later furloughed again, the employee continues to be governed by the June 8, 1979 decline in business formula. The words "original reduction in force" appearing in the penultimate sentence of the 1982 decline in business provision suggest that the recall provisions in the prior formula apply only to recalls from reductions in force occurring before April 13, 1982, and not to any subsequent reduction in force. Within the four corners of the decline in business provision, we do not find any language stating that the 1978 recall formula would cover all employees furloughed as of the effective date of the 1982 formula until all 66 resumed active service at the same time. The Carrier is apparently advocating that one of the 66 employees on furloughed status as of April 13, 1982, if recalled to service and then subsequently furloughed under the new formula, the employee would have to await recall under the old formula. Nothing in the record or the Agreement shows that the parties intended to split the 1978 and 1982 formulas in this inconsistent fashion.

Finally, the last sentence of the decline in business formula expressly provides that the recall provisions apply only to force reductions made prior to May 1, 1982. Claimant, after being placed on the Assistant Head Clerk-Interline position, was no longer subject to a pre-May 1, 1982 force reduction. If the

1978 formula was to control the rate of recalls to all 66 employees until all of them returned to service and none had reverted to furloughed status, the parties would have omitted the phrase "original reduction in forces" found in the indented paragraph of the 1982 decline in business formula.

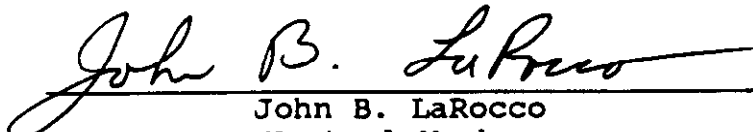
Although the Carrier alleges that Claimant had been recalled in 1984, the evidence is insufficient for us to decide whether she was actually recalled to a regular position. In any event, Claimant is not entitled to any monetary recovery prior to September 9, 1988. Finally, even if the presence of four employees senior to Claimant on furloughed status constitutes a past practice, the practice does not abrogate the clear language in the 1982 decline in business formula.

Although we are responding affirmatively to the second question at issue, we note that Claimant was returned to service on June 15, 1989.

AWARD

1. The Answer to the first Question at Issue is Yes.
2. The answer to the second Question at Issue is Yes, with the understanding that Claimant returned to service on or about June 15, 1989.

Dated: September 26, 1991



John B. LaRocco
Neutral Member