AWARD 497

SPECIAL BOARD OF ADJUSTMENT NO. 605

Case No. MW-62-W

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
TO THE) and
DISPUTE) BROTHERHOOD OF RAILWAY SIGNALMEN
and
SOUTHERN PACIFIC RAIL

QUESTION AT ISSUE:

(1) Did the Carrier violate the terms of the February 7, 1965 Stabilization Agreement, as amended, when it furloughed protected employes and refused to accord those protected furloughed Employes the benefits provided by said Agreement?

(2) Shall the Carrier now be required to restore all furloughed protected employes to the service of the Carrier and compensate them or otherwise make them whole for all wage loss suffered including all benefits lost as a result of the violation?

OPINION OF THE BOARD: In the latter part of September 1993 the Carrier furloughed more than 1500 employees, most of whom were Maintenance of Way employees, and some were signalmen. The Carrier concedes 74 BMWE employees and between two to 13 BRS employees were protected under the February 7, 1965 Agreement, as amended. The Organization establishes the number of protected employees as "several." All of the furloughed employees were unable to displace or otherwise exercise their seniority rights into another position.

The February 7 Agreement provides, in pertinent part:

"ARTICLE I - PROTECTED EMPLOYEES

Section 1 -

All employees, other than seasonal employees, 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 fifteen 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 employees 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 employees by reason of this Agreement. For the purpose of this Agreement, the term 'active service' is defined to include all employees 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 employees 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 employees who respond to extra work when called, and have averaged at least 7 days work for each month furloughed during the year 1964.

Section 2 -

Seasonal employees, who had compensated service during each of the years 1962, 1963 and 1964, will be offered employment in future years at least equivalent to what they performed in 1964, unless or until retired, discharged for cause, or otherwise removed by natural attrition.

Section 3 -

In the event of a decline in a carrier's business in excess of 5% 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 employees entitled to

preservation of employment under this Agreement to the extent of one percent for each one percent the said decline exceeds 5%. 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 2. 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, employees entitled to preservation of employment must be recalled in accordance with the same formula within 15 calendar days.

Section 4 -

Notwithstanding other provisions of this Agreement, a carrier shall have the right to make force reductions under emergency conditions such as flood, snowstorm, hurricane, earthquake, fire or strike, provided that operations are suspended in whole or in part and provided further that because of such emergencies the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed. Sixteen hours advance notice will be given to the employees affected before such reductions are made. When forces have been so reduced and thereafter operations are restored employees entitled to preservation of employment must be recalled upon the termination of the emergency. In the event the carrier is required to make force reductions because of the aforesaid emergency conditions, it is agreed that any decline in gross operating revenue and net revenue ton miles resulting therefrom shall not be included in any computation of a decline in the carrier's business pursuant to the provisions of Section 3 of this Article I.

Section 5 -

Subject to and without limiting the provisions of this agreement with respect to furloughs of employees, reductions in forces, employee absences from service or with respect to cessation of suspension of an employee's status as a protected employee, the carrier agrees to maintain work forces of protected employees represented by each organization signatory hereto in such manner that force reductions of protected employees below the established base as defined herein shall not exceed six per cent (6%) per annum. The established base shall mean the total number of protected employees in each craft represented by the organizations signatory hereto who

qualify as protected employees under Section 1 of this Article I.

ARTICLE II - USE AND ASSIGNMENT OF EMPLOYEES AND LOSS OF PROTECTION

Section 1 -

An employee shall cease to be a protected employee 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 furloughed employee who fails to respond to extra work when called shall cease to be a protected employee. If an employee dismissed for cause is reinstated to service, he will be restored to the status of a protected employee as of the date of his reinstatement.

ARTICLE IV - COMPENSATION DUE PROTECTED EMPLOYEES

Section 1 -

Subject to the provisions of Section 3 of this Article IV, protected employees 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, 964; provided, however, that in addition thereto such compensation shall be adjusted to include subsequent general wage increases.

Section 2 -

Subject to the provisions of Section 3 of this Article IV, all other employees entitled to preservation of employment shall not be placed in a worse position with respect to compensation than that earned during a base period comprised of the last twelve months in which they performed compensated service immediately preceding the date of this Agreement. For purposes of determining whether, or to what extent, such an employee has been placed in a worse position with respect to his compensation, his total compensation and total time paid for during the base period will be separately divided by twelve. If his compensation in his current employment is

less in any month (commencing with the first month following the date of this agreement) than his average base period compensation (adjusted to include subsequent general wage increases), he shall be paid the difference less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average time paid for during the base period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the time paid for during the base period; provided, however, that in determining compensation in his current employment the employee shall be treated as occupying the position producing the highest rate of pay and compensation to which his seniority entitles him under the working agreement and which does not require a change in residence.

Section 3 -

Any protected employee who in the normal exercise of his seniority bids in a job or is bumped as a result of such an employee exercising his seniority in the normal way by reason of a voluntary action, will not be entitled to have his compensation preserved as provided in Sections 1 and 2 hereof, but will be compensated at the rate of pay and conditions of the job he bids in; provided, however, if he is required to make a move or bid in a position under the terms of an implementing agreement made pursuant to Article III hereof, he will continue to be paid in accordance with Sections 1 and 2 of this Article IV.

Section 4 -

If a protected employee fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position he elects to retain, he shall thereafter be treated for the purposes of this Article as occupying the position which he elects to decline.

Section 5 -

A protected employee 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 employee 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 employees 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.

ARTICLE V - MOVING EXPENSES AND SEPARATION ALLOWANCES

* * *

If the employee elects to resign in lieu of making the requested transfer as aforesaid he shall do so as of the date the transfer would have been made and shall be given (in lieu of all other benefits and protections to which he may have been entitled under the Protective Agreement and Washington Agreement) a lump sum separation allowance which shall be computed in accordance with the schedule set forth in Section 9 of the Washington Agreement; provided, however, that force reductions permitted to be made under this Agreement shall be in addition to the number of employees who resign to accept the separation allowance herein provided.

In 1991, the parties entered an Adaptation Agreement which extended the coverage of the February 7 Agreement to employees with two years' seniority as of October 1, 1972.

In the 1980s, pre-existing price supports were removed from the freight railroad industry. As a gathering and distribution railroad, the Carrier incurred high switching and handling costs not present for long-haul carriers. The Carrier also operated with more difficult or indirect routes. Its freight was boxcar or intermodal, which is less profitable than bulk freight because of

the handling costs. These factors combined to produce high engineering, maintenance, and fuel expenses per ton mile for the Carrier.

As a result, in the summer of 1993, the Carrier announced its determination to "fundamentally alter the manner in which it did business." The goal was to reduce costs and increase operating efficiencies. One element of cost reduction was the lowering of labor costs and increase in productivity. Another element was the disposition of low density lines through abandonment or shortline transactions. (The issue of shortline sales is before a different arbitrator and is not the subject of this dispute.) The Carrier disposed of considerable number of real estate assets and transit corridors. The disposition of assets could not sustain operations, because eventually, the assets will all have been liquidated. In order to continue cutting costs and continue operating, the Carrier had to look elsewhere for savings; it turned to its work force. The Carrier embarked on a process of cutting some 4000 employees by the end of 1994, both non-agreement and agreement (from all crafts). A new CEO was hired. A new senior management team replaced nearly all of the top managers.

To reduce costs in the maintenance of way functions, the Carrier ceased railroad tie production, deferred major capital improvement projects, and focussed maintenance work only on tasks necessary for safe rail operation. More than 3,000 miles of track

are to be sold, leased, or abandoned. The Carrier is also converting from double to single track on account of reduced traffic and in order to reduce costs. Interviews with some Organization members submitted as part of the Organization's post-hearing brief indicate some existing maintenance crews are working considerable amounts of overtime in order to maintain the remaining track. There is some new equipment in use such as hy-rail trucks. Some of the improved techniques discussed by the Organization members are not "new" at all, according to some of those same members, but date to the 1960s.

The position of the Organization is that the Carrier violated the February 7 Agreement when it furloughed protected employees and refused to accord them the protection benefits provided by the Agreement.

The Organization contends that the furloughed employees do not fall within the exceptions to the February 7 Agreement that are set forth in Article I, Section 1. Therefore, they must be, "retained in service subject to compensation as hereinafter provided unless or until retired, discharged for cause, or otherwise removed by natural attrition." The Organization also contends that Article I, Section 5 establishes the "maximum number of employees that may be force reduced under the applicable provision of the Agreement." The Organization notes that the words "force reduction" and "reduction in forces" are not used interchangeably with "furlough"

and only appear in Article I, Sections 3, 4, and 5, Article IV, Section 5, and Article V, paragraph third. After the Organization analyzes the use of "force reduction" and "reduction in forces" in the above-stated portions of the Agreement, it concludes that the words "force reductions" as used in Article I, Section 5 only applies to force reductions made pursuant to Article I, Sections 3 and 4. In short, the Organization asserts that neither the decline in business and the proper notice (Section 3) nor the emergency conditions (Section 4) is present in the current situation. The Organization cites Awards Nos. 10 and 180 of this Board for the proposition that Article I, Section 5 is designed to "maintain a work force of protected employees, not positions."

In the alternative, the Organization argues that should "furlough" and "force reduction" be found to have the same meaning, then the Carrier must pay compensation to any protected employee "arbitrarily" furloughed for reasons other than those in Article I, Sections 3 and 4. The Organization contends that were the Carrier entitled to furlough up to 6% of the base number of protected employees, then the parties would have included that exception in the provisions of Article VI, Section 5. Since the parties did not, the Organization reasons, then the Carrier may not.

Citing Award No. 194 of this Board, the Organization notes that in the instant dispute, employee jobs were abolished and the employees in those jobs were unable to secure other positions by

exercising their seniority. Therefore, the Organization argues, the employees are in furlough status and entitled to benefits under the February 7 Agreement.

The Organization rejects the Carrier's formulation of the issue, asserting that it seeks the Board's modification of the Agreement, which is beyond the authority of the Board. In addition, the Organization argues that acceptance of the Carrier's interpretation of Article I, Section 5 "would render the February 7, 1965 Agreement practically meaningless." The Organization points out that the Carrier has never taken this position in the 28 or 29 years of operation under the Agreement. If the Agreement allows the Carrier an arbitrary 6% furlough of protected employees, the Organization contends the Carrier would have used that power long ago.

The Organization notes this dispute involves only a small number of employees who were furloughed. "Many" of those employees have returned to work. The Organization goes on to challenge the Carrier's position that the work formerly performed by the furloughed employees has permanently disappeared. It rejects this assertion as "sophistry." The Organization cites the interviews with its members to show the work which was performed by employees such as those furloughed is still performed in the same manner now as in the past several years. While the Organization concedes there is less work now, it argues the awards cited by the Carrier

regarding the non-requirement of protection benefits where there is no ability to exercise seniority dealt with situations in which there was a complete cessation of business. That is not the case here. The maintenance forces are performing the same work as they did before the furloughs In addition, the Organization argues the assertion that the work has permanently disappeared is an affirmative defense whose burden the Carrier has failed to sustain.

The Organization rejects the Carrier's argument that an organizational, operational, or technological change must be made in order to trigger the February 7 Agreement. It also rejects the argument that the quid pro quo for job protection was the Carrier's right to implement certain organizational, operational, or technological changes, none of which, as the Carrier contends, occurred in this instance. While rejecting the Carrier's position, the Organization argues consolidating and downsizing to cut costs is an operational change. The Organization also argues that since February 7, 1965, there have been "massive technological improvements in track and bridges and buildings."

Finally, the Organization argues that the furloughed employees are merely furloughed employees under the Collective Bargaining Agreement. They are not reduced forces pursuant to an applicable provision of the February 7 Agreement. Therefore, they are entitled to benefits as provided in the February 7 Agreement.

The position of the Carrier is that Article I, Section 5 permits the furlough of up to 6% of the protected employees when the work formerly performed by those employees is unavailable.

The Carrier contends that it has suffered serious economic setbacks which have led it to focus its maintenance of way functions on maintenance, not capital improvements. In support of its position, the Carrier defined its character as a gathering and distribution railroad with high switching and handling costs, costs that are higher than those of over-the-road carriers. The Carrier also pointed to high costs from the indirect nature and rugged terrain associated with some of its routes. The Carrier presented figures showing that its operating ratio was higher than that of its competitors. Finally, the Carrier pointed out that the freight it carries is in boxcars or containers; this is freight that is less profitable than bulk freight. In order to contain costs, the Carrier contends it determined to sell assets, reduce improvements to remaining assets, and cut personnel at all levels of the company. The Carrier argues that the furloughs at issue in this matter were the "result of the disappearance of available work due to the need to preserve cash for working capital and the need to reduce the Carrier's high cost structure."

The Carrier contends that protection payments under the February 7 Agreement do not attach and/or are inapplicable when the

work is no longer available, in the absence of an operational, technological, or organizational change.

The Carrier argues the February 7 Agreement applies only in limited circumstances not involved in the present situation. The February 7 Agreement is not intended as a welfare program and does not require the Carrier to create jobs for protected employees when the work is not available. The Carrier maintains that this sort of job creation would jeopardize the security of the employment of all employees. The Carrier contends the recommendations of Presidential Emergency Board 161 produced the February 7 Agreement benefits. Those benefits were the "quid pro quo for certain modernization benefits accruing to a Carrier." Modernization meant technological, organizational, and operational changes. The Carrier argues the modernization of equipment or facilities is distinct from the reduction of forces because of the absence of work. The recent force reduction is not a means to modernize or the result of a technological advancement allowing more efficient operations.

PEB 161 by its terms incorporated the findings of PEB 160. The Carrier argues neither Board's findings "absolutely proscribed [carriers] from furloughing employees when there has not been a technological, operational, or organizational change." The dispute before PEB 160 was the product of technological and organizational changes that steadily eroded employment levels. The Carrier argues

that the intention of PEB 160 was to protect employees "impacted" by technological or organizational changes, not to restrict the Carrier's right to make fundamental business decisions by giving the Organization a voice in those decisions. Further, the Carrier contends that the rejection of a request by the Organization for inclusion of language in the February 7 Agreement that would have restricted the reduction of the number of employees for any reason except normal attrition (which reduction would not exceed 2% per year) proves the limited nature of the protection in the February 7 Agreement. The Carrier urges the conclusion that the protection was envisioned as a quid pro quo for the loss of employment for the causes stated in Article II (i.e. technological, organizational, or operational changes) "not when work simply was not performed." When there is no work, there is no change the Carrier can implement in order to affect the work or its performance; there is simply no work.

The Carrier maintains protection is tied to the events giving rise to the need for protection. PEB 161 adopted the notion that employees should be protected against a decline in business and so the parties adopted the limitation of protection to declines in business of 5% or less as measured in terms of gross operating revenue and net revenue ton miles. Protection was triggered by revenue related declines. The Carrier argues that the Staggers Act changed the economic environment such that the level of the

Carrier's business was increasing, but it was still losing money because of rising expenses.

Next, the Carrier contends the protection to which it agreed in the February 7 Agreement is linked to effects that flow from implementation of technological, operational, or organizational changes or a specific revenue shortfall. It notes that the bargaining history of the February 7 Agreement is inextricably bound up in the effects of reducing positions through operating efficiencies and modernization. The protections of attrition and employment preservation simply do not apply when the work has ceased to be performed and none of the specified changes is present. The Carrier also argues the decline in revenue set forth in the February 7 Agreement is not the same as an absence of work or a high cost/expense structure. Revenue might drop, but work can remain or even increase. Or revenue might remain the same and operating losses can still result.

The Carrier rejects the Organization's limited reading of the February 7 Agreement as to the circumstances when benefits may be suspended. Those circumstances are not limited to the express conditions stated in Article IV, Section 5 or Article II, Section I, because it fails to consider the situation where no work is available and the underlying purpose of the February 7 Agreement: the protection from the effects of technological changes and modernization. The fundamental question, according to the Carrier

is: Who is protected? The Carrier vigorously argues that it is only employees laid off for particular reasons.

The Carrier turns to the question of protection as it relates to job abolishment. It argues these do not mandate protection, without the additional proof of a related technological, organizational, or operational change. Reductions that are the product of the need to reduce costs incident to the improvement of operating ratios are not transactions entitled to protection.

The next point made by the Carrier is that the absence of the ability to exercise seniority means that protection is not required. Citing Awards Nos. 408 and 435, the Carrier argues the "reasonable use of [employees] services by Carrier" is part of the quid pro quo of the protection benefits in the February 7 Agreement. Here the ability to exercise seniority is a measure of the circumstances, not an end in itself. If the employees cannot exercise their seniority, then there is no work to perform, which in turn implies the Carrier cannot receive the reasonable use of the employees for which it bargained. Therefore, without the ability to receive the benefit for which it bargained (i.e. the employees' work), the Carrier is not required to perform provide the protection at a particular point in time. Since the Carrier envisions a permanent transformation in an attempt to contain costs (i.e. the disappearance of the work), the employees' services appear not to be needed in the foreseeable future. They are thus

without the ability to provide their portion of the quid pro quo and as such, not entitled to protection. In support of this proposition, the Carrier cites BRAC v. Kansas City Terminal Railway, 587 F.2d 903 (8th Cir. 1978). The Carrier argues that the decision in that case is premised on work availability. Thus, the Carrier also maintains it is not required to create "make work" under the February 7 Agreement. It reiterates its point that the February 7 Agreement is a cushion against the effects of modernization, not an "all-encompassing wage protection program."

The Carrier argues its continuation of operations is not the controlling issue in determining whether the furloughed employees are entitled to benefits. Citing Award No. 425, it argues that the continuation of operations does not defeat an exemption from the application of the February 7 Agreement. Under the terms of the report of PEB 219, the Carrier was permitted "to adapt the PEB's wage recommendations to the prevailing financial circumstances at [the Carrier]." From this and other evidence, the Carrier argues that the force reductions are a response to its "cash situation caused by the Company's as yet uncompleted transformation of its operating ratio." The Carrier associates that point with the ruling in Award No. 408 to stand for the proposition that when employees' work ceased to exist through no technological, organizational, or operational occurrence, then there is no entitlement to protection for furloughed employees.

Finally, the Carrier argues the plain language of Article I, Section 5 permits the reduction of 6% of protected employees. The Carrier cites Award No. 180, "'It is the intent of said Section 5 of Article I to maintain a work force of protected employees and not positions.'" In Award No. 180, the Board specifically rejected the proposition that the Carrier must rehire or hire new employees to compensate for protected employees who left the service. The Carrier rejects the Organization's interpretation that the 6% is a cap on natural attrition.

After considering the entire record, the majority of the Board finds that the instant claim must be denied. There is substantial, credible evidence in the record that the Carrier did not violate the terms of the February 7 Agreement, as amended, by its furlough of protected employees and its refusal to pay protection benefits provided for in that Agreement. The Carrier is not required to restore the furloughed protected employees to its service or to compensate them since there has been no violation.

It is clear from the record and of facts of which arbitral notice may be taken that the Carrier's rail operations have suffered a series of substantial economic setbacks. In an attempt to control its losses, the Carrier legitimately exercised its business judgment and management rights by deciding to reduce costs of operation as well as seeking to enhance revenues. This reduction in costs included the cessation certain capital

improvements, the liquidation of capital assets, the abandonment, sale, or lease of certain rail lines, the reduction in maintenance work except to the extent that maintenance was safety-related. The attempt to reduce costs also included a cut back in employees at all levels and in all sectors of the Carrier's work force, including senior management. The persuasive and credible evidence in the record shows that the maintenance work which was cut is likely to be permanent. The Carrier is not likely to reestablish the double tracks it has converted to single tracks; or to recover the tracks it has sold or abandoned; to recommence tie production; or a host of similar capital improvement or creation activities in which it formerly engaged. These facts compel this Board to conclude that the employees here were furloughed on account of the disappearance of work which is very unlikely to reappear. The evidence presented by the Union about overtime worked by certain gangs is anecdotal and isolated. There is insufficient evidence to show that such situation exists system-wide.

The reason for the employees' furlough is crucial because it is well established that the cause of the furlough is intimately related to the employees' entitlement to protection benefits. The plain language of PEB Nos. 160 and 161 makes clear that the February 7 Agreement was an effort to protect railroad workers from the negative effects of modernization and operating efficiencies. It was not, however, a blanket protection against all furloughs for whatever reason. The downgrading, dislocation, or disemployment

that was the concern of the PEBs were those resulting from technological or organizational changes. This is the theme to which the Carrier returned again and again in its presentation, and correctly so. The parties to the February 7 Agreement, including the Organization and Carrier here, entered into a contract, which in the law is a bargained for exchange. In exchange for financial protection for its members, the Organization accepted the loss of employment for some of those same members through the modernization of the Carrier's operations by technological, operational, or organizational improvements. Numerous awards correctly have termed this a "quid pro quo."

The protections created in the February 7 Agreement are, however, activated only by the sort of disemployment envisioned by the Agreement, that is: Technological, operational, or organizational improvements. The furloughs in this case are not the product of those sorts of improvements, but are the result of the elimination of the work that the furloughed employees performed. The work of the employees furloughed here was not eliminated by an operating efficiency; it was eliminated because of the financial exigencies as the Carrier legitimately determined them. No one or nothing else is performing the work of the furloughed employees; it simply is not being done.

This principle underlies the Carrier's argument regarding the failure to exercise seniority by the furloughed employees. Using

the capacity to exercise seniority as a measure of whether or not there is work available to perform, the Carrier correctly shows that the absence of a position to which to exercise seniority proves that the work performed no longer exists. This is in keeping with the findings of the awards cited by the Carrier. It also follows from a separate analysis that the Carrier is entitled to the use of the services of its employees. That reasonable use is part of the quid pro quo of the provision of protection benefits. In the absence of the ability to reasonably use its employees, the Carrier is not required to provide the protection portion of the bargain. Since the Carrier's financial circumstances and plans lead it to conclude that its lack of ability to reasonably use the furloughed employees is permanent, then the furloughed employees' lack of capacity to provide their portion of the bargain is also permanent. The holding in Kansas City Terminal makes it clear that the Carrier is under no obligation to create work that does not otherwise exist. Finally, this Board will not upset the conclusion reached in Award No. 180 that Article I, Section 5 is designed to protect employees, not positions. Similarly, Article I, Section 5 is not tied to Sections 3 and 4 as the Organization argued, but operates independently.

In sum, the February 7 Agreement created a specific protection for employees negatively affected by modernization and/or operating efficiencies. The case before this Board does not involve a technological, operational, or organizational improvement or

change. (Although there may have been changes in operations due to the elimination of capital improvements or lines, a change in operations is not necessarily an "operational change.") Rather, the Carrier discontinued the performance of certain work in order to reduce costs. The work performed by the furloughed employees ceased to exist; that circumstance makes this furlough one of the sort for which protection is not available under the February 7 Agreement. For all of these reasons, the Organization's claims cannot be sustained.

AWARD

The answer to Questions Nos. 1 and 2 is "No."

Nicholas Zumas

Nicholas H. Zumas, Neutral

Date: May 3, 1994