

PUBLIC LAW BOARD NO. 301

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BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES :

-vs- :

AWARD

NEW YORK+ SUSQUEHANNA & WESTERN R. R. :
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DOCKET NO. 1.

BEFORE: ALBERT W. EPSTEIN, MERITS NEUTRAL MEMBER
C. W. SCHROEDER, CARRIER MEMBER
A. J. CUNNINGHAM, EMPLOYEE MEMBER

CLAIMS:

1. Carrier violated the effective Agreement on November 10, 1966 by furloughing Plumber John Hope, a protected employee under the February 7, 1965 Agreement.
2. Carrier shall now reimburse Claimant John Hope for all wages lost to him by reason of his being furloughed during the period beginning November 10, 1966, and continuing until he is returned to the payroll at the Plumber's rate of pay.

FACTS

On February 7, 1965, five Non-Op Organizations, including the BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES, entered into Mediation Agreement Case No. A-7128 with the Carriers EASTERN, WESTERN AND SOUTH-EASTERN CONFERENCE COMMITTEE, which Agreement covers the employees of the NEW YORK, SUSQUEHANNA & WESTERN R. R. Article I of that Agreement defines who are to be protected employees thereunder. That Agreement also contains provisions for the benefit of such protected employees. On August 11th, 1965, the Carrier furnished a list of "protected employees" to the Brotherhood and JOHN HOPE'S name appears on such list and his position is shown to be plumber with an hourly rate of pay of \$2.723. On November 10th, 1966 JOHN HOPE was furloughed from his position as a plumber. On December 19th, 1966, the Brotherhood General Chairman wrote to the Chief Engineer for the Carrier, asserting a claim for the monetary loss of JOHN HOPE from November 10th, 1966 until his recall to service. No acknowledgment of said claim was received by the Brotherhood. On December 5th, 1967, the General Chairman wrote to the Director of Personnel for

the Carrier, advising of the letter dated December 19th, 1966 to the Chief Engineer and requesting the Director of Personnel to investigate and advise. On December 13th, 1967, the Carrier acknowledged the letter of December 5th, 1967, and stated that the matter will be investigated. On January 23rd, 1968, a conference was held with the Director of Personnel but the claim was not resolved and the Carrier agreed to look into the matter further and again advise the General Chairman. In May of 1968, claimant HOPE was offered employment as a part-time watchman which he accepted and he was paid at the trackman's rate of pay which was less than the plumber's rate. On August 12th, 1968, the General Chairman again wrote to the Carrier requesting the advice of the Carrier concerning the claim. No progress was made and on November 14th, 1968, the parties entered into an Agreement establishing Public Law Board No. 301.

The Board met on February 5th, April 16th and May 23rd, 1969, but was unable to resolve the dispute and became deadlocked. Thereafter, the Merits Neutral Member of Public Law Board No. 301 was appointed and a Hearing was held at Edgewater, New Jersey on March 26th, 1970. The parties thereafter submitted memoranda in support of their contentions and the Board again met on August 4th, 1970.

POSITION OF THE PARTIES

The Brotherhood contends that the Carrier violated Article I, Section 1, of the aforementioned Agreement dated February 7th, 1965, to which the Carrier was a signatory party. In accordance with the provisions of that Agreement, the Carrier furnished an official list of "protected employees" and JOHN HOPE'S name appeared thereon. The furloughing of JOHN HOPE was a direct violation of that Agreement and the claim should be sustained. The Brotherhood further claims that in conference the Carrier stated that the furloughing of JOHN HOPE was due to a reduction in force necessitated by the financial condition of the Railroad, and such ground is not sufficient to justify the furloughing of JOHN HOPE in view of the provisions of the Agreement of February 7th, 1965.

At the Hearing, the Carrier contended that Mr. HOPE was not improperly held out of service since the abolishing of his position was entirely proper and that it was in

accordance with the Agreement effective December 1, 1950. The Carrier further contended that Mr. HOPE worked as a trackman to the extent that work was available and that Mr. HOPE retired on or about January 1, 1970.

After the Hearing, each party submitted a Memorandum summarizing its position. The Brotherhood contended that the Carrier violated the provisions of the August 21st, 1954 Agreement which require a timely denial of all claims and grievances presented. As the claim was not timely denied by the Carrier, it should be paid as presented. In reply to the Carrier's contention that the position of plumber was properly abolished under the Agreement of December 1, 1950, the Brotherhood argued that the Agreement of February 7th, 1965, was an Agreement which protected individual employees and that since JOHN HOPE was protected under the February 7th, 1965 Agreement, he could not be furloughed even if the position of plumber could be abolished by the Carrier. In short, the Brotherhood contended that the February 7th, 1965 Agreement was not a guarantee of positions but rather an Agreement guaranteeing the individual employees the right to be continued in their employment. In its Memorandum, the Carrier reaffirmed the contentions which it raised at the Hearing, as hereinbefore set forth.

OPINION OF THE BOARD

The evidence before the Board includes the Agreement of December 1, 1950, the Agreement of February 7th, 1965, provisions of the August 21, 1954 Agreement and many Awards and Summary of Awards which were submitted by the parties. The Agreements have been carefully studied by the Board which has also examined into all the other Exhibits submitted by the parties. The Board has considered the contentions of the parties. There can be no doubt that the Agreement of February 7th, 1965, established a group of "protected employees". The rights of that group are clearly defined in the Agreement of February 7th, 1965. By furnishing the Brotherhood with a list of employees protected by that Agreement, the Carrier acknowledged that the employees whose names appeared on that list were entitled to all of the protection provided in that Agreement. Since the Carrier's list of "protected employees" included the name of claimant JOHN HOPE, the Carrier cannot now deny to that

claimant the protection provided in the Agreement of February 7th, 1965. Under that Agreement the Carrier could not reduce its force of protected employees unless it satisfied the conditions set forth in that Agreement. There is no evidence whatsoever before this Board which shows compliance with such conditions. In view thereof, the Board concludes that the Carrier violated the provisions of that Agreement by furloughing JOHN HOPE.

AWARD

Claim 1 is sustained.

Claim 2 is sustained to the extent of awarding to claimant the amount of compensation lost. Said amount is to be determined by conference between the Brotherhood and Carrier.

Dated August 7th, 1970.

/s/Albert W. Epstein
ALBERT W. EPSTEIN - MERITS
NEUTRAL MEMBER

/s/C. W. Schroeder, Dissent
C. W. SCHROEDER, CARRIER MEMBER

/s/A. J. Cunningham
A. J. CUNNINGHAM, EMPLOYEE MEMBER