

PUBLIC LAW BOARD NO. 301

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BROTHERHOOD OF MAINTENANCE OF WAY :
EMPLOYEES :
-vs- :
NEW YORK, SUSQUEHANNA & WESTERN R. R. :

AWARD
DOCKET NO. 3.

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

CLAIMS:

1. The New York, Susquehanna and Western Railroad Company violated the existing Agreements and Understandings when they made force reduction in the Maintenance of Way Department effective May 1st, 1968, when they abolished Section 6, also on May 7th, 1968 abolishing additional section including assistant foremen and trackmen in the Maintenance of Way Department, which is in violation of Memorandum of Agreement dated June 12, 1963, Job Security Agreement dated February 7th, 1965, also Mediation Agreement dated October 7th, 1959.

2. That Section Foremen, Assistant Section Foremen and Trackmen:

A. CERA	C. WITHERSPOON	
E. PAVIGANO	G. STORNO	F. MONTANYA
J. MORRIS	J. GIORDINO	P. MONTANYA
D. McCOLE	L. RACICOT	WILLIAM HALL
G. BERARDO	J. WILDER	WALTON J. BEEGLE
G. DAVIDSON	F. BARNES	VICTOR CLOUSE
T. CHESTNUT	P. NEKRASOW	DONNIE BACOTE
M. HOPKINS	C. BRYANT	JAMES E. REMBERT
F. PAVONE	L. MEYERS	
D. BERARDO	F. PETRUCELLI	

be allowed compensation at their respective rates of pay for all hours involved from May 1st, 1968 until all positions have been restored to their original positions prior to May 1st, 1968. Also be compensated travel time expenses and any other expenses that the employees incurred due to this arbitrary change.

FACTS

On May 1, 1968, the Carrier abolished Section No. 6 and on May 7, 1968, the Carrier abolished additional sections including the assistant foremen and trackmen in Maintenance of Way Department. The Brotherhood contends that such action is in violation of the Supplemental Agreement of June 12, 1963, the Job Security Agreement of February 7, 1965 and the Mediation Agreement dated October 7, 1959. As a result, the above claims were filed on behalf of the 27, Section Foremen, Assistant Section Foremen and Trackmen, in which compensation is requested at the respective rates of pay from May 1, 1968 until all employees were restored to the positions they held prior to May 1, 1968.

The Supplemental Agreement of June 12, 1963, establishes the minimum number of employees, their rates of pay and their specific headquarters as provided in Appendix "A" attached thereto. The specific provisions of that Agreement is as follows:

(1) It is agreed, effective August 1, 1963, the number of employees, rates of pay, and headquarters shall be as is listed in the attached. Appendix "A", which becomes and is a part of this supplemental agreement, and shall not be reduced in any manner except by agreement between the General Chairman and the Chief Engineer of the Railroad, or their designated representatives. Prior to the effective date of this Memorandum all positions of Track Foremen, Assistant Track Foremen, and Trackmen will be bulletined in accordance with Rule 12 of the current agreement.

(7) There shall be no abolishment, elimination or re-arrangement of any of the positions listed on the attached Appendix except by agreement between the Chief Engineer of the Railroad and the General Chairman, or their designated representatives.

While negotiations were being carried on by National Committees representing Non-Operating Brotherhoods and various railroads, the Chief Engineer of the Carrier indicated to the General Chairman of the Brotherhood that the Carrier desired to reduce the number of trackmen positions from 26 to 20. A conference was held on January 26, 1965, at which the matter was discussed. After the conference, the General Chairman wrote to the Chief Engineer and stated that the matter was being negotiated on a national basis and that further conferences could not result in any agreement. The National Committee reached the

Agreement of February 7, 1965 which provided for protected employees.

There was also in effect between the parties Mediation Agreement Case No. A-5987 which required prior consultation in advance of any material change in work methods of the Carrier.

On May 7, 1968, the Chief Engineer and the Director of Personnel of the Carrier wrote to the General Chairman setting forth changes to be made in the maintenance of way forces to become effective May 15, at the end of the work day. The letter stated that such changes were necessitated by the critical financial status of the Carrier. On May 10, 1968, the General Chairman replied to the Director of Personnel suggesting that the matter be held in abeyance pending a conference in order to determine whether or not the parties could reach an Agreement. In that letter, the General Chairman stated that he was disturbed by the Carrier arbitrarily making changes in direct violation of the Agreement dated February 7, 1965 and Memorandum of Agreement dated December 1, 1950. On May 13, 1968, the Carrier replied to the General Chairman stating that the Carrier does not desire to take arbitrary action in any matter covered by Agreements and claiming that survival dictated reduction in all forces and that survival was the primary consideration of the Carrier. A conference was held on June 5th, 1968, followed by a letter from the General Chairman to the Director of Personnel, dated June 7, 1968, in which the Brotherhood stated that Management had denied the request for restoration of the positions and that a Statement of Claim was attached on behalf of the employees affected. No changes were made in the Carrier's notice of May 7, 1968 and on August 12, 1968, and the General Chairman wrote to the Director of Personnel stating that if payment was not made and if there was no word from the Carrier within the ten days, the matter would be referred to the Third Division Adjustment Board for further handling.

POSITION OF THE PARTIES

The Brotherhood contends that the Carrier unilaterally and arbitrarily made a material change in its work methods by abolishing six sections and rearranging and regrouping

new sections and positions, and that such action violated the Mediation Agreement Case No. A-5987 and also violated the Supplemental Agreement dated June 12, 1963. The Brotherhood further contends that the majority of names listed as Claimants in this dispute are on the "Protected List" furnished by the Carrier under provisions of the Agreement of February 7, 1965 and that the action of the Carrier violated the Agreement of February 7, 1965. The Brotherhood further contends that the reason offered by the Carrier, which was a poor financial condition, was not sufficient reason to substantiate the Carrier's action. The Brotherhood also contended that the February 7, 1965 Agreement contained a formula for the reduction of forces and that the Carrier had not complied therewith.

The Carrier contends that its action was necessary because of its poor financial condition and that its action was dictated by a desire for survival of the Carrier. The Carrier further contended as in Docket No. 2 that the Agreement of June 12, 1963 was no longer in effect because of the failure of the Brotherhood to serve the notice provided in Article VI of the Agreement of February 7, 1965. The Carrier also contends that the abolition of positions was in accordance with provisions of the basic Agreement effective December 1, 1950, that the claim cannot be made under two Agreements and that the claim is overstated.

A Hearing before the Board was held on March 26th, 1970. The Board met again on August 4th, 1970 to consider the contentions of the parties.

OPINION OF THE BOARD

There is no doubt that the action of the Carrier in sending out the notices of May 7, 1968, unilaterally reducing forces violated the provisions of several Agreements between the parties. The Carrier apparently recognized that such action was a violation by thereafter conferring with representatives of the Brotherhood in an attempt to obtaining agreement to reduction of forces. Such meetings did not result in any Agreement and the Carrier's action cannot be considered as justified for the reasons relied upon by the Carrier. A poor cash position and/or a poor financial condition may be the basis for the

reduction of forces if the procedure set forth in the various Agreements is followed.

However, no provisions of any Agreement between the parties would authorize the Carrier to unilaterally take action which resulted in a reduction of forces.

A comparison between the list of grievants and the list of protected employees furnished by the Carrier pursuant to the provisions of February 7, 1965 Agreement, indicates that the majority of the claimants are protected employees under that Agreement. In view thereof, the Carrier's attempt to deprive those employees of the protection afforded under the provisions of the February 7, 1965 Agreement, cannot be sustained by this Board regardless of the reason for the Carrier's action.

None of the evidence before the Board justifies the Carrier's unilateral action taken in the Notice of May 7, 1968, and such action is not warranted by the provisions of the Agreement of December 1, 1950 or any other Agreement between the parties.

The contention raised for the first time at the meeting of this Board that the Supplemental Agreement of June 12, 1963, is no longer in effect, is not considered by this Board since that contention was not raised on the property.

AWARD

Claim 1 is sustained.

Claim 2 is sustained to the extent of awarding to claimants 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