SPECIAL BOARD OF ADJUSTMENT NO. 570

SYSTEM FEDERATION NO. 8
RAILWAY EMPLOYES' DEPARTMENT
AFL-CIO - CARMEN

and

MISSOURI-KANSAS-TEXAS RAILROAD CO.

DISPUTE:

1. The Missouri-Kansas-Texas Railroad Company violated Article I, Section 4 of the September 25, 1964 Agreement when it failed to give sixty (60) days (ninety (90) days in cases that will require a change of employe's residence) written notice of the abolishment of the jobs of M. E. Walker, C. Haney and J. Sampson, Jr., caused by the abandonment of passenger service and has further violated the terms of the Agreement when it refused to allow the above named Claimants the protective benefits of said Agreement.

FINDINGS:

It is undisputed that the Carrier's action in discontinuing passenger train service, effective July 1, 1965, precipitated the abolition of the Coach Cleaner-Boiler Fireman positions at the Denison, Texas passenger station held by the claimants herein. Clearly, a loss of or impairment to employee status which is attributable to any of the matters delineated in Article I, Section 2 of the Agreement of September 25, 1964, brings said agreement into full play.

Since the claimant's jobs were abolished as a consequence of one of the changes in Carrier's operations which are set forth in Section 2, namely, abandonment of services, it is plainly evident that they qualify for and they are entitled to receive the employee protection afforded by said Agreement.

Taking cognizance of the fact that, with the cessation of operations on July 1, 1965 of two passenger trains in each direction daily between Kansas City, Missouri, and Dallas, Texas, the Carrier no longer was engaged in any passenger service activity, it is a bold understatement at best to say that "a decline in business" prompted the abolition of the jobs involved in this dispute.

Actually, the passenger trains were taken off because all passenger service was stopped. Carrier's passenger service didn't merely decline--more accurately, it was entirely wiped out. This was a cut-back from four passenger trains per day to nothing. How do you decline from zero?

Obviously, the meaning of the phrase "decline in a carrier's business", appearing in Article I, Section 3, does not embrace a complete and permanent discontinuance of services. Indeed, there is a sharp distinction between abandonment of services and decline in business. To accept Carrier's argument that "decline in business" covers everything extending from a partial curtailment to a wholesale abandonment would be to knock meaningful props out from under the Agreement of September 25, 1964. Conceivably there may be instances where the reductions affected in the carriers operations may properly be deemed to have been due to a "decline in business" but that is not the situation here.

Moreover, it was never intended that Section 3 of Article I should modify, supersede or otherwise water down any of the causes specifically listed in Section 2 of the same Article. The provisions of said Section 3 were not designed to nullify the particular changes in Carrier operations which are stipulated to be sufficient in themselves to activate the protective benefits.

Once it is established that the employees either have been deprived of employment or placed in a less favorable job situation due to one of the changes in Carrier operations spelled out in Section 2, the incidence of a "decline in business", appearing as a collateral factor in the background of events, is not a relevant consideration.

By bulletined posting of notice dated June 24, 1965, claimants were advised that their jobs would be abolished at close of tour of duty on July 1, 1965. Article I, Section 4, of the September 25, 1964 Agreement obligated Carrier to give claimants, via posting on bulletin board, and their General Chairman, via certified mail, not less than sixty days notice of the abolition of these jobs. Neither were the claimants given ample notice nor did the Carrier give their General Chairman any advance notice of the contemplated job abolition.

Under these circumstances claimants are eligible for protection against any dimunition of earnings for the entire span (60 days) of the prescribed notice period.

AWARD - 1. That the Carrier forthwith shall remunerate M. E. Walker, C. Haney, and J. Sampson, Jr. with the difference between the Coach Cleaner-Boiler Firemen rate and the respective applicable Laborer's rate for all hours worked by them during the period from July 2, 1965 to August 30, 1965, both inclusive.

2. That, in addition, M. E. Walker, C. Haney, and J. Sampson, Jr. shall also be accorded the employee protection provided in Article I of the September 25, 1964 Agreement.

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Harold M. Gilden
Referee

Employee Members

Carrier Members

Chicago, Illinois
January 25, 1966