S.B.A. No. 570
Case No. 260
Award No. 214

Special Board of Adjustment No. 570

Established Under

Agreement of September 25, 1964

Chicago, Illinois, October 8, 1970

PARTIES TO DISPUTE: System Federation No. 96
Railway Employes' Department
A.F.L. - C.I.O. - Carmen

and

Lehigh Valley Railroad Company

STATEMENT OF CLAIM:

1. That under the terms of the Agreement of September 25, 1964 the Carrier improperly dealt with and thereby damaged Carmen L. Searfoss, J. Ross, H. Reading, D. Alexander, Robert Detro, J. Bennett, P. Guererri, M. Zepkowski, A. DeGloam, R. Hall and John Bromley when the above named claimants were furloughed as a result of changes covered in Section 2, Article I, and further that said Agreement has been violated in that no notice was given as required by Section 4, Manchester, N.Y.

2. That accordingly, the Carrier be ordered to compensate the above named claimants and/or any other employe affected by displacement, at their applicable rate of pay for the number of days received payment with the issuance of a five (5) day notification and the sixty (60) day notification they were entitled to receive, a total of and additional fifty five (55) days compensation, and that they be given the protective provisions of Article I of the September 25, 1964 Agreement.

FINDINGS: Prior to October 29, 1968, Carrier had maintained an engine house, car repair cripple track and East and West bound transportation yard at Manchester, New York. Also, during this time, Carrier maintained two terminals; Suspension Bridge, New York and Tifft Terminal, New York, which were used for classification and handling of cars to and from other Carriers in interchange. The Transportation Yard at Manchester had been used primarily for classifying cars and making up trains. On October 29, 1968, Claimants were advised by written notice that their position as carman, at Manchester New York, were abolished and that they would be furloughed as of November 6, 1968. Since November 6, 1968, the work of classifying cars and making up trains in Manchester, New York, has been discontinued and that work has been handled at Tifft Terminal. The Organization contends that under the provisions of Article 1, Section

4, of the September 25, 1964 Agreement, Carrier should have given 60 days notice instead of the 5 days notice actually given; that Claimants were deprived of employment because of a transfer of work from the Manchester Yard to Tifft Terminal; and that, therefore, they are entitled to the protection provisions of the September 25, 1964 Agreement.

The Carrier, in defense of this claim, contends that there was a double handling of cars and trains at Suspension Bridge, Tifft Terminal and Manchester which was eliminated strictly due to a decline in business as provided for in Section 3 of the Agreement; that there was no transfer of work or abandonment of facilities as contemplated by the Agreement; that the elimination of duplicate handling reduced the need for shop craft employes; and that, therefore, Section 3 of the Agreement applies and that Section 2 is not applicable.

The Organization has objected to Carrier's exhibits 1 through 6, which exhibits are statistics showing a decline in business of Carrier. The Organization maintains that these exhibits were not handled on the property, and are, therefore, not properly before this Board. It is noted that in the exchange of correspondence on the property, Carrier, in several instances, reserved the right, in any future progression of this claim by the Employees, to submit the statistical exhibits to support Carrier's statement that a severe decline in business necessitated the action taken. Carrier also maintains in the argument that the Organization refused to discuss with the Carrier the six statistical exhibits introduced in the submission to this Board, and, therefore, Carrier maintains the right to present the said exhibits for the first time in their submission to this Board.

It is the opinion of this neutral that both Management and Labor are subjected to the same rules of evidence: that under these rules, this Board is precluded from considering evidence not considered on the property. There are no exceptions to this rule and none can be implied. There was nothing to prevent Carrier from attaching these exhibits in question in any of their letters of declination or other correspondence while this matter was being handled on the property. Therefore, the objection of the Organization is well taken and Carrier's exhibits 1 through 6 will not be considered. This reduces Carrier's allegation that Claimants were deprived of employment because of a decline in business to mere naked assertions unsupported by probative evidence. Under the evidence that can be considered in this appeal, Carrier's action consisted of a discontinuance of work at Manchester, New York, and a transfer of this work to Buffalo, New York, which places the resolving of this dispute under Section 2 of Article I of the Shop Craft Agreement, and not Section 3. Section 3 places the burden of proof on Carrier to prove a decline in business as the reason for its action. Having failed to sustain this burden by admissible probative evidence, this claim will be sustained.

AWARD

Claim sustained.

Adopted at Chicago, Illinois, October 8, 1970

Neutral Member

See attached dissent

Carrier Members

Labor Members