S.B.A. No. 570
Award No. 283
Case No. 325

SPECIAL BOARD OF ADJUSTMENT NO. 570

ESTABLISHED UNDER

AGREEMENT OF SEPTEMBER 25, 1964

Chicago, Illinois - January 28, 1972

PARTIES TO DISPUTE: System Federation No. 114
Railway Employes' Department
AFL - CIO - Firemen & Oilers

and

Southern Pacific Transportation Company
(Pacific Lines)

STATEMENT OF CLAIM: That under the provisions of Article I, Section 2 (a) Transfer of work; (b) Abandonment, discontinuance for 6 months or more, or consolidation of facilities or services or portions thereof; (c) Contracting out of work; Mediation Agreement Case No. A-7030 of September 25, 1964, the six (6) furloughed laborers at the abandoned car cleaning facility at Sacramento, California should have been given a 60 day notice and all the protective benefits contained in said Article I of the September 25, 1964 Agreement. The laborers positions were abolished and the car cleaning facility closed, resulting in the furlough at the close of shift January 13, 1970 of laborers C. Reed, E. J. Ollison, W. W. Echols, M. M. Wormely, G. Aldana and W. L. Langston. These above listed employes hereinafter referred to as the Claimants, should have been afforded the 60 day notice and the protective provisions of Article I of the September 25, 1964 Mediation Agreement, Case No. A-7030.

DISCUSSION AND FINDINGS: An important issue exists in this case. It appears that the Claimants were Laborers who held car cleaning positions at Sacramento. Their positions were abolished at the close of their shift on January 13, 1970. Carrier wrote the Employes on May 8, 1970 that "These job abolishments were made in the normal fluctuation of work and lack of cars to be cleaned, partially as a result of ICC regulations".

Employes contend that the Carrier has "abandoned its car cleaning facility at Sacramento, California". The work of clearing freight cars was primarily transferred to the shippers.

The record shows that prior to January 13, 1970 eight laborers cleaned cars on tracks 25, 26, 27, 28 and 29 by removing all dunnage and debris. Two such laborer positions were not abolished. They are still retained to do essential work. In addition to cleaning cars they perform a variety of other laborer duties.

Since 1903 shippers have been required by law to clean cars. But it was never enforced until the ICC issued a notice on October 20, 1969 which, in part, says:

> "The Interstate Commerce Commission by this notice cautions the public and carriers of consignees' duty to completely unload rail cars received loaded with goods that have moved in interstate commerce subject to carload rates and charges.
>
> "The Commission interprets Rules 14 and 27 of the Uniform Freight Classification to obligate consignees of carload freight to completely unload from such cars, at their expense, all dunnage, debris, or other foreign matter connected with the inbound shipment so as to return rail freight cars to the carrier in a condition for loading by another shipper without further unloading. The Commission reminds consignees that the attempted release as empty of a car which has not been completely unloaded or in which debris has been placed by a consignee is an unlawful solicitation of a trash removal privilege having the effect of a concession or discrimination forbidden by the Elkins Act and Section 6 (7) of the Interstate Commerce Act.

"The Commission expects all carriers by railroad subject to its jurisdiction to enforce Rules 14 and 27 of the Uniform Freight Classification to the extent that when a carrier becomes aware of the breach by a consignee of its duty to unload completely, the carrier is not to pull the car but to leave it at the consignee's tracks on demurrage or under special detention rules in accordance with applicable tariffs until the consignee has fulfilled its unloading obligation. Additionally, the Commission expects carriers, when they become aware that a consignee has put debris into a car released as empty, either to refuse the car and hold it on demurrage or under special detention rules, or to bill the consignee under applicable tariffs for the transportation of refuse".

The notice sets up an investigative force and provides for prosecution of the consignee or the carrier or both under the Elkins Act.

There was neither a "transfer of work" nor an "abandonment" under Article I, Section 2 of the September 25, 1964 Agreement. Carrier did not voluntarily transfer the work of cleaning cars to its consignees, nor did it abandon car cleaning operations. It merely complied with the legal order of the ICC and ceased cleaning consignees' cars. The mere fact that consignees were obliged by law to clean their cars prior to the October 20, 1969 ICC notice is of no criteria. That this law had not been previously enforced is also irrelevant. The fact remains that a law obligating consignees to clean their own car does exist and action to enforce that law was taken. Carrier could not ignore the law nor the ICC notice without subjecting itself to prosecution and resulting penalties.

It is a well established general principle of law that "a contract which binds a party to do that which is contrary to public policy is void". (17 Am Jur 2d para 176). Such a contract is unenforceable. In Award No. 221 this Board recognized this principle and said:

> ". . . The Courts of our land have held, without exception, that a provision in a contract of any type is a nullity if the same violates a Municipal, State or Federal law".

In Third Division Award No. 16325 a junior employe, who had a New Jersey license to operate a locomotive crane, was assigned to a vacant position. A claim by a senior employe was denied and the Board said:

> "The Sovereign State of New Jersey had by statute required persons engaging in operating locomotive cranes to first qualify by examination and obtain a license from the State to so engage. If the normal operation of the seniority rule was interferred with in this case it was on account of law and not management".

A comparable claim was denied for the same reason in Award No. 10977. See also Award No. 12970.

There are many awards holding that the Hours of Service Law takes precedence over specific contract provisions. In Award 10956, with this Referee, the Board held that the "Hours of Work Act like the Railway Labor Act is substantive law which takes precedence over procedural matters, past practices, and issues of fact. Neither may the parties by contract or practice, nor may this Board, ignore the specific limitation of work hours contained therein."

As a result of the law and the ICC enforcement notice, Carrier may no longer clean consignees' cars. Fewer laborers are needed. The abolishment of Claimants' position resulted from the decision of the ICC. No other employes of the Carrier are doing this work. Carrier did only what it was obligated to do by law. The work practice that existed prior to October 20, 1969 has no legal effect or obligation since its very essence was in violation of law. A practice may not contravene or ignore a statutory requirement. This is not a transfer of work, an abandonment of service or a discontinuance of a contract. See Awards 143, 144 and 145.

Upon the whole record and all of the evidence, it is the finding of the Board that Carrier's compliance with the law is not such an act that can be construed as a violation of Article I, Section 2 of the September 25, 1964 Agreement.

AWARD

Claim denied.

Adopted at Chicago, Illinois - January 28, 1972.

Neutral Member

Carrier Members

Employee Members