

SPECIAL BOARD OF ADJUSTMENT NO. 570

ESTABLISHED UNDER

AGREEMENT OF SEPTEMBER 25, 1964

Chicago, Illinois - January 28, 1972

PARTIES
TO
DISPUTE:

System Federation No. 66
Railway Employees' Department
A.F.L. - C.I.O. - Carmen

and

Soo Line Railroad Company

STATEMENT
OF
CLAIM:

That under the Agreement of September 25, 1964, the Carrier improperly dealt with and thereby damaged coach carman Richard W. Ginther when Passenger Trains 3, 4, 5, and 6 between Chicago, Illinois and Superior, Wisconsin, and between Owen, Wisconsin and St. Paul, Minnesota were discontinued during March 1965. Then the last remaining passenger trains 9 and 10 between St. Paul, Minnesota and Noyes, Minnesota were discontinued during the month of March 1967, and subsequently the aforementioned coach carman was furloughed on October 23, 1967.

DISCUSSION
AND
FINDINGS:

At Shoreham Shops there are seven Carmen seniority subdivisions. In addition, the Air Brake Shop is a separate and distinct seniority district. Carmen employed in the Air Brake Shop accumulate seniority while employed in that facility and, if they have any, they retain their seniority rights in their seniority subdivision.

Claimant was a Coach Carpenter since March 31, 1949, his subdivision seniority date. After a furlough on July 24, 1961, he was reemployed in the Air Brake Shop on September 5, 1961. Thus, he held seniority in the Air Brake Shop as of September 5, 1961 and on the Coach Carpenter roster as of March 31, 1949.

On October 13, 1967 a position of Coach Carpenter was abolished. Stanley Biernat held that position. He ranked immediately ahead of the Claimant on the Coach Carpenters' seniority roster. And he had no seniority in the Air Brake Shop. Notwithstanding this fact, and for no expainable reason, Biernat displaced the Claimant in the Air Brake Shop although this was contrary to the agreement terms. Claimant then reverted to his Coach Carpenter seniority. Had this not happened, Claimant would have remained at work in the Air Brake Shop, he would not have been furloughed and he would have suffered no loss of position or earnings. Only Coach Carpenter positions were abolished.

Carrier contends that if the Claimant has suffered a loss of earnings or an infringement of his rights, it stems from the erroneous application of the seniority provisions in the schedule agreement. This Board has no jurisdiction to adjudicate a violation of seniority rights. It properly belongs before another forum, presumably the National Railroad Adjustment Board.

But the record does not support Carrier's position. On October 17, 1967, when the Claimant was still working in the Air Brake Shop, the Carrier notified him as follows:

"Due to the reduction of company business,
you will be furloughed at the close of
your shift Monday, October 23, 1967."

Carrier unquestionably then felt that it had every right to furlough the Claimant because of a decline in business. The issue of seniority or proper forum was not raised on the property. On May 24, 1968 Carrier wrote to the General Chairman "that it was neither the discontinuance of Trains #9 and #10, not the fanning out of work, that prompted Mr. Ginther's furloughing, but rather a decline in Carrier's business, which necessitated a trimming of operating expenses through a reduction in forces . . ." The concluding paragraph in that letter says:

"It is Carrier's position that the furloughing of Mr. Ginther on October 23, 1967, was not due to causes listed, in Section 2 of Article I of the September 25, 1964 Agreement, but rather due to a decline in Carrier's business, which is listed in Section 3 of the same Article."

The issue before this Board is clearly the interpretation and application of the September 25, 1964 Agreement.

The only evidence of a decline in business offered by the Carrier is a comparison of gross operating revenues, net railway operating revenues, net ton miles, freight train miles and loaded cars handled in 1966 and 1967. All of this is undoubtedly accurate statistical information. But it does not show what part of the decline is attributed to a voluntary withdrawal of business and what part resulted from the discontinuance of Trains 9 and 10. This general information is not substantial evidence that Claimant was furloughed because of a decline in business.

The question at issue must be answered in the affirmative. Since the Claimant was restored to his position in the Air Brake Shop on December 13, 1967, he is entitled to protective benefits under the September 25, 1964 Agreement from October 23, 1967 to December 13, 1967.

AWARD

Claim sustained in accordance with the findings.

Adopted at Chicago, Illinois, January 28, 1972

David Solink
Neutral Member

E. F. Hawley

W. M. Fairwood
Carrier Members

Richard Martin

Chas. J. ...
Employee Members