Award No. 17
Case No. H&RE-5-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Hotel and Restaurant Employees and Bartenders International Union
and
The Chicago, Rock Island and Pacific Railroad Company

QUESTION AT ISSUE: The question at issue is whether an extra-protected employee on extra list where the extra board or list exists pursuant to Agreement and practice may be furloughed by the carrier where there is neither a decline in the carrier's business nor any emergency conditions as set forth in Sections 3 and 4 of Article I of the Agreement.

OPINION OF BOARD: The facts of record establish that the employee in this case was an extra man in active service on October 1, 1964 and was, therefore, a protected employee under the Mediation Agreement of February 7, 1965 and, more particularly, Section 1 of Article I of that Agreement. The Carrier furloughed the employee on August 14, 1965, because of a surplus of extra employees to perform the extra work required at that time. On April 14, 1966, he was advised by Carrier that his failure to protect an extra board assignment for which he was called on December 30, 1965, meant that he had ceased to be a protected employee and was no longer entitled to the protective benefits of the February 7, 1965 Mediation Agreement.

However, the sole issue before the Board is whether the Carrier violated the aforesaid Mediation Agreement when, on August 14, 1965, it furloughed the employee here involved.

The Organization's position is that unless there is a decline in a carrier's business in excess of 5%, as provided in Section 3 of Article I, or the existence of emergency conditions as set out in Section 4 of Article I, a carrier cannot furlough a protected employee. Therefore, the Organization asserts, the employee in this case was improperly furloughed because none of the conditions of the aforesaid Sections was present at the time the furlough took place.

The Board finds no contract bar to the furloughing of protected employees under the provisions of the Mediation Agreement in evidence here.

Sections 3 and 4 of Article I of the Mediation Agreement apply solely to reductions in the work forces of protected employees under the conditions set forth therein with consequent suspension of the protective benefits of the Agreement. Conversely, a protected employee who is furloughed suffers no suspension of those benefits. Thus the distinction between an employee adversely affected by a reduction in force and one who is furloughed is clearly drawn.

Moreover, Article II, Section 1, impliedly recognizes the distinction between a protected furloughed employee and an employee whose protection is suspended under Sections 3 and 4 of Article I by providing that "A protected furloughed employee who fails to respond to extra work when called shall cease to be a protected employee." (Emphasis supplied)

In view of the foregoing, the Board finds that the February 7, 1965 Mediation Agreement permits the furloughing of an extra-protected employee where there is neither a decline in the Carrier's business nor any emergency conditions as set forth in Sections 3 and 4 of Article I of that Agreement.

AWARD

The answer to the Question submitted is "Yes".

REFEREES:

Washington, D. C. - December 19, 1967