Award No. 119
Case No. CL-27-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and Union Terminal Company (Dallas)

QUESTIONS AT ISSUE:

(1) Did the Carrier violate the February 7, 1965 Agreement and in particular Article I, Sections 1 and 3 and Article IV, Section 1 when it reduced forces on September 15, 1965 on the basis that a loss in business had occurred, thus forcing E. E. Peyton, a protected employee to the furloughed list?

(2) Shall the Carrier now be required to pay Clerk E. E. Peyton, who was furloughed as a result of the said reduction in force during period September 15, 1965 to October 31, 1965 the difference between the normal rate of the position to which he was regularly assigned on October 1, 1964 plus subsequent wage increases and the amount he was paid while working as a furloughed employee during period September 15 to October 31, 1965?

OPINION OF BOARD: The Carrier herein is a passenger terminal, jointly owned by eight carriers, operating into and out of the City of Dallas. As such, it has no gross operating revenue and revenue ton miles which is the criteria specified in Article I, Section 3, of the February 7, 1965 National Agreement. More precisely, this section provides as follows:

> "In the event of a decline in a carrier's business in excess of 5% in the average percentage of both gross operating revenue and net revenue ton miles in any 30-day period compared with the average of the same period for the years 1963 and 1964, a reduction in forces in the crafts ----- may be made at any time during the said 30-day period -----."

The Claimant is a protected employee as of October 1, 1964. Thereafter, on September 15, 1965, his position was abolished and he worked extra as a furloughed employee for eighteen days during the claim period from September 16 to October 31, 1965. Although a number of other claims arose during the same period of time involved herein, these were resolved on the property.

Involved herein is Question and Answer No. 4, of the November 24, 1965 Interpretations, hereinafter quoted:

> "How does the decline in business formula apply to short lines or terminal companies for which data concerning net revenue ton miles or gross operating revenues may not exist?
>
> Answer to Question No. 4: Short lines or terminal companies for which data covering net revenue ton miles or gross operating revenues may not exist should enter into local agreements for the purpose of providing an appropriate measure of volume of business which is equivalent to the measure provided for in Article I, Section 3."

Concededly, the Organization recognized the Carrier's status as a terminal company and in conference on July 15, 1965, proposed a substitute measure consisting of total revenue ton miles and gross operating revenues in lieu of the criteria set forth in Article I, Section 3, in order to ascertain whether the Carrier had sustained a loss sufficient to warrant a temporary force reduction. Discussions ensued as to criteria application until October 5, 1965, without agreement. Eventually, on July 6, 1967, a Criterion Agreement was consummated.

The question presented herein involves the obligation placed on a terminal company as reflected by Question and Answer No. 4, of the November 24, 1965 Interpretations. What is the significance of the phrase "should enter into local agreements," as contained therein? Is this a permissive or mandatory requirement? Prior to analyzing this question, it should be noted that the answer to Question No. 1, applicable to this Article, provides for an anticipatory decline permitting Carriers to reduce forces.

In our view, Section 3 of Article I, specifies a criterion which may be applied in the event of a decline in business so as to permit Carriers to reduce forces. An anticipatory decline is permissible -- aware, of course, that in the event subsequent conditions did not substantiate the anticipated decline, those individuals who were improperly removed, would be compensated retroactively.

In the instant dispute, however, a different situation exists due to the inability of terminal companies to utilize the formula prescribed in Section 3. Predicated upon this fact, the November 24, 1965 Interpretations specifically provided for such contingency by including an admonition that these companies "should enter into local agreements". This counsel is directed at the Carrier and makes it obligatory and mandatory -- not permissive. On the other hand, does such requirement prevent the Carrier from anticipating a decline in business? We believe that Question and Answer No. 2 is required to be read in conjunction with No. 4. However, the Answer to Question No. 2, also provides that such information supporting the decline in business will be furnished as soon as available.

How was this handled on the property? On January 5, 1966, the Carrier replied in the following manner:

> "Since the February 7, 1965 Agreement is not in effect on this property until a local agreement is consummated, we have to decline the claim as presented until such time as agreement is made to cover the situation."

The fallacy evidenced herein is the Carrier's contention that the February 7, 1965 Agreement was not in effect on this property. This is completely contrary to our understanding of the National Agreement. Nevertheless, it is also noteworthy that this defense was propounded even subsequent to the Interpretations. In our view, the Carrier could not sit idly by and avoid its obligation to enter into a local agreement. Furthermore, arguendo, granting that the Carrier could anticipate a decline in business, it was, thereafter, required to furnish supporting data to the Organization as soon as available. However, the Organization alleges as late as September 28, 1966, the date the Organization's submission was approved for filing with this Board, without denial, that the Carrier had not

> "furnished the Organization with any information whatsoever with respect to loss of business as required by the Answer to Question No. 3, Article I, Sections 3 and 4 of the joint interpretations of November 24, 1965 nor has it made any attempt to reach agreement with the organization on the property on an appropriate measure of volume of business equivalent to the measure provided for in Article I, Section 3 in accordance with the Answer to Question No. 4, Article I, Sections 3 and 4 of the joint interpretations, since the joint interpretations of November 24, 1965 were entered into."

Moreover, if it is evident that the Organization refused to enter into a local agreement, such factor would necessarily be required to be taken into consideration. However, in the instant dispute, the facts indicate that the Organization sought to prod the Carrier to negotiate a local Agreement.

Hence, it is our considered opinion that under the circumstances reflected herein, the Carrier violated the February 7, 1965 National Agreement.

Award

Answer to questions (1) and (2) is in the affirmative.

Murray M. Rohman
Neutral Member

Dated: Washington, D.C.
August 7, 1969

COOPERATING RAILWAY LABOR ORGANIZATIONS

G. E. Leighty • Chairman
Railway Labor Building • Suite 804
400 First Street, N.W. • Washington, D. C. 20001
Code 202 RE 7-1541

John J. McNamara • Treasurer
Fifth Floor, VFW Building
200 Maryland Ave., N.E. • Washington, D. C. 20002
Code 202 547-7540

August 21, 1969

Mr. C. L. Dennis
Mr. H. C. Crotty ✓
Mr. A. R. Lowry
Mr. C. J. Chamberlain
Mr. R.W. Smith

SUBJECT: Dissents to Awards No. 115, 116, 117 and 118
Disputes Committee No. 605
(Signalmen Cases)

Dear Sirs and Brothers:

I am attaching hereto our dissents to Awards No. 115, 116, 117 and 118 in connection with Awards issued by Referee Zumas. These Awards are all contrary to our interpretation of the meaning and intent of the February 7, 1965 Agreement.

Fraternally yours,

G. E. Leighty

Chairman
Five Cooperating Railway Labor Organizations

Enclosure

cc: L. P. Schoene
F. T. Lynch

Dissent to Awards Nos. 115, 116, 117 & 118
Cases Nos. SG-17-E, SG-20-E, SG-22-E & SG-26-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

Dissent of Labor Members

These Awards all involve one question, namely, whether a carrier can escape the obligation to give sixteen hours advance notice of force reductions under emergency conditions pursuant to Section 4 of Article I of the February 7, 1965 Agreement by the device of temporarily suspending rather than abolishing positions.

Just on the face of Section 4 of Article I the conclusion in these Awards that the sixteen-hour notice is not required if there is a temporary suspension of positions is inexplicable. Neither the definition of the carriers' rights nor the requirement of the sixteen-hour notice is phrased in terms in any way depending on either abolition or suspension of positions: "a carrier shall have the right to make force reductions under emergency conditions" and "Sixteen hours advance notice will be given to the employees affected before such reductions are made." Certainly no one can doubt that in these cases there were force reductions; the whole claim of the employees is for the pay they lost through forces being reduced without their being given the requisite notice; the claim does not depend in any degree on whether positions were abolished or suspended or left undisturbed.

There is no reference in Section 4 of Article I (or, for that matter, anywhere else in the Agreement) to suspension of positions, and the only reference in the section to abolition of positions is in conjunction with force reductions and then in the context of a limiting proviso on the conditions under which emergency force reductions are permitted at all: "provided further that because of such emergencies the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed." (underscoring supplied). How one can conclude from this language, as the Neutral Member does, that "Section 4 of Article I does not apply in situations where the positions are not 'abolished'" is incomprehensible.

The result is seen to be the more bitterly ironical when one regards the history of the rule contained in Section 4 of Article I. That rule, in less rigid terms, had its origin in Article VI of the national agreement of August 21, 1954 to which fifteen non-operating organizations were party. That agreement was a very comprehensive one involving organization proposals with respect to vacations, holidays, health and welfare, premium pay for Sunday work and free transportation and carrier counterproposals on thirty-one rules matters. Carrier

Proposal Number 11 was for a rule permitting abolition of positions or force reductions with no advance notice in the event of a strike or emergency affecting the operations or business of the Carrier.

The entire dispute in which this proposal was involved came before Emergency Board No. 106. The carrier witness on their Proposal Number 11 was Mr. John J. Sullivan, Manager of Personnel, Southern Pacific Company, Pacific Lines. Mr. Sullivan testified that many rules of non-operating crafts required advance notice of force reduction without exception for emergency conditions beyond the carrier's control and that the period of notice required ranged from one to six days, averaging 48 hours. Moreover, said Mr. Sullivan, even where there was no rule requiring advance notice or where the required notice was given, the carrier, in order to escape liability, had actually to abolish the position; merely suspending the positions would not do. Transcript pp. 2153-2156. (Third Division Awards Nos. 3701, 3838, 4001, 4327, 5178 and 6471 illustrate Mr. Sullivan's point as to the insufficiency of suspension for escape from liability.)

Emergency Board No. 106 was evidently impressed by Mr. Sullivan's testimony and recommended that the organizations agree to a rule permitting the carrier, without advance notice, to abolish positions or reduce forces "when emergency conditions arise over which a carrier has no control, which actually cause the work being performed by certain of its employees to cease to exist . . ." See Report of Emergency Board No. 106, pp. 63-64. But the unions felt so strongly about the right of their people to have some minimum hours of notice before layoff even under these most extreme conditions that they refused to accept the Emergency Board recommendation. They did agree, however, that under the stated conditions forces might be reduced upon giving sixteen hours advance notice. It is the rule then adopted, with some further restrictions, that Section 4 of Article I preserved against the general prohibition of force reductions contained in the February 7, 1965 Agreement.

It is only in light of this history that one can appreciate the true enormity of the wrong that has now been imposed by the Neutral Member upon the signatory organizations. Not only does he now hand to the carriers by interpretation a concession the organizations specifically refused to agree to fifteen years ago, but now he says the device by which it may be made effective is the very device (as distinguished from job abolition) that was acknowledged earlier as being ineffective in circumstances where job abolition would have been effective.

Truly, there can be no better example showing why unions cannot afford to submit agreement-interpretation to arbitration. The precise point they refuse to concede in negotiations is stolen from them by arbitration of an interpretation dispute.

COOPERATING RAILWAY LABOR ORGANIZATIONS

G. E. Leighty • Chairman
Railway Labor Building • Suite 804
400 First Street, N.W. • Washington, D. C. 20001
Code 202 RE 7-1541

John J. McNamara • Treasurer
Fifth Floor, VFW Building
200 Maryland Ave., N.E. • Washington, D. C. 20002
Code 202 547-7540

August 11, 1969

Mr. C. L. Dennis
Mr. H. C. Crotty
Mr. A. R. Lowry
Mr. C. J. Chamberlain
Mr. R. W. Smith

SUBJECT: Disputes Committee No. 605
February 7, 1965 Agreement
Awards No. 119 to 127 inclusive
(Clerks Cases)

Dear Sirs and Brothers:

I am enclosing herewith a copy of Awards No. 119 to 127 inclusive which were signed by Referee Rohman on August 7, 1969. We discussed several of these cases with Referee Rohman and the Chairmen of the three carrier's conference committees.

Inasmuch as the Referee has affirmed his decision in Award No. 43 to which we dissented, we are again dissenting in Award No. 124 which relates to the same subject. A copy of that dissent will be furnished you in the next few days.

With this one exception, the decisions of the Referee quite generally follow the lines of interpretation which we contend are correct.

Fraternally yours,

G. E. Leighty

Chairman
Five Cooperating Railway Labor Organizations

cc: L.P. Schoene
Frank Lynch