Award No. 202
Case No. CL-32-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE )

Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express & Station Employees
and
The 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 April 9, 1966, whereby Red Cap Harry Thomas was reduced to the furloughed list and when on April 30, 1966, it reduced forces causing Red Caps Ben D. Scott and David Jackson to go on the furloughed list on the basis that a loss of business had occurred?

(2) Shall the carrier now be required to return Harry Thomas, Ben Scott and David Jackson to active service and retain them in such service until such time as it can show that it has suffered a decline in business based upon the formula set out in Article I, Section 3 or upon a local agreement providing an appropriate measure of business equivalent to the measure provided for in Article I, Section 3, and subject to the other provisions of the agreement of February 7, 1965?

(3) Shall the carrier now be required to pay Red Caps Harry Thomas, Ben Scott and David Jackson the difference between the normal rate of compensation of the position to which each was regularly assigned on October 1, 1964, plus subsequent wage increases, and the amount they have been or will be paid while working as furloughed or extra employes during the month of May 1966 and each subsequent month thereafter until they are returned to active service or until such time as the carrier can show that it has suffered a sufficient decline in business which would permit it to reduce them to the furloughed list based upon the formula set out in Article I, Section 3 or an appropriate substitute to measure business is agreed upon, whichever occurs first?

OPINION OF BOARD:

The Carrier is a passenger terminal jointly owned by eight Carriers operating into and out of the City of Dallas, Texas. It has no gross operating revenue and revenue ton miles -- the criteria established in Article I, Section 3, of the February 7, 1965 National Agreement. Hence, Question and Answer No. 4, of the November 24, 1965 Interpretations, is applicable, i.e., they are required to negotiate on an equivalent measure.

In this regard, the Carrier asserts that a substitute formula was negotiated and accepted by the General Chairman of the Clerks' Organization; however, the Local Chairman of the Red Caps declined to acquiesce.

OPINION OF BOARD: (Cont'd.)

The Organization, in turn, abjures this contention. Instead, it argues that the Carrier has never furnished it with information pertaining to loss of business, nor has the Carrier 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 ---." etc; etc; etc.

Again, we are confronted with dialectics. Each party accusing the other with a refusal to negotiate a substitute formula as directed by the Interpretations.

We shall state our position once more. It is our firm view that both parties are not only obligated, but mandated, to negotiate an agreement which would provide a substitute formula for the criteria set forth in Article I, Section 3. See our Award Nos. 119, 155 and 156.

In this posture, we are remanding the matter back to the parties, with the understanding that they will be required to reach an agreement on a substitute criteria within sixty days. In the event they fail to reach such agreement within that period of time or as mutually extended, and the matter is returned to us for further action, we shall then expect the parties to justify their conduct. Such justification will include sufficient data to enable us to evaluate a refusal to negotiate, if such does occur. Where, in our judgment, it appears that one of the parties was recalcitrant, the burden of overcoming such presumption will be on that party to justify its action.

We would strongly urge the parties to reach an agreement on a substitute formula. We would further suggest that where one of the parties submits a proposal which is unacceptable to the other, then the rejecting party is obligated, nay, duty-bound, to submit a counter proposal. Of course, we recognize that neither party is required to accede to the other's proposal. However, we are also indicating that, if necessary, we shall be compelled to determine whether good faith bargaining has taken place. Such bargaining will be judged on the basis of proposals and counter-proposals -- not simply on a take-it-or-leave-it attitude. We are, furthermore, indicating that in the event the parties fail to agree upon a proposed criteria as an equivalent measure of a decline in business, then we shall not shirk our responsibility.

Award

The Issue is remanded back to the parties for negotiation of a substitute formula in accordance with the Opinion.

Murray M. Rohman
Neutral Member

Dated: Washington, D.C.
April 20, 1970