Award No. 215
Case No. CL-75-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and New Orleans Union Passenger Terminal

QUESTIONS AT ISSUE:

(1) Did the Carrier violate the provisions of the Agreement of February 7, 1965 when, commencing August 25, 1968, and thereafter, while continuing protected employes:

J. Alexander	J. Gair	E. Moses
J. Borrelli	C. Goudeaux	A. Owens
E. Borrelli	A. Goosman	F. Roane
T. C. Boone	H. Greo	T. Regan
A. Bosch	P. Guggino	J. Saltaformaggio
I. Benton	C. Hogan	R. Steppe
J. Carter	E. Holiday	H. Thomas
R. Cedor	S. Hurley	J. Terrell
I. Currera	M. Hill	J. Turner
G. Council	I. Joshua	L. Tracy
C. Cottone	J. Joshua	R. Voigt
J. Coates	W. Johnson	B. VanOsdell
A. Davis	F. L. Jones	E. West
G. Easter	F. L. Leonhard	H. Williams
J. Eignus	A. L. Mack	S. C. Williams
J. White	W. F. Young	

in service, it failed and refused to compensate them under Article IV?

(2) Shall Carrier now be required to compensate the above named employes who were retained in service in accordance with Article IV of the February 7, 1965 Agreement commencing August 25, 1968, and continuing thereafter as long as they retain their protected status?

OPINION OF BOARD: As a Passenger Terminal, the Carrier herein executed an Agreement with the organization on March 3, 1966, wherein the parties provided for an appropriate measure of volume of business which is equivalent to the formula contained in Article I, Section 3, of the February 7, 1965 National Agreement. Thereafter, on October 19, 1966, the rosters of Seniority Districts 3 and 4 were merged by Agreement and seniority dates dovetailed into one roster.

As a result of a decline in business, the Carrier placed into effect the formula established in Article I, Section 3, of the February 7, 1965 Agreement. In addition, every thirty days the Carrier furnished the Organization with statements indicating the extent of the decline in business.

The Organization concedes that Section 3 of Article I, provides for a reduction in forces as contemplated therein based upon a decline in business. However, it controverts the right of the Carrier to reduce the compensation of the affected employees who are in service. The basis for the latter contention by the Organization is predicated upon the fact that those employees who lost jobs as a result of a decline in the Carrier's business were able to secure other jobs as mail handlers in the Carrier's service. In essence, the decline resulted in those jobs formerly located in the Ticket Office or related departments, whereas the jobs as mail handlers did not decline due to a shift in mail handling from passenger trains to trucks and piggy-back trailers. Of course, the mail handlers' job paid a lower rate. Furthermore, the Carrier contends that those affected employees who did not fall within the percentage of business decline, above 5%, received additional compensation due to working a lower rated job.

At this juncture, we are unable to ascertain whether the Carrier complied with that portion of Section 3 of Article I, which required it to recall in accordance with the same formula within 15 calendar days upon restoration of a Carrier's business. However, in our view, this aspect can readily be determined on the property.

Thus, the issue presented herein is whether the Carrier may suspend the guarantee during a decline in business as contemplated by Article I, Section 3, of the February 7, 1965 National Agreement, or more specifically, the March 3, 1966 Implementing Agreement, and continue to use the services of those employees affected by the decline in business in another capacity? In this regard, the Organization vigorously insists that Article IV, Section 5, of the February 7, 1965 National Agreement, proscribes such application, unless the protected employee is furloughed due to the decline in business.

Admittedly, the Carrier had a right to reduce forces pursuant to the established formula. It is also required to recall such forces upon restoration of its business. Insofar as the question of recall due to restoration of its business is concerned, we have indicated our disposition of this facet. Nevertheless, predicated upon the assumption that affected employees were not required to be recalled, is the Carrier permitted to utilize the services of these employees in a different category without protection compensation, once it is shown that Carrier had a right to reduce such forces?

What is the effect of Article IV, Section 5, of the February 7, 1965 Agreement? The pertinent portion of Section 5, hereinafter quoted, provides as follows:

> "A protected employee shall not be entitled to the benefits of this Article during any period in which he fails to work due to - - -; nor shall a protected employee be entitled to the benefits of this Article IV during any period when furloughed because of reduction in force resulting from seasonal requirements (including lay-offs during Miners' Holiday and the Christmas Season) or because of reductions in force pursuant to Article I, Sections 3 or 4, - - -."

Does the above-quoted Section require that employees first be furloughed, or is it sufficient that a Section 3 reduction in force occurred? For the record, a decline in business induced a reduction in force. Who stood to benefit by hiring the reduced forces in a different capacity? Needless to say, the affected employees. Regardless of the simplicity of this analysis, it is, furthermore, our view that technically the Carrier's position is proper herein. Section 5 provides for a suspension of benefits ". . . or because of reductions in forces pursuant to Article I, Section 3 . ." It does not provide for "furloughed because of reductions in forces."

Despite our conclusion, we cannot desist from expressing our admiration for the ingenious argument advanced by the Organization's representative that the furlough is a condition precedent to the subsequent utilization of the forces, albeit in another capacity, who were affected by the decline in business.

AWARD:

The answer to Questions (1) and (2) is in the negative under the peculiar circumstances involved herein. However, the local parties shall be required to review whether affected employees should have been recalled pursuant to Article I, Section 3.

Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
July 8, 1970