

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21522  
Docket Number MW-21496

Robert J. Ables, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(St. Johnsbury & Lamoille County Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) Trackman Roger Stone shall be reimbursed for all wages lost since February 1, 1975 because he was deprived of the exercise of displacement rights. (Carrier's 'File - Union Maintenance of Way')

(2) Each employee (named below) shall be paid in full for all vacation time due them in the calendar year 1974 (specified below) which each of them earned in the calendar year 1973.

<u>NAME</u>	<u>VACATION PERIOD</u>	<u>NAME</u>	<u>VACATION PERIOD</u>
William H. Arel	15 days	Roy E. Lamphire	10 days
Norman J. Bergeron	15 "	Kenneth J. Mercier	10 "
Leonard Bray	15 "	Kirk J. Patch	10 "
Kenneth C. Hill	15 "	Raymond Phillips	10 "
Richard G. Perkins	15 "	Hermie Raymond	10 "
		Robert L. Smith	10 "
Jeffery Bryce	10 "	Archie A. Fournier	10 "
Fred Garrow	10 "		
Albert N. Goodell	10 "	William D. Garrow	5 "
Raymond Jettie	10 "	Roger A. Stone	5 "

(Carrier's 'File - Union Maintenance of Way')

OPINION OF BOARD: The Organization may have sandbagged the Carrier into paying this claim but they are entitled to protection of the labor agreement.

By the end of 1972 the Carrier was effectively bankrupt.

It had filed an application with the Interstate Commerce Commission to abandon its entire line. There were protests against the abandonment from a wide variety of interested groups including "railway labor." When it became clear the State of Vermont would purchase the railroad and provide the same basic service, all parties withdrew their protests.

To formalize agreements reached, all parties entered into a stipulation providing in substance that they would urge the Commission to

grant the application as promptly as possible, on condition that operation of the line be continued by the Vermont Transportation Authority, or some other purchaser, which would be required to continue to provide the necessary rail service.

Based on this stipulation, the Interstate Commerce Commission approved the abandonment, subject to the concurrent condition of continued operations.

The State of Vermont purchased the railroad and leased it to an operator which retained the same name, "St. Johnsbury & Lamotte County Railroad" and provided the same basic service as before with the same employees.

According to the ICC, "Labor representatives do not oppose the abandonment under the stipulation agreement and have made no request for conditions for the protection of employees." The stipulation on behalf of such labor representatives was signed by the United Transportation Union.

Against this background, the employees here claim pay for vacation time due them in calendar year 1974, which was earned in calendar year 1973. (1)

The claim of Trackman, Roger Stone, in Docket MW-21496 to be reimbursed for lost wages because he was deprived of displacement rights was not sufficiently established at the Board; accordingly it will be denied.

The Carrier's case against paying these vacation claims is stronger on equitable grounds than on the law.

From the beginning the Carrier has taken the position that whatever vacation pay claimants may be entitled to were earned and vested under the prior management and did not survive the order of the Interstate Commerce Commission permitting the abandonment and the subsequent purchase of the railroad by the State of Vermont. In short, the Carrier denied the claims on the basis that a collective bargaining agreement did not exist between the Carrier and the Brotherhood of Maintenance of Way Employees after the sale of the railroad. To support this conclusion,

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(1) In Docket MW-21496 concerning vacation claims in 1974 there are 18 employees, 14 of whom are also named in Award 21524. In Award 21524 concerning vacation claims in 1973 and 1972 there are 25 employees 14 of whom are also named in Award 21522.

As the basis and reasoning applicable to each claim is the same, the Opinion of the Board in Docket MW-21496 will apply with equal effect in Award 21524.

the Carrier emphasizes that the services of the National Mediation Board were invoked by this Union on April 3, 1975 to investigate and determine who may represent, for the purposes of the Railway Labor Act, certain employees in the class or craft of maintenance of way employees. The Carrier notes with special emphasis the statement by the National Mediation Board that:

"At the time application was received, these employees were not represented by any organization or individual."

The Organization maintains, to the contrary, that it had a collective bargaining agreement with this railroad before, during and after the ICC authorization to abandon, concurrent with the sale to the State of Vermont, and that it neither waived its rights under this agreement nor joined with other railroad labor organizations in surrendering vested rights under the collective bargaining agreement at the time of the sale of the property to the State of Vermont. As to the certification by the National Mediation Board in 1975, the employees assert that the election (which certified this union) was requested to settle once and for all with the new management of this railroad that this organization represented the maintenance of way employees, noting in particular in its underlying letter to the NMB on April 3, 1975 that the request for certification was prompted only because "the new owners refused to recognize this organization as the duly accredited representatives of Maintenance of Way employees on this property" despite that union having held an agreement on this property since 1942 and that, following action by the Interstate Commerce Commission, the railroad did not cease to operate but in fact continued to operate in the same manner with the same employees performing the same duties. Thus the request of the union invoking the services of the National Mediation Board was merely "to verify" their certification.

On these facts, this Organization took no part in protecting the interests of its employees at the time the ICC was considering authorizing the abandonment of the line which would have wiped out all jobs. And this union left undisturbed a public record in which the ICC clearly believed it had before it such labor organizations as were representing all the railroad employees on this property. And it made no contribution to improve the chances of economic success of the railroad under new management, as the parties to the stipulation had done, as by agreeing to certain changes in railroad operations and practices without exacting a price or condition for such concession, as in the agreement of the United Transportation Union not to request protective conditions for employees adversely affected by the abandonment and subsequent realignment of operations.

The case for equitable estoppel against the claims of the Organization here could hardly be stronger. But the Carrier has chosen to defend against the claim on the basis that the labor agreement between the parties did not survive the sale of the property to the State of Vermont and the question of the validity of an agreement under such conditions is too important to take the chance that a denial of the claim on the basis of equitable estoppel might be taken as an affirmation by this Board that a labor agreement is in fact subject to termination upon change in ownership of railroad property. To the contrary, the law seems to be well settled that the collective bargaining agreement of the parties survives a change in ownership of the property. (2)

The Carrier also argues now, before the Board, that the claims were not timely filed, noting with special attention that the claims for pay were presented for vacation time earned as much as two years prior to the claim for payment.

The evidence in the record does not support Carrier's contention on a procedural defect in the filing of these claims. The only rebuttal by the Carrier on the property against the claims was that they were not valid against this railroad because there did not exist a collective bargaining agreement between the parties. The Carrier's statement that:

"Vacation rights were earned prior to abandonment and the employees waived rights at abandonment proceedings."

and that

"If there is liability then it is the prior owner and operators for the State of Vermont which acquired the railroad by a purchase in 1973 and the petitioner should apply to these sources for adjustment."

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(2) The Organization cited awards by this Division as supporting the union view that the labor agreement survives a change in ownership, such as 4756-4761. These decisions only generally support the Organization's position. It does seem that so important an issue in this case would have been better developed but notice can be taken that many labor agreements, particularly in the transportation industry, such as bus and airline, contain provisions for the protected employees to follow the work upon sale, acquisition or merger of the property.

indicates that the Carrier did not contest the timeliness of the filing of the claims.

On the record: the claims were timely filed; the certification election won by this union in 1975 verified the authority of this Organization to represent Maintenance of Way Employees on this property; the Organization did not waive any vested rights under the ICC order; the Organization did not authorize the United Transportation Union to speak for it before the ICC; and, although a strong argument against the claims can be made on the basis of equitable estoppel, the vacation claims should be sustained because the labor agreement survived the change in ownership; but Claim No. 1 is denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated in accordance with the Opinion.

A W A R D

Claim No. 1 is denied.

Claim No. 2 is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A.W. Paulson  
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1977.