JUDGE ARTHUR W. SEMPLINER

ARBITRATION UNDER SECTION 4

NEW YORK DOCK, I.C.C. FINANCE DOCKET 28676-IF
360 I.C.C. 60 (1979)

IN THE MATTER OF

GRAND TRUNK WESTERN RAILROAD

UNITED TRANSPORTATION UNION

AWARD

JUDGE ARTHUR W. SEMPLINER
Arbitrator

APPEARANCES

GRAND TRUNK WESTERN RAILROAD
D. E. Prover
Richard O'Brien
Donald Vane

UNITED TRANSPORTATION UNION
Clifford Bryant
Robert Richie
R. W. Twyford
J. D. Doncoes

DECISION AND AWARD

Background

The Grand Trunk Western Railroad, on November 30, 1979, was granted authority under the Interstate Commerce Commission Finance Docket 28676 to acquire control of the Detroit and Toledo Shore Line Railroad Company and the Detroit Toledo and Ironton Railroad Company. The DT & I Railroad was acquired on June 24, 1980,

and the D&T SL on April 13, 1981. The labor protective provisions of the New York Dock Railway - Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979) were imposed as a condition of acquisition.

The parties met pursuant to the requirement of the New York Dock agreement, and failed to reach an understanding, whereupon the carrier, in conformance with the requirements of the New York Dock, on July 23, 1981, served notice on the unions representing the employees, that there would be a rearrangement of work. After a number of meetings between the carrier and the union, agreement could not be reached, and on December 7, 1981, the carrier informed the union they would submit the dispute to arbitration, pursuant to Article 1, Sec. 4(a) of New York Dock.

The undersigned was named as neutral arbitrator, oral arguments and submissions were heard January 15, 1982 in Detroit, Michigan.

Discussion

The carrier's notice of July 23, 1981 proposed a rearrangement of forces whereby the DT & I employees would man the assignments and do other work from MP 32 to MP 50.2, including Dearoad, Michigan, while D&T SL employees would have rights to Temperance Yard-Toledo, becoming a part of Lang Yard switching limits, performing industrial switching and other related work at Temperance Yard, including the handling of cars between Temperance Yard and Lang Yard.

The organization argues that all D&T SL employees should be certified as being adversely affected, that D&T SL employees be allowed to work on certain equity assignments under the D&T SL agreements. The agreement that D&T SL employees be allowed to work under their D&T SL agreement is not practical. The result would be two employees working the same assignment under different rates of pay and working conditions, an impossible administrative position.

The I.C.C. authority encompassed a proposed new system integrating the three railroads into a single system with anticipated improvements in service, plant and equipment, under a single labor agreement all subject to the protective provisions of the New York Dock. Section 4 of Appendix III New York Dock provides for notice when a proposed action by the carrier may cause rearrangement of forces involving the displacement of employees. The carrier served such required notice on July 23, 1981, providing adequately for work equity. Should such work equity be claimed not to work out in practice, this board reserves jurisdiction to review the issue on the basis of actual practice and use, upon the complaint of any organization or employee at any time prior to January 1, 1984. It is to be understood that such work equity principle must work out in practice, to a percentage of work equal to that percentage of work formerly performed by that group before the coordination. The carrier letter of July 23, 1981 provided for the rearrangement of work and working territories of DT & I and D&T SL employees. The changes

proposed were outlined, and as follows, an estimate of employees adversely affected was included as follows:

> "Overall, it is anticipated 2 engineers, 2 conductors and 4 brakemen on the D&T SL Railroad could be adversely affected, and 3 engineers, 3 firemen, 3 conductors, and 6 brakemen on the DT & I Railroad could be adversely affected."

The organization asks that particular attention be given to section 2 of New York Dock which provides, in part:

> "The rates of pay, rules, working conditions and all collective bargaining and other rights ---------- and/or existing collective bargaining agreements shall be preserved-------."

Section 2 must be read as part of the entire agreement together with the entire purpose of the agreement. Thus here the purpose was to consolidate, integrate, and bring the two railroads under a single management and working agreement. The original working agreements are in place governing UTU - D&T SL employees working on former D&T SL territory. When former D&T SL employees bid out to work on former DT & I territory, they voluntarily accept the contract there in force by virtue of the bid. In the selection of forces, the carrier has the burden of working out job equity, and should an employee be adversely affected, Section 4 provides a remedy for equalization. To accelerate any such redress, as the need appears

in practice, this board reserves the jurisdiction on any such complaint filed within 24 months of the date of this award.

In a similar arbitration, Neutral Leverette Edwards, a neutral with many years experience, in proceedings with parties Norfolk and Western, Illinois Terminal Railroad, wrote: "There are decisions both ways on that issue, and the artibtrator cannot say that there is no authority to revise or rearrange some provisions of a working agreement -------." Neutral Edwards conditions the authority to revise or rearrange the provisions of a working agreement on a showing of good cause or necessity.

Here, both committees are under the agis of the UTU parent union. Had the situation been otherwise, and had the committees been under the parenthood of different national unions, then the cause and necessity would be tempered by the necessities of providing balance in the two representations. Here the two railroads have basically parallel properties with similar or duplicated facilities. It serves no purpose to maintain duplicated yards or trackage. What the carrier has proposed is to eliminate redundant facilities thus causing operating efficiencies. Encompassed within the scope of increasing operating efficiencies is the necessary discontinuance of certain redundant positions which will have an adverse affect on a small number of employees. Provision has been made for the protection of such employees. The bulk of the employees of both carriers will continue as before under the same contracts. Work at Lang Yard and Temperance Yard (now a part of Lang Yard) will be performed by

former D&T SL employees, VICE DT & I employees, under the D&T SL contract. Industrial work from MP 32 to MP 50.2, including Dearoad on the Shore Line Sub of the GTW, will be performed by the former DT & I contract.

AWARD: AWARD IS RENDERED AS PER THE FOREGOING DISCUSSION. THE AWARD IS EFFECTIVE FORTHWITH, SUBJECT TO SEVEN DAYS NOTICE BY THE CARRIER.

Arthur W. Semplner
Arbitrator

Detroit, Michigan

February 11, 1982