

N/40-1

SPECIAL BOARD OF ADJUSTMENT
ESTABLISHED PURSUANT TO
SECTION 11 OF THE
NEW YORK DOCK II CONDITIONS

CASE NO. 1

PARTIES) BROTHERHOOD OF RAILWAY CARMEN OF THE UNITED STATES
) AND CANADA
TO)
)
DISPUTE) SEABOARD SYSTEM RAILROAD

STATEMENT OF CLAIM:

"Request that the Louisville and Nashville Railroad Company compile the test period averages of 'Dismissed Employees' Carmen M. Cornett, D. P. Rimer, D. M. Wood, A. B. Adkins and R. Harris as provided for in Sections 5 and 6 of the New York Dock Agreement, and make these men whole for any difference in pay and continuing for a period of six (6) years or until such time as they may have been recalled to their positions as Carmen at DeCoursey Shops, Covington, KY." (BRC File 574-900-T-165; L&N File 16-AA-(82-1043)M3.

BACKGROUND:

The claim involved in this dispute is for protective benefits as provided by the Interstate Commerce Commission in transactions it authorized under Finance Docket No. 28905 (Sub. No. 1) and related proceedings, the employee protective conditions being those set forth in New York Dock Ry Control - Brooklyn Eastern Dist. 354 ICC 399 (19-78), as modified at 360 ICC 60 (1979) (New York Dock II Conditions).

The dispute involves the coordination of certain facilities, operations and services of The Baltimore and Ohio Railroad Company (B&O) and the former Louisville and Nashville Railroad Company (L&N), the latter (L&N) having meantime merged with the Seaboard Coast Line Railroad and the new corporation now being known as Seaboard System Railroad (SBD or Carrier).

In pursuance of the ICC authorized coordination, the B&O and L&N served notice on the Brotherhood of Railway Carmen of the United States and Canada (BRC) under date of January 19, 1981 of the intent of the B&O to discontinue operation of TOFC ramps located at Cincinnati, Ohio and Jeffersonville, Indiana and transfer such work to the

L&N and, further, to consolidate and coordinate remaining carman work at Jeffersonville, Indiana with work performed by carmen at Louisville Terminal, Louisville, Kentucky on L&N. A bulletin board notice of the same date more fully described the consolidation and coordination to be as follows:

"Work at the Cincinnati TOFC ramp accruing to carmen under the provisions of the Collective Bargaining Agreement between L&N and Brotherhood Railway Carmen will be performed by employees on the carman seniority roster at DeCoursey, Kentucky. The effect on employees will be the abolishment of five (5) B&O carmen positions and the rearrangement of three (3) B&O carmen relief positions that, in part, relieve the abolished positions.

Work at the Louisville TOFC ramp accruing to carmen under the provisions of the Collective Bargaining Agreement between L&N and Brotherhood Railway Carmen will be performed by employees on the carman seniority roster at Louisville Terminal, Louisville, Kentucky. Additionally, remaining carman work at Jeffersonville, Indiana will be consolidated and coordinated with work performed under the L&N Agreement by carmen on the roster at Louisville Terminal, Louisville, Kentucky. The effect on employees will be the transfer of four (4) carman positions at Jeffersonville, Indiana (Washington, Indiana carmen's roster) to the L&N carmen's roster at Louisville Terminal, Louisville, Kentucky and the abolishment of one (1) Assistant Car Foreman position at Jeffersonville, Indiana.

Negotiations with employee representatives for the purpose of reaching an agreement to implement the above changes and protect the interests of the employees involved in the above-mentioned changes will commence as soon as possible."

Thereafter, under date of April 15, 1981, the B&O and L&N entered into an Implementing Agreement with the BRC concerning the intent of the aforementioned notice.

Sections 3, 4, 5 and 6 of the April 15, 1981 Implementing Agreement read:

"3. Positions to be established on L&N at DeCoursey Yard, effective with the date of coordination, will be bulletined at Cincinnati, Ohio, for a period of ten(10) days and will accrue to employees on the Cincinnati Carmen Roster Western Region Seniority Point 25.

4. Upon expiration of the ten-day bulletin, determination will be made of the employees who have bid and who have been awarded a position at DeCoursey Yard. In the event any position advertised at DeCoursey Yard is not filled in accordance with the foregoing, employees on the Cincinnati Carman Roster will be assigned the unfilled position(s) in reverse seniority order.

5. (a) Employees accepting positions at DeCoursey Yard on the L&N will have their seniority date, as it appears on the Cincinnati, Ohio Carman's Roster, dovetailed on the appropriate roster to which transferred upon reporting to work, and their name will be removed from the Cincinnati, Ohio Carman Roster. Where, following this procedure results in two (2) or more employees having the same seniority date on the dovetailed roster, their respective positions on the roster will be determined by continuous service standing and then by lot.

(b) Employees transferring to DeCoursey Yard will be assigned positions in accordance with the bulletins advertising positions; thereafter, changes in the coordinated operation in the filling of vacancies, abolishing or creating positions and reductions or restoration of force will be governed by application of the L&N Scheduled Agreement.

(c) B&O carmen who are awarded or assigned positions in the coordinated DeCoursey Yard operation will become L&N employees subject to the rules of the Agreement between Louisville and Nashville Railroad Company and Brotherhood Railway Carman of the United States and Canada.

6. In order that the provisions of the first proviso set forth in Article I, Section 3 of the New York Dock conditions may be properly administered, such employee determined to be a displaced or dismissed employee as a result of this Agreement, who also is otherwise eligible for protective benefits and conditions under some other job security or other protective conditions or arrangements shall, within ten (10) days after notification of his monetary protective entitlement under the New York Dock Conditions, elect between the benefits thereunder and similar benefits under such other arrangement. In the event an employee does not make an election within the ten (10) day period specified herein, he shall be considered to have elected to retain the protective benefits he is presently eligible to receive. This election shall not serve to alter or affect any application of the substantive provisions of Article I, Section 3."

The coordination was thereafter implemented on May 15, 1981. At this time, five B&O carmen positions were abolished and the seniority of the five B&O employees was dovetailed on the L&N Carmen's Roster at DeCoursey. Two of the former B&O employees exercised seniority to and were awarded carmen positions at the L&N's TOFC ramp, and the remaining three former B&O employees exercised seniority to and were awarded positions at DeCoursey Yard.

Subsequently, on December 14, 1981, a bulletin was issued at DeCoursey announcing the furlough from service of the five named Claimants effective December 21, 1981.

On December 28, 1981 the five named Claimants submitted requests or claims for the protective benefits of the New York Dock Conditions. The claims were handled in conferences on the property and then by agreement of the parties referred to this Board for determination in keeping with the arbitration of disputes mandates of the New York Dock Conditions.

POSITION OF THE EMPLOYEES:

It is the position of the Employees that the Claimants are "Dismissed Employees" as defined in Section 1(c) of the New York Dock Conditions. Section 1(c) reads:

"(c) 'Dismissed employee' means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction."

The Employees maintain: "[T]he Carrier has, with intent, furloughed the Claimants in anticipation of the ultimate coordination of all forces at the B&O facility at Cincinnati and the L&N facility at DeCoursey that became an actuality effective 12:01 AM, June 18, 1984, in line with the decision rendered by the Honorable William E. Fredenberger, Referee in a decision rendered May 1, 1984."

The Questions at Issue before the Fredenberger Board were as follows:

- "1. Should the entire L&N roster be dovetailed on-
to B&O roster?
2. Were the ten employees furloughed in August and
September (1983) furloughed in anticipation of

the coordination, and if so should these employees be dovetailed on the B&O roster?

3. Should L&N Carmen now holding assignment on L&N be dovetailed on the B&O roster? "

Although the Employees direct attention to the entire Award of Referee Fredenberger, particular note is taken of the following portions of the Findings of the Fredenberger Board:

"After laborious review of the evidence and arguments, this Neutral must conclude that there is substantial support for both sides of the question whether the furloughed SBD carmen are in such status due to actions by the Carriers taken in anticipation of the transaction in this case. However, such question is more appropriately for a proceeding under Article I, Section 11 of the New York Dock Conditions. In any event, it is not particularly helpful with respect to the question of how the furloughed SBD carmen should be treated in this particular case." (p. 6)

"Any question as to whether the ten SBD carmen were furloughed [in August and September of 1983] in anticipation of a transaction should be raised in an Article I, Section 11 proceeding." (p. 8)

The Employees dispute Carrier contention that the furloughing of the Claimants was the result of poor economic conditions, decline in business, and superior seniority rights afforded Journeymen-Carmen over upgraded Apprentices under Agreement rules.

As concerns the economic condition of the Carrier, the Employees direct attention to earnings statements released by the CSX Corporation, or the corporate head of the Carrier, and which were reported in the Louisville, Kentucky Courier-Journal as follows:

"EARNINGS: CSX Corp., Richmond, Va, reported record earnings of \$367.7 million for 1981, crediting the increase to exceptional performance by its two major rail lines. The earnings are 31 percent above the \$281.6 million in 1980, the previous record, CSX said. Revenues rose 12 percent to \$5.4 billion. Earnings per share were \$8.92 in 1981, and \$7.13 in 1980, the company said.

CSX Officials said both Chessie Systems Railroads and The Family Lines Rail System, the parent of the Louisville and Nashville Railroad, benefited from the continued growth and strength of the domestic and export coal markets, especially in the second

half of the year following the 30-day coal miners strike. Earnings for the fourth quarter were \$138.1 million, or \$3.34 a share, an increase of 46 percent over the fourth quarter of 1980. Total revenue for the fourth quarter was \$1.4 billion."

In regard to there having been a decline in business, the Employees urge that although "we are and were at that time in an economic slowdown on the national scene, this is not true with the Carrier." In this respect, the Employees state: "Coal being the main product hauled by the Carrier is a product that is hauled by freight cars. These cars need repair work on them and they cannot be repaired sitting in a side track while men are forced out of the jobs of repairing them."

Lastly, the Employees maintain that the Claimants were not displaced by furloughed carmen from another point on the L&N, but reason of the Carrier bulletin notice of December 14, 1981, and that 14 carmen transferred in line with the provisions of Rule 27 of the General Rules Agreement, with such transfer displacing 14 junior up-graded carmen.

POSITION OF THE CARRIER:

It is the position of the Carrier that a decline in business caused the furlough of the Claimants and hundreds of other employees, and the Claimants were not dismissed or affected by a "transaction" as defined in the New York Dock Conditions, which is defined to be as follows:

"(a) 'Transaction' means any action taken pursuant to authorizations of this [Interstate Commercial Commission on which these [labor protective conditions] have been imposed."

The Carrier submits, notwithstanding the reported earnings statement of CSX, that there has been a decline in the volume of business, and that this decline in business was as evident at Louisville, KY and Cincinnati, OH as at other locations on Carrier's system. In this respect, it points to the introduction of statistical data which shows total carloadings on the L&N decreased during the period March 1981 to July 1981 from 180,000 to 160,000 and dropped in January 1982, or the month following the furlough of the Claimants, to 140,000 cars. Here,

the Carrier submits that when carloadings drop, the number of employees needed to handle those cars decreases promptly.

The Carrier also directs attention to statistics it offered as representing four different indicators of business levels in the railroad industry, submitting that all reveal the extent of the decline in business which the Carrier has sustained, namely Net Revenue Train Miles, Revenue Cars Received from Connections, Carrier's Total Work Force, and Carloadings.

The Carrier also states: "Numerous publications, including labor union publications, have characterized the recent recession as being the most severe in several decades. The number of furloughed employees, as reported by the U.S. Bureau of Labor Statistics, clearly pointed to the national jobless rate as being the highest since the 1930's with numerous areas of the country exceeding 18% to 20%. Every state in the union reported job losses in manufacturing and at least two-third experienced decreases in mining, construction, transportation and public utilities." In this respect the Carrier submits various articles, excerpts, charts, etc., depicting the business decline in the nation generally, and in the railroad industry specifically. It cites of especial significance to the L&N, an article from the Kentucky Coal Journal as showing the drop in coal production during 1982 and 1983, the figures in the article reflecting a 6.2 million ton drop from 1981 to 1982, and a further 16.5 million ton drop in 1983.

For these and other reasons set forth in its ex parte submission, the Carrier maintains the Claimants were affected by a decline in business and not by a "transaction" as defined in the New York Dock Conditions. In this latter connection, the Carrier submits that at the time the coordination was implemented (May 15, 1981), there were no L&N positions abolished nor were any L&N employees affected by the transaction, and that the B&O employees transferred to the L&N facility merely followed their work as agreed between the parties in the April 15, 1981 Agreement. Further, that at the time of the transaction, the five B&O Car-men were placed on five jobs that were created for them, that they did not displace any L&N employees.

During the handling of the claim on the property, and by letter dated March 30, 1982, the Carrier additionally argued as follows to the BRC:

"A severe decline in business during the recession we are in has caused the temporary layoff of several hundred Mechanical Department employees over the entire system, including many Carmen. The resulting movement of Journeymen-Carmen who were furloughed at other points on the system due to business decline, transferring to DeCoursey under Schedule Agreement rules, caused the upgraded Carmen Apprentices, who are Claimants herein, to be furloughed on December 21, 1981. At the present time, there are 14 Journeymen-Carmen working at the DeCoursey facility who are senior to Claimants. These Journeymen-Carmen were furloughed from the South Louisville Shops as a result of decline in business and had the right under Agreement rules with your organization to displace those working in an upgraded capacity at any location on the L&N Railroad."

FINDINGS:

After carefully considering the record as developed and presented, the Board finds that the Carrier has produced sufficient probative support of record to establish that the Claimants were placed in an adverse position by reason of a decline in business and not the consequence of the coordination of facilities as authorized by the ICC in its Finance Docket No. 28905 (sub. No. 1) and related proceedings. In this respect, we find it worthy of note that at the time of the particular coordination here involved on May 15, 1981, the Claimants continued to enjoy benefit of both their positions and earnings as before the coordination, and that it was not in fact until some seven months later that Carrier found it necessary the Claimants be furloughed as the result of significant declines in business. There is nothing to suggest that Claimants were furloughed as a result of the dovetailing of seniority rosters or that the transaction called for Claimants to perform work differently or caused them to be displaced coincident with the coordination on May 15 1981. It must be presumed, therefore, from the weight of evidence that they were indeed furloughed as the result of declines in business which followed the coordination, and not as the direct result of the coordination itself.

In making this determination the Board would also note it finds nothing in the record before it to probatively substantiate that the Claimants here involved in this particular dispute were furloughed in anticipation of any other or subsequent coordination or transaction. We likewise fail to attach any significance to the fact that the same number of positions as were found to be involved in the coordination on May 15, 1981 is also the same number of positions subsequently furloughed some seven months later. Furthermore, the Board does not believe that merely because earnings of the parent company may be shown to have increased at a time when employees are being furloughed that this fact alone defeats Carrier arguments that it was nonetheless experiencing reduced work force needs as the result of reductions in carloadings, tonnage, cars being received from connections, net revenue train miles, etc. There are many aspects of corporate finance and railroad operations which can be held to account for such happenstance, as note, for example, the following excerpt from the Kentucky Coal Journal, which the Carrier had introduced into these proceedings:

"Wyoming coal lies in broad, deep coal seams, fairly close to the surface. It's low sulphur coal. It costs less than half as much to put it on the ground in Wyoming as it does to put it on the ground in Kentucky.

Recent FOB mines dollar-per-ton contract and spot market steam coal prices for low sulphur Eastern Kentucky coal were listed at \$35 term and \$27 spot. Wyoming prices were \$16.50 term and \$15.50 spot. Kentucky operators paid 4.5 percent severance tax on coal valued at virtually twice the price of coal on which Wyoming paid 10.5 percent tax.

It is thus obvious that Wyoming has a big profit edge on production. But, Kentucky being closer to Southern and Midwestern utility markets, should gain through lower transportation costs. Wrong again. With transportation costs included, Wyoming can be price competitive with Kentucky for coal markets in Michigan, Wisconsin, Texas, Georgia and Florida. With low sulfur coal!

The per-ton cost of rail coal shipments are lower if you can ship unit trains and lowers progressively as distance-to-destination increases.

"Most of Kentucky's independent coal operators don't ship by unit train, don't own rail cars, and they are all subject to premium rates for short distance coal transportation. And, the ICC approved an increase of 4½ percent on rail rates for coal originating in Kentucky, effective Jan. 1, 1984.

Kentucky coal operators with the capacity to compete for large long-term utility and industrial coal contracts have long contended that excessive rail rates take them out of the competition." (Underscoring by the Board)

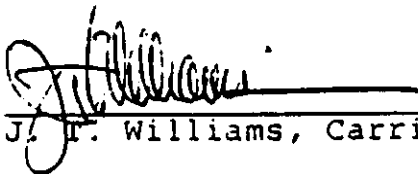
The Board finding, as the indicated above, that Claimants were placed in a worse position as a result of factors other than a transaction, we may not hold them to be eligible for protection under the New York Dock Conditions account their being furloughed December 21, 1981. Accordingly, the claim to have the Carrier compile test period averages of the Claimants as "dismissed employees" and to make them whole for any difference in pay and continuing for a period of six (6) years or until such time as they may have been recalled to their positions as Carmen at Decoursey Shops, Covington, KY, will be denied.

AWARD:

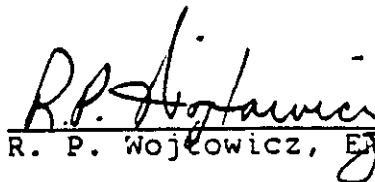
Claim denied.



Robert E. Peterson, Chairman
and Neutral Member



J. R. Williams, Carrier Member



R. P. Wojtowicz, Employee Member

Jacksonville, FL
May 29, 1985