

PUBLIC LAW BOARD NO. 2189

PARTIES) BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS
TO)
DISPUTE) GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM:

1. Was Mrs. E. Hoen affected by the transaction as that term is defined in Section 1(a) of Appendix III (New York Dock Conditions) when the Carrier transferred her with her position from the Detroit, Toledo and Ironton Railroad to the Grand Trunk Western Railroad?
2. If the answer to question No. 1 is affirmative; is Mrs. Hoen then entitled to a displacement or a dismissal allowance subsequent to the loss of her D.T.&I. position by a displacement of senior Grand Trunk Employee?

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee respectively within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Pursuant to authorization granted by the Interstate Commerce Commission (ICC) in Finance Docket No. 28250, the Carrier, effective June 24, 1980, acquired the Detroit, Toledo and Ironton Railroad Company (DT&I). In anticipation of this ICC authorization, the Carrier and the Organization (parties to this dispute) had entered into an Agreement under date of August 28, 1979 as concerned the application of those conditions generally imposed by the ICC in such transactions and commonly known as the New York Dock Conditions [New York Dock Railway-Control-Brooklyn Eastern Dist., 360 ICC 60 (1979)] as related to the interest and protection of employees.

Whereas the New York Dock Conditions stipulate that the arbitration of disputes or controversies with respect to the interpretation, application or enforcement of such conditions be handled as set forth in Section 11 thereof, the parties to the aforementioned August 28, 1979 provided for the disposition of such matters as follows:

"SECTION 7

The following will be substituted and shall supersede Section 11 of the New York Dock Conditions:

"In the event the railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the application or enforcement of any provision of this Agreement or New York Dock Conditions except Section 12 of Article I of New York Dock Conditions, it may be handled by either party in accordance with Section 3 or Section 7 of the Railway Labor Act, as amended."

As concerns the dispute here before this Board, a review of the record shows that almost a year after acquisition of the DT&I, on April 29, 1981, the Carrier served appropriate notice of its intention to transfer the position of Car Repair Clerk & Typist from the DT&I headquarters building in Dearborn, Michigan (Seniority District No. 41 - the territory of the former DT&I) to Carrier's headquarters building in Detroit, Michigan (Seniority District No. 14). The date of the transfer was set for June 1, 1981. Thereafter, when the then incumbent of the Car Repair Clerk & Typist position gave notice that she did not intend to follow the position from Seniority District No. 41 to Seniority District No. 14, the position was advertised to the employees of Seniority District No. 41 in accordance with another Agreement between the parties, known as Agreement "G", and which had been placed in effect on the effective date of the consummation of the acquisition of the DT&I by the Carrier, i.e., June 24, 1980. Paragraph (2)-A-(c) of Agreement "G", as is here pertinent, reads:

"(c) If the position involved does not require advertising pursuant to paragraph (b) it will be advertised in Seniority District #41 and awarded to the senior employee in Seniority District #41 applying for the position (Prior rights to apply), subject to Rule 5 of the Working Agreement."

In keeping with the above-quoted provisions and Rule 5 (Promotions, Assignments and Displacements), Claimant, as the senior qualified applicant for the position of Car Repair Clerk & Typist was awarded that position effective June 1, 1981, the same date that position was transferred from Seniority District No. 41 to Seniority District No. 14. At the same time, pursuant to the following additional provisions of Agreement "G", Claimant had her original seniority date of November 27, 1978 transferred into Seniority District No. 14:

"D. Seniority of employees transferred pursuant to the provisions of Sections A & B of this Agreement shall be transferred to their new Seniority District."

Thereafter, Claimant worked the position in Seniority District No. 14 until August 25, 1981, when she was displaced therefrom by a senior employee, who

had in turn been displaced by an employee returning from leave of absence. As a result of her displacement, Claimant, who had insufficient seniority to hold a regular position in Seniority District No. 14, became a furloughed employee, and was, pursuant to applicable agreement rules, permitted to displace junior employees on short vacancies and temporary vacancies until December 31, 1981, when she could not longer hold any temporary assignments in line with her seniority rights.

Subsequent to being furloughed from Seniority District No. 14, Claimant filed the claim here before this Board for a "Dismissal Allowance" under the provisions of Section 6 of the New York Dock Conditions, which claim the Carrier declined on the basis that Claimant did not meet the criteria of a "Dismissed Employee" or a "Displaced Employee", as defined in the New York Dock Conditions.

The definition of a "Displaced Employee" and "Dismissed Employee" as set forth in the New York Dock Conditions is as follows:

"(b) 'Displaced employee' means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

"(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."

It is the Organization's contention that the instant dispute involves an interpretation of Section 1(a) of the New York Dock Conditions and involves the inter-relationship of the aforementioned August 28, 1979 Implementing Agreement and Agreement "G".

Section 1(a) of the New York Dock Conditions reads as follows:

"(a) 'Transaction' means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed."

In this same connection, the Organization also directs attention to the following excerpt from Section 4(a) of the New York Dock Conditions as relates to the definition of a "transaction":

"...Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for a selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this Section 4." (Underscoring by Organization)

It is the Organization's position that the definition of "transaction" relates to any action taken by the Carrier pursuant to the authorization of the ICC for Carrier to acquire the DT&I. In this connection, it argues that when Claimant's position was transferred from Seniority District No. 41 (the former DT&I) to Carrier's Seniority District No. 14, it was "as a result of the transaction" and that "Claimant then became an affected employee as a result of the transaction, and would be entitled to a displacement allowance as result of the loss of her DT&I position by a displacement of a senior GTW [Carrier] employee." It states that absent the "transaction" the Carrier could not transfer Claimant's position from the DT&I to Carrier's headquarters in Detroit, Michigan.

Contrary to the Organization's position, the Carrier maintains that Claimant was displaced from her position in Seniority District No. 14 in an exercise of seniority by an employee in that District senior to Claimant, and that such displacement was entirely unrelated to the "transaction", which it describes as "the G.T.W.'s acquisition of the D.T.&I."

The Carrier asserts that Claimant was fully aware at the time she exercised her seniority bidding rights onto the position of Car Repair Clerk & Typist, that such position was being transferred from Seniority District No. 41 to Seniority District No. 14. In this regard, it submits that Claimant "voluntarily transferred" her seniority bidding rights into District No. 14 "prior to being affected by the transaction." It argues that had Claimant not exercised her seniority bidding rights onto this position, she might well have been displaced and furloughed in Seniority District No. 41, as the result of seniority displacement moves which would have occurred as the result of the then incumbent of that position electing to remain and exercise displacement rights in Seniority District No. 41, rather than, as Claimant subsequently elected to do, to follow the position into Seniority District No. 14. Had this event taken place, the Carrier states, then Claimant would have become a "dismissed" employee as that term is defined in Section 1(c) of the New York Dock Conditions.

It is the Carrier's further position that Claimant is not entitled to a "dismissal allowance" under the circumstances of record because her position was not in fact abolished as the result of the transaction; that the position which she was displaced from continued to be worked by the more senior employee who had displaced her; and, that neither of the employees involved in the displacement which caused Claimant to become furloughed had their positions abolished because

of a transaction. In this regard, the Carrier submits that Claimant did not meet the definition of a "Dismissed Employee" under Section 1(c) of the New York Dock Conditions and could not therefore qualify for a "dismissal allowance" as a "Dismissed Employee."

Insofar as being a "Displaced Employee" subject to Section 1(b) of the New York Dock Conditions is concerned, Carrier maintains "the transaction" was its acquisition of the DT&I, and the transfer of the position of Car Repair Clerk & Typist from Seniority District No. 41 (DT&I) to Seniority District No. 14 (Carrier) was a result of the transaction and, although Claimant could have remained in Seniority District No. 41, Claimant's "voluntary transfer" was caused by circumstances "completely unrelated to the transaction." In this connection, the Carrier urges that Claimant was not placed in a worse position with respect to the rules governing her working conditions as a result of the transaction, thereby not meeting the guidelines or definition of a "Displaced Employee."

In this Board's considered judgment, to sustain the contention of the Organization in this dispute would be to make application of a transaction under the New York Dock Conditions so narrow as to protect covered employees from the adverse affects of all seniority displacements. We find nothing in the New York Dock Conditions or the applicable implementing agreements which plainly contemplates such extensive protection. In our opinion, the protective obligations may only be imposed in connection with job abolishments found to be the direct result of the authorized transaction. We do not believe the protective benefits or conditions intend protection against seniority displacements not directly related to the transaction itself. In this connection, we think it evident that it was the implementing agreements, and not necessarily the New York Dock Conditions, which extended and granted Claimant the opportunity of a voluntary exercise of seniority from one seniority district to another. Clearly, Claimant had not been forced as a direct result of Carrier's acquisition of the DT&I to give up her seniority in her home district so as to continue her protective status. Rather, she elected to take advantage of the opportunity to transfer, voluntarily vacating her regular position in Seniority District No. 41 and exercising seniority to the Car Repair Clerk & Typist position effective on the date such position came to be subject to bidding and bumping by employees in Seniority District No. 14.

Under the circumstances of record, as indicated above, it will be this Board's finding that the protective features of the New York Dock Conditions did not attach

to Claimant's subsequent loss of work opportunities as a consequence of other, more senior employees, making displacements which eventually forced Claimant into a furloughed status from Seniority District No. 14.

AWARD:

Claimant was not affected by the transaction as that term is defined in Section 1(a) of Appendix III (New York Dock Conditions).

Claimant is not entitled to a displacement or a dismissal allowance subsequent to the loss of her position by a displacement of a more senior employee.



Robert E. Peterson, Chairman
and Neutral Member



~~D. E. Prover~~, Carrier Member
R.W. BARRETT

J. C. Campbell, Employee Member

Detroit, MI
~~January~~, 1984
May 30