
In the Matter of the Arbitration between
SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA
and
THE CHESAPEAKE AND OHIO RAILWAY COMPANY

*
*
* Re: New York Dock
* Newport News
*
* Opinion
* &
* Award
*

APPEARANCES

For the Employer

E. F. Norton, Jr. - Manager, Labor Relations
A. G. Anderson - Labor Relations Representative

For the Union

E. B. Puiver - Regional Director, S.I.U.N.A.
R. H. Avery - General Chairman, S.I.U.N.A.

BEFORE

Rodney E. Dennis - Arbitrator

BACKGROUND OF THE CASE

On September 25, 1980, the Interstate Commerce Commission granted Carrier authorization to abandon its carfloat operations between Newport News, Virginia, and the United States Navel Base, as well as Sewells Point in Norfolk, Virginia. New York Dock protective conditions were imposed. Proper notice of the abandonment was given by Carrier and a memorandum of agreement between the Organization and Carrier was entered into. The abandonment became effective on March 15, 1981. When Carrier abandoned its carfloat operation at Newport News, protective benefits were provided to eight Captains and Engineers who assumed displaced status and eight deck hands who assumed dismissed status.

In mid-1984, due to a drastic decrease in coal traffic, Carrier layed off all of its marine employes at Newport News. Carrier subsequently determined that the positions held by the employes receiving protection due to the elimination of the carfloat operation would also have been affected by the downturn in business and they, too, would have been layed off. Given this need to furlough all marine employees at Newport News, Carrier stopped paying protective benefits to those employes receiving them. The dispute in this case centers on Carrier's right to suspend protective payments under these conditions.

THE ISSUE AS STIPULATED TO BY THE PARTIES

Is the suspension of protective payments due to a decline in business unrelated to the transaction a violation of the New York Dock condition?

AGREEMENT LANGUAGE PERTINENT TO THIS ARBITRATION

Carrier and the Organization entered into a memorandum of agreement, as is required by New York Dock protective conditions, to establish the conditions that would be applicable to Carrier and the Organization in the event that there was a rearrangement of forces as a result of abandonment of carfloat operations at Newport News. That agreement incorporated the protective conditions set forth in New York Dock.

The conditions of New York Dock apply to this case, but only in a peripheral way. The general line of cases involving denial to grant New York Dock protective benefits to employees or cases involving cessation of payment of protective benefits generally turn on the argument made by the Organization that even though the adverse effect on the employees may have occurred at a time later than the transaction, the effect of the transaction was responsible for the employee being bumped, for his job being abolished, or for his being required to take a job at another location. The adverse effect was a result of the transaction, even though the end result of the trans-

action did not develop for many weeks or months--or, in some cases, for a number of years.

The crux of the instant case, however, is not whether there is a causal nexus between the transaction and the suspension of protective benefits, but whether a falloff of business unrelated to the transaction would provide sufficient basis for suspending those protective benefits.

POSITIONS OF THE PARTIES

The Carrier

Due to a drastic decrease in the export of coal through Carrier's Newport News coal piers, all of Carrier's marine employes were layed off in Mid-1984. That situation exists to this time. Coal dumped at Carrier's piers decreased from 18,478,613 tons in 1981 to 3,554,882 in 1984.

It was concluded that employes being paid protective benefits should also have their benefits suspended because they too would have been affected by the down-turn in business even though the car-float operation had been abolished. Carrier relied on numerous arbitration awards on New York Dock conditions to support its actions in this case.

Carrier contends that even though the parent company made money

in 1984, the C&O Railroad lost millions of dollars over the past few years at the Newport News Coal Pier Operation. Thus, it was justified in laying off all marine operation employes at that location and subsequently suspending the protective payments it is paying to employes at that location. Carrier argues that New York Dock protective benefits are to protect employes from an adverse impact due to a transaction, as defined in New York Dock, not from the adverse impact from a decline in business.

The Organization

While it agrees that the layoffs of marine employes was due to a reduction in coal tonnage and a subsequent drop in coal freight at Carrier's piers, the Organization does not agree that protective benefits can be suspended under the conditions that are present in this case. The CSX Company made money overall during 1984. It should not be allowed to say that since it had a loss at Newport News, protection at that location should be cut off when the holding Company is profitable in general. Protective benefits under New York Dock are designed to protect employes who are affected by transactions from adverse effect for up to six years. Nowhere in the New York Dock agreements does it state that Carrier can suspend payments of benefits because business slows down. New York Dock states that

displacement allowances shall cease prior to expiration of the protective period if the protected employe resigns, dies, retires, or is dismissed for cause. It says nothing about benefits ceasing if Carrier's business falls off at an individual location.

The Organization finally argues that it is unfair for Carrier to suspend protective benefits for the employes involved here. They are senior employes who can not find work in their craft at this stage in their lives. Given the fact that Carrier sold Coal piers to competing companies and allowed them to take over the coal-loading business, it is not difficult to conclude that Carrier has allowed the coal-loading business at the Newport News Coal Piers to be taken over by the competition. This has had a serious effect on Carrier employment in its marine division. Carrier should not be allowed to suspend protection under these conditions. It contributed to the demise of the business and it should be made to continue the protective payments to its employes.

FINDINGS

This is not a case that involves a complex fact pattern or detailed laws or agreement language. This case rests on what rights Carrier has to suspend protective payments and what language or rights

the Organization has to prevent Carrier from doing so. A careful reading of the New York Dock labor protective conditions that is a part of the parties' memorandum of agreement in this case reveals that no mention is made of Carrier's right to suspend protective benefits once granted because of a falloff in Carrier's business. Nor can language to the contrary be found. The fact is that the New York Dock protective conditions did not mention suspension of protective benefits for any reason other than resignation, death, retirement, or dismissal of the protected employe.

Over the years, however, Public Law Boards and Arbitrators have applied New York Dock conditions in such a way that only employes affected by a transaction are eligible for protection. Once it is agreed that a transaction means an action taken by Carrier that is authorized by the Interstate Commerce Commission pursuant to existing law, it becomes clear who is eligible for protection: Those employes who are adversely affected by the transaction and who can demonstrate, if challenged, that a causal nexus exists between the transaction and their adverse position. Failure to do so has generally meant that these employes were denied protection.

On the other hand Public Law Boards and Arbitrators faced with arguments against the suspension of protective benefits have generally decided that if business falls off at a location, employes, whether

working regularly or covered under protection, who are adversely affected by declining business due to economic conditions are not eligible for protection of any type.

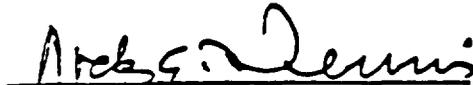
These Boards and Arbitrators have not arrived at this conclusion based on language in the New York Dock agreement that specifically authorizes such a position, but rather by concluding that protective benefits only flow to employes who are adversely affected by a legitimate transaction. That is what New York Dock states and that is as far as the Carrier or Arbitrator must go in applying New York Dock. Equity arguments made on behalf of employes or arguments that Carrier brought the situation upon itself because it allowed the competition to take over coal loading at Newport News are interesting, but not persuasive to the degree that they can be used to set aside the many arbitration awards and Public Law Board decisions that support Carrier's case in this instance. The facts of the instant case do not support the proposition that because Carrier makes money overall, it must continue to pay protection in a location where all employes have been furloughed because of a decline in business. There is no justification in this record to support the Organization's position. The answer to the question at issue in this case is no. The Carrier did not violate the New York Dock condition in this instance.

AWARD

Petitioner's grievance is denied.


E. B. Pulver, Union Member


E. F. Norton, Jr., Carrier Member


Rodney E. Dennis, Chairman
and Neutral Member