

Arbitration Pursuant to Appendix III, Section 11
(Finance Docket No. 28250)
Involving the
"New York Dock Protective Conditions"
Imposed by the
Interstate Commerce Commission
on the
Burlington Northern Railroad Company

Award No. 1

Parties to Dispute: Burlington Northern Railroad Company

and

Brotherhood Railway Carmen of the United
States and Canada

Statement of Claim:

- "1. That the Burlington Northern Railroad has flagrantly and continually violated the provisions of the New York Dock Agreement, causing adverse effect to the employees of the Brotherhood Railway Carmen of the United States and Canada, in anticipation of the merger of the Frisco with the Burlington Northern and by Carrier's actions after the merger of the two railroads on November 21, 1980.
- "2. That the following be compensated in such a manner that they be made whole from December 22, 1979, until this claim is satisfactorily resolved. The following be compensated for each day at the proper pro rata rate for such positions that the employees would have worked had said merger never been anticipated or consummated. That all claimants be afforded all the protective conditions by the New York Dock Agreement. All benefits and health and welfare protection that would have been provided then and now, had said merger never been anticipated nor consummated.

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| H. E. Anderson | R. M. Donnell | C. D. Keithley |
| D. E. Anderson | J. E. Elbert | G. L. Kleeman |
| D. W. Anderson | T. L. Edmonds | R. W. Keller |
| R. E. Anderson | D. R. Eubank | T. G. Hoflund |
| R. M. Adams | H. J. Freeman | J. E. Ferguson |
| S. W. Akers | J. W. Fry | J. R. Fleming |

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| M. O. Beavers | L. M. Galloway | J. F. Lee |
| B. T. Berry | G. J. Goodnight | J. H. Laney |
| R. L. Blevins | J. Graves | A. N. Lesley, Jr. |
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| K. R. Butrick | J. W. Hastings | D. L. Mettlach |
| J. B. Carpenter | R. K. Heckendorn | J. R. McCormick |
| R. A. Carpenter | O. Hudson | D. L. Menk |
| G. B. Cornell | K. R. Hunsaker | M. S. Myers |
| R. M. Crighten | J. R. Huckstep | T. S. Murphy |
| E. Davenport | R. C. Herman | R. W. Nichols |
| C. W. Daugherty | D. L. Ingram | J. L. Parrish |
| D. L. Dicus | D. R. Jameson | J. A. Pullen |
| F. M. Donnell | J. B. Johnson | D. P. Preseley |
| J. D. Shirkey | D. A. Romines | S. E. Pippin |
| S. D. Stewart | L. G. Stokes | R. S. Slaughter |
| R. Spurlock | T. E. Shrader | C. E. Scott |
| C. D. Stepp | D. B. Taylor | C. D. Whitehead |
| F. T. Williams | F. E. Turner | A. O. Walker |
| L. D. Waddell | R. C. Workman | R. A. Brake |
| J. A. Huckstepp | | |

Painters:

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|---------------|--------------|----------------|
| J. A. Noblitt | R. D. Wright | J. W. Irwin |
| C. K. Mericle | Y. D. Scott | K. W. Mitchem |
| J. R. Roberds | G. D. Spies | J. D. Anderson |
| R. T. Eddy | G. W. Boyd | |

Upholster - apprentice:

S. D. Stewart

"The ninety-one (91) claimants stated above have been adversely affected in anticipation of and because of the merger of the St. Louis-San Francisco Railway Company and the Burlington Northern, Inc., and therefore are entitled to the protective provisions of the New York Dock Agreement, Appendix III, Finance Docket #28250."

Committee Members: Chairman and Neutral Member: Gil Vernon

Labor Member: R. P. Wojtowicz, Vice President
Brotherhood Railway Carmen of
the United States and Canada

Carrier Member: J. N. Locklin, Manager -
Labor Relations

BACKGROUND

In 1977, Burlington Northern (BN) and the St. Louis San Francisco Railway Company (SLSF) initiated discussion concerning a merger. Approval for the merger was sought from the Interstate Commerce Commission (ICC) and it was granted effective November 21, 1980. As a condition of the approval, the ICC imposed the Employee Protective Conditions set out in Appendix III of Finance Docket No. 28250, commonly referred to as the "New York Dock Conditions". Section 11 of Appendix III sets forth the arbitration procedures "in the event the railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix." The instant committee was established pursuant to Section 11, and a hearing was held in this matter in St. Paul, Minnesota on September 29, 1985.

FINDINGS

Generally speaking, Appendix III provides that if an employee is placed in a worse position with respect to his compensation, or is deprived of employment as the result of a "transaction" (in this case, the merger), that employee is entitled to displacement or dismissal allowance as defined in the appendix.

In the event there is a dispute as to whether an employee is affected, Section 11(e) sets forth the respective burdens of proof facing the parties. It states:

"In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee."

Also relevant here is Section 10, which states:

"Should the railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this appendix, this appendix will apply to such employee."

It is the position of the Organization that the employees in question were furloughed in December 1979, in anticipation of the November 1980 merger. On the other hand, the Carrier makes a procedural argument as well as taking a position on the merits. Procedurally, they argue that the claim is barred under the doctrine of laches. On the merits, they argue that the Claimants were furloughed as the result of a decline in business -- not as the result of the merger.

First, in reviewing the Carrier's laches argument, it is noted the Board's opinion that under these circumstances, that there is nothing improper about considering this matter purely on its merits.

On the merits, it is noted that Section 11 requires the Organization to identify the transaction and specify the facts of the transaction which they believe adversely affected the Claimants. In other words, the Organization has the threshold burden. If the facts they present are such that they raise a sufficient presumption, then the burden shifts to the Carrier.

In this case, even if we assume for the sake of argument that the Organization has satisfied their obligation under Section 11(e), the evidence compels the Board to conclude that factors, other than a transaction, affected these employees. More specifically, the evidence convinces us that the employees were affected by a decline in business.

The Carrier has produced internal documents, contemporaneous with the furlough, which indicate that the Carrier was taking a number of measures -- including layoffs -- to reduce expenses, due to purely budgetary considerations caused by reduced billings and increased expenses.

Later, some of the forces were restored, but not all -- since in 1980, the Carrier experienced a dramatic decline in business. The data presented by the Carrier is clearly indicative of this. Moreover, other tribunals, in general, and some specific to this property, and these Parties, have recognized the generally poor economic condition during this time period.

In view of the foregoing, and based on the evidence properly part of this record, the committee finds that the Carrier's action did not violate the "New York Dock Conditions"

Accordingly, the Claim is denied.

AWARD

The Claim is denied.

G. Vernon

Gil Vernon, Chairman and Neutral Member

R. P. Wojciewicz

R. P. Wojciewicz, Labor Member

J. N. Locklin

J. N. Locklin, Carrier Member

Dated this 3rd day of January, 1986.