

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. 4

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 violated and breached the letter and intent of the provisions of I.C.C. Finance Docket No. 28250 (commonly known as New York Dock Conditions), particularly Sections 6 and 7, thereof, when the aforesaid Carrier made a reduction in forces affecting Carman Painter L. R. Dixon. That the reduction in forces affecting Claimant resulted from the merger related transaction to the change in operations, at the two common points and the abolishment of all junior redundant personnel protected by the New York Dock Conditions.
- "2. That the Burlington Northern Railroad Company be required to award Claimant the employee protective benefits set forth in Sections 6 and 7 of the New York Dock and all fringe benefits provided for in Section 8 of the New York Dock."

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, set 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.

Pursuant to the New York Dock Conditions, the Carrier and the Organization entered into an Implementing Agreement covering consolidation of car repair facilities and functions at Kansas City and St. Louis. Prior to the merger, BN carmen at North St. Louis had been part of the Hannibal seniority district which included other points in Missouri, Iowa and Illinois, whereas the SLSF Carmen had point seniority. The St. Louis point covered the Lindenwood Yard and Valley Park, Missouri. Pursuant to the January 29, 1981 agreement, effective February 2, 1981, the car forces at St. Louis were consolidated and the former SLSF carmen had their

seniority dovetailed onto the BN Hannibal seniority district roster. Those carmen who were adversely affected by the merger received the appropriate New York Dock benefits.

The Claimant was originally a SLSF employee hired in July 1968 as a carman-painter and worked at the repair track at the Lindenwood yard. Effective January 13, 1984, the positions of carmen, and that of the Claimant, were abolished as the result of the elimination of the repair track at Lindenwood. The Carrier contends that carmen continued to perform car repair work at Lindenwood working out of Valley Park with a road truck.

FINDINGS

The Organization argues that the Claimant was affected by a "transaction", and therefore is entitled to the protective benefits specified in Appendix III. The "transaction" is the eventual consolidation of all car repair functions at North Kansas City, Missouri. In their opinion, the abolition of all redundant positions at Lindenwood, and other points, is simply one step along the way. Therefore, as part and parcel of the grand plan made possible by the merger, the abolition of jobs at Lindenwood should be considered a transaction.

The Carrier argues that the Organization has failed to identify a "transaction" or causal nexus between the merger and the abolishment of the Claimant's position. Instead, they contend that the abolishment was the result of the gradual evaporation of painting work and the Carrier's decision to expand the intermodal operation at Lindenwood which, because of space needs, required the

closing of the repair track. With respect to the lack of painting work, they note that the Claimant was originally to paint multi-level auto racks owned by the SLSF. They contend this work gradually ceased to be performed because the older racks, which required painting, were retired and were replaced by enclosed racks. These new style racks did not require painting because the painted surfaces were protected from the elements. In fact, the painting of auto racks ceased by 1978. Thereafter, the Claimant performed stenciling of light weights on cars, much of which was on TTX equipment. Because of a change in AAR Interchange rules this work was also eliminated. Thereafter, the Claimant performed stenciling of reporting marks on cars and miscellaneous duties including odd jobs and running errands. With respect to the decision to expand the intermodal service and close the repair track, they contend it was not merger related, noting that no ICC approval is needed for such a decision. As such, they contend it was not a transaction since it was not "pursuant to authorization of (the) Commission."

It is the finding of the Committee that the Carrier has presented the more convincing case here. This is so for several reasons. First, a nexus is difficult to draw between the Claimant's furlough in 1984 and the merger in 1980, four years earlier. This certainly does not, per se, mean that actions made only possible because of the merger could not affect him, but as time goes on a connection is more difficult to draw. However, the fact of the matter is that the Claimant continued to work three years after the consolidation of forces at St. Louis, which is the only action

readily identifiable in this record which could be termed a "transaction" potentially affecting the Claimant.

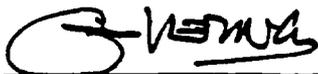
Second, it is apparent that there was indeed a gradual evaporation of the Claimant's work. Thus, it is likely that his position could have been legitimately abolished without regard to the merger.

Last, it is noted the committee's conclusion that there was no transaction is supported by the fact that the closing of the particular repair facilities at this particular time was an operational change which could have been accomplished in the absence of the merger.

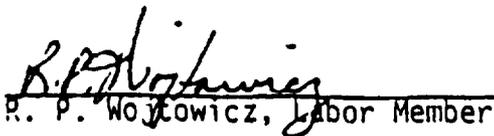
In view of the foregoing, the Claim is denied.

AWARD

The Claim is denied.



Gil Vernon, Chairman and Neutral Member



R. P. Wojtowicz, Labor Member



J. N. Locklin, Carrier Member

Dated this 300 day of January, 1986.