
In the Matter of Arbitration)
Between)
United Transportation Union-)
Yardmasters Department)
And)
Southern Railway Company)
_____)

FINDINGS AND AWARD

Question at Issue:

Were Messrs. W. E. Killen, R. J. Tilly and T. J. Tilly displaced and/or dismissed as a result of the Southern Railway acquisition of the Kentucky and Indiana Terminal Railroad Company as defined by the New York Dock II Conditions?

BACKGROUND: On December 8, 1981, the Interstate Commerce Commission (ICC) approved the Carrier's request to acquire the Kentucky and Indiana Terminal Railroad Company (KIT). New York Dock employee protective conditions were provided in connection with the ICC decision to approve the acquisition of the KIT by the Carrier.

At the time of the acquisition, the Claimants were not affected in a substantive manner. Slightly four years later, on February 16, 1986, the Carrier abolished four yardmaster assignments at the Fairgrounds and Junction area, Louisville Yard Operations. It is this action which triggered the dispute before this Arbitration Committee. The Claimants, after the displacement, did not stand for yardmaster assignments and exercised their seniority rights to other positions pursuant to the parties' Agreement. In April 1986, the Claimants filed for protective benefits afforded

under the New York Dock protective conditions. They contend that their displacement, as noted above, was caused by the Carrier's acquisition of the Kentucky and Indiana Terminal Railroad Company (KIT) in December 1981. The issue was then progressed in the usual manner and placed before this Committee for resolution.

CONTENTIONS: The Organization, in its well-reasoned position which it has supported by extensive rationale in its submissions and skillful arguments before the Board, has cited a number of events which it submits are directly linked to and result from the Carrier's acquisition of KIT in December 1981. The Organization's basic position is that, but for the Southern's acquisition of KIT, then:

- (a) "The KIT Trainmasters would not have been faced with the option of accepting a transfer to official positions on the Southern or accept a 'one time' lump sum severance allowance";
- (b) "These Trainmasters would not have exercised seniority back into the Yardmaster Craft";
- (c) "The Claimant's would have been able to hold three more yardmaster positions";
- (d) "The T. I. P. S., Southern computer system, would not be in place on the former KIT property in Louisville, Kentucky. Small class III terminal roads do not require sophisticated computerization such as the T. I. P. S. system";
- (e) "The tower Yardmaster would not be able to use the T.I.P.S. computer system to 'drive' work orders and switching instructions to the yard crews working in the Fairground/Junction area."

In summary, the Organization recognizes that a direct causal nexus must be established between the December 1 acquisition (transaction) of the KIT and the displacement of the Claimants. It avers that the circumstances and events, as noted above and supported by its lengthy submissions, clearly establishes a sustaining case and the Committee should so find.

For its part, the Carrier, also with well-reasoned and extensive rationale in the record and skillful arguments before the Board, mainly maintains that the changes that affected the Claimants came about because of an operational decision, a decision which was based upon business conditions not related to the acquisition. Essentially, the Carrier, in summary, contends that:

- (a) There were no Southern Yardmasters within the Louisville Terminal at the time of the acquisition of the KIT and thus no rearrangement of forces occurred at that time;
- (b) The exercise of seniority by three Carrier officials in 1982 followed a rearrangement of supervisory positions at Louisville and cannot be connected to the action that impacted on the Claimants in 1986;
- (c) A decline in switching at the Louisville Terminal, in part, had an impact on the Claimants' assignment.

(d) The TIPS computer system had been in place over five years prior to the abolishment of the Yard-master positions in 1986 and there is no evidence that such changes would not have been made by the KIT had it not been acquired by the Southern. Moreover, it cites and relies upon 1963 ICC Finance Docket 21400 Southern Railway Company - Control-Central of Georgia Railway Company which held that post-acquisition technological changes which affect employees is too indirect and remote to be considered a result of a transaction. It contends that the ICC holding substantially fits the key issue before this Committee and, thus, should be applied here in reaching a decision.

Accordingly, for the foregoing reasons, the Carrier submits that the Organization has failed to meet its burden because it has not identified a transaction that adversely affected the Claimants and consequently, the claim must fail.

FINDINGS AND OPINION: Basic to a determination as to the triggering of employee protection benefits pursuant to the New York Dock conditions in the case before us are the following New York Dock provisions:

Section 1

Definitions -

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

(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.

Section II

(e) 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.

The Organization, as the moving party to legitimize its claims, must first identify a Section 1(a) transaction and then, pursuant to Section 11(e), identify the "***pertinent facts of that transaction relied upon" to support the claim. On the evidence properly before us, we find that the Claimants have not met their burden, mainly for the reasons that follow.

First, while we are not unmindful that the definition of a transaction is broad, it is evident, on the basis of prior arbitral and ICC holdings, that not every work force adjustment constitutes

a transaction. Furthermore, in a realistic sense, with respect to the issue here, the time that has passed has made it more difficult to draw a connection between the acquisition in 1981 and the subsequent abolishment of the Claimants' positions.

Second, and closely related to the time factors noted above, KIT provided Southern with long-standing terminal facilities and services at Louisville. Consequently, at the time of the acquisition, there was no coordination of KIT and Southern Yardmasters because Southern did not have Yardmasters at the affected locations.

Third, there has been no substantive showing that the exercise of seniority by three Carrier officials in 1982 was caused by the acquisition or adversely impacted on the Claimants four years later.

Fourth, the evidence does show a decline in switching at Louisville.

Fifth, with respect to post-acquisition technological changes, it is not overly speculative to conclude that Carrier's TIPS computer system had some impact upon the utilization of personnel in the Louisville Terminal. However, no Yardmaster positions were abolished following the implementation of TIPS. Furthermore, given the ready availability and the overall state of computer


technology, there is nothing to establish that the KIT would not have implemented a similar change without the acquisition. Lastly, on this point, the ICC, in its ruling earlier cited, clearly addressed the technological change arguments when it held, in part:


"However, the effect of subsequent internal technological improvements by either of the Carriers, even if made possible by improved financial circumstances partly attributable to the unification of control, is too indirect and remote to be considered a result of the transaction and it is not our intention that employees affected by such internal improvements shall be entitled to the benefits of the conditions."


Accordingly, and after full consideration of the parties' submissions, cited holdings of various adjudicating bodies and oral arguments before us, we conclude, primarily on the weight of the foregoing, that the Claimants were not displaced and/or dismissed as a result of the acquisition of KIT by the Southern Railway.

AWARD

As specified in the opinion.


Eckehard Muessig, Neutral Member


M. C. Kirchner, Carrier Member


D. R. Carver, Employees' Member

Dated: February 17, 1967