

Arbitration Pursuant to Article I, Section 11
of New York Dock Labor Protective Conditions

PARTIES	The Atchison, Topeka and Santa Fe Railway)	
	Company - Eastern and Western Lines,)	
	excluding Northern and Southern Divisions)	
TO		DECISION
	and)	
)	
DISPUTE	The United Transportation Union (CT&Y-E))	

QUESTION AT ISSUE:

Have the former employees of the Toledo, Peoria and Western Railway, currently the Peoria Subdivision of the Illinois Division, been adversely affected by a transaction as contemplated by the provisions of Finance Docket 28250, New York Dock?

HISTORY OF DISPUTE:

In December of 1979 the Atchison, Topeka and Santa Fe Railway Company (Santa Fe) and the Pennsylvania Company (Pennco) each owned fifty per cent of the Toledo, Peoria and Western Railroad Company (TP&W). At that time TP&W was a regional railroad operating between Keokuk, Iowa and Logansport, Indiana. TP&W generally served Peoria and Central Illinois and operated as a bridge carrier between eastern and western railroads two of which were the Santa Fe in the west and the Consolidated Rail Corporation (Conrail) in the east. Fifty per cent of TP&W's revenues were derived from its operations as a bridge carrier.

On December 20, 1979 the Santa Fe petitioned the Interstate Commerce Commission (ICC) for approval to acquire Pennco's fifty per cent interest in TP&W. Through this transaction Santa Fe would acquire complete control of TP&W. However, TP&W would remain a separate operating railroad with its own management.

On October 14, 1980 the Staggers Rail Act became law the general purpose of which was to deregulate the railroad industry. As part of the statutory scheme carriers could cancel joint rates and routes more easily.

On December 17, 1980 in its Decision in Finance Docket No. 29217 the ICC granted the Santa Fe's application to acquire control of TP&W. The ICC conditioned the exercise of the authority granted Santa Fe upon application of the employee protective conditions set forth in New York Dock Ry.-Control-Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock Conditions).

Utilizing the provisions of the Staggers Act, Conrail moved to cancel most of its joint routes through approximately 100 interterritorial gateways effective July 25, 1981. As part of that move Conrail canceled its December 9, 1975 traffic agreement with TP&W and virtually eliminated Logansport, Indiana as an interchange junction. Thereafter, interchange traffic between Conrail and Santa Fe was rerouted through Streator Junction. TP&W's bridge traffic fell dramatically as did TP&W's annual revenues.

On July 24, 1984 TP&W and a number of other affected carriers protested Conrail's action to the ICC. On March 18, 1982 in Decision No. 38676 the ICC found with respect to TP&W's objection that it could not reach a majority decision within the prescribed time limit and, accordingly, that the Commission would not disturb the route changes effectuated by Conrail.

Apparently both the Santa Fe and TP&W accepted the ICC's decision. TP&W's President stated in a TP&W publication dated April 15, 1982 that "[W]e and the Santa Fe have invested an enormous amount of money and legal, data processing and other resources and have concluded that further appeals would be futile."

However, other carriers adversely affected by Conrail's route alterations successfully challenged the ICC's Decision in Chesapeake and Ohio Ry. Co. v United States, 704 F. 2nd 373 (7th Cir. 1983). The Court found that Conrail's case before the ICC was not supported by substantial evidence and remanded the case to the Commission for further consideration.

Meanwhile on August 1, 1983 Santa Fe and TP&W filed a notice of exemption with the ICC proposing to merge the TP&W into the Santa Fe effective January 1, 1984. In a Decision on August 17, 1983 in Finance Docket No. 30249 the Commission approved the merger. TP&W became the "Peoria District" of the Santa Fe. The Commission imposed the New York Dock Conditions for the protection of any Santa Fe or TP&W employee affected by the transaction.

In anticipation of the merger the parties entered into negotiations pursuant to Article I, Section 4 of the New York Dock Conditions for an implementing agreement. The parties reached such agreement on September 14, 1983 to become effective December 31, 1983.

By notice dated June 7, 1984 the Carrier discontinued trains LIL41-LIL42 which were known as the Conrail connection. By notice of June 10, 1984 the Carrier discontinued train numbers 223 and 322 servicing the Carrier's TOFC operation at Hoosier Lift, Indiana which had been established by the Carrier in November 1983.

By letters of June 11 and July 15, 1984 the Organization alleged that the abolishment of the foregoing assignments was a result of the merger of TP&W into Santa Fe, and that the abolishments had adversely affected all employees in train and engine service. The July 11 letter

advised that those employees would submit claims for displacement allowances under the New York Dock Conditions, and the July 15 letter requested test period earnings for all employees.

By letter of July 24, 1984 the Carrier denied that the discontinuance of the trains was a result of the merger.

Thereafter, the parties exchanged correspondence and had direct discussions concerning the dispute. However, both parties adhered to their respective positions. By the end of March 1985 the Organization had filed numerous claims seeking either "displacement allowances" or "protective allowances" as provided in the New York Dock Conditions. The Carrier denied all such claims.

In April 1985 the Organization sought to establish a Public Law Board pursuant to Section 3, Second of the Railway Labor Act, 45 U.S.C. §152, Second, to resolve the dispute. However, the Carrier declined on the ground that the dispute was justiciable through the arbitration processes of Article I, Section 11 of the New York Dock Conditions.

Eventually the parties agreed to arbitration under Article I, Section 11 of the New York Dock Conditions. Pursuant to Section 11(a) the parties established this Arbitration Committee, designated the partisan members thereof and selected a Chairman and Neutral Member by August of 1986.

On September 5, 1986 the ICC issued its Decision in Finance Docket No. 38676 in the case remanded to the Commission by the United States Court of Appeals for the Seventh Circuit in 1983. The Commission decided that Conrail had failed to overcome the deficiencies identified by the Court of Appeals. The ICC found that Conrail's 1981 cancellation of joint

rates applicable to the affected routes was not in the public interest. However, the Commission declined to reestablish such joint rates and directed Conrail to negotiate with the protestants for 180 days after which, failing settlement, the Commission will entertain requests for the prescription of new rates.

Hearings were held before this Arbitration Committee in Chicago, Illinois on November 19, 1986. The parties agreed to extend the time specified in Article I, Section 11(c) within which this Committee must render its Decision in this case.

PARTIES' POSITIONS:

The Organization maintains that the employees were adversely affected by the control and merger transactions authorized by the ICC, both of which were made subject to the New York Dock Conditions.

The Organization argues that when Santa Fe gained control of the TP&W that action destroyed TP&W's neutrality. Accordingly, urges the Organization, Conrail reacted by terminating its traffic agreement with TP&W and abrogating its routes. As a result of Conrail's actions Logansport was eliminated as an interchange junction and traffic was rerouted through Streator Junction. Such rerouting, alleges the Organization, resulted in substantial decline in revenues and consequent job losses for train and engine employees.

Moreover, argues the Organization, such rerouting was a major factor behind the merger of TP&W into the Santa Fe. In this regard the Organization emphasizes that the Santa Fe ceased to oppose the rerouting in 1982 as a prelude to the merger. The Organization also emphasizes that

despite the terms of the September 14, 1983 implementing agreement that no operational changes adversely affecting employees would result from the merger and that employees would continue to protect their assignments, the Carrier substantially rearranged employee forces thereafter. The Organization maintains that in view of Santa Fe's need to cut costs and to turn a profit the merger adversely affected service to shippers along the TP&W line thus reducing traffic. The Organization points to the fact that all crafts on the TP&W except employees represented by the Organization have been afforded the protective benefits of the New York Dock Conditions as a result of the merger and that the employees represented by the Organization deserve the same.

Pointing to correspondence from the Organization asserting that the discontinuance of the trains at issue in this case was a result of the merger, the Carrier contends even the Organization acknowledges that none of the employees represented by the Organization were adversely affected as the result of Santa Fe obtaining control of the TP&W. Nor, argues the Carrier, were any such employees adversely affected by the merger.

The Carrier argues that the Conrail connection was abolished due to the sharp decline in bridge traffic resulting from Conrail's actions pursuant to the Staggers Rail Act. The Carrier urges that the two trains servicing Hoosier Lift were eliminated simply because the five to thirteen cars generated by business at Hoosier Lift could be handled most efficiently and economically by a single train rather than two trains. Accordingly, argues the Carrier, abolishment of the assignment servicing Hoosier Lift as well as the Conrail connection was the result of factors other than the merger.

Citing numerous arbitration awards the Carrier maintains that as part of the Organization's burden of proof under Section 11(e) of the New York Dock Conditions it must establish a "causal nexus" between a transaction and the adverse effect upon an employee. In the instant case, argues the Carrier, the Organization has alleged numerous adverse effects upon the employees it represents, but in no instance has the Organization established a causal nexus between such effects and either the control or merger transactions. In this regard the Carrier attacks the sufficiency of the numerous claims filed by the Organization for displacement or other protective allowances on the grounds that the claims do not identify a transaction or specify the pertinent facts related to that transaction which support the claims.

The Carrier agrees with the Organization that the major factor contributing to the decline in TP&W's revenues and the loss of jobs was the drastic reduction in bridge traffic. However, emphasizes the Carrier, that factor resulted from the actions of Conrail over which the Carrier had no control. Additionally, urges the Carrier, while Conrail's actions may have been the most significant factor contributing to the decline in business on TP&W, it was not the only factor. The Carrier points out that business from Caterpillar Tractor Company, a major customer of TP&W, dropped twenty-eight per cent between 1984 and 1985. The Carrier points to even more dramatic drops in the level of business from other customers of TP&W during the same period. The Carrier emphasizes that the Santa Fe experienced a similar loss of business.

The Carrier maintains that although cars previously interchanged between Conrail and the TP&W were rerouted via Streator Junction, statistics show that between 1979 and 1985 there was a twenty-eight per cent decrease in the number of cars interchanged between Santa Fe and Conrail at that location. Accordingly, urges the Carrier, there is no basis for the argument that all traffic previously interchanged between TP&W and Conrail at Logansport was simply rerouted through Streator Junction.

Pointing to several arbitration awards the Carrier maintains that adverse effects which are the result of a decline in business or business fluctuations are not the result of a transaction. The Carrier urges the same finding from this Committee in the instant case.

FINDINGS:

As both parties recognize this case turns upon Article I, Section 11(e) of the New York Dock Conditions which provides:

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.

It is well established that, as part of the Organization's burden under Section 11(e) it must establish a "causal nexus" between a transaction and the adverse effect upon an employee. If the Organization cannot do so it fails to meet its burden under Section 11(e).

In the instant case the Organization presented an exhaustive analysis of the dispute before us, apparently leaving no stone unturned

in an effort to substantiate its position. Pursuant to the requirements of Section 11(e) the Organization identifies two transactions and particularizes numerous facts which the Organization contends link the adverse effects upon the employees it represents to one of the transactions. Chief among these is the fact that Conrail by abrogating its routes and rates with TP&W caused a drastic reduction in TP&W's work as a bridge carrier with consequential reduction in revenues for TPW. Both parties recognize this fact and the Organization maintains that it was responsible for not only the abolishment of the Conrail connection but the abolishment of the two trains servicing Hoosierlift.

However, we can find no causal nexus or connection between the loss of TP&W's bridge business and either of the transactions cited by the Organization. Although TP&W may have lost its neutrality when Santa Fe gained control of it and its identity when it was merged into Santa Fe, there is insufficient evidence to conclude that fact caused Conrail to terminate its rates and routes with TP&W. Conrail took identical action with respect to a number of other carriers involving over one hundred gateways. Conrail was acting pursuant to and with the encouragement of the Staggers Rail Act of 1980. The record before us strongly indicates that statute rather than TP&W's alleged loss of neutrality was the proximate cause of Conrail's action.

It follows that all consequences of Conrail's action, including the abrogation of its traffic agreement with TP&W and the rerouting of traffic through Streator Junction, were not the result of either transaction.

If rerouting in fact was a major factor in the merger transaction, then the merger would appear to have been the result of the rerouting and not the cause of it. We find no significance to the fact that Santa Fe and TP&W ceased to oppose the rerouting of traffic. We believe the reasons advanced by the President of TP&W were quite realistic when he made them. Moreover, we find little basis for the Organization's assertion that a loss of business from shippers along the TP&W line was a result of the merger. The record before us indicates that a general decline in business forced a reduction in the level of rail service. As the Carrier points out, Santa Fe experienced reductions in business during the same period.

We do not believe the Organization's position is well taken that the September 14, 1983 implementing agreement was violated when the Carrier reduced its employee forces. That agreement applies only to Carrier actions which are the result of the merger which is the essence of the question at issue in this case. Moreover, the provision in the agreement that employees will continue to protect their assignments cannot be construed, as the Organization would have us do, to imply attrition protection. The fact that jobs were rearranged after the agreement is inconsequential unless there is substantial evidence establishing that such rearrangements were the result of the merger. We find no such evidence.

While it may be true that all crafts other than the employees represented by the Organization have been afforded protective benefits under the New York Dock Conditions, it does not follow that the employees represented by the Organization have been wrongfully denied those benefits.

That conclusion may be drawn only in the event the Organization can establish that the adverse effect upon the employees it represents is the result of one of the two transactions.

Although the Organization has pointed to two transactions and identified several factors establishing adverse impact upon the employees the Organization represents, the Organization has failed to establish the causal nexus between such adverse impact and either of the transactions. Accordingly, the Organization has not met the burden imposed upon it by Article I, Section 11(e) of the New York Dock Conditions.


However, even if it is assumed that the Organization has met its burden of proof under Section 11(e), we believe the Carrier has established that factors other than a transaction affected the employees.

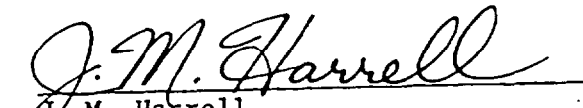
It must be borne in mind that the claims before us were generated by the Carrier's abolishment of the Conrail connection and the two trains servicing the Hoosier Lift operation. Even the Organization acknowledges that both abolishments resulted from Conrail's cancellation of its rates and routes with TP&W, a factor which we have found is unrelated to either transaction.

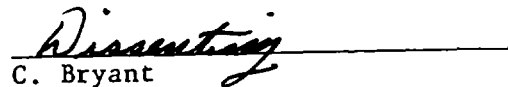
In the final analysis we find insufficient evidence to connect the adverse impact upon the employees represented by the Organization with either transaction.

AWARD

The question at issue is answered in the negative.


William E. Fredenberger, Jr.
Chairman and Neutral Member


J. M. Harrell
Carrier Member


C. Bryant
Employee Member

DATED: January 23, 1987