

IN THE MATTER OF ARBITRATION :
 :
before an :
 :
ARBITRATION COMMITTEE :
 :
under :
 :
ICC FINANCE DOCKET NO. 28250 :
(NEW YORK DOCK CONDITIONS) :
APPENDIX III, SECTION 11 :
 :

HEARING HELD IN ST. PAUL, MINNESOTA, NOVEMBER 2, 1982

PARTIES BROTHERHOOD RAILWAY CARMEN OF
THE UNITED STATES AND CANADA
TO
and
DISPUTE: BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT File SCA 82-2-4B

OF (1) That the Burlington Northern Railroad
CLAIM: Company, violated the provisions and intent of
Sections Six (6) and Seven (7) of Finance Docket
No. 28250 (New York Dock) when they failed to
provide protective benefits forthcoming as a result
of a transaction and Claimants were furloughed at
Kansas City, Missouri.

(2) That the Burlington Northern Railroad
Company, hereinafter called the Carrier, be
required to compensate Carmen;

Phyllis M. Manley	B. Cummings	B. A. Brock
K. B. Riley	S. R. Peek	
Thomas R. Prichard	M. E. Robinson	
David B. Blake	C. L. Manley	
Jeffrey R. Bailey	K. R. Payne	
H. Baptiste, Jr.	Frank Correnti	
J. B. Cheatum	J. C. Henderson	
R. J. Utter	M. I. Moore	

hereinafter called the Claimants, their proper protective compensation as provided in Section 6 & 7 and all fringe benefits as provided in Section 8, pursuant to Finance Docket No. 28250 (New York Dock).

D I S C U S S I O N

This dispute arose based on the Carrier's action in reference to change in force levels for Carmen at the Rosedale and Murray Yards in September 1981. Seventeen employes, the Claimants herein, were displaced and claimed that this was as a result of a "transaction", requesting protective benefits under the New York Dock Conditions.

As background to the dispute, the Burlington Northern (the Carrier herein) and the St. Louis San Francisco Railway Company effected a merger as of November 21, 1980. Following this, on January 29, 1981, the Carrier and the Organization entered into an Implementing Agreement, recognizing coverage of New York Dock Conditions (Finance Docket No. 28250). The Implementing Agreement specifically referred to the locations at issue here, as follows:

3. Consolidation of St. Louis and Kansas City facilities and functions:

(a) As a result of this transaction, certain Frisco Carman assignments at Rosedale yard will be abolished and consolidated with BN work at Murray yard, North Kansas City, Missouri; and, thereafter, all car department functions in the Kansas City terminal will be performed on a coordinated basis under the BN collective agreements. . . .

The sole issue for resolution by the Arbitration Committee is whether the Carrier's action in September 1981 -- eight months after the date of the Implementing Agreement -- was a "transaction" resulting from the merger, as claimed by the Organization or whether it was a result of "factors other than a transaction".

Relevant portions of the New York Dock Conditions are as follows:

. . . .

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

Section 1 (c) of the Conditions reads as follows:

(c) "Dismissed employee" means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.

11. Arbitration of Disputes . . .

(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 argues that, from the outset of the merger, the Carrier took advantage of the opportunity to

consolidate the two nearby facilities which were previously required by the former separate carriers. This is clearly indicated in the Implementing Agreement. Further reductions in the Rosedale facility in September 1981 were, in the Organization's words, "simply one step. . . in the Carrier's plans, resulting from the merger, to consolidate all Carmen's work in the Kansas City area in one facility /Murray/". In its submission, the Organization states that the Rosedale facility was completely closed by September 1982. The Arbitration Committee notes that this took place long after the filing of the claims under review here and thus is of doubtful relevance; however, it does go to enhance the basic argument on which the Organization rests its case.

The Carrier, however, takes up the burden of showing that "factors other than a transaction" formed the basis of the September 1981 force reduction. This other factor, the Carrier argues, was purely and simply a decline in business. The Carrier argues such adverse business condition would have required a force reduction for both carriers, if no merger had taken place, or for the merged Kansas City operations. Such reduction in force as a means to "reduce expenses" is covered by Rule 22 (a) of the Schedule Agreement, which reads as follows:

(a) When it becomes necessary to reduce expenses, forces will be reduced. When forces

are reduced, employees will be laid off in reverse order of their seniority, employees remaining in service to take the rate of the job to which assigned. When a holiday occurs in the assignment of the employees work week, the work hours for that assignment will be thirty-two (32) hours, except for those employees who are given four (4) calendar days' advance notice that they will work.

Rule 27 (a) of the St. Louis San Francisco Agreement reads to similar effect.

Detailed analysis of the statistics provided by the Carrier is not required here. The following are some examples of the data:

In the Springfield District, of which Kansas City is a part, carloadings declined from 62,401 in November 1980 to 46,118 in November 1981, to use comparable figures absent seasonal fluctuation. This is a decline of 26 per cent.

Train miles declined from 320,249 in February 1981 to 247,744 in August 1981, a decline of more than 22 per cent.

Yet the change in number of Carmen employed at Rosedale and Murray Yards declined only 13.4 per cent from November 1, 1980 (149 Carmen) to October 1 (129 Carmen), according to the Carrier's figures.

At the arbitration hearing, in response to certain contentions by the Organization that statistics supplied earlier were not directly applicable, the Carrier offered information specifically related in Kansas City. While such

material had not been presented earlier for Organization review, it appears to support further the Carrier's basic contention that the reduction in force which is the subject of the claim was caused by the effects of a steady decline in business.

It is obvious, as the Organization argues, that the merger had its long-range effect as to the consolidation of operations at Rosedale and Murray and the eventual elimination of the Rosedale Yard. However, this by itself does not explain the decline in force beyond that effective at the time of the Implementing Agreement. The Carrier has sufficiently proved that the reduction in force in either or both points at the time of this dispute was rationally grounded in concern for reduction in expense owing to decline in business.

Public Law Board No. 3160, Award No. 1, involving the same Carrier, is relevant in its argument, which states in part:

Changes in volume of Carrier's business, which results in an employee's loss of earnings or furlough is not a "transaction" within the meaning and intent of the Merger Protective Agreement. Lost earnings or furloughs resulting from a decline in business is not a direct result of a "transaction", and such employees who lose earnings or are furloughed do not qualify for protective benefits under the definitions in the Merger Protective Agreement.


A W A R D


The Carrier did not violate ICC Finance Docket No.
28250 (New York Dock Conditions) as to the Claimants herein.
The claim is denied.

New York, New York

Dated: January 17, 1983

ARBITRATION COMMITTEE


HERBERT L. MARX, JR., Neutral Member
and Chairman


R. P. WOJCIOWICZ, Employee Member


CLEMENT LANE, Carrier Member