

SPECIAL BOARD OF ADJUSTMENT NO. 927

Award No. 2

Case No. 2

Parties Brotherhood of Locomotive Engineers

to and

Dispute Norfolk and Western Railway Company

Question

at Issue: Are the following individuals displaced and/or dismissed employees as set forth in the New York Dock II protective conditions.

G. R. Olaker

L. E. Blackburn

Findings: This is the second of five cases placed before this arbitration board. The first such case resulted in our Award No. 1, which by reference is incorporated herein.

The instant claims were filed pursuant to Article XI of the New York Dock II employee protective conditions which were imposed by the Interstate Commerce Commission (ICC), in connection with its decision to approve the coordination of operations on the Norfolk and Western Railway Company (N&W) and Southern Railway Company (SR) in Finance Docket No. 29430 (SUB-NO. 1). This case is similar to Case No. 1 except as to the circumstances under which the alleged adverse situation arose. As noted in Award No. 1 the conditions for the protection of an employee enunciated in New York Dock Railway - Control-Brooklyn Eastern District, 360 ICC, 60 (1979) (New York Dock Conditions) were imposed for the protection of those employees adversely effected as a result of the coordination of the authorized coordinations.

Each of the Claimants identified herein alleged that they are entitled to protection under the New York Dock II Conditions for the reason that as a result of the consolidation that Carrier is no longer switching out Southern Railway cars, thereby causing the loss of two to three three yard crews at Williamson yard.

We will here discuss both the claims as one in the interest of brevity.

Each Claimant completed and submitted a "Request to be Recognized as a Protected Employee under NYD II" form on September 14, 1982. Upon receipt of this form, the Carrier researched each man's allegations and subsequently advised each of them individually that their request to be recognized as a protected employee under the New York Dock II Conditions was denied. Further, the Carrier advised that the reason the request was denied was because the displacement identified in July of 1982 as having adversely effected him, was not a result of the consolidation, but rather, a direct result of the decline and volume of traffic handled in that facility.

Carrier, in support of this position, supplied the Organization with a chart showing the number of cars handled at Williamson yard between February of 1982 and July of 1982, the number of crews worked each month and the amount of coal available for loading each month. Such data reflected:

<u>Month</u>	<u>No. of Crews</u>	<u>No. of Cars Handled</u>	<u>Coal Loaded Tons</u>
February	151	51,456	136,422
March	191	66,109	168,461
April	147	48,369	136,691
May	158	51,748	123,573
June	141	46,857	137,168
July	115	37,844	94,271

Claimant Olaker, on June 1, 1982, was working as fireman on the 6:30 AM short track job in the Williamson yard, making three to four hours overtime. Since the consolidation, it was argued, Williamson yard crews are not switching Southern Railway hopper cars. As a result thereof yard jobs had been cut off. Claimant's present assignment does not make the overtime as previous.

Claimant Blackburn was on the yard fireman's extra list by his own choice. The last day that he worked therefrom was November 6, 1982. He worked the R-2 as a regular assigned fireman. Claimant Blackburn has not worked since (as of June 17, 1983).

The Employees contend, as in Case No. 1, that both Claimants were effected by the "various programs of economics put into effect at the Williamson, W. VA. Terminal." It was contended that the certification of an employee's test period as a result of consolidation has no relation to the decline in business factor because New York Dock II Conditions do not provide relief to Carrier in the latter category.

The Board finds that if fireman Olaker were to be recognized as a "displaced" employee and fireman Blackburn as a "dismissed" employee the record must reflect that the Employees had established a direct causal relationship between the transaction, to wit- the consolidation of operations at certain points between the N&W/SR, and their status complained of. The record does not so reflect.

While it may be true that the Carrier did decide to eliminate the switching of Southern hopper cars at Williamson yard such fact of itself was an operational change. No yard assignments were lost as a result thereof. It is not unreasonable to conclude that if the change was effective on or about June 1, 1982, then the Claimants' allegations would have born truth long before July 1982 had they been directly effected by the transaction. The Board on the record before it must conclude that it was more apparent from the tables quoted herein before that the marked reduction in the level of traffic handled including the annual miners vacation and the decreasing number of crews depicted between February and July 1982 is reflective of a declining level of traffic.

The Employees had the burden to show the relevance between their allegation, to wit- that by their no longer switching Southern Railway hopper cars at Williamson yard, the loss of their jobs had resulted from the transaction. They, simply, did not.

The Board concludes, as did Murray Roman, Chairman and Neutral Member of the Amtrak Board of Arbitration between Grand Trunk Western Railroad Company and the United Transportation Union that:

\*\*\*\*\*the determining factor to be considered  
is the end product of the chain of bumps on

June 9, 1971. If this criterion is one basis, then we must conclude that Webster was not effected at that time. Hence, when he was furloughed subsequently, it was a result of a change in volume or character of employment brought about by other causes than a transaction as defined by Appendix C-1, Article I, Section 1(a)."

The Board, here, must conclude that the adverse effect complained of by the Employees did not flow directly from the transaction in question. In the circumstances, the Board concludes that the Question at Issue must be found in the negative, i.e., that the Claimants were not displaced and/or dismissed employees as set forth in the New York Dock II Protective Conditions.

Award: The following individuals are not displaced and/or dismissed employees as set forth in the New York Dock II Protective Conditions:

G. R. Olaker  
L. E. Blackburn

  
C. M. Moore, Employee Member

  
D. H. Mullen, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member