

ARBITRATION BOARD
NEW YORK DOCK LABOR PROTECTIVE CONDITIONS
(IMPOSED BY THE INTERSTATE COMMERCE COMMISSION
IN FINANCE DOCKET 29430

UNITED TRANSPORTATION UNION)
)
vs.) FINDINGS & AWARD
)
NORFOLK & WESTERN RAILWAY COMPANY)

QUESTION AT ISSUE:

Do the following individuals meet the criteria of either
a displaced or dismissed employee as set forth in the
New York Dock II Conditions:

Name	Seniority Rank	Name	Seniority Rank
J. D. Rife	93	D. E. Mounts	144
L. Williamson	104	J. E. Hensley	154(A)
C. F. Butler	108	R. E. Hairston	157
John Hall	116	M. I. Hager, Jr.	176
J. R. Scott	141	D. K. Williamson	189
		R. D. Aaron	186(A)

BACKGROUND:

The events which led to the filing of claims for the above-named individuals in pursuance of Article 1, Section 11, of the New York Dock II protective conditions (the "NY Dock Conditions"), and identification of the applicable Interstate Commerce Commission (the "ICC") Finance Control Dockets, are not unlike those set forth in the Joint Statement of Facts in Case No. 1 (Award No. 1) of this Arbitration Board.

Whereas the issue in Case No. 1 concerned consolidated operations at Norfolk Terminal, the issue here in dispute concerns Williamson Yard at Williamson, West Virginia.

POSITION OF THE EMPLOYEES (UTU):

The UTU maintains that the Claimants, Williamson Yard Brakemen, lost work opportunities as a result of the discontinuance of the switching out of Southern Railway (SR) coal cars and a diversion of traffic from Williamson Yard.

The UTU says that prior to the consolidation a large part of the work of the yard crews at Williamson was the separating of empty coal cars, which were then routed for return to their respective home roads. It says that yard crews on each of the three daily shifts performed the switching out of these cars, and that each crew averaged from three to five hours every day doing that particular work.

The UTU says that because the yard crews were no longer needed to switch out SR coal cars and to make up trains of empty cars for return to the home road, that the Carrier was thus able to rearrange its yard work to the extent that six of ten regular crews were abolished over a two and one-half year period of time. Thus, the UTU says that as of February 21, 1985 there were only four regularly assigned yard crews at Williamson, each consisting of a conductor and two brakemen, and with six brakemen on the yard brakemen's extra list. This, the UTU says, represents a reduction of 26 positions after the consolidation on June 1, 1982.

Accordingly, the UTU contends, 11 of the 44 prior right Williamson yardmen, or the individuals named above, were adversely affected by the transaction and are therefore entitled to benefit of the NY Dock II Conditions account their having been placed in a worse position with respect to compensation and rules governing their working conditions as a result of a "transaction," i.e. the discontinuance of the switching out of the SR empty coal cars and making up trains consisting of such cars for return to the SR.

The UTU disputes the contention that a decline in business was responsible for the loss of work opportunities at Williamson and challenges data offered by the Carrier which shows the total number of cars handled and the corresponding number of yard crews worked in each month for the period from January of 1982 through December of 1983. The UTU argues that the figures in the Carrier chart are incomplete and deceptive.

The UTU says that the figures presented by the Carrier cannot be taken at face value because prior to the consolidation on June 1, 1982 several trains of up to 200 empty coal cars each were "handled in the yard" each day because it was necessary to switch out the foreign cars. However, following the consolidation those same trains were not handled in the yard, the UTU asserts, but instead were run by the yard on the main line track and were not therefore recorded as being handled in the yard. The UTU says that this accounts for the sudden drop in the number of total cars handled and the reduction in the number of yard crews shown on the Carrier's chart as compared in the months before and after the consolidation, or, a total of 51,748 cars and 158 yard crews in May 1982 to 37,844 cars and 115 yard crews in July 1982.

In the circumstances, the UTU says that although at first glance the chart supplied by the Carrier would seem to justify a reduction in the work force, or the number of yard crews needed at Williamson due to a "decline in the number of cars handled," that when one considers all the trains that were run through and, therefore, not handled in the yard, it becomes evident that fewer

crews were worked because there was less work to be done and that the difference was a direct result of the transaction and that the loss of earnings for the above-named individuals after the transaction is directly related to the loss of this work.

The UTU thus maintains that each claimant listed in this case is entitled to the maximum protective benefits enumerated in NY Dock II Conditions as claimed on the basis that each of them meets the criteria of a "displaced" or a "dismissed" employee. In this respect, the UTU says that each Claimant was "placed in a worse position with respect to their compensation and to rules governing their working conditions" as a result of the abolishment of more than 60% of the yard positions to which they held prior rights.

The UTU does not dispute that some, if not all, of the Claimants have been able to obtain positions in road service commensurate with their dual road/yard seniority (established on September 16, 1977 by Memorandum Agreement) when they no longer stood for positions in the Yard. However, the UTU offers that this fact only tends to support their claims of being "placed in a worse position with respect to their compensation and to rules governing working conditions" because of the disparity in road and yard rates of pay.

In this latter regard, the UTU submits that the rate of pay for yard brakemen at the time was \$104.10 per day, whereas the daily rate for a road brakeman in through freight service was \$90.00, or a difference of about 13% in the daily rate of pay. Moreover, the UTU argues that rules governing road service are much more restrictive than those covering yard service, particularly with regard to fringe benefits and regulated working hours. It says, for instance, that yard service employees (regular and extra) are entitled to eleven (11) paid holidays each year whereas only road service employees who are regularly assigned to runs without a mileage component have this particular benefit. The UTU also offers that yard service employees have stated times and designated places for going on and off duty and that yard crews, unlike road service employees, are not required to lay over for several hours at an away-from-home terminal. Further, the UTU says that yard service employees have a scheduled meal period between 4-1/2 and 6 hours after reporting for duty, arbitraries for coupling air hose, and that they do not have to sit by a telephone around the clock waiting to be called to work.

Although the UTU offers that the foregoing arguments support the claim of all 11 claimants in this case, it addressed the adverse affect in more detail in the case of Claimant John Hall, who had requested an oral hearing and desire to document his assertions before the Board.

Claimant Hall filed a claim on May 24, 1983, requesting that he be recognized as having been adversely affected and entitled to the protective benefits of the NY Dock Conditions pursuant to the terms of the consolidation as approved and the Memorandum Agreement between the Norfolk and Western Railway Company and its

Employees represented by the United Transportation Union dated May 5, 1982.

Claimant Hall, the UTU submits, earned \$20,492.35 during the 12 months preceding the consolidation, or, principally, an average monthly compensation, adjusted due to general wage increases of \$1,843.69. His monthly earnings following the consolidation were less than this average monthly compensation, i.e., \$1,688.60 for June, \$1,094.54 for July, \$1,343.78 for August, \$1,424.66 for September, and \$1,189.66 for October 1982.

The UTU says that Claimant Hall had 16 years yard seniority when he filed his claim, and that prior to the consolidation such a seniority standing had enabled him to hold a regular assignment, work consistent hours, and almost never be forced onto the extra list. It says that he could have expected to have continued to work in such a manner provided that at least five yard crews were needed, whereas there were only four regular crews assigned at Williamson after the consolidation.

In this regard, the UTU offers that although there was a slight decrease in total rail traffic in the weeks following the date of consolidation as a result of the "annual coal miners' vacation," that Claimant Hall was not placed in a worse position as a result of that decrease. It says that a temporary decrease in the number of cars handled would not have resulted in the increasingly frequent furloughs and the inability of getting only a few days work each week as experienced by Claimant Hall with his seniority standing. Thus, the UTU asserts, that while the Carrier claim of "bad times" would be relevant to individuals on the bottom of the seniority roster, such a defense is misplaced when considering someone with Claimant Hall's seniority.

Further, the UTU says that whereas Claimant Hall's job had not been abolished prior to the consolidation, it was abolished on two occasions after the consolidation.

The UTU also disputes the Carrier contention that Claimant Hall had laid off an excessive amount of time during the months before and after the consolidation. It says that even though there may have been occasions when the Claimant marked off on days that he also worked, a total of only 10 days, and not 72 days referenced by the Carrier, were lost during a cited 26-month period account of absenteeism. In this regard, the UTU says that the difference in the amount of time that Claimant Hall worked, as compared to the total number of working days in the period in question, was "due to the unavailability of work and not because he laid off excessively of his own volition." It says that when Claimant Hall "was assigned to the extra list, yard or road, whether he worked or not depended upon vacancies to be filled and his relative standing on the list."

In regard to being placed in a worse position with respect to his compensation and rules governing his working conditions, the UTU says that whereas Claimant Hall had 16 years of seniority as a yard brakeman, he has less than six years of seniority as a road

brakeman, and thereby loses 10 years seniority when he bids on an unassigned road job.

The UTU accordingly asks that the Question at Issue be answered in the positive with respect to Claimant Hall, et al, being held to meet the criteria of a displaced or dismissed employee as set forth in the NY Dock Conditions.

POSITION OF THE CARRIER:

The Carrier maintains that the change in the employment status of the above-named individuals did not result from the consolidation of the NW and SR, but from other unrelated factors such as a decline in the volume of traffic handled at Williamson and that this allowed it to eliminate two or three yard jobs at Williamson.

The Carrier says that the UTU allegation that because of the consolidation that it is no longer necessary to "switch-out" SR coal cars at Williamson for interchange back to the SR is fundamentally unsound.

First of all, the Carrier says, the actual work involved in the separate handling or switching of SR hoppers prior to June 1, 1982 constituted a minute part of the overall yard operation, to the extent that even the total elimination of this work could not conceivably result in the reduction or elimination of even one yard crew. It says SR cars were, for the most part, handled in solid blocks or consists, and the actual switching time involved in moving these cars through the yard was minimal.

Secondly, the Carrier says, it was discovered after the merger that the NW and SR coal hopper fleets were not, in all cases, compatible or interchangeable because of the difference in the primary purposes for which they were designed. NW cars were specifically designed and manufactured to be handled in a rotary dumper, whereby the entire car is rotated, at its Norfolk Coal Pier facility or at the plant sites of some of its larger coal consignees. A number of the SR coal hoppers, on the other hand, the Carrier says, were designed for bottom dumping and are larger in size and dimensions, making them unsuitable for rotary dumping.

Therefore, the Carrier says, while it may be true that it is no longer required to "interchange" cars back to the SR to the same extent as before the merger, the fact remains that SR coal hoppers are still being separated from NW coal hoppers more or less to the same extent as before the merger. In support of this contention the Carrier directed attention to an analysis of the yard operation at Williamson before and after the NW/SR merger as prepared by one of its general yardmasters, i.e., Exhibit "F" to the Board.

The Carrier also says that the record makes it clear that the changes in employment levels which affected the above-named individuals were tied directly to the downward trend in coal

business, as well as the overall economic recession which occurred during 1982 and 1983, and not as a result of the NW/SR related "transaction." In this respect, the Carrier directed attention to a chart and graph in illustration of what it submitted was the direct and immediate correlation between the total cars handled during a given month at Williamson and the total number of yard crews worked, and which showed that as business levels declined, the number of yard crews needed to handle the reduced number of cars also declined.

The Carrier, as did the Organization, cites awards of past boards of adjustment in support of its contentions. The Carrier especially directs attention to a dispute which had been brought forward by the Brotherhood of Locomotive Engineers on behalf of two Williamson Yard firemen, and wherein SBA No. 927, with Referee Arthur T. VanWart, concluded that the elimination of the switching of SR hoppers at Williamson Yard was an operational change and that no yard assignments were lost as a result of that particular change.

As more specifically relates to Claimant Hall, the Carrier, in addition to arguing that Claimant Hall's inability to retain full time employment in the Williamson Yard was unrelated to the NS consolidation, offered a statement from its General Yardmaster in which, among other things, it was stated as follows:

"[I] feel Mr. Hall's claim is without merit as evidenced by the volume of rail traffic, the current slump in the coal industry, and the overall poor economic condition throughout the country. Please note that in the seventeen (17) month period prior to the consolidation, January 1, 1981 through May 31, 1982, we handled 14,700 inbound trains at Williamson Yard. In the seventeen (17) month period since the consolidation, June 1, 1982 through October 31, 1983, we handled only 12,228 inbound trains; a decrease of 2,482 trains, or an average of 146 fewer trains per month since the consolidation. Also, prior to the consolidation, we were working approximately twenty (20) Pocahontas Division Mine Runs per week out of Williamson. These figures have declined drastically over the past year until at this time we are working only approximately ten (10) Pocahontas Division Mine Runs per week and twenty-nine (29) Scioto Division Mine Runs per week. This has been a direct result of the current slump in the coal industry and not due to the Norfolk Southern consolidation as would be suggested by Mr. Hall's claim.

The severe decline in rail traffic has also produced a less congested yard situation, thereby resulting in less yard switching required and a reduction in the need for yard crews.

It should also be pointed out that Mr. Hall's seniority would allow him to work as a road conductor, an option that was offered to him. However, Mr. Hall has rejected

this proposal and refuses to perform any duties other than yard service. Our records will indicate that several yardmen at Williamson, including some men younger than Mr. Hall, have elected to accept this option and have been working steadily since the consolidation.

In view of these facts, it would seem that Mr. Hall has placed himself in his current status and the Norfolk Southern consolidation should not be considered at fault."

The Carrier thus urges that the Question at Issue be answered in the negative, i.e., that the Claimants do not meet the criteria of either a displaced or dismissed employee as set forth in the NY Dock Conditions since they did not lose a regular job, nor were they involved in a chain of displacements that resulted directly from an authorized transaction.

FINDINGS AND OPINION OF THE BOARD:

The Board has given studied consideration to the respective positions of the parties; the record as developed and presented; the oral and rebuttal arguments asserted at hearings on the issue; and, the awards of past boards of adjustment as introduced by the parties.

In the opinion of the Board, the record fails to support the contention that a large part of the work of the yard crews at Williamson prior to the consolidation involved the switching out of foreign cars. Rather, the record supports the finding that the work of switching SR cars was but a relatively minor part of the overall work performed by yard crews at Williamson.

Even assuming, arguendo, there had been a total elimination of this work, we believe it apparent that the net result would not have been of sufficient impact to have caused the reduction of one yard crew. In this respect, it must be recognized as the Carrier argued, and was not probatively refuted, that SR coal cars were generally received by the NW in solid blocks and required but little additional switching, and that, if anything, the amount of switching given to SR hoppers increased following the consolidation due to oversized cars, i.e., those referred to as "Big Reds" and "Little Big Reds," being dedicated to unit train service and the operational need for them to be continually separated out after their return from a particular consignee, albeit, as the Organization showed in several photographs, there would be occasion when SR hopper cars and NW hopper cars would be in the same train consist.

The Board is also persuaded that the number of yard crews at Williamson did not increase in proportion to the increase in coal tonnage handled account a number of factors as offered by the Carrier, or, principally:

1. Many of the smaller mines served from Williamson

have been shut down over the past several years thus reducing the amount of switching and classification of cars originating from a greater number of mines and with more diverse destinations. Most of the larger mines ship solid train loads to the same location which eliminates the need to switch or classify individual cars.

2. Long term coal hauling contracts permitted since passage of the Staggers Act have increased the use of "unit" trains and have reduced the turn-around time for cars between mine and market. Thus, fewer cars are needed to handle the same relative amount of business, yards and sidings are less congested, and train operations are improved.

3. The on-going conversion from 50 ton to 100 ton coal hoppers has decreased the total size of the car fleet, while retaining the same overall capacity.

4. Less congested yards have permitted local supervision to improve efficiency and reduce switching time.

5. Improvements in the "blocking" or classification of cars by destination at other terminals and by road crews on line of road has reduced the amount of switching performed at Williamson. This is brought about, in part, by improvements in computerized car records and more centralized control over transportation policy.

The Board also finds support for the Carrier contentions in that documentation which the Board asked the Carrier to prepare and submit as related to certain arguments which had been offered at hearings on the dispute. Among other things, this additional information showed that Williamson Yard, as with the entire system, suffered a decline in traffic during the second half of 1982 and into 1983, and that there was a direct and immediate correlation between the number of cars handled at a given terminal and the crews needed to handle the available traffic.

In the circumstances, the Board finds it evident from the data of record that the decline in the number of yard crews worked at Williamson after the consolidation was directly related to the corresponding decline in the number of cars handled at that location as a result of the soft coal market and a general recession in the economy as a whole.

The Board also finds it significant that in a dispute of like nature on this property involving employees represented by the Brotherhood of Locomotive Engineers (Award No. 2, SBA No. 927) it was found that elimination of the switching of SR cars at Williamson constituted an "operational" change and not a "transaction" pursuant to the consolidation. That Board, with Arthur T. Van Wart serving as the chairman, held in part here pertinent as follows:

"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. . . . 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 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."

In the light of the record as developed and presented, the Board has no alternative but to find, as did SBA No. 927, that the work and crew reductions at issue were brought about account a fluctuation in business and a change in the volume or character of rail traffic being handled. They were service changes which are completely unrelated to the transaction and do not serve to qualify the employees for the protective benefits of the NY Dock Conditions.

AWARD:

The Question at Issue is answered in the negative. The above-named individuals are not found to meet the criteria of either a "Displaced" or "Dismissed" employee as set forth in the New York Dock II Conditions.



Robert E. Peterson, Chairman
and Neutral Member



G. C. Edward
Carrier Member



B. G. Gates
Employee Member

Norfolk, VA
April 9, 1992