

BEFORE AN
ARBITRATION COMMITTEE ESTABLISHED
UNDER ARTICLE I, SECTION 11 OF THE
NEW YORK DOCK EMPLOYEE PROTECTIVE CONDITIONS

PARTIES	AMERICAN TRAIN DISPATCHERS)	
	ASSOCIATION)	AWARD NO. 4
TO)	
	AND)	CASE NO. 4
DISPUTE)	
	CSX TRANSPORTATION, INC.)	

ORGANIZATION'S STATEMENT OF CLAIM:

Claim of Train Dispatcher R. M. Cummins for entitlement to the protective benefits of the New York Dock Conditions as a result of being affected by implementation of the August 15, 1989 Agreement.

CARRIER'S QUESTION AT ISSUE:

Is claimant entitled to a 'displacement allowance' resulting of the 'transaction' (as those terms are used and interpreted by 'New York Dock') that was implemented on February 1, 1990 pursuant to the provisions of the Memorandum Agreement signed on August 15, 1989 as claimed by the Organization?

HISTORY OF DISPUTE:

On September 1, 1987 pursuant to authority granted by the Interstate Commerce Commission (ICC) in Finance Docket Nos. 30055 (Sub.-No. 1) and related proceedings, 30053, 31033 and 31108 the Carrier began implementation of a multiphased project to centralize train dispatching functions throughout the Carrier's property to the Carrier's Centralized Train Dispatching Center in Jacksonville, Florida. The ICC conditioned the authority granted the Carrier upon application of the labor protective conditions set forth in New York Dock Ry. --Control--Brooklyn Eastern Discl., 360 I.C.C. 1979 New York

Dock Conditions). As the result of implementation of "Phase I" of the transaction Claimant relocated to Jacksonville in April 1988 at which time Claimant became a displaced employee as defined in Article I, Section 1(b) of the New York Dock Conditions and began to receive a displacement allowance under Article I, Section 5 of the conditions. By letter of May 3, 1989 Claimant was notified of the compensation and hours upon which his dismissal allowance would be based and that his protective period began on April 27, 1988 and would end on April 28, 1994.

On May 18, 1989 the Carrier issued a notice pursuant to Article I, Section 4 of the New York Dock Conditions to implement "Phase II" of the transaction. Further pursuant to Article I, Section 4 the parties entered into negotiations for an agreement to implement the proposed transaction. An agreement was reached on August 15, 1989.

On October 19, 1989 the Carrier issued a notice to all dispatchers on the centralized train dispatcher's seniority roster concerning the implementation of Phase II. That notice stated in pertinent part that "... certain positions will have their rest days changed, or territory added to their current position. Dispatchers thus affected are entitled to an exercise of seniority." The notice further stated that incumbents of such positions had to state whether they wished to remain on the position with the new days off or additional territory added or to exercise their seniority to another position. Included among such positions was the "AQ" desk on the Corbin Division.

On February 1, 1990 the Columbus, Ohio dispatching office was closed and its functions transferred to the Corbin Division AQ desk in Jacksonville. The incumbent of that position, L. Stalcup, exercised seniority to displace a junior employee, C. D. Keys, from a relief train dispatcher position. Dispatcher Keys then elected to displace Claimant from his position of Assistant Chief Dispatcher on the Corbin Division effective February 1, 1990. Claimant then exercised his seniority on March 16, 1990 to displace Junior Train Dispatcher D. L. Young who held the position of Second Shift Assistant Chief Dispatcher on the Florence Division.

On February 6, 1990 Claimant wrote the Carrier requesting "... my 12 month test period guarantee under New York Dock protection from Feb. 1st, 1990 thru Feb 1st., 1996." On February 11, 1990 the Carrier declined Claimant's request stating that Claimant had been affected by the implementation of Phase I of the transaction and that his protective period for purposes of New York Dock protective conditions began on April 27, 1988.

The Organization grieved the Carrier's action. The Carrier denied the grievance. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remained unresolved, and the parties determined to handle the matter through arbitration pursuant to Article I, Section 11 of the New York Dock Conditions. This Committee was created and heard the dispute. The parties extended the time for this Committee to issue its decision provided in Article I, Section 11.

FINDINGS:

The Organization's theory in this case is that Claimant was in the chain of displacements initiated by implementation of Phase II of the centralization of train dispatching functions at Jacksonville, Florida. Specifically, the Organization maintains that Claimant was covered by Section 6(a) of the August 15, 1989 Implementing Agreement providing in pertinent part that "[E]mployees affected as a result of the implementation of this agreement will be entitled to the protective benefits of the New York Dock Conditions" Pointing to the Carrier's October 19, 1989 notice, the Organization argues that the addition of the train dispatching functions formerly performed at Columbus, Ohio to the AQ desk on the Corbin Division caused Train Dispatcher Stalcup to exercise his seniority which eventually resulted in Claimant being bumped from the position he held. The Organization argues that Claimant became a displaced employee at that time as defined in the New York Dock Conditions because the position from which he was displaced produced more income in the form of overtime than the position to which he displaced even though the latter position carried a higher rate of pay. Accordingly, argues the Organization, Claimant is entitled to a new six-year protective period as a result of his displacement on February 1, 1990 and to a dismissal allowance as a result of the loss of overtime.

The Carrier vigorously contests the Organization's position. The Carrier maintains that Train Dispatcher Stalcup voluntarily

exercised his seniority pursuant to Article 5(c)(4) of the January 9, 1988 Centralized Train Dispatching Center Agreement which provides in pertinent part that a Train Dispatcher may exercise seniority rights when "... additional territory is added to his assignment. . . ."

The Carrier asserts that Dispatcher Stalcup was not required by the transaction to exercise displacement rights, but elected to do so. Accordingly, urges the Carrier, the exercise of such displacement rights was not a result of the transaction. Moreover, not only has Claimant failed to show that he was affected as a result of the transaction as required by Article I, Section 11 of the New York Dock Conditions, but he also has failed to prove his status as a displaced employee under Article I, Section 5 of the New York Dock Conditions. Finally, the Carrier maintains that even if claimant has satisfied his burden of proof under Article I, Section 11, he is barred by the terms of Article I, Section 5 from receiving a displacement allowance because he failed to obtain a position available to him in the Corbin Division which would have allowed him the same opportunities to earn overtime as he had in the position from which he was displaced.

We believe that on the record before us the Organization has the superior argument that Claimant was affected within the meaning of Section 6(a) of the August 15, 1989 Implementing Agreement by Phase II of the transaction. While it is true that Dispatcher Stalcup exercised his seniority pursuant to Article 5(c) of the applicable schedule agreement, the Carrier's October 19, 1989 notice clearly indicates that such action was anticipated to be at a result of the

implementation of Phase II. If Phase II had not been implemented the dispatching duties from Columbus, Ohio would not have been placed on the AQ desk in the Corbin Division at Jacksonville and Dispatcher Stalcup would not have exercised his seniority to another position. Accordingly, Claimant was entitled to a new protective period beginning with his displacement on February 1, 1990.

However, we believe the Carrier's point is well taken that Claimant is not entitled to a displacement allowance as a result of his displacement on February 1, 1990 because Claimant did not secure a position in the Corbin Division which would have entitled him to the same opportunities for overtime work he had in connection with the position from which he was displaced. While it may be true that Claimant exercised his seniority to a higher rated position after his displacement, the fact remains that such position produced less compensation which is the basis for his claim for a displacement allowance. Claimant cannot base his claim upon a set of facts and then deny the consequences of those facts with respect to other pertinent matters. In this case the actual compensation produced by the position to which he exercised his seniority. Here Claimant failed to place himself on a position where his opportunity for overtime would have been equal to that he had in the position from which he was displaced. Article I, Section 5 of the New York Dock Conditions clearly bars the displacement allowance Claimant seeks in this case.


AWARD

The Organization's claim is denied.

The Carrier's question is answered in the negative.


William E. Fredenberger, Jr.
Chairman and Neutral Member


Michael Nicoletti
Carrier Member


H. E. Mullinax
Employee Member

DATED:

