

ARBITRATION UNDER
OREGON SHORT LINE III

PARTIES TO DISPUTE:

Brotherhood of Maintenance of	:	
Way Employees	:	
	:	G. N. Babb
and	:	Claimant
	:	
Illinois Central Gulf Railroad	:	

ARBITRATION COMMITTEE

Joseph A. Sickles	Neutral Member
J. S. Gibbons	Carrier Member
Hugh Harper	Employee Member

STATEMENT OF THE CASE

The parties were unable to resolve a dispute concerning the application of the Oregon Short Line III protective conditions as they relate to Claimant Babb. The dispute was ultimately submitted to this Committee.

A hearing was held on September 30, 1985, in Chicago, Illinois, at which time all parties were represented and afforded full opportunity to present pertinent and material information, all of which has been considered.

QUESTION AT ISSUE

Is Claimant entitled to the protective conditions set forth in Oregon Short Line III?

STATEMENT OF FACTS

G. N. Babb established trackman seniority as of April 30, 1979, and he was occupying the appointed position of Track Inspector on the Carrier's Aberdeen Branch when the Carrier applied for and received ICC approval to abandon certain track segments. The ICC approval (contained in decision No. AB-43 (Sub-No. 77F)), imposed OSL III protective conditions on the Carrier's actions.

The Carrier abandoned the track segments here in question in 1981, and according to the Organization, the Carrier abandoned the track from milepost 23 (Kosciuska, Mississippi) to milepost 46.5 (Ackerman, Mississippi) and it transferred the inspection of trackage from milepost 0 (Durant, Mississippi) to milepost 23 (Kosciuska, Mississippi) to another Track Inspector's district. It also added milepost 239.5 (Ackerman, Mississippi) to milepost 74 (Woodland, Mississippi). When the latter segment was abandoned, the Claimant inspected track from Ackerman to Aberdeen. From September to November 1982, he also inspected track from West Point to Okolona, Mississippi.

The Carrier notes that the 1981 track abandonment affected less than twenty-five percent (25%) of the territory on which the Claimant had worked.

The Claimant's position was abolished on November 18, 1982, and because of his seniority, he was placed in a furloughed status, and, to our knowledge, he has not been recalled to service.

In January of 1985, the Claimant submitted a written statement which expressed the view that he was entitled to benefits under Oregon Short Line III since, in his opinion, "if the company had not started abandoning the lines, I believe I would still have a job with the Company." The Claimant's submission was denied.

According to the Engineering Superintendent, "(t)he reason (the Claimant was) taken off the track inspector position was not account of line abandonments but because of a reduction in the number of track inspectors on the Southern Division."

On March 12, 1984, the Organization appealed the decision of the Engineering Superintendent, arguing that "(a) reduction in track inspectors was made necessary because the Company abandoned the line from Kosciusko to Ackerman, then a few months later, from Ackerman to Houston, Mississippi. This is indeed the reason for Mr. Babb not being able to hold his Track Inspectors position."

By letter dated April 27, 1984, the Director of Labor Relations denied the appeal of the Claimant.

POSITION OF THE PARTIES

Position of the Carrier

The Carrier relies essentially on three arguments in support of its view that the Claimant is not entitled to benefits under OSL III.

Initially, the Carrier argues that the Organization has failed to sustain the burden of proving a direct cause and effect relationship between the track abandonment and the abolition of the Claimant's job. The Carrier claims that the burden of proof on this point rests solely with the Organization and unless the Organization can show the relationship between the two events, its claim must fail.

Secondly, the Carrier argues that the Claimant's job was abolished due to a decline in business and part of a larger reduction in force.

Third, the Carrier argues the doctrine of laches as a bar to the claim. On this point, the Carrier notes that the track abandonment took place in 1981, the Claimant was furloughed in 1982, and the ultimate claim for OSL III protection was made in 1984.

Position of the Organization

The Organization claims that there is a "cause and effect" relationship between the abolishment of the Claimant's position and the abandonment of the Aberdeen Branch segments. In the view of the Organization, the abandonment of the two segments of track on the Claimant's former track inspector area is the cause for the abolishment of the Claimant's position.

The Organization also argues that since the Claimant has not been recalled to service since November 18, 1982, and since there was no indication that he would be recalled, the Claimant would lose all seniority under Rule 10(c) of the Agreement. Thus, the Organization argues, the Claimant is entitled to the protection prescribed in Sections 5, 6 and 7 of Oregon Short Line III.

DISCUSSION

As indicated above, the ICC imposed Oregon Short Line III conditions when it approved the Carrier's request to abandon certain trackage. The Oregon Short Line III conditions, first set forth in ICC decision No. AB-36 (Sub No. 2), provide certain protections for employees who are affected by the "transaction" of a Carrier; that is, an action which was taken pursuant to authorizations of the ICC (see OSL III, Section 1(a)). In this instance, the Claimant seeks to come within the definition of "dismissed employee," that is, "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" The dispute between the parties here is whether the Claimant was dismissed "as a result of" the Carrier's abandonment of a track or for some other reason, such as a general reduction in the work force.

The Carrier cited several Awards in its brief relating to this point. One case in particular supports the Carrier's view that a direct causation is necessary in order for an employee to be considered a "dismissed" employee for purposes of OSL III benefits. In United Transportation Union and Chicago and North Western Transportation Company (OSL III Protective Conditions, September 12, 1983, G. Vernon, Chairman), the award stated:

The mere fact that a position was abolished or an employee's earnings are reduced in some proximate geographic area and time frame as a "transaction" does not per se establish that the abolished assignment was caused by the transaction; there could be other factors. Some of the awards cited by the Carrier demonstrate some of the reasons, other than transactions, that have been considered the cause of adverse employee impact. Certainly, without question, one of the defenses available to Carriers in this respect is the "reduction in business" defense, i.e., arguing that there was a reduction in the volume of traffic and/or employment which was the cause of the abolishment rather than the transaction.

The "nexus" principle therefore requires it be shown that an individual employee was "displaced" or "dismissed" because of the transaction. This is based on the language in Section 1 which defines "displaced" and "dismissed" employees as those placed in certain positions "as a result of a transaction." Moreover, the causation must be direct and not general

The case cited above supports the Carrier's position in this case. Here, the Organization was able to show only that:

- (a) The Claimant worked on the same branch as the track abandonment; and
- (b) The Claimant was dismissed within a year after the tracks were abandoned.

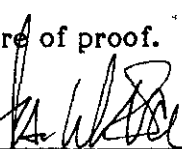
Thus, the Organization showed only that the Claimant's "earnings (were) reduced in some proximate geographic area and time frame as a 'transaction'." This does not establish the required nexus between the track abandonment and the Claimant's furlough.

Moreover, the Carrier submitted as rebuttal evidence, figures showing an overall loss of business. In an exhibit, the Carrier listed decrease in business between 1980 and 1982: i.e., a train mile decrease of 26%; an engine hour decrease of 30%; and a carload decrease of 21%. In terms of specific work force reductions, an internal memorandum from the Superintendent in Mississippi disclosed that the number of track inspectors in the Southern Division (the Claimant's Division) was reduced from twenty-three to fourteen between the date of the Claimant's furlough and the date of his claim in 1984.


These facts (when considered along with the lack of specific evidence linking the track abandonment to the Claimant's furlough) sufficiently support the Carrier's position. Inasmuch as the Carrier has prevailed on these defenses, it is unnecessary to discuss whether or not the claim here is barred by laches.

AWARD


Claim dismissed for failure of proof.



Joseph A. Sickles
Chairman and Neutral Member



J. S. Gibbins
Carrier Member



Hugh Harper
Organization Member

April 4, 1986

Date