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ARBITRATION COMMITTEE  
ESTABLISHED UNDER SECTION 11  
OF OREGON SHORT LINE III LABOR PROTECTIVE CONDITIONS,  
INTERSTATE COMMERCE COMMISSION DOCKET NO. 29458

In the Matter of an Arbitration Between  
UNITED TRANSPORTATION UNION  
and  
GRAND TRUNK WESTERN RAILROAD COMPANY

FINDINGS

and

AWARD

STATEMENT OF CLAIM:

Claims of Yardmen B. L. DePeal, L. M. Schneider and T. J. Kolko for displacement allowance as a result of the Tuscola and Saginaw Bay Railway Company assuming operation of the Denmark Subdivision on May 4, 1981.

BACKGROUND:

Under date of March 6, 1981, the Interstate Commerce Commission (ICC) approved application of the Tuscola and Saginaw Bay Railway Company, Inc. (TSBY), a common carrier by railroad subject to the Interstate Commerce Act, to acquire and operate approximately 9.46 miles of railroad located in Michigan, contiguous to TSBY's then present operation. At the time, the ICC noted in its Order the line of railroad was: "owned and operated by the Grand Trunk Western Railroad Company (GTW) and forms part of its 'Denmark subdivision' in the Thumb area of Michigan."

As a condition of its approval of the application, the ICC imposed labor protective conditions described in Oregon Short Line R. Co. -- Abandonment -- Goshen, 360 I.C.C. 91 (1979), commonly known as the Oregon Short Line III Conditions, with the costs of protection to be borne by the GTW. In this respect, the ICC set forth in its

Certificate and Decision, among other comments, the following:

"The Commission is not required to impose protective labor conditions in applications arising under 49 U.S.C. 10901. While not required, the Commission does have the discretion to do so where the interests of employees may be adversely affected by the proposal. In Prairie Trunk Railway - Acquisition and Operation, 348 I.C.C. 832 (1977), and Cadillac & Lake City Ry. Co. Acquisition and Operation, 320 I.C.C. 617 (1964), the Commission imposed such conditions, with the costs to be borne by the selling carrier. In both proceedings, the vendors had filed abandonment applications for the rail lines in question, but those applications were dismissed. Notwithstanding the dismissal of the abandonment applications, the Commission, in each case, noted that the principal result or benefit of the proposal would be the cessation by the vendor of operation of the line. Since employees of the vendors would be affected by the proposals, and since each vendee was a new carrier that had not operated previously, the Commission imposed the burden of labor protection costs upon the vendors. See Prairie Trunk Railway-Acquisition and Operation, *supra*, at page 852, and Cadillac & Lake City Ry. Co. Acquisition and Operation, *supra*, at pages 618 - 619.

The instant proceeding differs somewhat from Prairie Trunk in that the vendor, GTW, has not expressed a willingness to bear the costs of labor protection. It also differs from both Prairie Trunk and Cadillac in that vendor has not filed an abandonment application for the line to cease operation thereof. The principle is the same, however, since GTW is disposing of a losing operation. The burden on TSBY of institution of operations over such a line will be great enough without the additional costs of labor protection for the GTW employees that are not employed in the new operation. Accordingly, the costs of labor protective conditions imposed herein shall be borne by GTW. While it is true that GTW is not a party, per se, to the application in Finance Docket No. 29458, it is a party to the purchasing agreement which is a part of the application. It is through this that we have the authority to impose these labor protective costs upon that carrier.

In regard to the then present operation of service on this line of railroad, the ICC noted the following:

"GTW presently serves shippers on this line line two days per week. TSBY will replace the GTW as the serving carrier and offer five day per week service. \* \* \* \*"

It is undisputed that the Claimants in the instant dispute were working GTW 1500 Saginaw Yard Assignment, which performed all required service on the trackage covered by the ICC application.

It is also undisputed that the GTW made a change in service or operations effective May 4, 1981, prior to reaching agreement with the representative of the covered employees, namely, the United Transportation Union (UTU).

POSITION OF THE UTU:

It is the position of the UTU that the GTW "abandonment" of a portion of the Denmark Subdivision under the authority of the ICC Order is a "transaction" as defined in Section 1(a) of the Oregon Short Line III Conditions. This Section reads as follows:

"'Transaction' means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed."

The UTU maintains that the abandonment representing a transaction, it was incumbent upon the GTW to have posted notice on bulletin boards convenient to the interested employees and to have sent registered mail notice to the UTU as the representative of the interested employees. It also submits that the GTW failed to meet with the UTU in an attempt to achieve an implementing agreement to cover the protection of employees adversely affected by the transaction. In both

respects, the UTU directs attention to Section 4 of the Oregon Short Line III Conditions. This Section reads:

"4. Notice and Agreement or Decision - (a) Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representatives of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes to be affected by such transaction, including an estimate of the number of employees of each class affected by the intended changes. Prior to consummation the parties shall negotiate in the following manner.

Within five (5) days from the date of receipt of notice, at the request of either the railroad or representatives of such interested employees, a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotiations shall commence immediately thereafter and continue for at least thirty (30) days. Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this section 4. If at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment in accordance with the following procedures:

(1) Within five (5) days from the request for arbitration the parties shall select a neutral referee and in the event (sic) they are unable to agree within said five (5) days upon the selection of said referee then the National Mediation Board shall immediately appoint a referee.

(2) No later than twenty (20) days after a referee has been designated a hearing on the dispute shall commence.

(3) The decision of the referee shall be final, binding and conclusive and shall be rendered within thirty (30) days from the commencement of the hearing of the dispute.

(4) The salary and expenses of the referee shall be borne by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(b) No change in operations, services, facilities, or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered."

The UTU urges that in violation of the aforementioned requirements of the Oregon Short Line III Conditions, that the three Claimants are entitled to full back pay based upon the average compensation earned in the twelve (12) months preceding the date of the change, including improvements in pay scales since that time.

In support of its contentions, the UTU directs attention to various Awards related to application of the Washington Job Protection Agreement (WJPA), submitting that Sections 4 and 5 of the latter (WJPA) are almost identical to Section 4 of the Oregon Short Line III Conditions. In particular, the UTU cites Docket Nos. 106, 122, 128, 130, 140 and 141 of the WJPA Section XIII Committee as supportive of its position for back pay to all employees adversely affected by what it terms the "unauthorized changes" made by the GTW.

POSITION OF THE GTW:

The GTW does not agree that the UTU "citation of transaction of May 4, 1981 affected the employees in question."

The GTW states that two days prior to the transaction date, the following Notice was posted to GTW employees at Saginaw:

"To all concerned:

Effective 0001 hours May 4, 1981 the GTW has authorized the TSBYR.R. to assume operating responsibilities, and commence train operation over the Denmark Spur between Mileage 4.60 and Mileage 14.1 (Denmark Junction).

Until such time as the TSBY has completed the interchange track, to be built East of Airport Road, the GTW will interchange daily with the TSBYR.R. on the Saginaw Steering Gear lead.

The 0700 Saginaw Yard Assg. will leave all TSBY car (sic) on the SSG lead each morning. The TSBY will pick up and deliver on the SSG lead between 1100 hours and 1700 hours daily.

The 1500 Saginaw Yard Assg. will handle all cars received from the TSBY back to Saginaw Yard daily.

A temporary waybill box has been installed near the SSG switch.

The 0700 Yard Conductor will place waybills for cars interchanged to the TSBY in the box daily.

The 1500 Yard Conductor will handle waybills back to Saginaw Yard for cars received in interchange daily."

The GTW states that the time consumed by the GTW 1500 Saginaw Yard Assignment on the trackage covered by the application to the ICC immediately prior to May 4, 1981 was two days per week (two hours per day) and that the average number of cars handled in that service was as follows:

"Star of the West Milling (Industry - 7 cars/month

Wickes Lumber (Industry) - 1 car/month

Interchange with TSBY at Denmark Junction - 90 cars/month."

It states further that on May 4, 1981, it discontinued servicing Star of the West Milling and Wickes Lumber, and as a result, the

"total number of hours worked by the 1500 Saginaw Yard Assignment was reduced an average of four hours per week (number of cars interchanged with the TSBY remained the same and no work was lost)."

The GTW also submits that on May 14, 1982, one year and 10 days after the TSBY began operation on the Denmark Subdivision, the 1500 Saginaw Yard Assignment was abolished due to a decline in business. In this connection, the GTW asserts that in January 1982 it became evident that a severe decline in business had effected the number of cars handled at Saginaw and only one assignment, namely the 0700, was required. In this respect, the GTW states that its records reveal that "by May of 1982 a 50.3 % decline in the number of cars handled at Saginaw had occurred in the prior year; this is reflected by the following record of cars handled:

<u>MONTH/YEAR</u>	<u>CARS HANDLED AT SAGINAW</u>
May, 1981	4144
January, 1982	3104
February, 1982	2837
March, 1982	3082
April, 1982	2507
May, 1982	2084"

It is the GTW's position that the foregoing decline in business "adequately serves to prove that factors other than the cited transaction affected the employees concerned here; and in so doing the Carrier is not required to provide Oregon Short Line Protection to said employees."

In support of its position, the GTW cites various Awards relating to application and interpretation of the Oregon Short Line III Conditions as well as Awards rendered in connection with various other protective conditions imposed by the ICC.



OPINION OF THE ARBITRATION COMMITTEE:

This Arbitration Committee thinks it clear from the record before it that the GTW knew or should have known that a condition precedent to abandonment of operations or services covered by the ICC in its Certificate and Decision in Finance Docket No. 29458 made it necessary that notice not only be posted to interested employees, but that registered mail notice be given the UTU, and that in pursuance of ICC imposed labor protective conditions: "No change in operations, services, facilities or equipment shall occur until and after an agreement is reached or the decision of a referee has been rendered." Thus, while GTW would urge that factors other than the cited transaction affected the Claimants, this Arbitration Committee cannot give credence to such argument since it is apparent there must first be positive evidence of record to show that GTW had met its primary obligation to negotiate an implementing agreement pursuant to the ICC Order.

The foregoing notwithstanding, we think it worthy of note that at the time of the transaction, namely, May 4, 1981, the Claimants, members of the 1500 Saginaw Yard Assignment, admittedly sustained a reduction of at least an average of four hours per week as a result of GTW discontinuing its servicing of Star of West Milling and Wickes Lumber. This was not a remote or tangential effect of a transaction, but rather a causal nexus sufficient to establish an adverse impact with respect to compensation and rules governing their working conditions. The fact, therefore, that GTW would endeavor to show support for its contention a constant decline in the level of business activity at Saginaw Yard eventually made it necessary there be an adjustment of

yard assignments on May 14, 1982, does not serve to overcome either these facts of record or GTW's breach of the ICC Order relative to GTW giving requisite notice to the interested employees and the UTU so that an appropriate implementing agreement might be reached in connection with GTW's cessation of operations on its Denmark Sub-division.

Under the circumstances of record it follows that this Arbitration Committee must conclude that the action taken by GTW on or about May 4, 1981 was not in accord with ICC imposed labor protective conditions and that it will now be necessary that GTW (1) compensate the Claimants for any loss of regular compensation or fringe benefits; and, (2) give requisite notice and negotiate the required implementing agreement with the UTU.

In regard to compensation, we believe the Claimants are entitled to full back back, based upon their test period average during the 12 months preceding May 4, 1981, including all subsequent increases in wages and fringe benefits, less actual wages and/or benefits received, for any month after May 4, 1981 in which their compensation fell below their test period average, until appropriate notice is served and an implementing agreement achieved.

When an implementing agreement is achieved, Oregon Short Line III protective benefits will be held to extend through June 4, 1987 (six years from 90 days after the ICC Order of March 6, 1981), or the point in time when the GTW, had it fulfilled its obligation, might have been able to expect that an implementing agreement would have been achieved with the UTU. In this same connection, as set forth in Section 1(d)

of Oregon Short Line III Conditions,"the protective period for any particular employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the railroad prior to the date of his displacement or his dismissal."

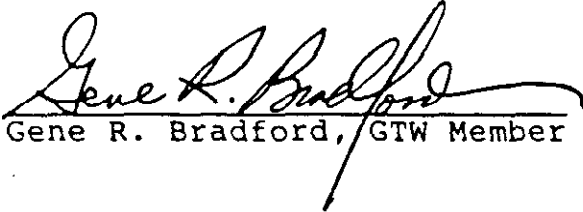
As to the giving of notice and negotiating an implementing agreement, we believe such action must be undertaken to properly discharge the obligations of the parties under the ICC Order. However, since it is apparent that such action must take into account intervening events, it is recommended the parties may want to consider agreement upon an implementing agreement that is more effective and acceptable in protecting the interests of the affected employees than might otherwise have prevailed had timely notice been given in pursuance of the ICC Order.

AWARD:

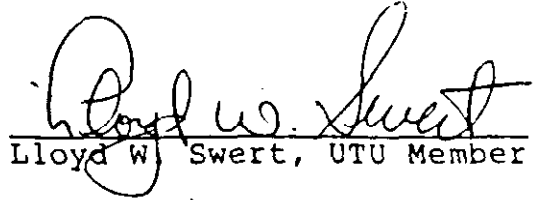
The Claimants were adversely affected as a result of the TSBY assuming operation of the GTW Denmark Subdivision on or about May 4, 1981. The GTW abandonment of this line of railroad being a "transaction" as defined in the Oregon Short Line III Conditions, the GTW is thereby liable for Oregon Short Line III protective benefits to the Claimants and for the proper service of a notice upon the interested employees and the UTU and for negotiation of an implementing agreement as required by the Oregon Short Line III Conditions. These matters shall be handled in accordance with the Opinion of this Arbitration Committee as hereinabove set forth.



Robert E. Peterson, Chairman  
and Neutral Member



Gene R. Bradford, GTW Member



Lloyd W. Swert, UTU Member

Detroit, MI  
January , 1985