# HOW TO USE THIS INDEX

This index of Oregon Short Line III Awards was prepared so that there would be a cross-referenced index comparing and combining the awards. In addition to the full text of each decision, this index is made up of five (5) sections, listed as follows:

(1) Text of Oregon Short Line III (360 I.C.C. 91 (1979))
(2) Case Number Index
(3) Topical Index
(4) Article Index
(5) Case Synopsis

Case Number Index:

Each decision is listed in numerically-ordered designation according to date of Referee's decision. This portion of the index shows the Referee's name, date the award was issued, Carrier involved, and craft(s) involved.

Topical Index:

This section is an alphabetically arranged listing of subjects which were addressed in the awards. For example, under Abolishment of Positions the topic Account Decline in Business lists several award numbers. Each of these awards dealt with the abolishment of positions which the Carrier claimed was as a result of a decline in business and not as a result of the Oregon Short Line III transaction.

Article Index:

This is an index which has listed the awards according to which article(s) of Oregon Short Line III the award interpreted.

Case Synopsis:

This section contains a short summary of the content of each award, the article(s) of Oregon Short Line III interpreted, and the article language interpreted. This synopsis will give the researcher an idea of the content of the awards to assist him/her in selecting the pertinent award sought.

Oregon Short Line Railroad Company - Abandonment - Goshen, 360 I.C.C. 91 (1979).

> "1. Definitions.- (a) "Transaction" means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed.
>
> (b) "Displaced employee" means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.
>
> (c) "Dismissed employee" means 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 or

the ss thereof as the result f the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.

(d) "Protective period" means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, provided, however, that 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. For purposes of this appendix, an employee's length of service shall be determined in accordance with the provisions of section 7 (b) of the Washington Job Protection Agreement of May 1936.

2. The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.

3. Nothing in this Appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under any existing job security or other protective conditions or arrangements; provided, that if an employee otherwise is eligible for protection under both this Appendix and some other job security or other protective conditions or arrangements, he shall elect between the benefits under this Appendix and similar benefits under such other arrangement and, for so long as he continues to receive such benefits under the provisions which he so elects, he shall not be entitled to the same type of benefit under the provisions which he does not so elect; provided further, that the benefits under this Appendix, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits; and provided further, that after expiration of the period for which such employee is entitled to protection under the arrangement which he so elects, he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of this protective period under that arrangement.

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 or 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 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 equally 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.

5. Displacement allowances - (a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period), and provided further, that such allowance shall also be adjusted to reflect subsequent general wage increases.

If a displaced employee's compensation in his retained position in any month is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of his voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but if in his retained position he works in any month in excess of the aforesaid average monthly time paid for during the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position.

(b) If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for justifiable cause.

6. Dismissal allowances. -(a) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the transaction. Such allowance shall be adjusted to reflect subsequent general wage increases.

(b) The dismissal allowance of any dismissed employee who returns to service with the railroad shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of section 5.

(c) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the railroad shall agree upon a procedure by which the railroad shall be currently informed of the earnings of such employee in employment other than with the railroad, and the benefits received.

(d) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure to return to service after being notified in accordance with the working agreement, failure without good cause to accept a comparable position which does not require a change in his place of residence for which he is qualified and eligible after appropriate

notification, if his return does not infronge upon employment rights of other employees under a working agreement.

7. Separation allowance. - A dismissed employee entitled to protection under this appendix, may, at his option within 7 days of his dismissal, resign and (in lieu of all other benefits and protections provided in this appendix) accept a lump sum payment computed in accordance with section 9 of the Washington Job Protection Agreement of May 1936.

8. Fringe benefits. - No employee of the railroad who is affected by a transaction shall be deprived during his protection period of benefits attached to his previous employment, such as free transportation, hospitalization, pensions, reliefs, et cetera, under the same conditions and so long as such benefits continue to accorded to other employees of the railroad, in active or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

9. Moving expenses. - Any employee retained in the service of the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the transaction, and who within his protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects for the traveling expenses of himself and members of his family, including living expenses for himself and his family and for his own actual wage loss, not exceed 3 working days, the exact extent of the responsibility of the railroad during the time necessary for such transfer and for reasonable time thereafter and the ways and means of transportation to be agreed upon in advance by the railroad and the affected employee or his representatives; provided, however, that changes in place of residence which are not a result of the transaction, shall not be considered to be with the purview of this section; provided further, that the railroad shall, to the same extent provided above, assume the expenses, et cetera, for any employee furloughed with Three (3) years

aft changing his point of emr oyment as a result of a transaction, who e. .cts to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provision of this section unless such claim is presented to railroad with 90 days after the date on which the expenses were incurred.

10. Should the railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this appendix, this appendix will apply to such employee.

11. Arbitration of disputes. - (a) In the event the railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, except sections 4 and 12 of this article 1, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee. Upon notice in writing served by one party on the other of intent by that party to refer a dispute or contraversy to an arbitration committee, each party shall, within 10 days, select one member of the committee and the members thuse chosen shall select a neutral member who shall serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or the highest officer designated by the railroads, as the case may be, shall be deemed the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. Should the members be unable to agree upon the appointment of the neutral member within 10 days, the parties shall then within an additional 10 days endeavor to agree to a method by which a neutral member shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days the neutral member whose designation will be binding, upon the parties.

(b) In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the railroad will be entitled to appoint additional representatives so as to equal the number of labor organization representatives.

(c) The decision, by majoring vote, of the arbitration committee shall be final, binding, and conclusive and shall be rendered within 45 days after the hearing of the dispute or controversy has been concluded and the record closed.

(d) The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

12. Losses from home removal. - (a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the railroad (or who is later restored to service after being entitled to receive a dismissal allowance) who is required to change the point of his employment within his protective period as a result of the transaction and is therefore required to move his place of residence:

(i) If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the railroad for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby. The railroad shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

(ii) If the employee is under a contract to purchase his home, the railroad shall protect him against loss to the extent of the fair value of equity he may have in the home and in addition shall relieve him from any further obligation under his contract.

(iii) If the employee holds an unexpired lease of a dwelling occupied by him as his home, the railroad shall protect him from all loss and cost in securing the cancellation of said lease.

(b) Changes in place of residence which are not the result of a transaction shall not be considered to be within the purview of this section.

(c) No claim for loss shall be paid under the provisions of this section unless such claim is presented to the railroad within 1 year after the date the employee is required to move.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee, or their representatives and the railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner. One to be selected by the representatives of the employees and one by the railroad, and these two, if unable to agree within 30 days upon a valuation, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall selected, and failing such agreement, either party may request the National Board to designate within 10 days a third appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

ARTICLE II

1. Any employee who is terminated or furloughed as a result of a transaction shall, if he so requests, be granted priority of employment or reemployment to fill a position comparable to that which he held when his employment was terminated or he was furloughed, even though in a different craft or class, on the railroad which he is, or by training or retraining physically and mentally can become, qualified, not, however, in contravention of collective bargaining agreements relating thereto.

2. the event such training : retraining is requested by such employee, the railroad shall provide for such training or retraining at no cost to the employee.

3. If such a terminated or furloughed employee who had made a request under section 1 or 2 of the article II fails without good cause within 10 calendar days to accept an offer of a position comparable to that which he held when terminated or furloughed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such 10-day period, forfeit all rights and benefits under this appendix.

ARTICLE III

Employees of the railroad who are not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under these terms and conditions.

In the event any dispute or controversy arises between the railroad and an employee not represented by a labor organization with respect to the interpretation, application or enforcement of any provision hereof which cannot be settled by the parties within 30 days after the dispute arises, either party may refer the dispute to arbitration.

ARTICLE IV

1. It is the intent of this appendix to provide employee protections which are not less than the benefits established under 49 USC 11347 before February 5, 1976 and under section 565 of title 45. In so doing, changes in wording and organization from arrangements earlier developed under those sections have been necessary to make such benefits applicable to transactions as defined in article 1 of this appendix. In making such changes, it is not the intent of this appendix to dimish such benefits. Thus, the terms of this appendix are to be resolved in favor of this intent to provide employee protections and benefits no less than those established under 49 USC 11347 before February 5, 1976 and under section 565 of title 45.

2. In the event any provision of this appendix is held to be invalid or otherwise unenforceable under applicable law, the remaining provisions of this appendix shall not be affected."

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ARBITRATION AWARDS

OREGON SHORT LINE III

# CASE INDEX - OREGON SHORT LINE III AWARDS

| Date Issued | Arbitrator | Carrier | Award No. & Craft Designation |
|---|---|---|---|
| 5-12-80 | Van Wart | C&O | 1 UTU, BofLE |
| 5-16-80 | Van Wart | C&O | 2 Great Lakes Officers Assn. |
| 12-19-80 | Kasher | ICG | 3 UTU |
| 1-9-81 | Speirs | DRGW | 4 RLEA |
| 12-12-81 | Henle | DRGW | 5 RLEA |
| 7-15-82 | Henle | C&NW | 6 UTU |
| 9-12-83 | Vernon | C&NW | 7 UTU |
| 8-29-84 | Blackwell | C&NW | 8 BRS |
| 1-85 | Peterson | GTW | 9 UTU |
| 1-20-85 | Duff | SOO | 10 UTU |
| 4-11-85 | Twomey | ICG | 11 UTU (7 Cases) |
| 4-12-85 (*14,15) | Seidenberg | SP (East) | 12 UTU |
| 6-20-86 | Lieberman | B&O | 13 UTU-Yardmasters Department |
| 3-13-86 | Peterson | GTW | 14 UTU |
| 4-25-86 | Peterson | ICG | 15 BRS |
| 7-25-86 | Peterson | GTW | 16 UTU |
| 9-29-86 | Fredenberger | SP(East) | 17 UTU (Also includes interprestation) |
| 11-20-87 | Zumas | UP | 18 BMWE |

# ARTICLE INDEX - OREGON SHORT LINE III AWARDS

| Article/Section | Language Interpreted | Referee's Decision | Referee, Craft, Case |
|---|---|---|---|
| Article I Sec. 1 | Whether or not an employe was affected by a transaction under Oregon Short Line III | Carrier, C&O, was engaged in a car ferry service from Milwaukee across the Great Lakes. When this service was abandoned, the Brotherhoods (UTU, BofLE) wanted to "automatically certify" all present employes of the Carrier at the affected locations as being covered by OSL III. The referee rejected this concept as being beyond the "authority and competence" of the Board; also, that the coverage would be for "persons unnamed, unknown, and unidentified". In addressing the union's concern about future coverage by OSL III, he stated that that would be for another Board to decide under Article I Sect. 11. | Van Wart, C&O, UTU, BLE (5-12-80) |
| Article I Sec. 4 | Re an arbitrator's authority to fashion an appropriate implementing agreement | | |
| Article I Sec. 10 | Whether the Carrier had abolished positions in anticipation of the transaction | | |
| A. :le I Sec. 1 | Whether or not an employe was affected by a transaction under Oregon Short Line III | In the same transaction discussed above, the Organization argued that the Carrier had deliberately "dried up" the business at the transacted locations in order to support their claim before the ICC for abandonment. The Referee noted that the same contention was declined before the ICC and was not a proper matter for consideration. The purpose of this was to deny OSL III Benefits for those employes furloughed prior to the date of award. | Van Wart, C&O Great Lakes Officers Organization (5-16-80) |
| Article I Sec. 4 | Re an arbitrator's authority to fashion an appropriate implementing agreement | | |
| Article I Sec. 10 | Whether the Carrier had abolished positions in anticipation of the transaction | | |
| Article I Sec. 1 | Whether or not an employe was affected by transaction under OSL III | Organization wanted to compute the test earnings period as the 12 months prior to the transaction, rather than for a 12 month period prior to being affected. Referee deferred answering this question and said if the matter came up it was properly before another Board under Article I Sec. 11. Ths arbitrated agreement defined change in residence as being required "when an employe is required to change the point of his employment as a result of the transaction by a distance greater than twenty-five miles, provided his new point of employment is farther from his residence than was his old point of employment." | Kasher, ICG, UTU (12-19-80) |
| Article I Sec. 4 | Re arbitrator's authority to fashion appropriate implementing agreement for transaction | | |
| ' :le I Sec. 9 | Implementing agreement defined change of residence | | |

CASE # 1

CASE # 2

CASE # 3

| Article/Section | Language Interpreted | Referee's Decision | Referee, Craft, Case |
|---|---|---|---|
| Article I Sec. 1<br><br>Article I Sec. 4 | Must affected employe have employment relationship on sale date<br><br>Arbitrator's authority to fashion arbitrated implementing agreement | RLEA brought to the Board several questions, as did the D&RGW Railroad. Results: 1) Board did not have authority to impose *OSL III on the purchasing railroad, the D&S:* 2) In order to be affected by the transaction (the sale of the narrow gague RR), must have employment relationship on sale date; 3) Board will not interpret Article I Sec. 5, 6 re allowances as they are to be handled under Article I Sec. 11: 4) Board cannot stop the sale of the RR, only forbid changes in operations, etc. The referee stated that the term "transaction" is synonymous with the term "coordination" (from WJPA). Referee also rejected the Carrier's attempt to compute the affected employes compensation by using the twelve months prior to the sale. Referee stated that the clear language stated ". . .it means date in said period when that employee is first adversely affected as a result of said coordination." | Speirs, D&RGW, RLEA (1-9-81) |
| Article I Sec. 4 | re arbitrator's authority to arbitrated implementing agreement | In a second arbitration involving the sale of a portion of the D&RGW to the D&S, the arbitrator first noted that the ICC had stated that the Carrier was in violation by completing the sale, and hence, instituting a transaction prior to the ICC's approval and in direct disobeyance of the arbitrator's decision in Case #4 (above). In order to return the status to what it should have been prior to the ICC's authority and the resultant transaction, the referee made each employe whole, with special computations for the seasonal employes with only point seniority at Durango, Colorado, required the Carrier to pay any medical expenses which were incurred and not covered by Carrier's failure to pay insurance premiums, and permitted all affected employes to exercise seniority and receive compensation for moving their place of residence. He calculated the mimimum length of time worked during the test period to establish coverage under OSL III (120 days) for all employes, seasonal or otherwise, while noting that the provisions of Oregon Short Line clearly pertained to permanent employes. | Henle, D&RGW, RLEA 12-12-81 |

CASE #4

CASE #5

| Article/Section | Language Interpreted | Referee' Decision | Referee, Craft, Case |
|---|---|---|---|
| Article I Sec. 4 | re arbitrator's authority to fashion arbitrated implementing agreement | In an arbitration involving the abandonment of five (5) portions of the railroad, two of which had yet to be approved by the ICC, the Carrier argued that the arbitrator was limited by the provisions of Oregon Short Line as to the provisions he may include in the agreement. The arbitrator included a provision for the employe to opt to receive a payment equal to a fixed percentage of the fair market value of his home in lieu of Article I Sec. 12 benefits, a provision not included in Oregon Short Line, because the arbitrator stated that the parties had agreed to an identical provision in earlier, negotiated abandonment cases. The referee also ruled that he would include the two trackage abandonment cases not yet approved by the ICC in his agreement, referring to the provisions of Article I Sec. 4 which refers to railroads "contemplating a transaction" as his authority to do so. | Henle, C&NW, UTU (7-15-82) CASE #6 |
| Article I Sec. 12 | optional provisions for reimbursement on sale of residence | | |
| Article I Sec. 1 | was employe affected by transaction | Referee ruled that despite Carrier's abandonment of 335 miles of a portion of the railroad containing 434 miles, there was no causal nexus between the abolishment of many of the positions, that the Carrier had established that a general decline in business was the reason for the abolishment. | Vernon, C&NW, UTU (9-12-83) CASE #7 |
| Article I Sec. 11 | burden on employe to identify transaction | | |
| Article I Sec. 1 | was employe affected by transaction | Claimant was displaced as a result of job abolishments due to Carrier's abandonment of trackage in Wisconsin; he displaced and was paid a moving allowance pursuant to Section 9 when he relocated to Chicago, Illinois. Subsequent to his relocation, Carrier abolished a number of jobs and he was furloughed; he filed for dismissal allowances. Referee held that the entitlements of Section 9 (Moving expenses) are separate and apart from any showing that Claimant was displaced employe when he moved from Wisconsin, in fact, he had suffered no loss in wages as a result of the initial abandonment. Hence, the series of job abolishments as a result of a decline in business were not related to the abandonment and Claimant was not affected. | Blackwell, C&NW, BRS (8-29-84) CASE #8 |
| Article I Sec. 11 | burden on employe to identify transaction | | |

| Article/Section | Language Interpreted | Referee's Decision | Referee, Craft, Case |
|---|---|---|---|
| Article I Sec. 1<br><br>Article I Sec. 4 | was employe affected by transaction<br><br>Carrier's responsibility to enter into implementing agreement before instituting transaction | Carrier, the GTW, was required by the ICC to observe the labor protective provisions of Oregon Short Line III as a result of the acquisition of a portion of track by the TSBY Railroad, which planned to offer better service than that provided by the GTW. The GTW, prior to acquisition date, determined to implement a change in operations which deprived its employes of approximately two hours' work two days per week. Then, about one year after the acquisition, the GTW abolished an assignment, claiming decline in business factors. Referee held that it was clear that the Carrier had attempted to avoid its responsibilities under Oregon Short Line III. He further stated that GTW was required by Article I Section 4 to enter into an implementing agreement and because of this was required to make all employes whole, serve the required notice, and enter into implementing agreement. Employes were to be paid their fringe benefits, just as if they had never been furloughed. | Peterson, GTW, UTU (1-85) |
| Article I Sec. 1<br><br>Article I Sec. 11 | was employe affected by transaction<br><br>burden on employe to identify transaction | In late 1977, Carrier petitioned to abandon 49 miles of railroad. While the petition was before the ICC and due to the prohibitive costs of maintaining that section of track, the Organization and the Carrier entered into an agreement to establish a road switcher, which operated at a lesser cost due to the fact that certain arbitrary payments were suspended. Subsequently, the ICC permitted the abandonment of only 30 of the 49 miles of track requested and the State of Michigan gave the Carrier a subsidy to operate over the remaining 19 miles. However, after one year, the subsidy ended and the Carrier abolished the road switcher, which was permitted under the terms of the agreement. Later, when the ICC gave authority to abandon the remaining 19 miles, the Carrier gave notice and entered into an implementing agreement to provide Oregon Short Line III to affected employes. The instant claim was that the employes who lost their assignments due to the abolishment of the road switcher should be covered by Oregon Short Line. The referee ruled that the Organization had not established a causal nexus, that the abolishment was provided for in the agreement between the parties to establish the road switcher. | Duff, SOO, UTU (1-20-85) |

CASE #9

CASE #10

| Article/Section | Language Interpreted | Referee's Decision | Referee, Craft, Case |
|---|---|---|---|
| Article I Sec. 1<br><br>Article I Sec. 11 | was employe affected by transaction<br><br>burden on employe to identify transaction | In a series (8) of Article I Section 11 arbitrations the referee held that in six of the claims the Organization had not shown that the Claimant was affected by a transaction. The reasons varied from employes that displaced on positions paying a greater compensation to those displaced by another employe returning from sick leave of absence. | Twomey, ICG, UTU<br>(4-11-85)<br><br>CASE # 11 |
| Article I Sec. 5,6 | computation of test period "average monthly time paid for" | The dispute arose over how to compute test period average monthly time paid for. The Organization contended that despite the accepted formula which provides payment to be made at the rate of 12.5 miles to the hour, the actual time worked by the affected employe during his test period should be calculated to determine time paid for. The Carrier prevailed in the referee's decision and he noted that so long as a consistent method is used and has been accepted by the parties, it should not be successfully challenged in an employe protective agreement dispute, that actual hours worked is not the criterion that is utilized in pay determination for operating employes. | Seidenberg, SP(East), UTU<br>(4-12-85)<br><br>CASE # 12 |
| Article I Sec. 1<br><br>Article I Sec. 11 | was employe affected by transaction<br><br>burden on employe to identify transaction | Carrier received permission to abandon a portion of its trackage known as the CT&V Subdivision. Pursuant to that order, one local was abolished, affecting the entire crew, as well as two trackmen which were also affected. Carrier also reorganized the switching operations at the Akron yard and abolished Claimant's third trick yardmaster position. When he filed for Oregon Short Line protective benefits the Carrier maintained that it was due to a decline in business and other managerial decisions not related to the transaction which resulted in the abolishment. Referee ruled that the Organization had successfully identified the transaction which affected the Claimant and the Carrier failed to show that factors other than the transaction caused the abolishment. | Lieberman, B&O, UTU-Yardmasters<br>(6-20-86)<br><br>CASE # 13 |

| Article/Section | Language Interpreted | Referee's Decision | Referee, Craft, Case |
|---|---|---|---|
| Article I, Sec. 5<br><br>Article I, Sec. 9 | is an employe drawing a displacement allowance entitled to payment at a guranteed hourly rate for time worked in excess of average monthly paid for?<br><br>after being certified as affected by an OSL transaction is an employe entitled to moving expenses for job abolishments caused by subsequent decline in business? | Claimants had been certified as affected by an OSL transaction as a result of prior arbitration proceedings. In the instant dispute, one of the claimants requested moving expenses account he had changed his place of residence in mid-1982 due to the abolishment of several assignments. However, the transaction which certified him for coverage under OSL occurred in May, 1981. Referee held that the subsequent change of residence was a unilateral decision and unrelated to the transaction, therefore, he was not entitled to moving expenses. Also at issue was the fact that several claimants certified as entitled to OSL protection were currently working positions which contained as part of the assignment a guaranteed sixth day, which hours were included as time work for the purposes of determining their monthly displacement allowance. However, the Organization asserted that a guaranteed hourly rate determined by dividing the average monthly compensation by the average monthly hours worked is to be applied to the hours worked in excess of the average monthly hours derived from the claimant's test period. Referee held that: "The 'average monthly time paid for' factor as contained in the Oregon Short Line Conditions is, in the board's opinion, designed to protect a displaced employee in circumstances related the following types of situations: (1) Adjustments to average test period compensation necessary to reflect subsequent general wage increases; (2) Development of appropriate comparisons between average rates of pay for various classes of service; (3) Prorating offsets for time lost in a retained or current position account absences from service; and, (4) Determination of the time at which an employee may be voluntarily absent during a month without deduction being made from the employee's monthly displacement allowance.<br><br>The board does not believe the reference to such time factor was for the purpose of providing a protected employee benefit of payment of hours worked in excess of test period time on a basis that would grant reimbursement for time worked in a retained or current position at the rate of that position and, in addition, payment for that same or like period of time at the hourly rate of pay of the employee's test period average compensation...<br><br>As concerns additional questions which came to light during board hearings, the Board would hold that the following criteria be used to resolve those questions at issue: (1) If the protected employees worked the equivalent number of test period average hours, but fails to earn compensation equal to or greater than test period earnings, the employee is entitled to full benefit of the monthly displacement allowance. (2) If the protected employee works all available hours, but the total number of hours falls below test period time, the employee is entitled to full benefit of the monthly displacement allowance. (3) If the protected employee works more than the total number of test period hours, the employee is entitled to full benefit of the monthly displacement allowance, but not to additional compensation for the excess hours worked at the rate of the test period average hourly earnings." | Peterson, UTU, GTW (3-13-86) |

CASE # 14

| Article/Section | Language Interpreted | Referee's Decision | Referee, Craft, Case |
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| Article I, Sec. 1<br><br>Article I, Sec. 11(e)<br><br>Article I, Sec. 10 | was employe affected by transaction<br><br>burden on employe to identify transaction<br><br>abolishment of position in anticipation of transaction | On January 1, 1983, Carrier made application to abandon a portion of rail known as the Amboy District. In May of that year, Claimant's signal maintainer position was abolished, as confirmed in Carrier's letter of March, 1983, as the position to be abolished if and when the ICC approved the abandonment. Subsequently, Claimant was paid moving expenses but Carrier refused to permit OSL protective allowances on the basis that the district had not yet been abandoned. Referee held that the Carrier's assertion that a general decline in business had caused the abolishment was not persuasive and that the defense was not raised prior to submission of the dispute to the Board, that the payment of moving benefits had to have been in recognition of the proposed abandonment, that Section 10 of OSL provided for benefits due to abolishments made in anticipation of an abandonment. | Peterson, BRS, ICG<br>(4-25-86) |
| Article I, Sec. 4 | Carrier's obligation to provide notice and enter negotiations | Carrier abandoned several small stretches of trackage for which ICC approval had been received but for which Carrier claimed no employes would be adversely affected. Due to this assertion the Carrier failed to provide notice under Article I, Section 4, maintaining that such notice was optional. Referee held that Carrier is required to provide the proper notice and enter into negotiations to fullfil the requirements of OSL, that because of this the employes working the assignments that switched the sections of abandoned trackage on the dates the abandonment was effective would be certified as "displaced" and Carrier will make the proper computations to determine test period earnings and average hours worked in order to determine if the affected employes are due displacement allowances, which will be awarded retroactive to the date the abandonment took place. | Peterson, UTU, GTW<br>(7-25-86) |
| Article I, Sec. 4 | carrier's obligation to give proper notice and enter into negotiations to cover transaction | Carrier proposed to abandon a stretch of track on which was located only one industry which received only minimal traffic. In fact, when a carload was received in interchange to be spotted a train and engine crew were deadheaded, using a leased locomotive for spotting the load. When carrier received ICC permission to abandon the trackage, it refused to provide notice under Article I, Section 4 account it had determined no employes would be affected by the transaction. Referee held that the term "may" in Article I, Section 4 referred to the possibility of adversely affected employes, not the certainty, that when the trackage was abandoned the mileage on the district was reduced by 62 miles, which had the effect of reducing available mileage to the employes who were paid in part based upon the total amount of mileage in the district, which may lead to employes being placed in worse position with respect to compensation. In response to the Carrier's argument that the Organization had permitted prior abandonments without requiring Article I, Section 4 implementing agreements, the referee noted that "Rights established in Article I, Section 4 of the OSL Conditions are rights implemented by federal law by decision of the ICC. Waiver or extinction of those rights by virtue of laches should not be inferred." | Fredenberger, UTU, SP<br>PLB No. 4057<br>Award No. 2<br>(9-29-86)<br>Interpretation<br>(11-25-86) |

CASE # 15

CASE # 16

CASE # 17

| Article/Section | Language Interpreted | Referee's Decision | Referee, Craft, Case |
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| Article I, Sec. 8 | are dismissed employes entitled to health and welfare coverage attached to their previous employment? | The question before the Board was whether the Carrier was obligated to continue health and welfare premium payments to cover dismissed employes the same as were paid for regularly assigned or active employes. Carrier claimed that it was only required to pay a dismissed employe's health and welfare premiums for the same period of time as it was required for any furloughed employe. The Organization argued that the clear wording of OSL requires that a dismissed employe is entitled to the "benefits attached to his previous employment", that Carrier was required, during his protected period, to preserve the fringe benefits of a dismissed employe. The referee held that: "The statutory underpinnings of OSLC make it plain that employees affected by an abandonment are to be protected in such a way that their economic situation would be no different than what it was before the transaction. The Board finds that the fringe benefits here at issue are one element of that equation. If an employee was entitled to such benefits before the transaction, then that employee continues to be entitled to them following the transaction. We then examine Claimants' status at the time of the transaction... The Board finds Claimants were in service at the time of the transaction and concludes that they are entitled to receive the fringe benefits identical to those of active employees for the full term of their protective period. The language in Section 8 of OSLC which refers to 'benefits attached to his previous employment' refers to the Claimants' employment before they were 'affected'--thus, in active service. Claimants were in active service when affected by the transaction, and only the transaction caused them to be furloughed. Thus, Claimants became '"dismissed" "active service" "employees"' rather than '"dismissed" "furloughed" "employees".<br><br>Award<br><br>For the foregoing reasons, this Board finds that the Claimants are to be provided health and welfare benefits for the duration of their full protection period; and that they are to be reimbursed for any such payments made thus far to the extent they were actually paid by Claimants." | Zumas, BMWE, UP (11-20-87) |

CASE # 18