PUBLIC LAW BOARD NO. 3160

12

PARTIES TO DISPUTE: United Transportation Union

and

Burlington Northern Railroad Company

STATEMENT OF CLAIM: Merger protection pay claims in favor of Switchman/Brakeman J. E. Eye, Springfield, Missouri, claiming displacement allowances of $905.66 for February, 1981; $217.83 for March, 1981; $462.15 for April, 1981; $1,272.39 for May, 1981; and $1,248.96 for June, 1981, and all claims for subsequent months which are a matter of record between the parties.

PRELIMINARY STATEMENT:

United Transportation Union is herein referred to as the "Employes", the Burlington Northern Railroad Company is herein referred to as the "Carrier" and Switchman/Brakeman J. E. Eye is herein sometimes referred to as the "Claimant".

A hearing before the board was held on June 2, 1982, at the office of the Carrier, 176 East Fifth Street, St. Paul, Minnesota.

Each party presented comprehensive submissions, exhibits and cited precedents, each party also presented oral testimony and each party thoroughly argued its position. The

parties agreed that the decision in this Case No. 4 will apply to all other fifty-four (54) cases wherein claims were filed by Switchmen and/or Brakemen employed in the Springfield, Missouri seniority district. They agreed that a separate award be issued for each of the other fifty-four (54) cases.

BACKGROUND FACTS:

On December 28, 1977, Burlington Northern, Inc., hereinafter referred to as "BN", the predecessor company to the present Carrier, and the former St.Louis-San Francisco Railway Company, hereinafter referred to as "SL-SF", filed an application with the Interstate Commerce Commission seeking approval to merge. The merged railroad would then be known as the Burlington Northern Railroad Company.

After long negotiations, the Employes entered into a Merger Protective Agreement with Burlington Northern, Inc., and the SL-SF dated March 25, 1980. The preamble of that Agreement provides that:

> The scope and purposes of this agreement are to provide ... for fair and equitable arrangements to protect the interests of employees adversely affected by the transaction known as the Burlington Northern Inc. (BN) - Control and Merger - St. Louis-San Francisco Railway Company (Frisco), Finance Docket No. 28583 and to

provide for expedited changes in services, facilities, operations, seniority districts and existing collective bargaining agreements to enable the merged company to be operated in the most efficient manner as one completely integrated railroad immediately upon consummation of the transaction referred to above; therefore, fluctuations and changes in volume or character of employment brought about by other causes are not within the purview of this Agreement.

The Merger Protective Agreement also contains the following pertinent provisions:

ARTICLE I

(b) "Transaction" means a change in operations, services or facilities on the railroad pursuant to the merger authorized by the Commission's Order, which results in the displacement or dismissal of any protected employee or the transfer of work which results in a protected employee being required to change his residence.

* * *

(d) "Displaced employee" means a protected employee of the railroad who, as a result of the transaction, is placed in a worse position with respect to his compensation and rules governing his working conditions.

(e) "Dismissed employee" means a protected employee of the railroad who, as a result of the transaction, is deprived of employment (furloughed) with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of the

transaction and he is unable to secure another position by the exercise of his seniority rights.

* * *

4. (a) When the railroad contemplates that effectuation of the transaction may cause the dismissal or displacement of protected employees or rearrangement of forces involving such employees, it shall give at least thirty (30) days' (ninety (90) days if a transfer of work and employees requires a change in residence) written notice of such transaction by posting a notice on bulletin boards convenient to the interested protected employees of the railroad and by sending certified mail notice to the duly authorized representatives of such employees. Such notice shall contain a full and adequate statement of the proposed changes to be effected, including an estimate of the number of employees of each class affected by the intended changes. Such notice may be served any time before or after the application for merger has been approved by the Commission, or after the date of the merger.

* * *

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.

* * *

ARTICLE III

3. Subject only to the notice requirements of Article I, Section 4, the new company shall have the right to place into effect any and all changes necessary to effect an efficient, fully merged and integrated operation, including right to transfer work from one position or location to another within a seniority district as well as between seniority districts, and between the existing separate facilities maintained by the applicants prior to merger.

On June 9, 1981, Claimant filed District Job Protection Pay Claim forms for the months of February, March, April, and May, 1981, which show that he was in a cut-off status from February 1 to and including February 20, 1981, that he worked February 21 and 22, that he was again on a cut-off status on February 23, 24, and 25 and that he worked February 26, 27, and 28, 1981, he worked steadily in March up to and including March 22 and he was on a cut-off status for the balance of March, 1981. The form also shows that he worked sporadically in the month of April, 1981, and with the exception of two days, he was on a cut-off status in May, 1981.

On July 2, 1981, Carrier's Superintendent wrote the Claimant, in part, as follows:

> There have been no diversions or rerouting of traffic that would affect employes at Springfield due to the merger, therefore, your claims are without merit and agreement support and are returned declined.

Claimant filed a similar form for July, 1981, which shows that with the exception of two days, he was on a cut-off basis that month. That claim was similarly denied on July 20, 1981. On July 27, 1981, the Local Chairman appealed the two denials. The Superintendent denied the appeal in a letter dated July 27, 1981, in which he said:

> ... you made formal request that I furnish you a complete list of business that has been rerouted around Springfield, Missouri. I am unable to furnish you any information regarding business that has been rerouted around Springfield, Missouri, as there have not been any trains rerouted nor has there been a diversion of traffic resulting from the merger.

By letter dated August 12, 1981, General Chairman, J. W. Reynolds, appealed the claims to Carrier's Vice President of Labor Relations. In that letter, the General Chairman states that the transactions, which allegedly resulted in Claimant's displacement, include the rerouting of Train UFL, a unit coal train which was received from the Union Pacific in Kansas City and which was destined for Rush Tower. The letter continues as follows:

> ... Before the merger, the train was routed through Springfield (Via Fort Scott, Kansas). From Springfield, the train was operated to St. Louis, over claimant's seniority district, and from St. Louis to Rush Tower.
>
> Since the merger, the Carrier has operated the train ... over trackage which was not available to the former Frisco. The train is now turned over to River Division crews at St. Louis after being operated over the Hannibal Division.

In the same letter, the General Chairman relates two other alleged transactions which adversely affected the Claimant. He wrote as follows:

> Another transaction affecting the claimant is the Carrier's rerouting of Trains FBF and BFF(X). While the Carrier has claimed that this was a "new", post-merger operation, it is a fact that FBF and its northbound counterpart were made up of the same business that formerly comprised interchange movements between the BN and former Frisco. After the consolidation of yards at Kansas City, those interchange movements ceased. The Carrier then re-numbered its trains and the train identified as 135 disappeared. Train 135 had previously handled the cars delivered in interchange from the former BN, and that train was often switched, filled or reduced at Springfield yard. The reduction in switching service since FBF and BFF(X) were rerouted has adversely affected the claimant.
>
> Prior to the merger, Trains 35 and 36 were operated over the claimant's seniority district on a daily basis. A large portion of the trains consisted of tonnage either from or destined to Kansas City. Since the merger,

> the Carrier has diverted the cars involved and combined Trains 35 and 36 with other trains in many instances. Not only has the number of trains run by the Carrier diminished, but the diversion of traffic over routes now available to the Carrier has resulted in a reduction in switching work at Springfield.

This claim was amended in a letter from the General Chairman, dated September 21, 1981.

On October 8, 1981, Mr. W. C. Sheak, Assistant to the Vice President for Labor Relations, wrote to Mr. Reynolds in reply to his letters of August 12, September 10, and September 21, 1981. Mr. Sheak denied the claims citing Article I, Section 1(d) of the Merger Protective Agreement and continued as follows:

> Contrary to your contentions, the alleged "transactions" is not as a result of a diversion of traffic, but rather, a general decline in business.

Mr. Sheak wrote to Mr. Reynolds again on January 28, 1982, and reiterated his position that the alleged "transaction is not as a result of a diversion of traffic, account of the BN-SLSF merger, but, rather, a general decline in business".

In another letter to Mr. Reynolds, dated March 8, 1982, Mr. Sheak repeats Employes' position on the five (5) issues and replied to them in detail. No 1 refers to the coal train identified

by the Employes as UPL. To that issue Mr. Sheak wrote that there was, in fact, a rerouting of this train until February 22, 1982, but that "during the period of time Train UPL was routed over Hannibal Division Territory, the number of trains run was minimal at best, and no employes have been adversely affected".

With respect to position No. 2 involving Trains 35 and 36, Mr. Sheak wrote as follows:

> Prior to merger, Trains 35 and 36 were run on a daily basis between Kansas City and Springfield. However, due to a decline in business, Trains 35 and 36 no longer operate on a daily basis. The Carrier did intend to reroute this business over the Hannibal Division and established trains KSL and SLK, to provide daily service between Kansas City and St. Louis. However, after operating these trains for three days, there was not sufficient business and trains KSL and SLK are no longer operating. There can be no showing that the rerouting of traffic has affected Trains 35 and 36 and the employees have not been adversely affected.

Position No. 3 involves the alleged establishment of Trains PBF and BPF to divert traffic previously handled before the merger by Train 135. Mr. Sheak contends that this is not factually accurate. Train PBF, he said, never operated through Springfield, Missouri. "The establishment of Trains PBF and BPF has not caused traffic to be diverted from Train 135 and the employees have not been adversely affected".

With respect to Employes position No. 4, Mr. Sheak wrote as follows:

> Prior to merger, Train QLA was primarily made up of TOFC/COFC business that was delivered to the Frisco from the SCL at Birmingham. The SCL is now making that delivery to the Burlington Northern at Memphis and the BN-SLSF merger has caused no adverse affect.

And to Employes position No. 5, Mr. Sheak wrote as follows:

> The color coded map, which you refer to as Exhibit A-16, Appendix 9, indicates routes to be changed as a result of merger. These changes were, in fact, contemplated prior to merger. However, due to a severe decline in business, such changes have not taken place.

Mr. Sheak concluded his letter of March 8, 1982, by affirming "that the employes have not been adversely affected as a result of the merger, but rather because of a general decline in business".

This essentially, was the position of the parties when the board met on June 2, 1982.

DISCUSSION AND OPINION:

To sustain the claim, Employes must show by a preponderance of acceptable, clear and convincing evidence that the Claimant is either a "displaced employe" or a "dismissed employe" as a result of a "transaction" as defined in Article I, Section 1 of the Merger Protective Agreement. Employes must show that the Claimant has suffered a loss of earnings or that he has been furloughed because of a "transaction" resulting from the merger. The mere fact that the Claimant has, since the merger, suffered a loss of earnings or was furloughed is not enough to entitle him to displacement allowances or to dismissal allowances or to any other compensation provided for in the said Merger Protective Agreement. Employes must show that such loss of earnings or furlough resulted from a "transaction" as defined in Article I, Section 1 of the Merger Protective Agreement. In their submission to this Board, Employes admit that "adverse effect must be shown by the Organization". But this adverse effect must also arise out of a "transaction".

True, the preamble of the Merger Protective Agreement states that its "scope and purpose" is to provide for "fair and equitable arrangements to protect the interests of employes adversely affected by the transactions known as the Burlington Northern Inc. (BN) - Control and Merger - St. Louis-San Francisco

Railway Company (Frisco), Finance Docket No. 28583". But, the general language of "fair and equitable arrangements" is modified by specific language relating to "transactions". In other words, if an employe can show by substantial, clear and convincing evidence that his loss of earnings or his furlough is a direct result of a "transaction", then and then only are the "equitable arrangements" as provided in the preamble of the Merger Protective Agreement, invoked. To sustain the claim, Employes must first prove that Claimant's displacement or dismissal is a direct result of "a change in operations, services, or facilities on the railroad pursuant to the merger authorized by the Commission's Order".

Changes in volume of Carrier's business, which results in an employe's loss of earnings or furlough is not a "transaction" within the meaning and intent of the Merger Protective Agreement. Lost earnings or furloughs resulting from a decline in business is not a direct result of a "transaction", and such employes who lose earnings or are furloughed do not qualify for protective benefits under the definitions in the Merger Protective Agreement.

The opinion and award of the arbitrator cited by Employes wherein the parties are Railway Employes Department and the Chicago and Western Indiana Railroad Company, and wherein the

current neutral was also the neutral member in that case, is not applicable to the facts here. In that case, the Dearborn passenger station in Chicago, Illinois was actually closed. The Norfolk and Western commuter train was removed and ceased using that station for its commuter service. As a result of the closing of the station and the removal of commuter service trains, the Indiana Railroad Company furloughed the claimants. That board held that this was a "transaction" within the definition of Article I, Section 1(a) of Appendix C - 1 under Public Law 81-518, Rail Passenger Service Act of 1970. The parties did not seriously dispute that the furlough resulted from a "transaction". Primarily in dispute was whether or not the claim was timely presented. A majority of that board held that under Appendix C-1 it was timely presented.

Yardmen and brakemen have interchangeable seniority rights in the Springfield Seniority District. Crews handle interdivisional trains to St. Louis, Neodesha on the Wichita line, Tulsa and Fort Smith, and through freight runs to Thayer on the Memphis line. There is a separate yardmen's extra list and a brakemen's extra list. All extra boards are regulated by appropriate local chairmen.

As of November 20, 1980, the date of the merger, there were 18 yard engines at Springfield, 7 Springfield crews in the St. Louis ID pool, 4 Springfield crews in Tulsa ID pool, 3 Springfield crews in the Fort Smith ID pool, 4 Springfield crews in the Neodesha ID pool and 18 crews in the Thayer pool. As a result of periodic reductions of extra boards, Claimant was cut off the switchmen's extra board on January 7, 1981.

From April 20, 1981, to February 22, 1982, the UFL coal train moved from Kansas City to St. Louis over the alternative BN route via Brookfield and west Quincy. This, as the Carrier has admitted, constituted a rerouting of the train from Springfield. On February 22, 1982, that train returned to the former Frisco route through Springfield, Missouri.

The record shows that during this ten month period, 93 trains, including empties, were so diverted over the former BN route. The record also shows that when this diversion took place the number of Springfield crews in the St. Louis pool remained constant at six (6). The claim here is for February, 1981, and subsequent months. Since the Claimant was furloughed on January 7, 1981, and the crews at Springfield remained rather constant, and since he had performed some work in February, 1981, and in subsequent months, it was not a "transaction" which

adversely affected this Claimant. No one lost his job and there were no bumps either at Springfield or at Brookfield during the ten month period when the UPL coal train was erroneously diverted. No protected employe, including this Claimant, was displaced or dismissed during this period. Claimant was not displaced or furloughed as a result of this temporary, erroneous rerouting.

It is Employes' position that trains PBF and BPF handled the same business as the former interchange from BN to the Frisco handled by Train 135. To support its position, Employes have produced a timetable showing Train 135 as running from Kansas City through Springfield to Memphis. That timetable is dated April 22, 1979, considerably more than a year before the merger. A new train, FSE-2 was established to run over the same route as of June 15, 1980, five months before the date of the merger, which was on November 20, 1980. Train 135 is not shown on Frisco's Through Freight Schedules as of June 15, 1980. Employes allege that Train 135 was not changed in a wire message dated November 30, 1980. It is not mentioned in that wire because it did not exist. Train FSE-2 was established in its stead on June 15, 1980.

FSE-2 was not switched in Springfield. The continuation of this train after the merger could not have adversely affected any Springfield yardmen, including this Claimant.

Trains 135 and FSE-2 were Kansas City-Memphis trains, so was PBF, which is a fast train from Portland to Birmingham. On the former Frisco's lines PBF was Train 131, which traversed Kansas City-Springfield-Memphis-Birmingham. Neither the pre-merger Train 131 nor post-merger Train PBF were touched by Springfield crews.

Because of physical conditions and business needs, Train PBF was rerouted through St. Louis, rather than through Kansas City. This is all explained in detail in Carrier's exhibits and in its submission to this board. The train was taken out of the Kansas City-Fort Scott, Fort Scott-Springfield; Springfield-Thayer, Thayer-Memphis Pools and it was added to Chaffee-Northend and Chaffee Southend pools. For February and March, 1981, the Kansas City-Fort Scott, Fort Scott-Springfield, Springfield-Thayer and Thayer-Memphis pools were unchanged. The only changes were in Chaffee where one pool went down by one crew and the other went up one crew.

This rerouting took place February 26, 1981, a day on which the Claimant returned to work from his furlough on January 7, 1981. He was not displaced when this rerouting took place. This was not a "transaction" that adversely affected him. Neither he nor anyone else at the Springfield Seniority District occupied a position that was abolished. The rerouting of the PBF train resulted in no displacement or dismissal of any protected employe. It was, therefore, not a "transaction".

In his letter dated August 12, 1981, previously quoted, the General Chairman wrote that a large portion of the tonnage of Trains 35 and 36, which operated over the Springfield, Missouri seniority district have been diverted by the Carrier since the merger. This, say the Employes, has resulted in a reduction in switching work in Springfield. The displacements and furloughs, the Employes imply, resulted from "transactions" which entitle the Claimant to displacement allowances.

In its submission to this board, Employes allege that "Before the merger, Kansas City-St. Louis business comprised a major portion of Train 35. Since the merger that business has been consolidated at Kansas City with Trains 72 and 71 and routed through Brookfield, Missouri to West Quincy, Missouri and then south to St. Louis". It also alleges that the business diverted from Train 35 has increased.

Trains 72 and 71 were the former BN's equivalent of Trains KSL and SLK. These latter trains were established before the merger in anticipation of increased business, which never materialized. After December 31, 1980 they originated or terminated at West Quincy. Train SLK had its final run on January 20, 1981, and KSL had its final run on January 10, 1981. The fact is that there is only little traffic moving between Kansas City and St. Louis.

When Trains CTF and TCF were operating from Kansas City, it picked up cars for Galesburg and beyond and not Quincy or St. Louis traffic. Train TCF, a Tulsa-Chicago fast train was abolished in September, 1981, because of decline in traffic.

The record also shows that traffic between St. Louis and Kansas City declined considerably after the merger. The number of cars handled between January 4, 1981 and December 26, 1981, averaged only 12.25 cars per day over both routes. This represents a decline in business of approximately 55.4% from what Frisco alone handled prior to the merger.

It is also a fact that from December, 1980, when the KSL-SLK trains were first established, and when West Quincy-Brookfield route began to handle the bulk of Kansas City-St.Louis

traffic, the crews in the Springfield-St. Louis pool that previously handled Trains 35 and 36 remained constant at 7. This was the period from November, 1980 through March, 1981. Claimant was working when Trains KSL-SLK were established. Neither the Claimant nor any other employe in the Springfield, Missouri seniority district was bumped because a position was abolished as a result of a transaction or were any affected by a series of bumps brought about by a transaction. The cut-offs resulted from a decline in business.

Article 1, Section 4(a) applies only when the Carrier contemplates a transaction. Since no transactions were involved in any of the incidents previously mentioned, no prior notices were necessary. Carrier did not violate Article I, Section 4(a).

Exhibit A, Appendix 9, which is a map of the merged system, and which was included in the merger application, shows "routes with changed train service , one train in each direction daily". Employes contend that this map shows that service in the Springfield-St. Louis corridor was expected to be reduced after the merger. In fact, say the Employes, these plans and more have been carried out.

That map in and by itself is not evidence that routes and train service have actually changed to the detriment of protected employes. What may have been projected may not have eventually taken place. What the Carrier predicted it would gain did not materialize. The projections were excessively optimistic as the following table will show.

| Corridor | Projected Change in Trains per Month | Actual Change in Trains per Month | |
|---|---|---|---|
| Minot-Fargo | + 60 | -175 | (10/80-2/82) |
| Willmar-Breckenridge | + 60 | -183 | " |
| Chicago-Galesburg | + 60 | -153 | " |
| Galesburg-W. Quincy | +120 | - 8 | " |
| Brookfield-Kansas City | 0 | - 84 | " |
| Kansas City-Ft. Scott | +180 | -222 | (2/81-2/82) |
| Ft. Scott-Tulsa | +120 | + 27 | " |
| Springfield-Thayer | + 60 | -215 | " |
| Springfield-St. Louis | - 60 | - 85 | " |
| Monett-Ft.Smith | 0 | - 27 | " |
| Springfield-Tulsa | - 20 | -100 | " |
| Memphis-Birmingham | + 60 | -166 | " |

The Neodesha Interdivision Run is not raised in Mr. Eye's claim. It is mentioned in some of the later claims to be adjudicated by this board and should, for this reason, also be resolved here. In those claims, Employes have alleged that:

> ... trains #337 and #330 which ran daily between Springfield and Neodesha, Kansas have been eliminated with their daily tonnage being re-routed over the Ash Grove and Afton subdivisions.

In an agreement dated May 26, 1977, between the former Frisco and the UTU, it was agreed that:

> Interdivisional through freight service may be operated ... on a territory between Springfield and Neodesha ...

Early in 1981 such interdivisional trains ran only three days a week. Carrier abolished the interdivisional run, and in its stead, established a Neodesha based road switcher.

While this issue is still pending before the First Division of the National Railroad Adjustment Board, it must be said here that this abolishment did not constitute a "transaction" under the Merger Protective Agreement since the May 26, 1977 agreement permits the Company the privilege of operating interdivisional through freight service between Springfield and Neodesha, and by its language it also gives the Carrier the right to abolish said operation at any time. Whether the establishment was before or after the merger is immaterial. The 1977 agreement states that the Carrier may operate such service which implies that it may also discontinue that run.

The evidence in the record also shows that traffic in the former Frisco Central District as well as in the former MP and former Frisco Systems has dropped considerably. From October, 1980, through July, 1981, the number of train miles

and gross ton miles in the former BN System dropped respectively 24% and 25%. For the same eight months on the former Frisco System the number of train miles dropped 11.7% and gross ton miles dropped 14.9%. Also, in the former Central Frisco District, for the same eight months, train miles dropped 21.9% and gross ton miles dropped 28.1%.

Similarly, from February 20, 1981, to February 20, 1982 the number of shifts for the Springfield seniority district dropped 13.8% and the number of overtime hours remained at zero.

It has been established by undisputed clear and decisive evidence that the loss of earnings experienced by the Claimant and other employes in the Springfield, Missouri seniority district was occassioned by a serious decline in Carrier's business and not by any "transaction" under the Merger Protective Agreement.

FINDINGS:

By reason of the agreement between the parties, the Board finds that the parties are respectively employer and carrier as defined in the Railway Labor Act, as amended, and that it has jurisdiction.

For the reasons stated in the opinion, this Board also finds that the claim of J. E. Eye is without merit, since Employes have failed to show by clear and convincing evidence that his loss of earnings is the result of a "transaction". The Board finds that the Claimant was not displaced or dismissed as a result of any such transaction. His claim, therefore, must be denied.

AWARD

Claim denied.

DAVID DOLNICK, Neutral and Chairman

W. A. BELL, Carrier Member

C. F. CHRISTIANSEN, Employe Member

DATED: July 21, 1982

Organization's File: L-303-B-10098
Carrier's File: CTG 81-8-12

ORGANIZATION'S DISSENT
to
Award No. 1
of
PUBLIC LAW BOARD NO. 3160

This dissent is compelled by reason of the fact that the Opinion and Award rendered by the neutral-led majority are completely contrary to the stated intent of the framers of the March 25, 1980, BN-SLSF-UTU Merger Protective Agreement. Moreover for reasons best known to the neutral member the employees are told, through the use of illogical, convoluted reasoning, that the Merger Protective Agreement is unenforcable and incapable of providing the benefits negotiated.

Throughout the written and oral arguments before this tribunal, we pointed to the language contained in the preamble of the Merger Protective Agreement which states that its "scope and purpose" is to provide for "fair and equitible arrangements to protect the interests of employes adversely affected by the transactions known as Burlington Northern Inc. (BN) - Control and Merger - St. Louis-San Francisco Railway Company (Frisco), Finance Docket No. 28583."

The above-quoted language is clear and unambiguous. It is difficult to conceive of the situation where the preamble would not be easily understood, as it stands by itself as a statement of intent. It is impossible to reconcile the basic intent of the agreement, which is so openly stated, with the majority's conclusion that the employees must possess a "preponderance" of evidence before receiving benefits to which they are entitled. This addition to and twisting of the Merger Protective Agreement does a disservice to the accepted mechanisms of industrial relations and to the arbitrators' craft.

We consistently pointed to this Carrier's abject failure to negotiate in good faith or to respond to the positions advanced by the Organization during the handling of the Merger Protective claims. The Carrier openly and freely admitted before this tribunal that the information contained in the greatest part of its submission was not made known to the Organization until a very few days in advance of the hearing. These purported facts which the neutral member so easily swallows whole were seemingly impossible to develop during the solid year of correspondence between the two parties, relating to diversions and reroutings. The majority places enough faith in the figures presented in the Carrier's submission to use them as a basis for denying this group of employees the benefits to which they are entitled. We fail to see why any reliance can be placed on the Carrier's statements and figures when they have made proven misstatements and have given the Organization admitted contrary-to-the-fact figures in the past. We also fail to see how the majority can deny these claimants the compensation negotiated for and to which their seniority entitles them by using conjecture. We find conjecture and supposition throughout this Opinion, not only in the unwarranted misinterpretation of the provisions of the agreement but also in the majority's review of the purported facts. If the Carrier's figures so strongly convinced the neutral member that a decline in business caused all the damage to the claimants, we fail to see the necessity for the tentative statement contained in the Award wherein the referee states "What may have been projected may not have eventually taken place."

It is unconscionable that the majority chooses to deny all these claims after this Carrier admitted the rerouting of train UPL. This referee recognized the rerouting of train UPL. On page 10 of the Carrier's submission, they stated that the train was "inadvertently rerouted for a period of months." In their oral argument, they explained to this tribunal how easy it was for them to "lose" a train. Eight months elapsed from the time that they were notified of the "inadvertent" rerouting until they choose to acknowledge it. The neutral member, for reasons best known to him, chooses to believe that this Carrier, which is computerized and internally audited to the extreme, can "lose" trains. Through great leaps of legalistic sophistry, we are told that the rerouting of a train away from the claimants' seniority district had no effect on them. If the "preponderance" of evidence necessary to sustain a claim is not satisfied by an undisputed rerouting and diversion of traffic, the only conclusion that may be reached is that the parties formulated an agreement which has no force or effect and which is a totally absurd conclusion.

The Opinion and Award are grossly erroneous and do great damage to the concepts of justice and fair play. The majority has obviously taken the easy way out by parroting the Carrier's submission instead of dealing with the basic issues.

For the reasons stated above, I dissent

July 27, 1982
Date

C. F. Christiansen
C.F. Christiansen
Labor Member PLB #3160