

PUBLIC LAW BOARD NO. 2807

Award Number: 57

Case Number: 57

PARTIES TO DISPUTE

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

And

SEABOARD SYSTEM RAILROAD

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

CLAIM NUMBER 1:

1. Carrier violated the Memorandum Agreement between the B&O and L&N which was effective May 15, 1981, the New York Dock Agreement (Finance Docket 28905) and/or Stabilization Agreement of February 7, 1965, amended May 22, 1981.
2. Carrier shall grant Clerk A. Benningfield the right to exercise her option of income protection under either New York Dock or Stabilization Agreement of February 7, 1965, amended May 22, 1981.
3. Carrier shall compensate Clerk Benningfield the sum of \$3,230.00 which is the difference of what she was compensated and what she should have been compensated under the Agreement for the period from May 1981 through January 1982.

CLAIM NUMBER 2:

1. Carrier violated the Memorandum Agreement between the B&O and L&N which was effective May 15, 1981, the New York Dock Agreement (Finance Docket 28905) and/or Stabilization Agreement of February 7, 1965, amended May 22, 1981.
2. Carrier shall grant Clerk D.A. Williams the right to exercise his option of income protection under either New York Dock or Stabilization Agreement of February 7, 1965, amended May 22, 1981.
3. Carrier shall also compensate Clerk Williams the difference in what he has been compensated and what he should have been compensated under his choice of protections.

FINDINGS

On May 15, 1981, a Memorandum Agreement was signed by the Louisville and Nashville Railroad (Carrier), the Baltimore and Ohio Railroad Company (B&O), and the Brotherhood of Railway, Airline and Steamship Clerks (the Organization). The Agreement provided for the consolidation and coordination of the clerical functions performed by B&O employees on Clerical Roster No. 77 at Watson, Indiana, Jeffersonville, Indiana and Louisville, Kentucky, and those performed by Carrier employees on Seniority Roster No. 32 at Louisville, Kentucky. On January 13, 1982, Claimant Williams, an extra clerk, filed claim for protection under ICC Finance Docket #28905 pursuant to the terms of the Agreement, contending that he had lost wages as a result of the consolidation of clerical work. On February 1, 1982, extra clerk Benningfield filed a similar claim. The claims were denied at all levels of appeal on the property, and the Organization then submitted the matter to this Public Law Board for resolution.

The parties have stipulated that this Board has jurisdiction to hear the dispute.

The issue to be decided in this dispute is whether Claimants were improperly deprived of protective benefits and conditions in violation of Section 9 of the Agreement; and if so, what should the remedy be.

Section 9 of the Agreement reads as follows:

9. (a) Employees adversely affected as a result of the implementation of the provisions of this Memorandum Agreement will be entitled to the protective benefits and conditions provided under Finance Docket 28905 (Sub.-No. 1) and related proceedings which are attached hereto as Exhibit No. 4 - and such protective benefits and conditions will be applied for the duration and to the extent applicable to each employee entitled thereto.

NOTE: A 'change of residence' as referred to in Sections 5(b) and 6(d) of the attached protective conditions shall only be considered 'required' if the reporting point of the employee would be more than thirty (30) normal route miles from his point of employment at the time affected.

(b) Each employee entitled to the protective benefits and conditions referred to in subsection (a) above and who is also otherwise eligible for protective benefits and conditions under other protective agreements or arrangements shall within sixty (60) days from date affected be notified of his monetary protective entitlements under this agreement. Within thirty (30) days of being advised of their monetary protective entitlements under the provisions of the attached Protective Benefits, such employee(s) will elect between the Protective Benefits and conditions attached hereto and the protective benefits and conditions under such other arrangement. Should any employee fail to make an election of benefits during the period set forth in this subsection (b), such employee shall be considered as electing the protective benefits and conditions attached hereto.

(c) It is further understood and agreed that at the expiration of the protective period provided for employees who elect the Protective Benefits and conditions attached hereto, such employees will revert to and be entitled to any and all pre-existing protective benefits and conditions to which they were entitled prior to making their election, provided they continue to maintain their responsibilities and obligations under such other protective agreements or arrangements.

(d) It is further understood and agreed that employees who are entitled to the Protective Benefits and conditions attached hereto, who are not now entitled to the protective benefits and conditions of some other protective agreement or arrangement during the protective period provided in the attached Protective Benefits, will be entitled to the protective benefits and conditions of such other protective agreement or arrangement at the expiration of the protective period provided in the attached responsibilities and obligations under such other protective agreements or arrangements.

ICC Finance Docket No. 28905 (Sub. No. 1) imposes the so-called "New York Dock Conditions" on certain railroad transactions such as the merger that occurred in this case. The pertinent portions of the New York Dock conditions read as follows:

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

* * * * *

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 may then be entitled to protection under the other arrangement for the remainder, if any, of this protective period under that arrangement.

* * * * *

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.

In order to be eligible for the protections of the New York Dock conditions, Claimants must be "displaced employees" within the meaning of that term as it is used in those conditions. Section 1(b) of the New York Dock Conditions defines "displaced employee" as one who has (1) been placed in a worse position with respect to his compensation and the rules governing his working conditions (2) as a result of a "transaction." The parties agree that the merger and subsequent coordination of clerical work constitute a transaction falling within the operation of the New York Dock Conditions. Therefore, a decision that the Claimants were wrongly deprived of the protections specified in the Agreement first requires a finding that Claimants were placed in a worse position with regard to their pay and working rules, and second, that their worsened position came about as a result of the relevant transaction.

The Organization contends that the burden is on Carrier to show that Claimants are not "displaced employees" as that term is defined in the New York Dock Conditions. In support of this contention, the Organization cites the Affidavit of former Secretary of Labor James D. Hodgson, dated April 27, 1971. The affidavit was taken in order to clarify certain portions of the "Railpax

Conditions" which had recently been certified by the Secretary. While a copy of the Railpax Conditions is not before this Board, it is evident from a reading of the Affidavit that the Railpax conditions contained a provision that specifically placed the burden on a carrier to prove that something other than the discontinuance of rail passenger service affected an employee claiming protection under these conditions.

The New York Dock Conditions contain a similar provision. Appendix III, Article I, Section 11(e) of the New York Dock Conditions reads as follows:

(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.

This provision, however, assumes that it has already been proven that a claiming employee has been adversely affected. Since neither the Agreement nor the New York Dock Conditions specify otherwise, the burden of proving that an employee has been adversely affected must rest with the Organization as the party alleging a violation of the Agreement.

There is no evidence in the record to sustain the proposition that the Claimants were adversely affected by the coordination of clerical work or by any other event. In its submission, the Organization states: "Five former B&O

employees were senior to the Claimants and neither Claimant could obtain a regular position, nor protect work to which they would have otherwise been entitled." The record shows that prior to the coordination, Claimants were numbers 200 and 228, respectively, on the District 32 Seniority Roster; after the coordination, they were numbers 205 and 233 on that Roster. While it is clear that Claimants were lower on the seniority roster than they had been prior to the coordination, there is no evidence that this circumstance resulted in the adverse effects alleged by the Organization. No evidence has been submitted to show that Claimants were prevented from obtaining regular positions due to being lowered on the seniority roster; likewise, since there is no evidence that Claimant's were lowered on the Extra List, it cannot be held that they were prevented from protecting work to which they would otherwise be entitled.

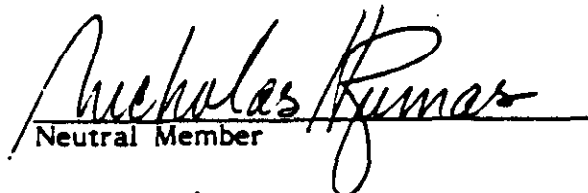
The Organization also argues that Claimants are "displaced employees" within the meaning of the New York Dock Conditions "due to being placed in a worse position with respect to compensation." Claimants were Extra employees both before and after the coordination. A finding that they were adversely affected would require a showing that Claimants' incomes dropped after the coordination. The Organization has made no such showing; it has merely asserted that Claimants "had lot substantial amounts of wages as a result of the coordination." This unsupported assertion falls far short of proving the Organization's contention. The Organization claims that Carrier has admitted

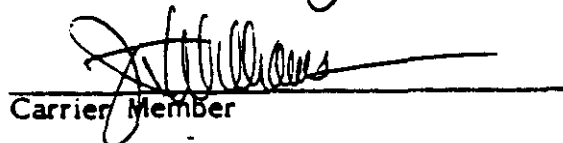
that Claimants sustained a loss in compensation. However, a reading of the record shows that, at most, Carrier contends that if Claimants were affected at all they were affected by a decline in business and not by the coordination. Such a position hardly constitutes an admission, and there is no other evidence in the record to show that the parties have stipulated to the fact that Claimants suffered a loss in compensation.

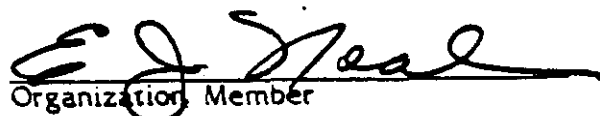
For the reasons stated above, it is the opinion of this Board that the Organization has failed to show that Claimants were adversely affected in any way. Consequently, it is unnecessary for the Board to address the question of whether or not any adverse effects were caused by the relevant transaction. The instant claims must be denied, and therefore it is also unnecessary to decide whether or not Claimants are entitled to protection under the Stabilization Agreement of February 7, 1965, as amended May 22, 1981.

AWARD

Claims denied.


Neutral Member


Carrier Member


Organization Member

Date:

9/26/84