

In the Matter of the
Arbitration Between:

BALTIMORE AND OHIO RAILROAD
COMPANY and SEABOARD SYSTEM
RAILROAD (LOUISVILLE AND
NASHVILLE RAILROAD COMPANY)

Carriers,

and

BROTHERHOOD OF RAILROAD
SIGNALMEN,

Organization.

Pursuant to Article 1 of the
New York Dock Conditions

ICC Finance Docket No. 28905

OPINION AND AWARD

(The Nabb Dispute)

31

Date of Hearing: November 2, 1984
Place of Hearing: Cincinnati, Ohio
Date of Award: January 3, 1985

Mr. John B. LaRocco
Arbitrator
625 No. 1 Woodside Sierra
Sacramento, CA 95825

APPEARANCES

For the Carriers:

Mr. E. F. Norton, Jr.
Manager, Labor Relations
Chessie System Railroads
Labor Relations Department
100 North Charles Street
Baltimore, MD 21201

Mr. J. T. Williams, Director
by Mr. Carl F. Snyder, Manager
Personnel and Labor Relations
Department
Seaboard System Railroad
500 Water Street
Jacksonville, FL 32202

For the Organization:

William G. Mahoney, Esq.
John J. Delaney, Esq.
Highsaw & Mahoney, P.C.
1050 Seventeenth St., N.W. #210
Washington, D.C. 20036

Mr. C. T. Green
General Chairman
Brotherhood of Railroad
Signalmen
R.D. Route 1, Box 395
Meyersdale, PA 15552-9401

This copy of Award No. 1, ARB-3780, B&O, is for your information and file. (NYD)
5/24/85 RTB

cc: C. S. Chandler, Vice President
J. Hansen, Vice President
V. Van Artsdalen, Vice President

C. T. Green, Gen. Chrmn, B&O
R. B. Flowers, Gen. Chrmn, L&N

OPINION

I. INTRODUCTION

On September 23, 1980, the Interstate Commerce Commission (ICC) approved CSX, Inc.'s petition (Finance Docket 28905 (Sub-No. 1)) to control and acquire Chessie System, Inc. and Seaboard Coast Line Industries, Inc., which were the parent corporations of the Chessie System Railroads and the Seaboard Coast Line Railroad respectively. The Baltimore and Ohio Railway Company (B&O) is a subsidiary of the Chessie System Railroads and the former Louisville and Nashville Railroad Company (L&N) has since been merged into the Seaboard System Railroad (SBD) which is the successor enterprise to the Family Lines. To compensate and protect employees adversely affected by the primary acquisition and related proceedings, the ICC imposed the employee merger protection conditions set forth in New York Dock Railway - Central - Brooklyn Eastern District Terminal, 360 I.C.C. 60, 84-90 (1979); affirmed, New York Dock Railway v. United States, 609 F.2d 83 (2nd Cir. 1979) ("New York Dock Conditions") on all corporate parties pursuant to the relevant enabling statute. 49 U.S.C. §11347.

This dispute arises out of the Carriers' May 25, 1984 notice served on the Organization whereby the Carriers informed the Organization that they intended to transfer B&O signal maintenance work on the B&O track between Nabb, Indiana, and Louisville, Kentucky, to the SBD effective

August 22, 1984. The parties personally conferred and attempted to negotiate terms and conditions of an implementing agreement on July 2, 1984. After further telephone discussions, the parties were unable to reach an agreement. Next, the Carriers invoked the mandatory interest arbitration provisions in Article 1, Section 4(a) (1-4) of the New York Dock Conditions.

An arbitration hearing was held at Cincinnati, Ohio, on November 2, 1984. Both parties filed prehearing submissions and, at the hearing, they presented extensive oral arguments in support of their respective positions. The Carriers submitted two prior New York Dock arbitration decisions which allegedly support their position in this case. Inasmuch as the Organization's counsel had not had an opportunity to thoroughly review these decisions, the parties stipulated that the Organization could file a post hearing brief rebutting the efficacy of the two decisions. Though the Carriers later objected to the Organization's brief, the Arbitrator will consider the Organization's brief.¹

¹The Carriers responded to some of the Organization's arguments in a November 16, 1984 letter. Thus, even if the Organization's post hearing brief violated the parties' stipulation, the Carriers were not deprived of any due process.

At the Arbitrator's request, the Carrier and the Organization agreed to extend the thirty-day limitation period for issuing this decision.

II. BACKGROUND AND SUMMARY OF THE FACTS

On May 25, 1984, the Carrier notified the Organization of their intent "... to transfer maintenance responsibilities of B&O Trackage, Nabb, Indiana, to Louisville, Kentucky, to SBD." Effective August 22, 1984, all signal maintenance work on the Nabb to Louisville rail line would be assigned to signal forces on the Evansville Division within the scope of the Monon agreement. The May 25, 1984 notice further informed the Organization that the Carriers did not contemplate any furloughs or transfer of B&O workers as a result of the transaction. During negotiations over an implementing agreement, the Carriers presented a proposed implementing agreement which was rejected by the Organization.² Although the Organization did not proffer a complete, written proposal (for an implementing agreement), it enumerated the subjects, which in its view, must be incorporated in a final implementing agreement.

On the property, the Organization contended that the transfer of B&O signal maintenance work to the SBD would substantively alter the seniority provisions and scope clauses of the applicable collective bargaining contracts

²See Carriers' Exhibit D.

contrary to the prohibition set forth in Article 1, Section 2 of the New York Dock Conditions. At the arbitration hearing, the Organization waived the above argument in this particular case but without prejudice to raising a similar Article 1, Section 2 argument in any future dispute.

The B&O's Louisville to Nabb track terminates near Nabb and connects with the L&N at Louisville. It is isolated from the B&O. The territory to be transferred is currently assigned to Independent Signal Maintainer Plessinger headquartered at North Vernon, Indiana. The Carriers assured the Organization that transferring a portion of Plessinger's assigned territory to the SBD will have absolutely no effect on his continued employment.

The Organization has related, in great detail, facts and factual allegations which, from its perspective, are relevant to the instant dispute. At the time of the primary control application, the Carriers also petitioned the ICC to allow the B&O to abandon its track running from North Vernon south to Nabb. Fin. Docket No. 28905 (Sub-No. 41). The ICC approved the abandonment in conjunction with permitting the B&O and L&N to coordinate their traffic operations between Cincinnati and Louisville to take advantage of the shorter L&N route between those cities. Fin. Docket No. 28905 (Sub-No. 11). Thus, B&O trains which previously operated between Cincinnati and Louisville via

North Vernon (and Nabb) were rerouted over the L&N short line.

Before the North Vernon to Nabb track abandonment, Plessinger occupied an Independent Signal Maintainer position at Watson, Indiana. He was responsible for maintaining the territory which will be transferred to the L&N. Lowry, the Signal Maintainer at North Vernon, maintained the track which was abandoned.³ In addition, a three member signal maintenance unit stationed at North Vernon spent forty percent of its work time assisting the independent signal maintainer on the North Vernon to Louisville track. By 1983, the B&O had abandoned the road signal system on the line up to Nabb. When the B&O abolished Plessinger's position on September 28, 1983, he exercised his seniority to replace Lowry who was awarded a vacant job on the three man maintenance unit at North Vernon. The territory on the Nabb line which Plessinger formerly maintained was merged into the North Vernon assignment (which Plessinger now occupied). On October 5, 1984, the B&O abolished the North Vernon maintenance unit and simultaneously expanded the territorial responsibilities of adjacent maintenance units to maintain the B&O's Cincinnati to St. Louis main

³Evidently, as a result of the abandonment which decreased Signal Maintainer Lowry's compensation, the Carrier began paying Lowry a displacement allowance.

line through and near North Vernon. Lowry apparently displaced to a position on the maintenance unit headquartered at Seymour, Indiana, while the other two signal employees claimed positions on the Lawrenceburg, Indiana, maintenance unit. The most recent adjustment in the B&O signal force occurred after the Carriers issued their May 25, 1984 notice.

Contesting some of the Organization's factual allegations, the Carriers asserted that the North Vernon signal maintenance unit had performed very little work associated with a signal upgrading project on the territory to be transferred. While work on the project has been halted, an AFE signal force will complete the project if and when it is resumed.

III. THE POSITIONS OF THE PARTIES

This Arbitrator concurrently heard another New York Dock Article 1, Section 4 dispute involving this Organization and the SBD concerning the transfer of signal maintenance work from the Chesapeake and Ohio Railway Company to the SBD (The Chilesburg dispute).⁴ Though the underlying facts in this case are different, the issue which thwarted

⁴In the Matter of the Arbitration between Chessie System Railroads (Chesapeake and Ohio Railway Company) and Seaboard System Railroad (Louisville and Nashville Railroad Company), Carriers, and Brotherhood of Railroad Signalmen, Organization, I.C.C. Finance Docket No. -28905 (The Chilesburg Dispute), NYD Arb. January 3, 1985.

negotiations over an implementing agreement is essentially the same as the predominant issue in the Chilesburg dispute.⁵ Thus, the Arbitrator need not completely restate each party's position.

A. The Carriers' Position

The Carriers contend that their proposed implementing agreement conforms to all the requirements set forth in the New York Dock Conditions. The Organization's demand that the Carrier automatically provide New York Dock protective benefits to Plessinger and the three members of the former North Vernon maintenance unit is a wholly inappropriate subject matter for an implementing agreement. Claims for New York Dock benefits must be resolved by the Article 1, Section 11 arbitration process. The status of these four workers is not before the Arbitrator as part of this Article 1, Section 4 proceeding. Since no employees are being transferred as a result of this coordination, the implementing agreement need not provide for a selection of forces. Moreover, the employee responsible for signal maintenance on the territory to be transferred will not be affected. The abolition of the North Vernon maintenance unit was completely unrelated to the transfer of work herein.

⁵However, in this case, the Organization is not challenging the validity of the Carriers' May 25, 1984 notice.

In any event, the Organization's contention that four signal employees are entitled to protective pay is solely within the jurisdiction of an Article 1, Section 11 arbitration tribunal. When the Organization demanded protective benefits for the four signal workers, the Carriers declared that while they would not recognize them as displaced employees, they were ready and willing to arbitrate any claims which might arise under Article 1, Section 11.

B. The Organization's Position

As in the Chilesburg case, the Organization argues that to reach a proper resolution, the Arbitrator must examine the evolution of events leading up to the May 25, 1984 notice.

The primary application coupled with the Nabb to North Vernon abandonment adversely affected the incumbent Independent Signal Maintainer and the North Vernon maintenance unit. The unit suffered even greater harm when the B&O abolished the unit on October 12, 1984 after the Carrier had abandoned and arranged for the transfer (the transaction herein) of the territory which previously accounted for forty percent of the unit's work. The transfer of signal maintenance to the SBD is but another step in the Carriers' overall objective of rerouting B&O traffic over the Cincinnati to Louisville L&N short line. Though the Organization acknowledges the Carriers' need to achieve more efficient operations, the Carriers are commensurately

obligated to compensate employees adversely affected by changes which increase productivity and reduce the Carriers' operating and labor costs. Thus, the implementing agreement in this case should include covenants which specifically protect the four signal workers who performed service on the Nabb line.

The Organization lastly objects to the unemployment insurance reporting provisions in the Carriers' proposed implementing agreement.

IV. STATEMENT OF THE ISSUE

The issue before the Arbitrator is what shall be the substantive content of an implementing agreement between the Carriers and the Organization to cover the impending transaction (as outlined in the May 25, 1984 notice) which meets the requirements of the New York Dock Conditions.

V. DISCUSSION

The resolution of this case concerns the Arbitrator's fundamental authority and jurisdiction to pass on whether or not any of the four signal workers, identified by the Organization, are entitled to New York Dock protective benefits within the parameters of an Article 1, Section 4 arbitration. Although the facts surrounding the transfer of signal work from the B&O to the SBD are slightly different from the Philesburg transfer dispute, the material questions regarding the proper scope of an Article 1, Section 4 arbitration are identical to the issues considered

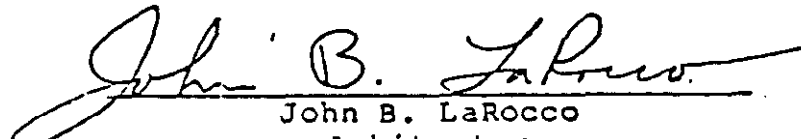
and decided by this Arbitrator in the Chilesburg case. There is not any distinguishing evidence in this record which would warrant an outcome different from the result reached in the Chilesburg dispute.

- For the reasons more fully set forth in the Chilesburg Arbitration Opinion, the parties shall enter into an implementing agreement conforming to the Carriers' proposals (Carriers' Exhibit D) with the same modification.

AWARD AND ORDER

1. The parties shall adopt the Carriers' proposed implementing agreement (Carriers' Exhibit D, pages 1-3) but delete Section 4(b) and substitute the words "having claimed or received" in place of "being entitled to" in Section 4(c);
2. The date of the implementing agreement should be adjusted; and,
3. The Carriers and the Organization shall comply with this Award within thirty days of the date stated below.

Dated: January 3, 1985


John B. LaRocco
Arbitrator