

Before ARBITRATION COMMITTEE appointed pursuant to
Article I, Section 11 of Appendix III, I.C.C. Finance
Docket No. 28250

In the Matter of
UNITED TRANSPORTATION UNION (T)
and
CONSOLIDATED RAIL CORPORATION
Docket No. CRT-906

O P I N I O N
A N D
A W A R D

SUBMITTED ISSUES

1. Is trackman James Poltrack entitled to the benefits described in the "New York Dock Conditions" as requested on August 16, 1982 due to the abolishment of his position on August 11, 1982?
2. Is trackman Thomas A. Grant entitled to the benefits described in the "New York Dock Conditions" as requested on August 17, 1982, due to the abolishment of his position on August 13, 1982?
3. Is trackman Wayne Ust entitled to the benefits described in the "New York Dock Conditions" as requested on December 10, 1982, due to the abolishment of his position on December 10, 1982?
4. Is trackman T. M. Roberts entitled to the benefits described in the "New York Dock Conditions" as requested on December 10, 1982, due to the abolishment of his position on December 10, 1982?

BACKGROUND FACTS

On January 11, 1980, the U. S. Interstate Commerce Commission issued as Finance Docket 29805 a Notice of Exemption from the requirements of 49 U.S.C. 11343-11347 to the proposed merger of Consolidated Rail Corporation (~~CONRAIL~~) with the Raritan River Railroad Company (Raritan), the latter

wholly owned by Conrail at the time. This grant was made "subject to the conditions imposed for the protection of employees imposed in New York Dock Ry-Control-Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), affirmed by slip opinion of U. S. Court of Appeals for 2nd Circuit, November 7, 1979." The latter document provides certain payments to individuals caused to be displaced or dismissed because of merger. It bears the designation of Finance Docket No. 28250 and will be referred to herein as New York Dock Conditions or NYDC. Provisions of this document which are material and pertinent to the instant controversy, are the following:

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

* * *

11. Arbitration of disputes

* * *

- (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.

The merger of Raritan with Conrail was effectuated on April 24, 1980.

CIRCUMSTANCES

It is undisputed that the four above named claimants were hired by the Raritan River Railroad on various dates in 1970 to work as trackmen (work consisting primarily of maintenance and repair of tracks and their component and connective appurtenances and equipment) and held such positions at the time of the Raritan-Conrail merger on April 24, 1980.

The position of Claimant Poltrack was abolished on August 11, 1982. He applied for NYDC benefits on August 16, 1982.

The position of Claimant Geant was abolished on August 13, 1982. He applied for NYDC benefits on August 17, 1982.

The position of Claimant Ust was abolished on December 10, 1982. He applied for NYDC benefits on December 10, 1982.

The position of Claimant Roberts was abolished on December 10, 1982. He applied for NYDC benefits on December 10, 1982.

Carrier denied Claimants' applications.

POSITIONS OF THE PARTIES

Carrier takes the position that these losses of jobs were not the direct result of the Raritan-Conrail merger and that the claims must be rejected because claimants have not met the burden of proof put on them by Article 1, Section 11 (e) of NYDC to show that they were adversely affected by a "transaction" as defined in Article 1 (a) of that document, i.e. "to identify the transaction and specify the pertinent facts of that transaction relied upon" (Article 1, Section 11 (e)).

In support of its argument, Carrier cites the Award of an Arbitration Committee chaired by Referee Robert O'Brien

in a controversy under NYDC involving the International Organization of Masters, Mates and Pilots, and the Chesapeake and Ohio Railway Company (12/29/83). This decision states, in part:

"it must be shown that there existed a causal nexus between a 'transaction' and the adverse impact experienced by employees claiming the protective benefits established by the New York Dock conditions. Absent such causal nexus, said employees are not entitled to the benefits provided by the New York Dock conditions despite the fact that they may have suffered some loss of earnings, or that their positions were abolished, subsequent to the ICC authorized 'transaction.'"

In Carrier's view, in this case, it is clear from the record that the claimants have failed to prove - or even allege - that they were adversely affected, with respect to their employment as the result of the "transaction" which is the subject of NYDC. It is pointed out by Carrier that in its on-the-property responses to claimants, Carrier stated that the loss of the respective jobs "cannot be deemed as a result of a transaction but merely due to a normal reduction in force as the result of the completion of programmed work on the former Raritan River property". No denial of these statements or support of such denials were ever put forward by claimants or their Organization.

Carrier points out that the abolishments in question took place in August and December 1982, approximately 2½ years after the merger and asserts that at that time there had been no integration or coordination of maintenance-of-way work on the Raritan line with Conrail maintenance-of-way work. It maintains that had the Raritan not been merged with Conrail, these abolishments would have occurred nevertheless when they did.

Organization maintains that abolishment of these positions was a direct result of the Raritan-Conrail merger. This was the causal "transaction" that resulted in the employment by Carrier of Conrail employees with no Raritan River seniority to work on former Raritan property. And it was because those Conrail employees performed said work that the positions of these four former employees of the former Raritan River Railroad were abolished.

OPINION

Organization argues that the causal nexus between merger and the abolishment of the jobs of these four is apparent from the fact that individuals hitherto having seniority only on the Conrail trackage, have, at various times since the termination of Claimants, done work on the former Raritan trackage which had customarily been performed by claimants

In the first place, it is not self-evident, that if these facts were proven they would constitute a showing that these four jobs were lost in August and December 1982 because of the merger in April 1980.

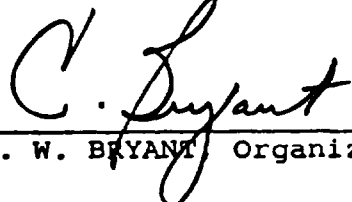
But this Committee is unable to reach such evaluations because claimants have not met their burden under NYDC of proving either that the events described took place or that they resulted from the merger "transaction" for which NYDC establishes benefits.

AWARD

1. Trackman James Poltrack is not entitled to the benefits described in the "New York Dock Conditions" as requested on August 16, 1982 due to the abolishment of his position on August 13, 1982.
2. Trackman Thomas A. Grant is not entitled to the benefits described in the "New York Dock Conditions" as requested on August 17, 1982, due to the abolishment of his position on August 13, 1982.
3. Trackman Wayne Ust is not entitled to the benefits described in the "New York Dock Conditions" as requested on December 10, 1982, due to the abolishment of his position on December 10, 1982.

4. Trackman T. M. Roberts is not entitled to the benefits described in the "New York Dock Conditions" as requested on December 10, 1982, due to the abolishment of his position on December 10, 1982.


LOUIS YAGODA, Neutral Member


C. W. BRYANT, Organization Member


ROBERT O'NEILL, Carrier Member

Dated JUN 18 1985