

NYD8

SPECIAL BOARD OF ADJUSTMENT  
ESTABLISHED PURSUANT TO  
SECTION 11 OF THE  
NEW YORK DOCK II CONDITIONS

CASE NO. 2

PARTIES ) BROTHERHOOD OF RAILWAY CARMEN OF THE UNITED STATES  
          ) AND CANADA  
TO        )  
          )  
DISPUTE ) SEABOARD SYSTEM RAILROAD

STATEMENT OF CLAIM:

"Case in behalf of 23 furloughed carmen under the provisions of the New York Dock Conditions account Trains 273/274 and others being transferred to the B&O Railroad's Queensgate Yard from the Louisville and Nashville Railroad, DeCoursey, Kentucky." (BRC File 574-1012-M-295; L&N File 16-AA-NYD (83-133))

BACKGROUND:

The background and certain of the arguments in this dispute are not too unlike those presented by both the Carrier and the BRC in Case No. 1 before this Board, except the named Claimants here number 23 and were furloughed at DeCoursey Yard on April 23 and May 25, 1982, and the issue in dispute involves not only the May 15, 1981 coordination of B&O--L&N TOFC ramps as in Case No. 1, but, more particularly, a BRC contention that the adverse affect upon the Claimants also resulted from the Carrier shifting of certain train operations from DeCoursey Yards (L&N) to Queensgate Yards (B&O).

POSITION OF THE EMPLOYEES:

The BRC contends that the moving of business from DeCoursey to Queensgate was something which was contemplated a considerable time before the actual move, as it submits is evident from a news release dated November 16, 1978, wherein the parent company, CSX, announced an approved plan of merger between the Seaboard Coast Line Industries, Inc., and Chessie System, Inc., would result in, among other things, the following:

"Management believes the proposed merger will provide improved service to shippers, operating efficiencies and greater intermodal competition in North - South transportation; will permit more in-

tensive utilization of facilities and equipment; and will mean improved profitability; increased capability to meet the needs of the shipping public and a stronger rail transportation system in the East.

Osborn and Watkins [Chairman and Chief Executive Officer and Chairman and President of the two companies, respectively] emphasized the competitive benefits of better access to each other's markets. They said that joint solicitation and improved through service will attract merchandise traffic currently moving across north-south regional boundaries on highways and waterways. Affiliation will also offer opportunities for more efficient coal distribution as potential coordination projects provide alternative routes to consuming markets. The combined system will improve service by close coordination of train schedules, increased numbers of run-through trains, more efficient routing among the systems' individual roads and greater car availability.

Together, Chessie and Seaboard have a total coal hopper fleet of 125,000 cars. Utilization of this fleet will be improved through reductions in hauling empty cars to loading points and in less circuitous routing, thus assuring a better car supply to shippers on both rail systems.

\* \* \* \* \*

Potential common-point coordination projects exist in the Chicago, St. Louis, Cincinnati, Louisville, Lexington, Richmond, Newport News-Norfolk and Eastern Kentucky areas. Coordinations at these points could reduce overall investment by eliminating duplicate or little-used plant, and would be designed to increase volumes over the best routes, to reduce car delay and improve through-train movement."

The BRC urges that, in essence, the Carrier is "attempting to use the merger without negotiations as a stepping stone to merge the two railroads without the protective benefits that the Interstate Commerce Commission rendered with the instituting of the provisions of the New York Dock [Conditions]."

The BRC maintains that despite Carrier contentions to the contrary, prior to April 15, 1981 (the date the Implementing Agreement was entered into between the parties relative to the coordination of B&O and L&N TOFC ramps), all of the trains that ran from the northern

Kentucky facility of the L&N's DeCoursey Yards, and any trains or parts of trains coming from the B&O facilities at Queensgate Yards (Cincinnati, OH), "all were made up and departed from DeCoursey Yards facility."

In this same connection, the BRC stated in a letter dated September 12, 1983 to the Carrier: .

"If there had been no merging of the Railroads, (CSX Corporation), into one backdoor merger the trains that you refer to would have read: Trains 273/274 Louisville to Decoursey where they would have been put in trains that would have dispatched the business to the B&O Railroads, Queensgate Yard, C&O Railroads former Covington, Kentucky train yards, (now owned by B&O and/or CSX), there would have been cars dispatched to the Conrail System through former New York Central and Pennsylvania Yards in Cincinnati, Ohio. Certain cars historically were dispatched from Decoursey yards to the industries in and around Cincinnati, Ohio, that business was taken to Decoursey Yards from Louisville, Corbin and points on the L&N in Kentucky and other adjacent states.

The business that flow from Louisville to Decoursey also flowed in reverse from Cincinnati to Decoursey to Louisville, Corbin, Ravenna, Hazard, Kentucky as well as other points in adjacent states.

Once the I.C.C. granted C.S.X. Corporation the right to merge the Employees of all of the railroads became effected. Prior to the CSX Corporation's formation the B&O/C&O operation at Cincinnati, Ohio known as Queensgate Yards was a completely different Railroad. Since the formation of the CSX the employees at Decoursey Yards have seen their work slowly but surely being given over to the B&O Railroads property. Why? Why?

The answer to why is quiet simple, the employees of the B&O are covered by protective benefits that, if furloughed they would have to be paid protective benefits."

The BRC also asserts that since the L&N has furloughed Carmen in 1981, 1982 and 1983, amounting to approximately 84 employees, whereas the B&O Carmen's roster grew without any decrease whatsoever during the same years, that this makes it evident that work belonging to the forces at DeCoursey has been transferred to Queensgate.

The BRC asks that the Board sustain its position and define the Claimants in this dispute as "Dismissed Employees" under Section 1(c) of the New York Dock Conditions and instruct the Carrier to comply with Article 1, Section 5, of the New York Dock Conditions as concerns displacement allowances.

POSITION OF THE CARRIER:

Basically, the Carrier maintains that the Claimants were furloughed as result of a severe decline in business and not because of the B&O-L&N TOFC ramp coordination of May 15, 1981 or change in train operation.

As concerns the BRC allegations related to changes in train operation, the Carrier states:

"Prior to May 15, 1981, B&O crews operated one through freight train each way between Louisville and Cincinnati via the B&O Nabb to North Vernon line. At Louisville the train operated into and out of the Kentucky & Indiana Terminal Company (K&IT) Youngtown Yard; and at Cincinnati the train operated into and out of the B&O Queensgate Yard. After May 15, 1981, this same train was operated into and out of L&N's Osborn Yard via L&N's LCL line into and out of Queensgate with B&O crews. The LCL agreement spelled out that B&O crews would operate this train via the L&N line either to Queensgate or to DeCoursey Yard. The usual provisions for recovery of work (equity) by L&N crews or by B&O crews based on train miles operated by B&O crews or by L&N crews are contained in the agreement.

Prior to May 15, 1981, L&N crews operated two through freight trains each way between Louisville and Cincinnati via the LCL line. The trains ran to and from Osborn Yard at Louisville and DeCoursey Yard at Cincinnati. After May 15, 1981, these same two trains were operated between Osborn and DeCoursey Yards. The LCL Agreement spelled out that the L&N crews could operate either to DeCoursey Yard to (sic) to Queensgate Yard.

On August 19, 1981, one of the through freight trains began operating between Osborn and Queensgate; however, L&N crews continued to operate the train to Queensgate. The other through freight train began operating from Osborn to Sharonville

Yard (ConRail) at Cincinnati and from DeCoursey to Osborn on return. L&N trains had been operated to Sharonville Yard during various periods of time over a period of years preceding and independently of the May 15, 1981 coordination. L&N crews continued operating the Osborn-Sharonville/DeCoursey-Osborn train. No employees were eliminated or affected by these changes."

The Carrier further states that during the first three quarters of 1981 an average of 2,360 cars per day were dispatched through DeCoursey and the heavy car repair shop was operating at peak capacity, three shifts per day, five days per week. Conversely, Carrier submits, during the fourth quarter of 1981 the business decreased to an average of 1,645 cars per day. Further, that the decline in business which began in the third quarter of 1981 continued to slide in 1982 and remained depressed into the third quarter of 1983. As an example of how this affected the operations at DeCoursey, the Carrier submits that the average number of cars dispatched from that terminal declined to 1,393 per day for the year 1983, a decline of 41% from the 1981 average.

The Carrier also states the number of trains dispatched from DeCoursey to Clean Coal at Carrollton, KY during the years 1981, 1982 and 1983 were as follows: 1981 - 708 trains; 1982 - 253 trains; and, 1983 - 189 trains. In addition, it offers other statistics related to declines in business and, in particular, the impact of such reductions on shop craft and other forces at DeCoursey. In this latter connection, Carrier states that Claimants, as well as employees in other crafts at DeCoursey and elsewhere on its System were furloughed as a result of the depressed economy, namely, 292 employees in the period September through December 1981; 2,002 employees in 1982; and 291 in 1983.

The Carrier asserts that none of the events described by the BRC caused any carmen to be furloughed, and that in the instant case the furloughs did not take place until a year following the coordination of the L&N-B&O TOFC ramps. In this connection, it submits that as a result of the L&N-B&O coordination only one set of L&N trains was changed to operate to Queensgate and provision was made that per-

tain blocks of cars in that train could be set off for handling in DeCoursey Yard.

The Carrier urges that the Claimants do not meet the definition of "dismissed" or "displaced" employees as set forth in the New York Dock conditions and are not, therefore, entitled to any protective benefits.

FINDINGS:

The Board has carefully reviewed the voluminous presentations made by both parties.

It is axiomatic that in order for the protective benefits of the New York Dock Conditions to apply that it must be shown that any adverse affect upon employment relationships is directly attributable to a transaction authorized by the ICC wherein it has imposed the aforementioned protective conditions.

In the dispute before us we are not persuaded that BRC has established a prima facia case that the furloughing of the Claimants in April and May 1982 was the direct result of the year earlier coordination of the L&N-B&O TOFC ramps or by reason of a change in Carrier's train operations. The allegations advanced by the BRC are too indirect and remote to connect them with the May 15, 1981 coordination. At the same time, we believe the Carrier has shown by presentation of substantial data that it suffered a severe decline in business and that this was the prime factor for the furloughing of the Claimants.


The Board likewise does not find that the 1982 furloughing of the Claimants was in anticipation of a subsequent, or 1984, coordination of forces and facilities in this same general area.

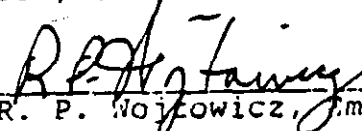
Accordingly, in the absence of a supportive causal nexus, this Board has no alternative but to hold that the claims be denied. As held by past boards, the transaction causation must be direct and not general in nature.

AWARD:

Claim denied.

  
Robert E. Peterson, Chairman

  
J. F. Williams, Carrier Member  
Jacksonville, FL  
May 29, 1985

  
R. P. Wojtowicz, Employee Member