

Arbitration Pursuant to Appendix III, Section 11
(Finance Docket No. 28250)
Involving the
"New York Dock Protective Conditions"
Imposed by the
Interstate Commerce Commission
on the
Burlington Northern Railroad Company

Award No. 2

Parties to Dispute: Burlington Northern Railroad Company

and

Brotherhood Railway Carmen of the United
States and Canada

Statement of Claim:

- "1. That the Burlington Northern Railroad Company violated the terms of our Agreement, in particular the provisions of ICC Finance Docket no. 28250 (commonly known as New York Dock Conditions), Sections 4, 5, 6, 7, 8, 9, and 10 thereof, when they furloughed Childress, Texas Carman Clark Rogers III and refused to provide said employee with the protective benefits as provided for under the provisions of New York Dock.
- "2. That, accordingly, Texas Carman Clark Rogers III be provided those benefits he was denied commencing May, 1983 and continuing throughout his protective period."

Committee Members: Chairman and Neutral Member: Gil Vernon

Labor Member: R. P. Wojtowicz, Vice President
Brotherhood Railway Carmen of
the United States and Canada

Carrier Member: J. N. Locklin, Manager -
Labor Relations

BACKGROUND

On December 31, 1982, the ICC approved the Merger of the Carrier (BN) and the Fort Worth and Denver Railroad (FWD). There is no real dispute that this was a "paper merger" in as much as FWD was effectively, as of January 1, 1982, a wholly owned subsidiary of the Carrier. This was the result of the January 1, 1982 merger of the BN and the Colorado & Southern Railway (C&S), which at the time owned the FWD. Prior to this, the Carrier owned a controlling interest in the C&S.

In July, September and October of 1982, a number of employees, who are Claimants in Case No. 3 of this Board, were furloughed. On various dates in April 1983, the 28 remaining Carmen -- along with other crafts -- were offered separation allowances. The Carrier terms these "voluntarily separations allowances". The Organization claims they were pursuant to Section 7 of Finance Docket 28250 (New York Dock Conditions), which reference Section 9 of the Washington Job Protection Agreement.

Twenty-two of the employees accepted the separation allowance. Of the six remaining carmen, three exercised seniority elsewhere, one had died, and the Claimant in this case, and Employee J. N. Ray, a Claimant in Case no. 3, were furloughed. The Claimant, since that time, has performed, when available, vacation relief at another point.

The Claimant rejected the separation allowance, and on May 27, 1983, made a claim for wage protection. The claims were denied June 1, 1983. On July 14 and 15, 1983, they were appealed. On

September 8, 1983 the appeals were declined. On April 26, 1984, they were discussed in conference. On June 27, 1984, the Vice General Chairman indicated in a letter to the Carrier that they were still waiting for a response to the Carrier's commitment in the April conference to investigate the matter further. However, in any event, they rejected the Carrier's position. The case was then appealed to arbitration June 5, 1985. A hearing was held on the matter September 29, 1985 in St. Paul, Minnesota.

FINDINGS

Regarding the time limit argument made by the Carrier, it is noted that there are no strict time limits in the New York Dock conditions. With respect to laches, it is the committees' opinion that this principal does not apply under these circumstances.

With regard to the merits, as noted in Case 1, Section 11(e) sets forth the Parties' respective burdens of proof. In this case, the transaction identified is the merger and later discontinuance of all carman work at Childress, Texas. As evidence that the Claimant was affected by a transaction, the Organization, among other things, points to the fact that all 28 employees, including the Claimant, were offered separation allowances. They also point to internal Carrier correspondence dated approximately two months after the furloughs referring to the "discontinuance of facilities at Childress, Texas." The correspondence relates to the removal and disbursement of tools and machinery from Childress. Last, they argue that without the merger, the total discontinuance of carmen activity at Childress could not have occurred.

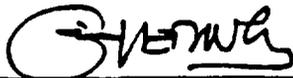
It is the opinion of the committee that the fact that all 28 carmen were offered separation allowances, combined with the timing of the discontinuance of carmen activity at Childress, raises a sufficient presumption that the Claimant was, in fact, affected by a transaction pursuant to the merger. Thus, it is the finding of this committee that the Organization has satisfied their burden under Section 11(e).

Accordingly, the burden shifts to the Carrier. Additionally, it is the finding of the committee that the Carrier failed to show that factors, other than a transaction, caused the Claimant's furlough. Moreover, there was no challenge to this committee's jurisdiction or the applicability of the New York Dock Conditions on the property. Therefore, the Claimant is entitled to reject the separation allowance and accept the dismissal allowance.

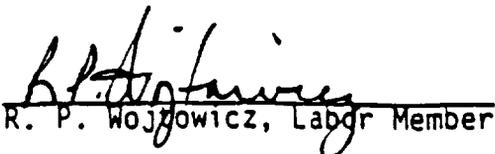
In view of the above findings, the Claim is sustained.

AWARD

The Claim is sustained.



Gil Vernon, Chairman and Neutral Member



R. P. Wojnowicz, Labor Member



J. N. Locklin, Carrier Member

Dated this 3rd day of January, 1986.