

BEFORE  
AN ARBITRATION COMMITTEE  
ESTABLISHED UNDER SECTION 11 OF THE  
NEW YORK DOCK (II) CONDITIONS PROTECTIVE CONDITIONS

In the Matter of Arbitration Between	}
	}
Allied Service Division/Brotherhood of	}
Railway, Airline and Steamship Clerks	}
	}
and	}
	}
Western Railroad Traffic Association	}

OPINION AND AWARD

Background

This dispute protests the action of the Western Railroad Traffic Association, who eliminated the positions of some 25 employees who are members of the Brotherhood of Railway, Airline and Steamship Clerks. An Arbitration Committee was established to resolve the dispute. A hearing was held on April 10, 1986 in Chicago, Illinois, at which time written briefs were presented, extensive exhibits were offered and made part of the record, and oral argument was heard.

## Statement of the Facts

This dispute involves the Association and its regional Rate Bureaus. The Bureaus consist of member line Carriers who would meet to discuss and vote on proposed rate and routing changes. The Bureaus also published the tariffs of the Carriers.

Initially, the Bureaus were immune from antitrust laws under the Reed-Bullwinkle Act of 1948, which allowed competing Carriers to discuss the rate and route changes. However, during the 1970's, Congress began to consider changing the antitrust immunity laws.

The result was the Staggers Rail Act of 1980, 49 U.S. Code, Section 10101 et seq. Section 219 of the Staggers Rail Act placed three important restrictions on the Rate bureaus. Section 219 prohibits the discussion of or voting on single rates. Section 219 also limited discussion of or voting on joint line rates.

The third important change took affect after January 1, 1984. Section 219 prohibited discussion of joint line rates by other than carriers forming a particular route. It also eliminated general rate increases and broad tariff changes.

Section 219, while limiting the role of Rate Bureaus, provided some protection for employees. Section 219 (g) requires that employees at a Rate Bureau be provided the same benefits as those established under the New York Dock Conditions.

During 1981, the Association began planning the consolidation and centralization of collective rate activities with Southwestern Freight Bureau, Western Trunk Line Committee and Trans-Continental Freight Bureau. The Organization requested that the employees be provided protection. In a letter dated February 23, 1981, the Organization requested that New York Dock Conditions be adopted to cover the anticipated impact of Section 219.

The Organization and the Association reached an agreement which took affect on July 1, 1982. They agreed that the New York Dock Conditions would apply to the consolidation and centralization of the operations of the Association.

On October 1, 1982, the Association consolidated with the three other bureaus. As a result, New York Dock Conditions began to apply to certain employees. An agreement was reached between the Association and the Organization which established the "date affected" (which determines when New York Dock Conditions would apply) for some employees.

The Interstate Commerce Commission issued orders deregulating boxcar service, which became effective January 1, 1984 367 I.C.C. 424 (1983) and 367 I.C.C. 746 (1983). The orders exempted railroad boxcar service from regulation of freight rates. These orders were issued pursuant to the Commission's authority in Section 213 of the Staggers Rail Act.

On March 1, 1984, the Association announced its decision to reorganize four regional Tariff Bureaus and the Computer Conversion Department into two divisions in Chicago. This was to become effective March 16, 1984. It led to the elimination of the positions of the 25 Claimants.

The Organization filed a claim on behalf of the Claimants. On April 3, 1984, an Arbitration Committee headed by Neutral Member George S. Roukis was established. In a decision dated June 4, 1984, the Roukis Committee held that the March 16, 1984

reorganization did not constitute a transaction. Therefore, the Association was not required to serve the notice prescribed by Section 4 of the New York Dock Conditions and negotiate with the Organization.

On October 24, 1984, the Organization filed another claim, which is the claim before this committee.

### Issues

1. Were the following employees affected by changes made pursuant to section 219 or changes in antitrust immunity for collective rate making on March 15, 1984, when their jobs were eliminated?

C. H. O'Connor

W. J. Lisowski

T. M. Stasik

D. E. Hammer

L. A. Hodges

R. T. Passarelli

L. Wiggins

R. Luksetich

G. Jaguden

S. K. Sprague

J. H. Rogers

D. Finkes

D. M. Nelson

A. Perski

M. J. Flaherty

E. Sadowski

F. J. Richards

K. Robbins

C. M. Willford

I. M. Rebersky

M. Dragisic

S. S. Smith

E. J. Tisza

V. A. Quiroga

F. Walsh

2. If the answer to the above is in the affirmative, shall the Association now be required to calculate a protective period beginning March 16, 1984 and pay the affected employees as required by the New York Dock Conditions?

#### Position of the Organization

It is the position of the Organization that Section 219 of the Staggers Rail Act and the loss of antitrust immunity caused the elimination of the Claimants positions. The Organization maintains that the Claimants are entitled to benefits under a new protective period as provided by New York Dock Conditions.

The Organization asserts that the changes caused by the Staggers Rail act took place over several years, and contends that Rate Bureau positions existed because of the complexity of procedures for handling collective rate matters. The Staggers Rail Act limited the duties of these positions, but as of January 1, 1984, the Claimants still had a function. The Organization argues that only the changes brought about by the Staggers Rail Act caused the elimination of the jobs.

The Organization points out that the Claimants' jobs were affected when Section 219 revoked antitrust immunity for broad tariff changes. This led to the elimination of the positions.

The Organization maintains that the consolidation agreement of 1982 stated that employees were protected under New York Dock Conditions, and argues that the agreement is an additional reason that the Claimants are entitled to the benefits.

The Organization contends that it does not need to show a transaction in the present case. According to the Organization, Section 219 grants statutory access to the New York Dock Conditions and that Claimants are automatically entitled to benefits because of the effect of Section 219.

The Organization also argues that it is proper for a new protective period to be calculated, pointing out that the Association did just that for management employees in the summer of 1983.

#### Position of the Association

It is the position of the Association that the Claimants are entitled to New York Dock Conditions, but they are not entitled to a greater level of protection or multiple protective periods. The Association acknowledges that Section 219 had a continuing effect on the positions held by the Claimants, but points out that the eligible Claimants were already receiving protective benefits.

It is also the position of the Association that the March 16, 1984 action was directly caused by the Interstate Commerce Commission orders exempting railroad boxcar services from regulation of freight rates and by other factors which do not entitle the Claimants to protective benefits.



The Association maintains that there was a decline in notices, tariff production and distribution. The Tariff Conversion Project was uneconomical and had generated a net loss of over \$500,000, and that the use of Transportation Contracts reduced the need for tariff publication. The Association argues that these factors, along with box car deregulation caused the March, 1984 action.

The Association asserts that the fact that Section 219 abolished antitrust immunity for Broad Tariff Change and General Rate Increases did not have a significant effect on the work performed by the Tariff Department employees. The Association points out that less than 4 percent of supplemental pages were lost in the tariff department because of Section 219.

The Association further contends that the Organization failed to identify a transaction and specify pertinent facts of that transaction. According to the Association, this failure on the part of the Organization bars the Claimants from recovering.

The Association maintains that 21 of the 25 Claimants were previously extended protection under the New York Dock Conditions, and asserts that these individuals are not entitled to a new protective period (which the Organization claims would begin March 16, 1984). The Association argues that the four additional Claimants are ineligible because the adverse affect on their jobs was not caused by the Staggers Rail Act.

### Findings and Conclusions

The New York Dock Conditions state that an employee is not entitled to protective benefits unless he has been affected by a transaction. Section 11(e) of the New York Dock Conditions states that the burden of proof falls upon the employee (or his or her Organization) "to identify the transaction and specify the pertinent facts of that transaction.:"

The Roukis Arbitration Committee has already decided that issue. The Roukis decision held that the March 16, 1984 reorganization did not constitute a transaction. Therefore, the Claimants were not entitled to the protective benefits they sought in that dispute.

Section 219 provides that employees "who are affected by amendments made by this section" are entitled to "fair arrangements" no less protective than those established by the New York Dock Conditions. Being affected by Section 219 is tantamount to being affected by a transaction. The statute has created a new "transaction": being affected by Section 219. This dispute concerns whether the Claimants were affected by Section 219.

Section 219 eliminated general rate increases and broad tariff changes after January 1, 1984. The Organization alleged that this affected the positions held by the Claimants and led to the Association action of March 16, 1984. The Association has offered proof to the contrary. The Association cited statistics indicating only a 4 percent decrease attributable to Section 219. The only proof offered by the Organization is that the statute took effect and that the positions were eliminated.

The Association has also offered proof that other factors played a role in the elimination of the positions held by the Claimants. Most important were the orders issued by the Interstate Commerce Commission concerning boxcar deregulation. The Association also points to the statistical decline in

notices, tariff production and distribution. There was also the economic loss of over \$500,000 caused by the Tariff Conversion Product. The evidence offered indicates that these factors, not Section 219, caused the loss of the Claimants' positions. Since Section 219 did not affect the Claimants, the protective provisions of the New York Dock Conditions do not apply.


Furthermore, it should be noted that 21 of the 25 Claimants were already receiving protective benefits, as a result of the consolidation agreement of 1982. The agreement reflects the requirements of the Staggers-Rail Act.

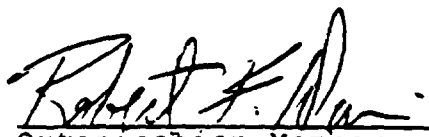
Nothing in either Section 219 or the New York Dock Conditions indicates that the Claimants are entitled to a new protective period for an additional change caused by the statute. The changes which took place after January 1, 1984 are part of the continuing process, for which the Claimants are already receiving benefits.


As for the four remaining Claimants not already receiving benefits under the New York Dock Conditions, the Committee finds that they are not entitled to benefits. As was discussed earlier, the Organization failed to show that Section 219 affected the Claimants.

AWARD

The Claimants were not affected by changes made pursuant to Section 219. Therefore, Claimants are not entitled to have a new protective period calculated.

  
Neutral Member

  
Organization Member - *Wiscot Attack*

  
Association Member

Date: 9-23-86