

ARBITRATION BOARD
(ARBITRATION PURSUANT TO SECTION 11
OF THE NEW YORK DOCK CONDITIONS)

BROTHERHOOD OF RAILROAD SIGNALMEN)	
)	
vs.)	FINDINGS AND AWARD
)	
BALTIMORE AND OHIO RAILROAD COMPANY)	

QUESTION AT ISSUE:

BY THE BROTHERHOOD OF RAILROAD SIGNALMEN (the "Organization")

"1. Whether the terms and conditions of the New York Dock formula, upon the application of which the CSX control of these formerly competing railroads was conditioned, should be applied as provided in Article I, Section 11 to an individual railroad signalman of B&O as an employee affected by transactions undertaken pursuant to that control authority.

2. Whether the claim of Thomas B. Able was improperly denied by the B&O."

BY THE BALTIMORE AND OHIO RAILROAD COMPANY (the "Carrier"):

"Was signal employee T. B. Able adversely affected on July 9, 1984 as a result of the coordination signal work in the Greater Cincinnati, Ohio Terminal area and thereby entitled to the protective benefits contained in the New York Dock Conditions?"

BACKGROUND:

The circumstances which led to imposition of the New York Dock employee protective conditions by the Interstate Commerce Commission (the "ICC" or "Commission") in connection with ICC approval of the CSX Corporation control of both the Chessie System, Inc., including the Baltimore and Ohio Railroad Company, party to this dispute, and the Seaboard Coast Line Industries, Inc. (the "SBD"), are set forth in Award No. 1 of this Arbitration Board.

The dispute here at issue concerns a determination as to whether the terms and conditions of the New York Dock conditions have application to Claimant Able.

The Organization maintains that Claimant Able was adversely affected as a result of the Carrier effectuating the consolidation of certain operations in the Greater Cincinnati, Ohio Terminal area, a consolidation which it submits was specifically defined in a notice dated November 9, 1983, whereby the Carrier announced

its intent to coordinate the job functions of certain signalmen between the separate carriers at such location.

Inapposite contentions of the Organization, the Carrier asserts that Claimant Able was not adversely affected by the coordination. It maintains that Claimant Able was displaced off his position or assignment as the result of the normal application of rules as contained in the Schedule of Rules Agreement.

FINDINGS:

At the time of his displacement, Claimant Able, together with Signalman H. C. Smith, was working on Force 1731 in pursuance of Section 5(a) of the March 21, 1977 Grade Crossing Agreement.

Section 5(a) of the Grade Crossing Agreement provides in part here pertinent as follows:

"When the Grade Crossing Force is working on a seniority district where there are furloughed Signal Department employees, a maximum of two (2) such furloughed employees will be put on the Grade Crossing Force for the period it is on said seniority district."

While the Organization urges that Claimant Able had been working a permanent position on Force 1731, and had been displaced from such permanent position to a temporary position before being displaced from such temporary position and back into a furlough status, the record shows that Claimant Able had been awarded a position on Force 1731 on a temporary basis effective March 26, 1984, and that he had worked on such position on a substitute or temporary basis from March 26, 1984 through July 5, 1984. The position had become vacant on a temporary basis as the result of the permanent incumbent, Signalman R. J. Earnhart, having elected to take what was described as "temporary duty on home station."

Now, with respect to arguments of the parties as to whether it was, as the Carrier asserts, Signalman S. King, a non-protected employee, or, as the Organization avers, Signalman M. Ryan, a protected employee, who had displaced Claimant Able on Force 1731.

In several letters of appeal the Organization essentially maintained that Claimant Able had been first displaced by Mr. King off what it alleged was a permanent position and then by Signalman Ryan off the temporary position. The Organization does not offer, however, the date Claimant Able was alleged to have been displaced by Signalman King, but did indicate in correspondence of record that Claimant Able had been displaced by Signalman Ryan on July 3, 1984. In this respect, the Organization had, more especially, stated the following in a letter to the Carrier dated December 5, 1984:

"Mr. T. B. Able held a permanent position in force #1731. Mr. S. A. King displaced Mr. Able from his per-

manent position, Mr. Able then assumed a temporary position in the same force #1731. On July 3, 1984 Mr. M. P. Ryan displaced Mr. Able from his temporary position in force #1731, forcing Mr. Able to be furloughed."

Mr. Ryan is a protected employee under the New York Dock [conditions] due to the Cincinnati Terminal Coordination. Mr. Able is being adversely affected by the Cincinnati Terminal Coordination, and should now come under all of the protection provided by the New York Dock [conditions]."

The above contentions as made by the Organization during the on the property handling of the dispute notwithstanding, in a post-hearing submission to this Board the Organization submitted copy of a statement from Signalman Ryan which it said may be viewed as having established beyond doubt that Claimant Able was displaced by Signalman Ryan.

This hand-written statement from Signalman Ryan, which is dated July 6, 1984, reads as follows:

"I would like to exercise my signal seniority rights to displace a younger signalman (Tom Able) in force 1731. Working at Mullberry Street, Cin., Ohio. Effective date 7 - 9 -1984."

There is nothing to substantiate that Signalman Ryan's statement had been presented to the Carrier in the first instance or during discussion of the dispute on the property. Moreover, while this statement is dated July 6, 1984, and states the displacement was to be effective July 9, 1984, as indicated above, during presentation of the claim on the property and during subsequent appeals the Organization had submitted that it was on July 3, 1984 that Signalman Ryan had displaced Claimant Able.

Contrary to the position of the Organization, the Carrier has continued to maintain that it was Signalman King and not Signalman Ryan who had displaced Claimant Able from Force 1731. In its initial letter of denial of the claim, the Carrier, by letter dated September 7, 1984, advised the Organization as follows:

"Mr. Thomas B. Able was not displaced by Mr. Ryan as you state. Mr. S. King displaced Mr. Able on July 3, 1984 on force 1731 working at Lockland, Ohio. Mr. King is not a protected employee, and therefore your claim is without merit and is declined."

In this same regard, in its written submission to this Board, the Carrier stated:

"On July 3, 1986 senior furloughed signal employee S. King advised that he desired to displace Claimant from his temporary assignment; however, Mr. King elected to take vacation until July 9 when he physically displaced Mr. Able. On the same date Mr. Ryan displaced H. C.

Smith from the other temporary assignment on Force 1731. Therefore, contrary to the Brotherhood's contention Claimant was not displaced by M. P. Ryan and; therefore, could not be adversely affected as a result of the coordination of signal functions at Cincinnati in any event. The Carrier advised the Brotherhood of these facts from the initiation of this dispute and to date they have failed to produce any evidence to the contrary."

As the Board views the above representations of the parties it would have to be concluded, in the light of the timesheets as submitted, that if Signalman King had made an election to displace onto Force 1731 on July 3, 1984, as the Carrier says, he could only have displaced Signalman Smith and not Claimant Able, since Claimant Able was the more senior of the two employees. At the same time, since the timesheets reveal that neither Claimant Able nor Signalman Smith were physically displaced on July 3, 1984, but had continued to work on Force 1731 until July 5, 1984, that Signalman King thereby came to displace Signalman Smith and Signalman Ryan came to displace Claimant Able at the close of work on July 5, 1984.

In the opinion of the Board, the mere fact that Carrier elected to show Signalman King on its force report as being the substitute or temporary employee occupying the position previously filled by Claimant Able and Signalman Ryan as replacing Signalman Smith, may not be held to have established a proper recognition of the seniority or displacement rights of all concerned.

In view of the particular circumstances of record, and in consideration of work opportunities made available to employees on furlough in application of Section 5(a) of the March 21, 1977 Grade Crossing Agreement, we believe that Claimant Able was affected by a direct and immediate chain of displacements resulting from action taken pursuant to a coordination at the Greater Cincinnati Terminal area. Therefore, it must be held that Claimant Able was adversely affected by such coordination.

The protection to be afforded Claimant Able is limited, however, to that period of time which he was found to have been deprived of employment as a direct result of the coordination, i.e., that period of time which Signalman Ryan continued to work with Force 1731 while it was on Claimant Able's seniority district. In this regard, we understand that Force 1731 left the Ohio Division and began working on the Toledo-Indianapolis Seniority District on July 30, 1984, and that Claimant Able did not possess seniority on such seniority district. Further, that Signalman King and Signalman Brown were, in any event, considered as the senior furloughed employees accepting work on the Grade Crossing Force at the time it began work on the latter seniority district.

AWARD:

The terms and conditions of the New York Dock conditions were improperly denied Claimant Able. He was adversely affected as a

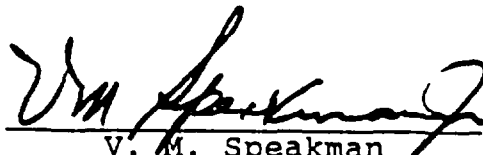
result of the coordination of signal work in the Greater Cincinnati, Ohio Terminal area and is entitled to an employee protective allowance in application of the New York Dock conditions to the extent set forth in the above Findings.



Robert E. Peterson, Chairman
and Neutral Member



W. C. Comiskey
Carrier Member



V. M. Speakman
Organization Member

Baltimore, MD
February 28, 1987