

ARBITRATION BOARD

ARBITRATION BOARD ESTABLISHED PURSUANT TO
SECTION 11 OF NEW YORK DOCK CONDITIONS
(FINANCE DOCKET NO. 28250 APPENDIX III)

UNITED TRANSPORTATION UNION - C & T)
)
vs.)
)
THE CHESAPEAKE AND OHIO RAILWAY COMPANY) Parties to Dispute
)
THE BALTIMORE AND OHIO RAILROAD COMPANY)
)
THE TOLEDO TERMINAL RAILROAD COMPANY)

QUESTION AT ISSUE:

"Has the consolidation of the Toldeo Terminal Railroad with the C&O/B&O Yard operations at Toledo, Ohio effective July 1, 1984, caused an adverse effect for the following named individuals:

E. L. Barker
P. F. Varwig
W. H. Gunlite
M. E. Berry
J. R. Barker
J. W. Cluckey
T. J. Grandowicz
S. M. Daum
G. J. Lada
S. N. Gunlite
G. B. Bennett"

BACKGROUND:

On October 21, 1983 the Interstate Commerce Commission issued decision in Finance Docket 30201 approving the C&O Railway Company's application to acquire control of the Toledo Terminal Railroad Company and imposed labor protective provisions described

in New York Dock.

Under date of December 23, 1983 the Carriers (C&O, B&O and TT) served notice pursuant to Section 4 of New York Dock of their intent to consolidate (coordinate) yard operations in the Toledo Terminal. Negotiations commenced and on May 23, 1984 an agreement was reached between the three carriers and the UTU which contained provisions stipulating the assignments which the Toledo Terminal employees would be given a choice of in the consolidated Toledo Terminal. On the effective date of the agreement (July 1, 1984) the Toledo Terminal employees were to be given the 8th, 23rd and 38 picks from the job (assignment) selection list. Each month thereafter for the next seven months the choices were to change progressively upward. For example, on August 1, 1984 the Toledo Terminal employees would be given the 7th, 22nd, and 37 picks, and by February 1, 1985 Toledo Terminal employees would be given the 1st, 16th and 31st picks. Beginning on March 1, 1985 the same order of picks would be repeated for the next eight months, etc.

In a letter dated June 14, 1984 the Carriers notified the UTU that they would consolidate (coordinate) their operations in the Toledo Terminal effective 12:01 a.m. July 1, 1984. On June 30, 1984 there were three regular assigned yard jobs and a five-man extra board working on the Toledo Terminal Railroad. On July 1, 1984 the three regular assigned yard jobs and the extra board were abolished. Subsequently Toledo Terminal employees either took a job on an assignment (8th, 23rd, 38th pick) or went on a list from which they were called for vacancies.

Beginning in November 1984 Toledo Terminal employees began submitting claims on Form P-491 for a monthly displacement allowance (guarantee) i.e., for the difference between their "test period average monthly compensation" and their actual earnings. Claims were submitted for October 1984 and subsequent months and were declined by the carrier on the basis the loss of compensation was as a result of a decline in business.

POSITION OF EMPLOYEES:

The employees contend that the record is clear that claimants are "displaced employees", i.e., they were placed in a worse position with respect to their compensation and rules governing their working conditions as the result of a transaction. The "transaction" being the abolishment of all Toledo Terminal assignments and consolidation of operations in the Toledo Terminal on July 1, 1984.

The employees state the primary issue before the Board to be resolved is: does the loss of earnings three months after displacement (after becoming a "displaced employee") negate an employee's protection throughout the remainder of the protection period. The employees cite Award 2, Case 2 of Arbitration Board involving C&O and B&O covering claim of Claimant C. Short, (B&O Employees Exhibit "D") in support of their position. The employees also cite awards of various other Boards in support of their position.

POSITION OF CARRIER:

The carrier's position is:

1. The Organization has failed to sustain its burden of proving that any adverse affect upon the claimants resulted from the Toledo Terminal Consolidation effective July 1, 1984.
2. Factors other that the transaction affected the instant claimants.

The carrier contends that while the organization has identified the transaction as the Toledo Terminal consolidation effective July 1, 1984 it has failed to show by clear and convincing evidence that any claimant was placed in "displaced" status as a direct result of the transaction. The carrier argues that for the Organization's claim to be of merit a casual relationship between a transaction and the adverse impact must be present and that the burden of establishing the presence of such casual relationship rests with the Organization. The carrier cited various awards in support of this argument.

The carrier contends that a general business decline in the Toledo area beginning in October 1984 was the factor that caused claimants not to make their guarantee beginning in October, 1984. The carrier cited awards of various Boards which denied claims because the employees had been affected by a decline in business and not by a transaction. In support of their statement that a general decline in business occurred carrier furnished records showing number of cars dispatched, number of yard crews assigned, etc., for the period July 1984 through December 1985. The carrier also furnished records showing the number of cars delivered to industries located on the former Toledo Terminal Railroad for the period January 1983 trough July 1986.

FINDINGS AND CONCLUSION:

After carefully analyzing the positions of the parties, as set forth in this dispute, this Board has concluded that the consolidation of the Toledo Terminal Railroad with the C&O and B&O yard operations at Toledo, Ohio on July 1, 1984 caused an adverse effect for Toledo Terminal employees who were placed in a worse position with respect to rules governing their working conditions when their jobs were abolished on July 1, 1984. Instead of having exclusive rights to the Toledo Terminal jobs as they had previously, the employees after July 1, 1984 were required to pick from a number of jobs in the consolidated facilities. Each month their selection of jobs changed. See the second paragraph under Background for details regarding the manner in which the selections of jobs varied. Section 1 (d) of New York Dock reads, in part, as follows:

"(d) "Protective period" means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, provided, however, that the protective period for any particular employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the railroad prior to the date of his displacement or his dismissal." (Underscoring added)

The first paragraph of Section 5 (a) of New York Dock reads as follows:

"5. Displacement allowances.-(a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced."

The third paragraph of Section 5 (a) of New York Dock reads, in part, as follows:

"If a displaced employee's compensation in his retained position in any month is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference,"

There is nothing contained in New York Dock conditions which requires that any adverse affect from the transaction must be immediate or that a "displaced employee" must be adversely affected each and every month during his protection period. The third paragraph of Section 5 (a) makes reference to "any month" in which a displaced employee's compensation is less, etc.

After carefully analyzing the fact sheets presented by both parties relating to the carrier's "decline in business" argument the Board believes such argument is not worthy of merit in this particular case for the following reasons:

1. While it is true a decline in business began in the consolidated terminal in October 1984, this decline followed approximately six months of an abnormal amount of business resulting from Toledo customers of the railroads stockpiling coal in anticipation of a possible United Mine Workers strike October 1.

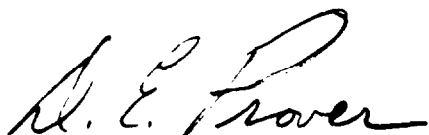
2. Of considerable importance are the figures relating to the number of cars delivered on the Toledo Terminal Railroad during the period of January 1984 through March 1985. During the first quarter of 1984 the total number of cars delivered was 2,846. During the last quarter of 1984 when a decline in business (compared to the previous 6 months) took place in the consolidated terminal the total number of cars delivered on the Toledo Terminal Railroad was 2,958; during the first quarter of 1985 the total number of cars delivered was 2,867. Both the last quarter of 1984 and the first quarter of 1985 reflect totals greater than the total for the first quarter of 1984.

3. The abnormal amount of business done during the 6-month period April - September 1984 was not truly representative of the normal amount of business that would have been done by the railroads during this period of time. We therefore, do not believe it appropriate or proper for the carrier to use consolidated terminal statistics following this period of time as a basis for their argument that the claimants were adversely affected by a decline in business. As indicated in Item **1** above, the number of cars delivered to the Toledo Terminal Railroad for the last quarter of 1984 and the first quarter of 1985 were greater than the totals for the first quarter of 1984.

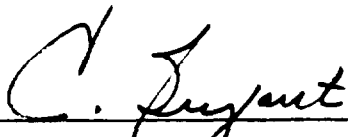
The Board is of the opinion that if the Toledo Terminal yard assignments had not been abolished on July 1, 1984 the claimants would not have suffered an adverse impact on their hours and wages such as they did by having to work in the consolidated terminal. The Board, therefore, concludes that the employees have shown a direct casual nexus between the transaction (abolishment of yard assignments on July 1, 1984) and the adverse affect they suffered (placed in worse position with respect to their compensation and rules governing their working conditions).

AWARD:


The Question at Issue is answered in the affirmative. This decision is not intended to be a blanket approval of the individual claims which serve as a background for this case. Each of the claims should be reviewed and decided on its merits in accordance with the provisions of New York Dock.



D. E. Prover, Chairman
and Neutral Member



Clifford Bryant
Organization Member



G. F. Leif
Carriers' Member

Disjoint Attached

Date: May 18, 1987