

BEFORE AN ARBITRATION COMMITTEE ESTABLISHED UNDER NEW YORK DOCK (II)

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In the Matter of the Arbitration Between .

UNITED TRANSPORTATION UNION .

- and - .

DECISION

SOUTHERN PACIFIC TRANSPORTATION COMPANY .
(EASTERN LINES) .

.....

By agreement of the above mentioned parties, the following questions were presented to this Arbitration Committee for final resolution:

"CARRIER'S QUESTION:

Are Southern Pacific Eastern Lines Employees represented by the UTU covered by the protective provisions of New York Dock II, pursuant to ICC Finance Docket 28799, when traffic between El Paso and St. Louis was diverted from Southern Pacific Eastern Lines, El Paso-Corsicana route to the Southern Pacific Western Lines-SSW, El Paso-Tucumcari route as a result of the SSW being granted trackage rights over the MP between Kansas City and St. Louis in Finance Docket 30000?

ORGANIZATION'S QUESTION:

Are Southern Pacific Eastern Lines employees represented by the UTU covered by the protective provisions of New York Dock II, pursuant to ICC Finance Docket 28799, when traffic between El Paso and St. Louis was diverted from Southern Pacific Eastern Lines, El Paso-Corsicana route to the Southern Pacific Western Lines-SSW, El Paso-Tucumcari route after the SSW was granted trackage rights over the MP between Kansas City and St. Louis Finance Docket 30000?"

On January 26, 1979, the Southern Pacific Transportation Company (hereinafter called "the SP") and its subsidiary, the St. Louis Southwestern Railway Company (hereinafter called "the SSW") applied to the Interstate Commerce Commission for permission for the SSW to purchase from the Chicago, Rock Island and Pacific Railroad (hereinafter called "the Rock Island") the Tucumcari line of railroad between Santa Rosa, New Mexico, and St. Louis, Missouri, via Hutchison, Kansas, and Kansas City, Missouri. The application was approved by the I.C.C. on June 6, 1980 in Finance Docket No. 28799.

The Rock Island trackage acquired was in a deteriorated condition and could be used only to a limited extent until large sums of money were expended for its rehabilitation. The SSW had no means, despite the decision in Docket No. 28799, of moving traffic between Kansas City and St. Louis due to the deplorable condition of the Rock Island tracks between those points and because efforts to obtain trackage rights over another railroad met without success in Docket No. 28799.

Over two years later, on October 10, 1982, in Finance Docket No. 30000, the I.C.C. granted trackage rights to the SSW over Missouri Pacific tracks between Kansas City and St. Louis. That decision was made in connection with the approval of applications by the Union Pacific, Missouri Pacific, and Western Pacific railroads to consolidate operations. The authority to operate over Missouri Pacific lines was given to offset partially the impact of these consolidations upon competition. Attempts by the SP to obtain additional rights in Docket 30000 were unsuccessful.

With the trackage rights made available by the I.C.C. decisions in Dockets 28799 and 30000 and the costly rehabilitation of trackage along the Tucumcari line, the SP was in a position to move shipments from the west through the Tucumcari corridor to St. Louis. That route is shorter and less circuitous than the Corsicana route further to the east.

On January 6, 1983, the SP began routing to the Tucumcari line some traffic formerly carried by way of Corsicana. It is the UTU's position that over 200 employees working on the Corsicana route have been adversely affected by that diversion of traffic. Those employees, according to the UTU, are therefore entitled to the protective benefits prescribed by the I.C.C. in the following provisions of its decision in Docket 28799:

"Employees of Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, and Chicago, Rock Island and Pacific Railroad Company affected by this transaction who are not specifically covered by the Labor Protective Agreement Between Railroads Parties thereto Involved in Midwest Rail Restructuring and Employees of such Railroads Represented by the Rail Labor Organizations Operating Through the Railway Labor Executives' Association shall be entitled to the standard level of protection enunciated in New York Dock Ry. - Control - Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), unless an agreement is entered prior to acquisition, in which case protection shall be at the negotiated level."

The "Labor Protective Agreement" mentioned in the provision just quoted does not specifically cover the employees in question. The UTU's position is that they are accordingly entitled to the prescribed benefits since they were adversely affected by the transaction involved in Docket No. 28799, namely, the acquisition of the Tucumcari

line, when beginning on January 6, 1983, traffic from the Corsicana route was shifted to the Tucumcari line.

The SP contends that no SP employee was dismissed or adversely affected as a result of implementing the transaction authorized in Docket No. 28799. It points out that no demand to enter into negotiations for an implementing agreement was received from the UTU until March 4, 1983.

The SP emphasizes that Dockets 28799 and 30000 are separate and independent and that Docket 30000 provides protective benefits for SSW employees only and not for SP employees. It maintains that the UTU has not shown a direct causal relationship between the controlling transaction and the alleged adverse effect. In its view, only the grant of trackage rights in Docket No. 30000 is controlling for it was not until that decision was issued that the SP had any means of moving traffic between Kansas City and St. Louis and any employee was adversely affected. In the Sp's opinion, the claim is vague and indefinite and fails to identify the transaction and establish how SP employees were affected by the transaction.

CONCLUSIONS

It is entirely clear from this record that it was never the intent of the SP or the Interstate Commerce Commission that the Tucumcari line acquisition be used for limited or short term operations. On the contrary, it was their hope that these rights would be used to restore a deteriorated line to its former status as a highly competitive route. On page 18 of its decision in Finance Docket 28799,

the I.C.C. made the following observations indicating that the acquisition of the Tucumcari line was part of a broad program:

"SSW wants to invest in this line to enter the Kansas City market and use a shorter route to the St. Louis market. Thus, we have a viable carrier seeking to compete with other carriers in key markets. The physical plant is there, albeit requiring major rehabilitation;....As we have noted, this purchase will give SP a single system entry into the important Kansas City market."

In Finance Docket 28799, the I.C.C. pointed to the decline of the Rock Island Tucumcari line and the circuitous nature of the Corsicana route as primary reasons why the SP could not sell its long haul. It emphasized again and again that the Corsicana route is "circuitous" and "almost 400 miles longer than the Tucumcari route".

The I.C.C. concluded in Docket 28799, at page 23, that:

"This transaction will change that situation. SSW will now be able to solicit in CP territory for a good route to Kansas City, St. Louis and Chicago. It will certainly be more competitive than the Corsicana route."

Accordingly, it is apparent that the I.C.C. granted rights in Docket 28799 on the assumption that a "viable" carrier would rehabilitate the Tucumcari line and make it part of a strongly competitive route from the west to the Kansas City market and to the St. Louis market. It is not surprising that it took several years for traffic to be rerouted from the Corsicana route to the Tucumcari line and for employees working on the Corsicana route to be adversely affected. The SP's own statements and publications show that it anticipated that extensive rehabilitation over a period of two or three years would be necessary.

SP literature (see "Preserving Your Railroad and Improving Rail Service") made it clear that the Tucumcari line would be an integral part of a restored "Golden State Route" between Los Angeles and Kansas City that is potentially the most efficient one between the Midwest and Southern California and would "once again be highly competitive with trucks on the highways and other rail carriers". Once the Tucumcari line is rehabilitated, SP literature concluded,

"Southern Pacific and Cotton Belt will be able to offer shippers a 390-mile shorter route for the substantial amount of traffic moving between the Pacific Coast and the St. Louis Gateway."

As the SP emphasizes, not every action initiated subsequent to a transaction can validly be held to be pursuant to that transaction. For the employees to prevail in this matter, there must be a causal connection shown between the transaction and the allegedly adverse conditions. However, the mere fact that one transaction occurs later than another does not necessarily make it the controlling factor in deciding whether or not employees are entitled to protective benefits and a causal connection exists.

In the present case, the Interstate Commerce Commission and all the parties recognized that it would take considerable time and money to make the Tucumcari line productive and to bring it to the point where traffic would be diverted to it from the more circuitous route. The adverse impact on SP employees was inevitable. It was plainly foreseeable and taken into account when the protective provisions quoted above were incorporated in the decision in Finance Docket No. 28799.

Without question, the alleged adverse conditions flowed directly and logically from the transaction involved in Docket 28799. That transaction enabled the SP to reach the Kansas City market from El Paso, Texas and to restore the once competitive "Golden State" route.

The I.C.C. recognized in its decisions in both dockets that under 49 U.S.C. #11344 (b), it was obligated to consider "the interests of carrier employees affected by the proposed transaction" and impose "employee protective conditions in appropriate cases". The protective conditions imposed in Docket 30000 cover SSW employees only but while that Docket added another important element to the SP's program, the acquisition of trackage rights between Kansas City and St. Louis, it is not controlling insofar as the impact on SP employees is concerned. In our view, the decision in Docket 28799 and carrier's publications make that clear. By the time the decision in Docket 30000 was issued, the SP program to restore the "Golden State" route was well on its way by reason of Docket 28799.

Docket 28799 had already imposed protective conditions that covered SP and certain other employees who were affected by the acquisition and operation of the Tucumcari corridor. That was the controlling transaction so far as the issues of the present case are concerned. The coverage of those SP employees did not cease to exist when Missouri Pacific trackage rights between Kansas City and St. Louis were granted.

The awards cited by the SP, including those issued by Jack Warshaw on March 9, 1983 and Arthur Van Wart on September 1,

1983, have been carefully examined and given due weight. They do not appear to address the specific issues and circumstances that are now before us.

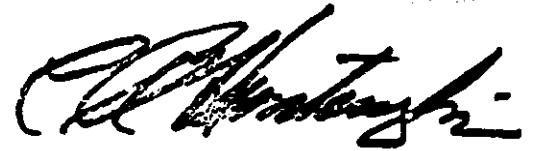
At any rate, it is this Committee's conclusion that both of the questions that have been presented must be resolved in the affirmative.



Harold M. Weston, Chairman



Howard Kenyon,
Organization Member



C. R. Huntington,
Carrier Member

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Dated: February 1985