

NEW YORK DOCK

Case No. 2

PARTIES TO DISPUTE: Allied Services Division/BRAC  
vs.  
The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM:

1. Did the Carrier violate the terms of the Letter of Understanding of February 17, 1984 by abolishing certain jobs at Cincinnati, Ohio on or about December 1, 1985 thereby entitling Claimants R.G. Condo, W.E. Stumpf, J.A. Glascock and M.J. Bray to employee protection as outlined in the New York Dock protective conditions?

2. Did the Carrier further violate the terms of the Letter of Understanding of February 17, 1984 when it abolished jobs at Cincinnati, Ohio on or about November 9, 1986, thereby entitling Claimants G.E. Ante, M.J. Bohler, J.D. Dugger, M.S. Lotspaih, A.A. Mazzaro, L.A. Terrell and R.G. Todd to employee protection as outlined in the New York Dock protective conditions?

3. If the answer to Questions #1 and #2 are in the affirmative, are the Claimants entitled to a dismissal and/or displacement allowance as outlined in the New York Dock protective conditions?

OPINION OF BOARD: The relevant facts of this claim are not in dispute. On November 9, 1983, Carrier gave notice of intent, effective February 15, 1984, to coordinate certain property protection functions in the Greater Cincinnati, Ohio Terminal area. At that time, such functions were performed separately by the Baltimore and Ohio Railroad Company (B&O) and the Seaboard System Railroad (SBD: formerly the L&N). On February 17, 1984, the Organization entered into an Implementing Agreement with Carrier with respect to the coordination. Under this agreement, any former B&O employee at Cincinnati or Hamilton furloughed as a result of job abolishment due to the performance of coordinated

functions by former L&N employees, would be considered a "dismissed employee" entitled to protective benefits. The Agreement was to be effective for six years from the coordination date.

Subsequently, on December 1, 1985, three former B&O positions were abolished. The Organization filed this claim seeking protective benefits on November 26, 1985. Carrier timely denied it. Thereafter, on October 14, 1986, Carrier gave notice changing all starting and stopping positions of Patrolmen to a new location in Cincinnati. Within 2 weeks Carrier gave notice, effective November 10, 1986, that five Patrolmen jobs would be abolished. On October 28, 1986, the Organization filed claim seeking protective benefits. On October 30, 1986, Carrier denied the claim.

Thereafter these claims proceeded in the usual manner on the property. They are now before this Board for adjudication.

The Organization contends that Claimants are entitled to protective benefits inasmuch as their eventual furloughs were due to performance of B&O work by former L&N employees. The Organization submits that because the criteria of the Implementing Agreement have been met, specifically, former L&N employees performing B&O work resulting in the furlough of B&O employees, Claimants are entitled to receive protected benefits. For the foregoing reasons, the Organization asks that the questions be answered in the affirmative.

On the other hand, Carrier denies that the terms of the Implementing Agreement have been triggered. In Carrier's view, the Organization failed to meet its burden of proving that any adverse effect suffered by Claimants was due to the coordination. Carrier submits that in fact, Claimants' furloughs were caused by a decline in business. According to Carrier, employment has been reduced by 36 percent since 1980; a decline from 74, 205 employees to 47, 515 in the period from 1980 to 1986. For the foregoing reasons, Carrier asks that the questions be answered in the negative.

After careful review of the record evidence, this Board concludes that the questions must be answered in part yes and in part no. This is true for the following reasons.

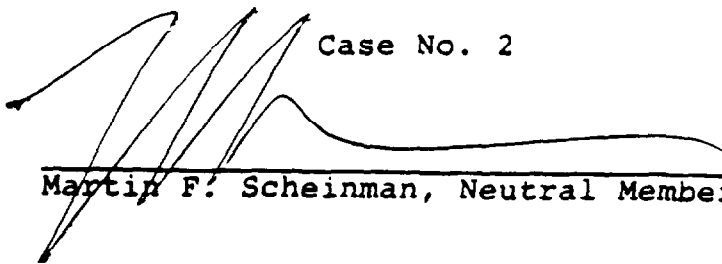
First, the Organization has clearly demonstrated that the three positions abolished on December 1, 1986 and the five positions abolished on November 9, 1986 were the direct result of the coordination. The Organization provided numerous work reports showing former L&N employees to be performing work previously considered to be B&O work. Thus, this Board is convinced that Question 1 must be answered "yes" with respect to Claimants R.G. Condo, W.E. Stumpf and M.J. Bray; and "no" with respect to J.A. Glascock. Claimant Glascock's position was not abolished by Carrier, rather Claimant was furloughed when a senior employee exercised his seniority, for reasons unrelated to those set forth in the Implementing Agreement.

Second, the Organization has further proven that although the five furloughs on November 9, 1986 occurred a significant time after the coordination, they were in fact, a direct result thereof. The Organization has produced sufficient evidence that the coordination and subsequent change of starting and stopping locations caused the furlough of five former B&O employees. As to these five senior most Claimants, G.E. Ante, J.D. Driggers, L.A. Terrell, A.A. Mezzaro, and R.G. Todd, Question 2 must be answered "yes", as to the other two named Claimants, the question must be answered "no".

Third, as such, Question 3 must be answered "yes" with respect to the 8 aforementioned Claimants and "no" with respect to the others whose positions were not abolished as a result of the coordination. The Organization has met its burden of proving that the furloughs were due to the coordination and Carrier has not effectively refuted it.

Accordingly, and for the foregoing reasons, the claims are sustained to the extent indicated in the Opinion.


3/25/88  
Date

  
\_\_\_\_\_  
Martin F. Scheinman, Neutral Member

1-14-88  
Date

Concur ☒


Dissent \_\_\_\_\_

  
\_\_\_\_\_  
R.P. Byers, Carrier Member

2/22/88  
Date

Concur ☒

Dissent \_\_\_\_\_

  
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F. Lynch, Organization Member