

NEW YORK DOCK

Case No. 1

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

QUESTION AT ISSUE:

"Has the consolidation of the Baltimore and Ohio Railroad Company and Seaboard System Railroad (former L&N) property protection functions within the existing terminal limits of the respective properties in the Greater Cincinnati, Ohio yard, effective June 18, 1984, caused an adverse effect, as contemplated by New York Dock Conditions, and thereby placed 13 B&O employees in a worse position with respect to compensation."

OPINION OF BOARD: The relevant facts of this claim are not in dispute. On or about June 18, 1984, Carrier coordinated the B&O and the L&N at Cincinnati, Ohio. As a result, five former L&N employees became B&O employees. It was agreed by the parties, on February 17, 1984, that the L&N employees transferring to the B&O would have their seniority "dovetailed with present B&O employees."

On August 19, 1985, the Organization filed claim alleging that Carrier was required to calculate the protected rate of pay for 13 former B&O employees as of June 18, 1984, and that Carrier provide a displacement allowance to the 13 employees which the Organization alleged to have been adversely affected by the consolidation. Carrier timely denied this claim. Thereafter, it proceeded in the usual manner on the property. It is now before this Board for adjudication.

The Organization submits that Claimants were adversely affected by the consolidation because they are no longer at the

top of the seniority ladder. Five L&N employees with greater seniority are now B&O employees, according to the Organization. As such, the Organization submits, Claimants have lost wages attributable to overtime now monopolized by former L&N employees. In the Organizations view, the only way to determine adverse affect is to calculate Claimants' protected periods and compensate those Claimants presently earning less. For the foregoing reasons, the Organization asks that the Question be answered in the affirmative.

Carrier, on the other hand, argues that Claimants suffered no adverse effect. Carrier points out that the Organization agreed that seniority would be dovetailed between the L&N and the B&O. The Organization can not now claim, according to Carrier, that merely because the senior employees are given priority as to overtime opportunities, that Claimants have been adversely affected. Carrier further contends that any actual adverse effect to Claimants resulted from decline in business and other causes, not from the consolidation. In Carrier's view, the Organization has failed to prove any direct casual relations between the consolidation and the alleged adverse affect. For the foregoing reasons, Carrier asks that the question be answered in the negative.

After careful review of the record evidence, this Board is convinced that the claim must be denied. This is true for a number of reasons.

First, the Agreement of February 17, 1984, is clear. It provides that seniority of the former L&N employees would be combined with the more junior B&O employees. Overtime work is awarded on a seniority basis similar to bid positions. Thus, the unequivocal language of the Agreement demonstrates that Claimants were not improperly denied overtime. Under these circumstances, Claimants were not adversely affected by the coordination.

Second, this case is substantially identical to the situation addressed in PLB 3716, Case No. 2. In that claim, Carrier had consolidated W.M. and B&O Patrolmen's work functions. It was agreed that W.M. employees would be dovetailed with B&O officers. Subsequently the claimant and a higher seniority former W.M. employee bid for a position. The claimant, having lost, sought protective benefits. The claim was denied because the failure of the claimant to obtain the position was due to a lack of seniority, not directly attributable to the consolidation.

Similarly, in the instant claim, it was agreed that Claimants' seniority, as B&O employees, would be dovetailed with the senior former L&N employees. As a result, overtime was consistently awarded to the former L&N employees with greater seniority. Clearly, as in the above award, Claimants were not adversely affected, but rather were not awarded overtime because they lacked seniority.

Accordingly, and for the foregoing reasons the questions presented must be answered as follows:

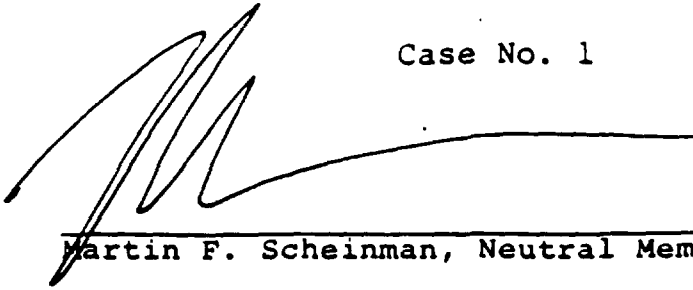
1. As a result of the June 18, 1984 Carrier effectuated coordination between the B&O and L&N police officers at Cincinnati, Ohio, is the Carrier required to determine the protected rates of pay for:

K.G. Myers
P.E. Johnson
J.D. Dugger
L.A. Terrell
A.A. Mazzaro
G.E. Ante
M.J. Bray

P.D. Pearl
D.L. Camper
R.G. Todd
M.J. Bohler
R.E. Condo
E.E. Stumpf

in order to determine if they are entitled to a displacement allowance? - No.

2. If the answer to the above question is in the affirmative, is the Carrier required to pay any and all Claimants a displacement and/or dismissal allowance if their average monthly compensation is less than their protected rate for the duration of their protective periods? - No.



Martin F. Scheinman, Neutral Member

6/24/88
Date

6/20/88
Date

Concur ✓

Dissent _____



R.P. Byers, Carrier Member

6/9/88
Date

Concur _____

Dissent attached



F. Lynch, Organization Member