

PUBLIC LAW BOARD NO. 3540

Case No. 43

PARTIES TO DISPUTE: The Brotherhood of Railway, Airline and
Steamship Clerks, Freifhr Handlers,
Express and Station Employees
vs.
The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM:

"(a) That Clerk Beverly Butler was displaced as a result of the controlled transaction approved by the Interstate Commerce Commission in Finance Docket No. 28905

"(b) Clerk Butler is, therefore, entitled to the employee merger protection conditions set forth in the New York Dock Conditions."

OPINION OF BOARD: The relevant facts of this claim are not in dispute. On September 25, 1980, the CSX Corporation was given permission by the Interstate Commerce Commission to acquire and take control of the Chessie System, Inc. and ~~Seaboard Coast Line Industries, Inc.~~ ^{RFB} ~~Seaboard Coast~~ ^{LA} ~~Line~~ Industries, Inc. The ICC required that any merger or coordination of work and/or facilities must fall under the protective conditions in New York Dock Railway - Control - Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979).

On February 28, 1984, the Chesapeake and Ohio Railway, Seaboard System Railroad, and the Organization entered into an agreement to transfer, reorganize, and coordinate clerical and related functions performed for Seaboard by employees on District No. 1, and for C&O by employees on District No. 7, Western Division Roster. The agreement went into effect on June 18, 1984.

As a result of this coordination, forty-four (44) positions on Seaboard District No. 1 were transferred to and coordinated

with positions and functions on C&O District No. 7. Subsequently, Carrier changed the rest days of Positions A-268, Trailer Service Clerk, - one of the positions which had been transferred on the effective date of coordination. As a result, the incumbent, D.G. Chapman, elected to exercise seniority, initiating a chain of displacements which led to Claimant's displacement to a lower-rated position than the one held at the time of the coordination.

Subsequently, the Organization filed this claim, alleging that Claimant is entitled to the merger protection conditions set forth in the New York Dock Labor Conditions. Carrier timely rejected the claim. Thereafter, the claim was handled in the usual manner on the property, and has now reached this Board for final adjudication.

The Organization contends that Claimant Butler was adversely affected, in respect to both her pay and working conditions, by the coordination transaction. Consequently, the Organization concludes, Claimant is entitled to the merger protection conditions set forth in the New York Dock Labor Conditions.

In this regard, the Organization indicates that prior to the relevant coordination Claimant Butler was regularly assigned to the position of Steno Clerk A-162, with a rate of pay of

\$99.64 per day. According to the Organization, approximately nine days after the coordination, Claimant was displaced from Position A-162 and forced to take an assignment on the extra board, at a rate of \$92.86 per day. The Organization maintains that this displacement to a position with lower pay and less adequate working conditions was definitely the result of Mr. Chapman's exercise of seniority, after Carrier made certain changes in the coordinated forces in the greater Cincinnati, Ohio, terminal area.

In essence, the Organization argues that Claimant Butler's displacement was the product of a chain of events initiated by the original coordination. In addition, the Organization emphasizes that Carrier has not shown that Claimant's displacement was not the result of the initial coordination. Accordingly, for these reasons, the Organization urges that the claim be sustained.

Carrier asserts that Claimant's displacement was not related to the initial coordination, and thus does not qualify her to the benefits described in the Memorandum Agreement. In addition, Carrier argues that the instant claim involves no alleged violation of any Rule or Provision of the General Agreement, and thus is not properly before this Board.

Carrier maintains that Claimant was not displaced from her position on the effective date of the Memorandum Agreement, nor

was her position abolished, transferred, reclassified, or changed as a result of any provision of that Agreement. Carrier further contends that Bulletin No. 39, dated June 27, 1984, which changed the days of assignment and rest days of Trailer Service Clerk A-268, was issued as a result of operational considerations and not as a result of the coordination. According to Carrier, it has the right to make such changes in order to accommodate business levels or operational needs, and that the mere proximity of dates does not prove that this change was the result of the prior coordination.

Also, Carrier contends that the exercise of seniority which is unrelated to a transaction which affords protective benefits, cannot be construed to entitle employees to those benefits. Claimant's displacement arose, in carrier's view, from the ordinary exercise of seniority, and did not involve any violation of the Memorandum Agreement. Accordingly, Carrier takes the position that this dispute should not have progressed under the provisions of Rule 27½ and is not properly before this Board. Therefore, Carrier asks that the claim be denied.

This dispute hinges on the question of whether or not Claimant is entitled to the merger protection conditions in the New York Dock Labor Conditions. More specifically, does Claimant qualify as a "displaced employee" who is therefore entitled to the displacement allowances that are included in the Agreement?

Section 1, subsection (b) of the New York Dock Conditions defines a displaced employee as follows:

"(b) 'Displaced employee' means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions."

Carrier argues that Claimant Butler was not a displaced employee in that her displacement was the result of a voluntary exercise of seniority, not the original coordination.

The Board is convinced that Claimant's displacement was not the result of a routine exercise of seniority. Rather, we are convinced that Claimant's bumping into a lower rated position was the result of a series of re-arrangements which developed out of the merged conditions and the original coordination.

It is significant that Mr. Chapman's exercise of seniority occurred shortly after he was transferred as part of the coordination process. In addition, it appears to this Board that Carrier's issuance of Bulletin No. 39 was reasonably related to the need to make changes in the work week which were not apparent at the time of the original coordination. The term of a coordination includes the period after a coordination, and it involves those consequent, and sometimes unforeseen, changes which may be required. Thus, there existed a substantial link between the initial coordination and Claimant's displacement into a lower rated position.

Moreover, Carrier has failed to prove that it was not the merger and coordination which caused Claimant Butler's displacement. The burden of proof in this case is on Carrier, as indicated in the Award of the Secretary of Labor of April 28, 1971. In that Award, Secretary of Labor Hodgson stated:

"The Railpax conditions simply require an employee to identify the transaction and the facts upon which he relies in his claim that he was affected by a transaction. The burden is then on the railroad to prove that factors other than 'a' transaction affected the employee."

Given these factors, it is clear that Carrier violated the AGreement as alleged.

Accordingly, and for the foregoing reasons, we must sustain the claim.

FINDINGS: The Public Law Board No. 3540 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That the Public Law Board No. 3540 has the jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD:


Claim sustained to the extent indicated in the Opinion.



R.P. Byers, Carrier Member



John Lieb, Employee Member



Martin F. Scheinman, Esq., Neutral Member