
In the Matter of Arbitration Between)
)
BROTHERHOOD OF MAINTENANCE OF WAY)
EMPLOYES)
and)
)
BURLINGTON NORTHERN RAILROAD COMPANY)
)
Regarding D. L. Helgeson)

OPINION AND AWARD

Before an Article I,
Section 11 Arbitration
Committee, Nicholas H.
Zumas, Neutral.

BACKGROUND

The undersigned Neutral was selected Chairman of an Arbitration Committee established pursuant to Article I, Section 11 of ICC Finance Docket No. 28250 (hereinafter "New York Dock" or "NYD"). Hearing was held November 14, 1988 in Washington, D.C., at which time exhibits were offered and received into evidence and oral argument was heard. The parties presented pre-hearing submissions. The Brotherhood of Maintenance of Way Employes (hereinafter "BMWE" or "Organization") was represented by Vice President S. W. Waldeier and the Burlington Northern Railroad Company (hereinafter "BN" or "Company") was represented by Director of Labor Relations Wendell A. Bell.

STATEMENT OF FACTS

BN and the Walla Walla Valley Railroad Company ("WVVR") served notice on their employes that the two companies intended to merge the WVVR into BN on or about November 1, 1981. On January 14, 1982, the two companies filed

a notice of exemption of the proposed merger in accordance with the applicable ICC procedures. The ICC approved the merger on February 11, 1982 and required that BN and the WWVR comply with the labor protective provisions of NYD as a condition of the Commission's approval of the exemption. On February 12, 1982, BN and WWVR reached an agreement with BMWE to implement the merger, and that Implementing Agreement made the NYD benefits those to be applied under the Agreement. On March 1, 1982, the merger was consummated and the WWVR forces, which included Claimant, were merged into BN's East Portland Seniority District.

During the period 1981 to at least 1983, BN experienced the effects of an economic decline that was felt in varying degrees in many industries nationwide. The unrefuted facts presented in BN's submission show that:

In January 1982, the number of locomotives stored systemwide on the BN was 602 and in January 1983 the number had risen to 737. During the same period, the number of boxcars stored on the BN system was 15,509 in January 1982, and 25,358 in January 1983.... The BN's operating expenses for Maintenance of Way and Structures went from \$59,256,000 in January 1982 to \$58,290,000 in January 1983 and then dropped sharply to \$51,169,000 for February 1983.

On January 5, 1983, Claimant's position was abolished during a force reduction. Claimant had insufficient seniority within his district so he was furloughed subject to recall. On January 17, 1983, Claimant was recalled pursuant to his bid on Regional Steel Gang No. 1. The work of a section laborer that Claimant performed up to January 1983 involved routine track maintenance. The work of a steel gang involved the installation of capital budget items such as new ties and tracks.

Claimant worked on Regional Steel Gang No. 1 until March 18, 1983 when he was placed on disability effective January 17, 1983 on account of the alleged aggravation of a previously existing back injury. Claimant remained on disability until March 24, 1984. On July 9, 1984, Claimant and BN executed a settlement agreement which provided in part:

2. It is agreed between the parties hereto that in consideration of the mutual covenants and agreements made herein, Don L. Helgeson, hereby releases forever and fully discharges all past and future claims, actions or suits arising out of injuries sustained to Don L. Helgeson, at or near Walla Walla, Washington and/or Spokane, Washington, on or about the 24th day of September, 1982, against Burlington Northern Railroad Company, and any other subsidiary or affiliated companies and their agents and employees. This release shall apply to all claims whether known or unknown, on the part of the parties to the agreement, to the effect that this agreement shall be a full, binding and complete settlement between the parties to this agreement and these other persons or entities referred to herein.

Article III of the NYD conditions provide:

1. Definitions. - (a) "Transaction" means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed.

(c) "Dismissed employee" means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.

11. (e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

The February 12, 1982 Implementing Agreement provides:

Specifically, the complete nature of this transaction is the integration of the Walla Walla Valley employees into the Burlington Northern Railroad's East Portland Seniority District No. 23, the elimination of the Walla Walla Valley section crew and the simultaneous bulletining of one Assistant Foreman and one Sectionman's position on the Burlington Northern's Walla Walla section, all of which will occur within thirty days of the consummation of the merger.

POSITION OF BMWE

BMWE contends that Claimant was affected by the transaction and is entitled to \$609.28 for the period January 5 to January 16, 1983 during which his position was abolished and he was unable to exercise his seniority.

BMWE maintains that BN indicated in the Implementing Agreement that one of the three WWVR employes would be dismissed due to the elimination of three WWVR section positions. Based on that indication, BMWE essentially argues that BN admitted that there would be a "dismissed" employe as a result of the transaction, and that Claimant is that employe.

BMWE contends that there is a causal nexus between the merger and the abolishment of Claimant's position because Claimant had worked regularly prior to the merger and dovetailing of seniority with BN personnel. BMWE rejects BN's argument that Claimant's position was abolished because of a nationwide decline in business and is unrelated to the merger. BMWE maintains that BN failed to meet its burden of proof because it has

presented no evidence of "economic decline, general force reduction, reduction of train traffic or reduction of maintenance."

POSITION OF BN

BN contends that Claimant is not entitled to the labor protective benefits claimed because he released his claim and because BMWE has failed to show that Claimant was dismissed because of the merger.

BN maintains that Claimant voluntarily relinquished all claims, including the right to return to work, in his July 9, 1984 settlement agreement. In support of its position, BN cites two very brief arbitration decisions.

On the merits, BN contends that Claimant was not adversely affected by the merger because BMWE has shown no causal connection between the transaction and the abolishment of Claimant's position. Rather, BN contends, Claimant's position was abolished for reasons unrelated to the transaction, that is, negative economic factors affecting BN. In support of its position, BN cites the figures for reduced numbers of locomotives and boxcars in active service showing less business and the decline in maintenance expenditures over the period 1981 to 1983. BN also maintains that the removal in time by nearly ten months between the consummation of the transaction and the abolishment of Claimant's position also proves the lack of causal connection between the two events. BN contends that BMWE has incorrectly used a "but for" test in assessing the nexus and likewise

reasoned incorrectly that simply because the abolishment followed the merger they were causally related.

FINDINGS AND CONCLUSIONS

The question to be resolved is whether Claimant was properly denied the labor protective benefits created pursuant to a transaction approved by the ICC. If not, the amount claimed should be awarded.

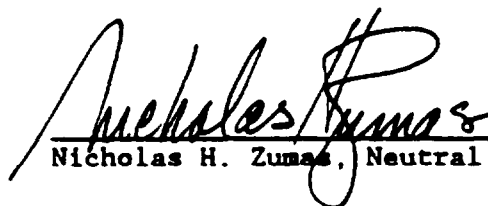
This question must be resolved on its merits. BN's argument that Claimant released his labor protective claim by the July 9, 1984 Settlement Agreement is not persuasive. The Settlement Agreement is related only to claims arising from or related to the alleged injury. Such an arrangement is quite common in tort matters. The parties clearly did not intend the release to apply to claims unrelated to the alleged injury. The decisions BN cites are not binding on this Neutral and are of little persuasive value because of the paucity of facts included in them.

On the merits, however, BN has shown by unrefuted facts in the record that during the period in question, it was caught in a substantial economic downturn unrelated to the merger. These unrefuted figures show a 22% increase in stored locomotives, a 64% increase in stored boxcars, and a 16% decrease in expenditures for Maintenance of Way operations. All of these actions occurred in the context of a general downturn in the economic health of the rail transport industry in the United States. One logical response for BN under these circumstances would have been to reduce costs by reducing

its work force. This decline and apparent response coupled with the remoteness in time of the abolishment of Claimant's position from the merger compels the conclusion that no sufficient causal nexus between the two events has been shown. It is well settled that BMW is required by NYD to prove this connection. Not only has BMW not done so, but BN has shown that factors other than the transaction were responsible for the abolishment of Claimant's position.

AWARD

For the foregoing reasons, this Neutral finds that Claimant was properly denied labor protective benefits imposed pursuant to the transaction.



Nicholas H. Zumas, Neutral

Date: March 13, 1989