

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

In the Matter of Arbitration)

Between)

International Association of Machinists)

And)

Southern Railway Company)

I.C.C. Finance Docket

No. 29430

Case No. 1

OPINION AND AWARD

BACKGROUND: On March 25, 1982, the Interstate Commerce Commission (ICC) gave approval to the Norfolk Southern Corporation (NSC) to acquire control through stock ownership of the Norfolk and Western Railway Company (NW) and its subsidiary companies as well as Southern Railway Company (SR) and its consolidated system companies. The ICC also approved the coordination of operations of NW and SR and imposed New York Dock (NYD) Protective Conditions.

Pursuant to Article 1, Section 4 of the New York Dock Conditions, the parties agreed to an Implementing Agreement on March 30, 1982. This Agreement provided the terms applicable to future transactions covered by such conditions.

On June 19, 1987, the Organization submitted a Request for Entitlement to Benefits form on behalf of four (4) Claimants for the protective benefits under New York Dock because each of them had been furloughed on April 3, 1987. Each Claimant also stated on the individual Request for Entitlement to Benefits forms the following significant points:

- (1) That he had been placed in "a worse position or deprived of employment" on April 3, 1987 because he had been furloughed;

- (2) That the coordination involved that placed him in a worse position was that "Southern transferred work to N&W without the required proper notice";
- (3) That the Carrier transferred the mounting of 28" wheel sets to the N&W, and that the Carrier dismantled used wheel sets at Coster and sent the useable wheels to Roanoke to be bored, remounted and turned on a tread lathe, using axles that were being sent there also from Coster. This work was transferred without notice, as required by the 1982 Agreement which also lowered the production required, therefore decreasing the number of needed Machinists.

The Carrier denied each of the claims essentially on the ground that the Claimants had been furloughed because of reduced production requirements brought about because of a system-wide usage of freight car wheels.

When the parties were unable to resolve their differences on these claims, including the "Question at Issue", they were advanced to this forum for final disposition.

Organization's Question at Issue:

- "1. Did the Carrier violate the March 30, 1982, Agreement with the transfer of 28" wheel and bearing mountings to N&W's Portsmouth Shop from Southern's Coster Shop and the boring and remounting of used wheel sets to N&W's Roanoke Shop from Southern's Coster Shop."

Carrier's Question at Issue:

Are Machinists Buckner, Messer, Collins and Flanigan entitled to the protective benefits under New York Dock as a result of the transfer of 28" inch wheel mountings and the re boring and remounting of used wheel sets from Southern's Coster Shop to NW's Roanoke Shop on or about April, 1985?"

FINDINGS: At the outset, the Board notes that the parties have progressed certain contentions and other matters to this Board which were not discussed on the property. Accordingly, these elements of this case will not be considered by the Board when arriving at its decision on these claims.

While the Organization, with skill and vigor, has presented its position at great length and in considerable detail, both in the record and before this body, the Organization's views may be summarized as follows:

- (1) The Carrier has not denied the main contention that the function of mounting 28" wheels was moved from Coster Shop and that the mounting of second-hand wheel sets has been performed at Roanoke, rather than the Coster Shop. The parties are bound by the requirements of Section 4 of the March 30, 1980 Implementing Agreement which in pertinent part reads:

"Future coordinations which are not now contemplated and may involved employees being dismissed may be accomplished by giving those employees and their interested General Chairman a thiry (30) days' written notice."

Consequently, the Carrier erred because it did not provide the required advance notice.

- (2) The claimed work, which the Organization also has described in great detail, both as to its nature and the impact its transfer had on Machinists' tasks associated with it, clearly would affect the Claimants. If nothing else, the sheer volume of the work transferred would lead to a reasonable conclusion that it caused the furlough of the Claimants. In summary therefore, the Organization contends this Board must sustain its claims.

The Carrier has acknowledged (and indeed it is self-evident, as contended by the Organization) that the transfer of work in April, 1985, associated with the 28" wheel sets from Coster, could have an impact on the Coster work force. However, the Carrier maintains that evidence also shows that the Claimants' work status did not materially change at that time. It was not until two years later, in April 1987, that the Claimants were furloughed.

In order to gain New York Dock Benefits, the following key criteria, as defined in Section 1 of NYD, must be met:

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

These criteria have been subject to numerous arbitral holdings which we have carefully considered.

Applying the facts of this case to the criteria, the Board finds that it must deny the claim. The Claimants continued to work at their same location, in the same craft and without a reduction in compensation until two years later, when in April 1987 they were furloughed. Clearly, it becomes more difficult to establish a "causal nexus" when a lengthy time span exists between the time of the "transaction" and the Claimants' furlough. However, the Claimants have not met their burden in showing that the April 1985 transfer of work caused the abolition of their positions two years later. We find that the Carrier's reasons for denying these claims, as summarized in its letter of August 28, 1987 to the Organization, are persuasive.

AWARD

The claims are denied.

B. C. Edwards
G. C. Edwards
Carrier Member

E. Muessig
Eckehard Muessig
Chairman

Joe R. Duncan
Joe R. Duncan
Organization Member

Dated: May 22, 1989