

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

In the Matter of Arbitration)

Between)

International Association of Machinists)
and Aerospace Workers)

And)

Southern Railway Company)

I.C.C. Finance Docket

No. 29430

Case No. 2

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

The first of the (2) claims presently at issue before the Board was submitted on June 12, 1987 on behalf of Claimant Lee. The claim asserted that:

- (a) The Carrier served a belated notice on June 3, 1985 that it had transferred all steam train and office car work from Hayne Shop to Roanoke Shop. Therefore, violating the provisions of the March 30, 1982 Implementing Agreement.
- (b) Claimant Lee's position in System Production at Hayne Shop was abolished by bulletin dated November 14, 1985 and he was furloughed effective November 20, 1985.

- (c) System Production contained three (3) job locations. Two of the locations entailed work that consisted of reworking and installing cab spicer drives and office car clutches and other related work on steam train and office cars.
- (d) Subsequent to the transfer of the above-identified work in March 1987, the Carrier transferred the work performed by job locations 1, 4 and 5, which performed cleaning, repairing and testing of D-22 and UC passenger and dinner car airbrake valves, hose repair and car testers.
- (e) Claimant Lee, although in a furloughed status was able to work on a day-to-day basis until March 25, 1987, subsequent to the transfer of work identified in (c) above.

On September 9, 1987, the Carrier declined the Organization's claim stating, in part, that:

Mr. Lee has not been adversely affected by the transfer of steam and office car work, passenger air brake valves, hose repair and car tester repair as you allege. The machinist furloughs in March 1987 were the result of a reduction in maintenance gang work at Hayne Shop. There was no transfer of D22 and UC brake valves from Hayne. We have converted passenger cars to AED/ABDW brake equipment and no longer have a need for D22 and UC equipment. Since passenger cars have been converted to freight equipment, there is no need for passenger car testers to test D22 and UC brake equipment.

On March 9, 1988, the Carrier, when declining the claim again, referred to prior correspondance and a conference on February 25, 1988:

As stated in prior correspondence and in conference, Machinist Lee has not been adversely affected by the transfer of steam and office car work, passenger air brake valves, hose repair and car tester repair. Machinist Lee's furlough in March 1987 was the result of a reduction in maintenance gang work at Hayne Shop.

When the steam and office car work was transferred to Roanoke Shop in November 1984, Machinist Lee continued working under the provisions of Rule 27 and therefore, was not a "displaced or dismissed employee" as defined in the New York Dock Conditions....

In addition, there was no transfer of D-22 and UC brake valve work from Hayne Shop as you allege. Passenger cars have been converted to ABD/ABDW brake equipment, thus eliminating the need for D-22 and UC brake equipment. As a result, there is no longer a need for passenger car testers to test D-22 and UC brake equipment.

Finally, regarding the loss of air hose and glad hand work; this work was no longer performed at Hayne Shop due to the change in AAR requirements. The new requirements, effective January 1, 1987, required all air brake hoses to be of the wide lip gladhand/ferrule type. Hayne Shop did not have the necessary machinery to remove and apply the new type of clamp. A change in AAR requirements is not a "transaction" as specified by the New York Dock Conditions which state:

"'Transaction' means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed."

In its letter of October 28, 1988 to the Carrier, the Organization in part stated:

Contrary to your position on the Hayne Shop transfer, the facts are as I have previously advised Mr. Koehler in conference, that the change to ABD/ABDW valves was a slow process of (1) car at a time and that the work was transferred before this change over was completed, further the Machinist at Hayne rebuilt P-valves for NS and other railroads, which are still used, but transferred. As to the hose repair, the Machinist maintained and repaired the equipment used in making and repairing the hoses for the connection from one car to another and the facts remain that the work was discontinued at Hayne (a Southern Shop) and is now being performed at Roanoke (a N & W Shop).

In reference to the Car testers, the Machinist at Hayne repaired and maintained the testers, which are used to test any type of air brake equipment on freight cars and the fact remains that this work has been transferred from Hayne Shop to the N & W, just like all the other foregoing work, without a proper notice as required by the 1982 Agreement.

Because the parties could not reach an agreement with respect to Lee's claim, it was progressed to this body for adjudication.

With respect to Claimant Phillips, his position was abolished by Bulletin dated March 18, 1987, effective the close of business March 25, 1987, although he afterward continued to work on a day-to-day basis pursuant to Rule 27 of the Parties' Agreement.

On June 24, 1987, the Organization filed a claim on behalf of Claimant Phillips, asserting that he had been adversely effected on March 25, 1987 because:

The Carrier has transferred the cleaning, repairing and testing of D-22 and UC passenger and dinner car airbrake valves, hose repair and car tester repair, which were performed on positions 4, 5 and 1, respectfully. All of this work was transferred without notice as required by the 1982 Implementing Agreement.

On August 28, 1987, the Carrier denied the Organization's claim, mainly stating that:

Mr. Phillips has not been adversely affected by the transfer of steam and office car work, passenger air brake valves, hose repair and car tester repair as you allege. The machinist furloughs in March 1987 were the result of a reduction in maintenance gang work at Hayne Shop. There was no transfer of D22 and UC brake valves from Hayne. We have converted passenger cars to ABD/ABDW brake equipment and no longer have a need for D22 and UC equipment. Since passenger cars have been converted to freight equipment, there is no need for passenger car testers to test D22 and UC brake equipment.

In accordance with a AAR requirement effective January 1, 1987, all air brake hoses are to be of wide lip gladhand/ferrule type. Hayne did not have the machinery to apply or remove the ferrule clamps.

The Carrier, on March 9, 1988, in confirming a conference held between the parties to discuss the Phillips claim, in pertinent part stated:

As stated in conference, since Machinist Phillips's position was abolished on March 25, 1987, he has been working on a daily basis under the provisions of Rule 27 and thus, has not been placed in a worse position with regard to his compensation. The New York Dock Conditions define a "displaced employee" as:

"'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."

Machinist Phillips is not a displaced employee as defined by the New York Dock Conditions.

In addition, there was no transfer of D-22 and UC brake valve work from Hayne Shop. Passenger cars have been converted to ABD/ABDW brake equipment, thus eliminating the need for D-22 and UC brake equipment. As a result, there is no longer a need for passenger car testers to test D-22 and UC brake equipment.

Finally, regarding the loss of air hose and gladhand work; this work was no longer performed at Hayne Shop due to the change in AAR requirements. The new requirements, effective January 1, 1987, required all air brake hoses to be of the wide lip gladhand/ferrule type. Hayne Shop did not have the necessary machinery to remove and apply the new type of clamp. A change in AAR requirements is not a "transaction" as defined by the New York Dock Conditions which state:

"'Transaction' means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed".

When this claim was not resolved, it also was progressed to the Board for resolution.

Differing versions of the Questions at Issue have been submitted by the parties. These are:

Organization Question at Issue:

1. Did the Carrier violate the March 30, 1982 Agreement with the transfer of steam and office car work, sometime prior to June 3, 1985, and the transfer of D-22 and UC passenger and dinner airbrake valves, P-valves, hose repair and car tester work from Southern's Hayne Shop to N&W's Roanoke Shop?
2. Are furloughed Machinists Lee and Phillips entitled to the rights and protective benefits provided in the March 30, 1982 Implementing Agreement, as a result of the transfers?

Carrier Question at Issue:

Are Machinists Lee and Phillips entitled to the protective benefits under New York Dock as a result of the transfer of steam and office car work in November, 1984 and the alleged transfer of ABD/ABDW brake valve, P-valve, hose repair and car tester work from Southern's Hayne Shop to NW's Roanoke Shop?

FINDINGS: Turning first to Claimant Lee, the Organization has the threshold burden to provide facts that raise a sufficient or reasonable presumption that the November 1984 transfer of steam train and office car work from Southern's Hayne Shop to NW's Roanoke Shop adversely affect Claimant Lee. The burden then shifted to the Carrier to prove that factors other than a "transaction" affected the employee. We find that the Organization has met its burden because it has identified the "transaction" as well as specified the pertinent facts of that "transaction" it has relied upon. In our judgment, the Carrier's bare assertion, on the property, when it denied the claim, that Lee was furloughed in March 1987 as a result of a reduction in maintenance gang work at Hayne Shop does not effectively refute the Organization's claim. Moreover, it ignores the fact that Lee's position was abolished in November 1985 and, as we read the record that is properly before us, he did not exercise his seniority in the normal sense, but rather was placed in a furlough status and worked, in effect, on a day-to-day basis under the provisions of Rule 27, Furloughed Employees. A furloughed employee is not a regular employee and this status, in the situation before us, did place him in a worse position with

respect to the "rules governing his working conditions". In summary, with respect to Claimant Lee, we find a causal nexus between the November 1984 transfer of work (as previously identified) and the abolishment of Claimant Lee's position one year later. Accordingly, his claim is sustained.

With respect to Claimant Phillips, we have closely reviewed the Organization's well-stated arguments on his behalf and, while it has met its initial burden, we find that Carrier's position persuasive, mainly for the reasons stated in the Carrier's letter of March 9, 1988 to the General Chairman.

AWARD

Claimant Lee's claim is sustain.

Claimant Phillips claim is denied.

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

E. Muessli
Eckehard Muessli
Chairman

Joe R. Duncan
Joe R. Duncan
Organization Member

Dated: May 22, 1989