

NEW YORK DOCK

PARTIES TO DISPUTE: Brotherhood of Railroad Signalmen  
vs.  
CSX Transportation Company

QUESTION AT ISSUE: The parties formulated different questions to be resolved. For ease we have accepted the Organization's version. They are:

A. In computing Claimant's protective period, does Claimant's approximately 10 years of continuous service with the Carrier count towards calculating his coordination allowance?

B. Is Carrier correct when it determined that Claimant's previous employment status was terminated when he transferred to another seniority district?

OPINION OF BOARD: The relevant facts of this claim are not in dispute. On December 29, 1982, the Seaboard Coastline Railroad (SCL) and the Louisville and Nashville Railroad L&N) merged to become Seaboard System Railroad, Inc. (SBD). On December 30, 1985, pursuant to Article 1, Section 4 of New York Dock Conditions, the former SBD served notice of its intent to consolidate at Savannah, Georgia (former SCL) all signal shop work being performed at Atlanta, Georgia (former A&WP), Erwin, Tennessee (former CRR), Louisville, Kentucky (former L&N), Nashville, Tennessee (former L&N) and Ocala, Florida (former SCL) and have such work performed thereafter on a coordinated basis under the SCL Schedule Agreement. The SBD Savannah Signal Shop Coordination became effective May 19, 1986.

Claimant, Signalman M.A. Krause, in this case, was employed by the former L&N on September 27, 1977 as an Assistant Signalman on a System Gang working on the Atlanta Division. (District #9)

In 1984, due to a temporary vacancy on a Lead Signalman position at the Signal Repair Shop in Louisville Kentucky (District #8), the position was bulletined to other districts and Claimant was assigned to the vacancy on January 23, 1985. Claimant continued to work the temporary vacancy until the return of the incumbent on March 26, 1985. Claimant's job history continues as follows:

3/26/85 - 4/5/85 Asst. Signalman System Gang #5.

4/5/85 - 11/20/85 Signalman System Gang #5.

11/23/85 - 2/28/86 Temporary position Asst. Signalman System Gang #1.

3/1/86 - 4/15/86 Temporary work as Signalman while assigned as Asst. Signalman System Gang #3.

4/22/86 - 5/13/86 Lead Signalman System Gang #1.

At the time of the Savannah Signal Shop Coordination, Claimant was bumped from the Lead Signalman position on System Gang #1 and placed himself on an Assistant Signalman position on a system gang, the highest rated position he could hold on the L&N System with his January 19, 1985 seniority date. On October 14, 1986 Carrier notified the Organization that Claimant was entitled to a protective period of 16 months - the number of months in which he performed service from the date he last acquired on employment status (January 23, 1985) to the date of the transaction (May 19, 1986). Claimant was furloughed a March 21, 1987 following a reduction of 30 L&N system gang positions.

On October 13, 1987, the Organization filed a claim alleging that Claimant was entitled to a monthly guarantee of 72 months

instead of 16 months. Carrier timely denied the claim. Thereafter, it proceeded in the usual manner on the property. It is now before this Board for adjudication.

The Organization maintains that Claimant is entitled to New York Dock protection under Article I, Section I, Definitions of the New York Dock Conditions. That Article states, in pertinent part:

"(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.

(d) 'Protective period' means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, provided, however, that the protective period for any particular employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the railroad prior to the date of his displacement or his dismissal. For purposes of this appendix, an employee's length of service shall be determined in accordance with the provisions of section 7(b) of the Washington Job Protection Agreement of May 1936." (Emphasis added)

The Organization states that the above referenced language indicates that Claimant is a displaced employee entitled to protection from the date he was adversely affected to the expiration of six years therefrom. It further points out that Section 7(b) of the Washington Job Protection Agreement of May 1936 supports its position by reference to the following:

"(b) For the purposes of this agreement the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for one month's service for each month in which he performed any service (in any capacity whatsoever) and twelve such months shall be credited as one year's service. The employment status of an employee shall

not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization he will be given credit for performing service while so engaged on leave of absence from the service of a carrier". (Emphasis added)

The Organization argues that Claimant entered Carrier's service on September 27, 1977 and continued employment until he was furloughed on March 21, 1987. In the Organization's view, by applying the above computation provision to Claimant's length of service, he is entitled to 72 months of protection under New York Dock. The Organization further refutes Carrier's position that Claimant was considered a new hire when he started working on the Louisville Signal Shop District. It maintains that Claimant transferred to a new seniority district, thereby retaining his status of continuous employment. In the Organization's view, such continuous service entitles Claimant to the benefits of New York Dock conditions for a period of six years. For the foregoing reasons, the Organization asks that the question be answered in the affirmative.

Carrier, on the other hand, argues that Claimant's protective period under New York Dock Conditions was for a period of 16 months and is not entitled to any additional monthly allowance. It maintains that Section 7(b) of the Washington Job Protection Agreement provides that an employee is entitled to a maximum of six year's protection but not more than the number of months in which he performed service prior to being "displaced" or dismissed" as the result of the transaction provided the employment status which

enabled the performance of the pre-transaction work is maintained. In this dispute, Carrier contends that Claimant voluntarily severed his seniority and employment status on District #9 and established new seniority and a new employment status on District #8. It argues that Claimant was not transferred from District #9 to District #8 by the Carrier or at the request of the Carrier; but by Claimants own actions. It further maintains that since Claimant held a Lead Signalman position prior to the coordination and an Assistant Signalman position with a lower rate of pay following the coordination, he was appropriately defined as a "displaced employee". Accordingly, in conformance with the term as used in the New York Dock conditions, he was entitled to the protective period of 16 months. Carrier maintains that the 16 months is calculated from the number of months in which he performed service from the date he last acquired an employment status (January 23, 1985) and the date of the last transaction (May 19, 1986).

In support of its position, Carrier points out that Claimant was furloughed on March 22, 1987 for reasons unrelated to the May 19, 1986 Savannah Signal Shop Coordination. It maintains that Claimant's furlough was directly attributable to the reduction of 30 system signal positions March 17, 1987 due to lack of signal construction work on the former L&N. In Carrier's view, any adverse affect to Claimant after the date of his furlough was not the result of the transaction and his monthly allowance should have ceased. For the foregoing reasons, Carrier asks that the question be answered in the negative.

After a careful review of the record evidence, this Board is convinced that the claim is moot. There is no rationale for reaching the issue of the appropriate period of protection at this time.

New York Dock conditions provide benefits for employees displaced or dismissed as a result of an ICC approved transaction. Section 5 provides a monthly displacement allowance during the protective period, for employees whose compensation is adversely affected by the transaction. Section 6 provides a dismissal allowance for such employees deprived of employment. In this dispute, both the Carrier and Organization referred to the definition of "protective period" (Article I, Section I, Definitions of the New York Dock Conditions), along with the definition of "employment status" (Section 7(b) of the Washington Job Protection Agreement). Although it is clear that the parties disagree on their interpretation of such definitions, a decision reconciling these differing opinions is not necessary in this case.

Assuming arguendo, that Claimant's protective period was 72 months as the Organization contends; Claimant would only be entitled to the monthly allowance for the period of time his adverse affect was the direct result of the May 19, 1986 transaction. In this case, Claimant was furloughed on March 21, 1987 as the result of the reduction of 30 system signal positions on March 17, 1987 due to the lack of signal construction work on the former L&N. No evidence has been presented to convince this Board to the contrary. As such, this entitlement to protection

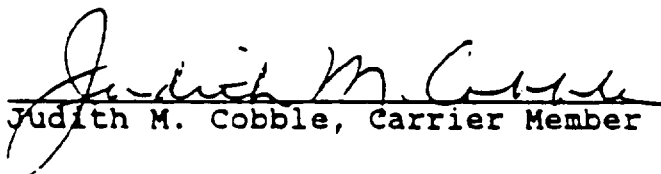
should have ended at that time.

The monthly allowances provided by the New York Dock Conditions are to protect employees against the adverse affect of reduced compensation and loss of employment directly related to a transaction. However, it must be noted that such protection is limited to that circumstance. Here, Claimant's furlough on March 21, 1987 was not related to the transaction and accordingly, his monthly displacement should cease on the date of the furlough. In fact, he was paid beyond that date.

For these reasons, the underlying issue of eligibility is moot as under no circumstance, would Claimant be entitled to additional compensation beyond what he received here.

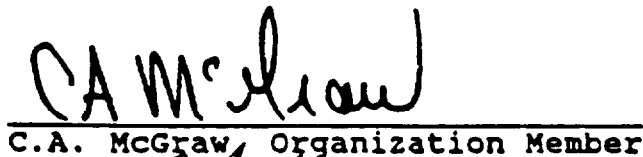
✓  
Concur

Dissent  
8/15/89  
Date

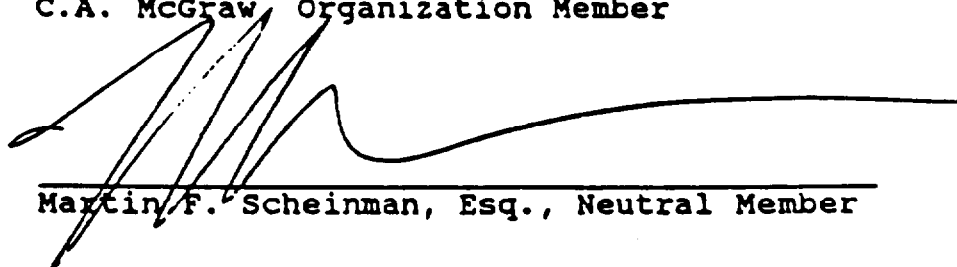
  
Judith M. Cobble, Carrier Member

Concur  
✓

Dissent  
8/22/89  
Date

  
C.A. McGraw, Organization Member

9/5/89  
Date

  
Martin F. Scheinman, Esq., Neutral Member