

A R B I T R A T I O N

PURSUANT TO NEW YORK DOCK PROTECTIVE CONDITIONS
ARTICLE I, SECTION 11

In the Matter of Arbitration

between

UNITED TRANSPORTATION UNION

Baltimore and Ohio General Committee of Adjustment

Chesapeake and Ohio General Committee of Adjustment

Louisville and Nashville General Committee of
Adjustment

AND

CSX TRANSPORTATION, INC.

Former Baltimore and Ohio Railroad

Former Chesapeake and Ohio Railway

Former Seaboard System Railroad

A P P E A R A N C E S

For the Carrier:

Ralph Miller, Assistant
Vice President

Lloyd Kell, Manager
Labor Relations

D. E. Strickland, Manager
Labor Relations

R. Allen Gray, Jr., Labor
Relations Officer

For the Organization:

R. W. Earley, General Chairman
UTU-B&O

R. D. Snyder, General Chairman
UTU-L&N

J. T. Reed, Vice General
Chairman, UTU-B&O

STATEMENT OF THE ISSUE

As stated by the Organization:

Has CSX violated the provision of Article 3 of the Consolidated Agreement when they denied the B&O Toledo Division percentage employees the right to occupy the Reserve Pool, established pursuant to the Crew Consist Agreement identified as CSX-T Labor Agreement T-017-90 dated February 13, 1990, applicable to employees working strictly within the consolidated terminal at Cincinnati, Ohio?

As stated by the Carrier:

Do the provisions of Article 3 of the Greater Cincinnati Coordinated Terminal Agreement apply to the exclusion of paragraph G of Attachment 1 of the Coordinated Cincinnati Terminal Crew Consist Agreement?

BACKGROUND

The former Baltimore and Ohio Railroad Company (B&O), Chesapeake and Ohio Railway Company (C&O), and Louisville and Nashville Railroad Company (L&N) are part of CSX Transportation, Inc. (CSXT or the "Carrier"). Separate collective bargaining agreements covering employees represented by the United Transportation Union (the "Organization") remain in effect. In 1978 separate Cincinnati yard facilities of the B&O and C&O were coordinated. While there was no coordination of seniority rosters or creation of a single seniority list, positions at the coordinated facility were allotted under an Order of Selection List under the so-called Queensgate Agreement". On April 4, 1984, a further agreement ("Queensgate II") was reached to include the L&N yard facility, with

assignment of positions under an Order of Seniority List involving the B&O Toledo and St. Louis districts, the C&O Cheviot and Stevens-Covington districts, and the L&N Kentucky district.

As of that time, the B&O and the C&O were parties to a crew consist agreement, while the L&N was not. In a side letter dated April 4, 1984, the parties agreed as follows:

If and when the SBD (former L&N) and United Transportation Union have consummated a Crew Consist Agreement, the parties to the consolidation agreement will meet for the purpose of determining which of the Crew Consist Agreements will be applicable to crews working in the consolidated terminal.

In 1988 the L&N and CSXT executed a "second generation" crew consist agreement, as did the B&O and C&O with the Carrier in 1989. This resulted in the adoption of CSXT Labor Agreement T-017-90 and Attachments, implemented on March 3, 1990. The thrust of this agreement was to reduce crew sizes within the Cincinnati Terminal and to provide protective benefits for those employees adversely affected. The CSXT Labor Agreement T-017-90 was entitled as follows:

CREW CONSIST AGREEMENT
between
CSX TRANSPORTATION, INC.
and its employees of
COORDINATED CINCINNATI TERMINAL
represented by
UNITED TRANSPORTATION UNION
(former B&O, C&O (Proper) and L&N)

To accommodate employees protected by the application of the crew consist agreement, a "reserve pool" was estab-

lished in Attachment 1. Paragraph G of Attachment 1 reads as follows:

G. When a vacancy exists on a position which would otherwise require (1) a new employee, (2) recalling an employee from furlough status, or (3) recalling to service a furloughed non-protected employee, the position will be advertised to employees on the reserve pool. In the event it is not bid in, the junior reserve pool employee will be assigned.

The pre-existing B&O-UTU reserve pool agreement of 1989 (established prior to CSXT Labor Agreement T-017-90) included virtually identical language, as follows:

G. When a vacancy exists on a position which would otherwise require (1) recalling a furloughed employee, or (2) a new hire, the position will be advertised to employees on the reserve pool. In the event it is not bid in, the junior reserve pool employee will be assigned.

In July 1990, positions became vacant on the Toledo (B&O) seniority district with no employees to fill them. At that time the Cincinnati Terminal reserve pool had 19 employees, seven from the Toledo District. The Carrier recalled the Toledo seniority employees to the vacant positions on the Toledo seniority roster. It was this action which led to the dispute here under review. The Organization argues that these employees were improperly removed from the Cincinnati Terminal reserve pool, while the Carrier contends that such recalls were appropriate.

CONTENTIONS OF THE PARTIES

The Carrier summarizes its argument as follows:

The reserve pool concept is for the benefit of those protected employees who cannot hold a position in active service with the reduction of all crews to a conductor and one trainman as provided in the newer agreements. The reserve pool positions

are obtained through an exercise of seniority entitlements in accordance with seniority standing. . . . Within this concept, and primary to it, is the principle that an employee cannot occupy reserve pool status if his services are needed to protect an active position on his seniority district which otherwise would have to be filled by a furloughed employee or a new-hire. At the time this dispute arose there were no furloughed Toledo district employees and if the Toledo district employees had not been removed from the Queensgate Terminal reserve pool and placed in active service in the Toledo road district, it would have been necessary to recruit new-hires to fill the vacancies.

The Carrier contends that the Order of Selection Lists at Cincinnati are to provide a means for employees of the various railroads to obtain positions at the Terminal. According to the Carrier, the OSL is "not a new seniority district, but is nothing more than an extension of the existing five seniority districts for purposes of protecting work in the terminal". The Carrier finds "no magic fence around an employee in the Terminal which prevents him from being required to protect his seniority when it is needed to fill an open vacancy [in his home district] which would otherwise be filled by a new hire".

The Organization points first to Article 3 of the Queensgate II agreement. Article 3 concerns assignment of positions in the Cincinnati Terminal by utilization of the Order of Selection List. The Organization refers in particular to Section (D) 1 (a) which reads as follows:

(D)1.(a) Yard trainmen within the Consolidated Greater Cincinnati Terminal will be permitted to exercise seniority in accordance with Rule 18 of Attachment "E". When exercising such seniority rights from within the Consolidated Greater Cincinnati

Terminal they may displace any yard trainman with a higher numerical order selection number.

(b) Yard trainmen having a higher Order of Selection List number than the number of assignments in the Terminal will be "cut-off" the Order of Selection List following the return of senior men resulting in their not being able to exercise seniority to any assignment in the Consolidated Greater Cincinnati Terminal. Thus a yard trainman is allowed to work his way off the Order of Selection List.

As argued by the Organization, this section does not contain "any exceptions".

The Organization then refers to Article 4 which reads as follows:

(A) Except as provided in this Agreement, including Attachment "E", yard trainmen working in the consolidated terminal will be governed by their home road working agreement.

(B) Where the rules of the respective working agreements conflict herewith, the provisions of this Agreement will apply. Rules, or portions thereof, that are not in conflict with this Agreement are preserved. Where an entire rule, or an entire section of a rule independent of other sections of such rule, was extracted from the applicable respective collective bargaining agreements to form the rules found in this Agreement, including Attachment "E", the agreed upon practices and interpretations of such rules and/or sections remain unchanged insofar as concerns their application under this Agreement.

From this, the Organization states the primacy of the Queensgate II Agreement over home road working agreements. The Organization further argues that the subsequent 1990 crew consist agreement, establishing the reserve pool, is integrally part of the Queensgate II Agreement, as indicated by the heading of the CSXT Labor Agreement T-017-90, quoted above. Thus,

it is the Organization's contention that the requirement of employees in the reserve pool to accept open positions where new hires would otherwise be needed is limited to the Cincinnati Terminal and cannot be applied to such openings which may occur on an employee's home road.

In support of its view of a "fence" around agreement application at the Cincinnati Terminal, the Organization cites a previous dispute in 1987 in which the Carrier advertised for bids for 20 Trainmen to qualify as Hostlers at the Cincinnati Terminal. The B&O General Chairman initially protested the exclusion of Toledo Division seniority employees from such positions. The Carrier responded in a November 16, 1988 letter as follows:

As previously discussed, it has been our position to restrict the applicants to qualify as hostlers in Cincinnati to those individuals who are listed on or could hold a position on the order of selection lists working within the consolidated Queensgate Terminal at Cincinnati. If we were to do otherwise, we could be qualifying people as hostlers who may never work in Queensgate Terminal. . . .

In response to this, the General Chairman withdrew his initial position as to the right of employees without Cincinnati Terminal rights to be considered.

FINDINGS

The principal question at issue is whether the language of Paragraph G of Attachment A of CSXT Labor Agreement T-017-90 applies solely to situations within the Cincinnati Terminal

or whether it must be read to apply to vacancies on the home road of an employee who is in the crew consist reserve pool.

The Carrier argues cogently but not persuasively that there is inequity (for the Carrier) in allowing a protected employee to draw earnings without work assignment when assignment is readily available to him on his home road as an alternative to the Carrier being required to add a newly hired employee to its force. In the Arbitrator's view, however, this must yield to the terms of the Queensgate II Agreement and its directly related crew consist agreement embodied in the 1990 agreement. The Carrier would act under Paragraph G of Attachment 1 of the CSXT Labor Agreement T-017-90. More persuasive is the Organization's position that this provision, like the entire 1990 agreement, simply adds to the Queensgate II Agreement, based on the establishment of necessary crew consist agreement (applicable in the Cincinnati Terminal only). This was not accomplished until after the Queensgate II Agreement was formulated, but it was therein anticipated.

Queensgate Agreement II, Article 4 (B) provides in part:

Where the rules of the respective working agreements conflict herewith, the provisions of this Agreement will apply. Rules, or portions thereof, that are not in conflict with this Agreement are preserved.

The 1990 crew consist agreement obviously involved mutual concessions to establish smaller crews. In so doing, the

agreement set protective conditions for those adversely affected, including the establishment of the reserve pool at the Cincinnati Terminal. It is true that the reserve pool Attachment 1, Paragraph G language virtually duplicates the Toledo home road agreement. However, it is reasonable to assume that Paragraph G was created, to repeat for emphasis, as an integral part of the revised crew consist arrangement. Thus, it cannot be read to include the necessity of reserve pool members being available for any vacancy requiring a new hire, wherever situated. If such were the case, the rights of employees applicable at the Cincinnati Terminal, as well as the rights of selection at Cincinnati among the five seniority districts involved, would be diminished.

To put it another way, Attachment 1 of CSXT Labor Agreement T-017-90 calls for protection of employees "not needed to protect the service" in accordance with crew consist agreement, provided "they would have stood for service under application of agreement rules" prior to the crew consist agreement. This covers the employees whose situation is under review here. The remainder of Attachment 1 concerns the various requirements and rights of employees in the reserve pool. Paragraph G, in the midst thereof, must therefore be read to concern positions falling under the crew consist agreement which in turn devolves from the Queensgate II agreement. If Paragraph G were to be designed to refer to vacancies outside these agreements, the parties could have readily so stated.

A W A R D

The question posed by the Organization is answered in the affirmative.

As to the question posed by the Carrier, Paragraph 3 of Attachment 1 of the Coordinated Cincinnati Terminal Crew Consist Agreement is applicable as interpreted in the Findings.

A handwritten signature in cursive script, reading "Herbert Marx, Jr.", followed by a stylized flourish.

HERBERT L. MARX, JR., Arbitrator

NEW YORK, NY

DATED: November 29, 1990