

BEFORE AN
ARBITRATION COMMITTEE ESTABLISHED
UNDER ARTICLE I, SECTION 11 OF THE
NEW YORK DOCK EMPLOYEE PROTECTIVE CONDITIONS

PARTIES	AMERICAN TRAIN DISPATCHERS)	
	ASSOCIATION)	AWARD NO. 3
TO)	
	AND)	CASE NO. 3
DISPUTE)	
	CSX TRANSPORTATION, INC.)	

ORGANIZATION'S QUESTION AT ISSUE:

Whether Train Dispatcher W. R. Johnson was adversely affected in June-1989, rather than December 1988, as a result of implementation of the January 9, 1988 Memorandum Agreement, and thereby entitled, under Section 10(a) of said agreement, to the protective benefits of the New York Dock Conditions commencing in June-1989 rather than any earlier date.

CARRIER'S QUESTION AT ISSUE:

Were Claimant Johnson's 'Displacement Allowance' and 'Protective Period' (as those terms are used and defined in New York Dock) resulting from the transaction implemented at Mobile, Alabama, in December, 1988, correctly determined?

HISTORY OF DISPUTE:

On September 1, 1987 CSX Transportation, Inc. (Carrier or CSXT) pursuant to the authority granted by the Interstate Commerce Commission (ICC) in Finance Docket Nos. 28905 (Sub.-No. 1) and related proceedings, 30053, 31033 and 31106 served notice under Article I, Section 4(a) of the labor protective conditions set forth in New York Dock Ry --Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock Conditions) upon the American Train Dispatchers Association (ATDA or Organization) of its intent to transfer and coordinate train

dispatching functions performed at various locations throughout the property to Jacksonville, Florida. The notice did not indicate that dispatching work or positions at Mobile, Alabama where Claimant held the position of Second Shift Assistant Chief Dispatcher, Position No. 203, would be affected by the transaction. The parties entered into negotiations for an implementing agreement as provided in Article I, Section 4 of the New York Dock Conditions, and such agreement was reached on January 9, 1988.

On November 23, 1988 the Carrier notified the Organization of its intent to transfer certain dispatching work from Mobile, Alabama to Jacksonville, Florida and to combine the dispatching work remaining at Mobile. As a result of that action Claimant's job, Position No. 203, was abolished. On December 6, 1988 Claimant exercised his seniority to the Second Trick Train Dispatcher's position. At the time Position No. 203 was abolished it carried a rate of pay of \$147.99. When Claimant exercised his seniority to the Second Trick Train Dispatcher's position the rate of pay of that position was \$146.52.

On December 9, 1988 the parties reached agreement formally allowing the abolishment of Claimant's position and the transfer of its work to Jacksonville, Florida and agreed that the rate of pay applicable to the dispatching positions remaining in Mobile, including the one to which Claimant had exercised seniority on December 6, would be \$165.00 per day effective December 15, 1988.

Claimant worked the Second Trick Train Dispatcher's position at Mobile from December 1988 until June 6, 1989 when that position and

all other dispatching positions at Mobile were abolished and the work of those positions transferred to Jacksonville. At that time Claimant exercised his seniority to a clerical position at Flomaton, Alabama at a lower rate of pay than the rate of the Second Trick Train Dispatcher's position at Mobile.

On June 21, 1989 the Carrier informed Claimant of his entitlement to benefits under the New York Dock Conditions as provided in the January 9, 1988 Implementing Agreement. The Carrier stated that Claimant's protective period began on December 14, 1988 and would expire on December 13, 1994. Claimant disagreed taking the position that his protective period began in June 1989.

The Organization grieved the Carrier's action. The Carrier denied the grievance. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remained unresolved, and it was handled to arbitration under Article I, Section 11 of the New York Dock Conditions. This Committee was created and heard the dispute. The parties extended the time specified in Article I, Section 11 within which this Committee was to render its decision on the dispute.

FINDINGS:

The question in this case is when Claimant's protective period under the New York Dock Conditions began. Article I, Section 1(d) of the New York Dock Conditions provides that such period begins on the date on which an employee is dismissed or displaced. Article I,

Section 1(b) of the New York Dock Conditions defines a displaced employee as one who ". . . as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions." Article I, Section 1(c) defines a dismissed employee as one who ". . . as a result of a transaction is deprived of employment with the railroad because of the abolition of his position"

The record in this case establishes that at the time Claimant's position as Mobile Assistant Chief Dispatcher was abolished in December 1988 that position carried a rate of pay of \$147.99 per day. The position of Second Trick Train Dispatcher to which Claimant exercised his seniority on December 6, 1988 carried a rate of pay of \$146.52 per day. Clearly, Claimant became a displaced employee on December 6, 1988 because he was placed in a worse position with respect to his compensation as a result of the transaction. The fact that a few days later the Second Trick Train Dispatcher's position at Mobile received a rate increase to \$165.00 a day is irrelevant. The fact remains that as a result of the transaction Claimant exercised his seniority to a position carrying a lower rate of pay than Claimant's abolished position. Accordingly, it was at that time that Claimant became a displaced employee which began his protective period. All allowances are determined from that point in time. See Award No. 66 of Public Law Board No. 3160, Sept. 20, 1982 (Dolnick, Neutral).

Moreover, even if Claimant had exercised his seniority to the Second Trick Train Dispatcher's position at Mobile after the \$165.00 per day rate had become effective, a different result would not occur. The temporary nature of the train dispatcher's positions remaining at Mobile, Alabama, the circumstances leading to the parties' December 9, 1988 letter agreement governing the transfer of dispatcher's work from Mobile to Jacksonville and the rate of pay applicable to the temporary positions remaining, all militate against the Organization's position. See BMWE and So. Ry. Co., Oct. 9, 1985 (Marx, Jr., Neutral) and Cannon, et al and So. Freight Assn., Feb. 3, 1987 (Fredenberger, Jr., Neutral).

In the final analysis we find the Organization's position in this case without merit.

AWARD

The Carrier's Question is answered in the affirmative.

The Organization's Question is answered in the negative.

William E. Fredenberger, Jr.
William E. Fredenberger, Jr.
Chairman and Neutral Member

Michael Nicoletti
Michael Nicoletti
Carrier Member

H. E. Mullinax
H. E. Mullinax
Employee Member

DATED:

Oct. 4, 1993

I DisSENT