

In the Matter of Arbitration
Under Oregon Short Line III, Protective Conditions, Section 11
Pursuant to ICC Finance Docket No. AB-55 (Sub.-No. 258X)

Between:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

And:

CSX TRANSPORTATION, INC.
(Former Western Maryland Railway Company)

Arbitration Committee

Herbert L. Marx, Jr., Chairman and Neutral Member
Kenneth R. Mason, Employee Member
R. S. Timmons, Carrier Member

Hearing held at Baltimore, MD, January 26, 1993

Employes' Question at Issue:

Are the protective conditions of the Oregon Short Line III Employee Protective Conditions, as imposed by ICC Finance Docket No. AB-55 (Sub-No. 258X) applicable to Bridge Operator Bruce Myers, as a result of the abandonment as defined in the above ICC Docket, and abolishment of the Bridge Operator's position on the Spring Garden Drawbridge?

Carrier;s Question at Issue:

Should Bruce M. Myers be considered a "displaced employee" or "dismissed employee" as defined by Section 1 of the Oregon Short Line Protective Conditions that were imposed as a result of the Carrier's abandonment of a section of mainline track less than one mile in length located in the former Port Covington Yard, Baltimore, Maryland?

BACKGROUND FACTS

The Claimant held the position of Drawbridge Operator, requiring the operation of the Spring Garden Drawbridge headquartered at Port Covington, Baltimore, MD. The position also included "track related activities when required". On December 11, 1988 the Carrier abolished the position of Drawbridge Operator. As a result, the Claimant exercised seniority to claim a position as Trackman. It is the Organization's position that the Claimant is entitled, as a result of this action, to benefits under Oregon Short Line III Protective Conditions.

This occurrence is within the framework of two events. The first of these was the Carrier's removal of its Baltimore intermodal operations from the Port Covington Yard to a new Intermodal Container Transfer Facility ("ICTF"), in connection with the new Seagirt Marine Terminal. The movement occurred on October

6, 1988. This did not require ICC approval, and none was sought. There is no dispute that this move greatly enhanced the efficiency of handling intermodal freight movement in Baltimore.

The second event concerned the plans and execution by the City of Baltimore to provide a suitable site for location of a new printing facility for the Baltimore Sun. This involved rezoning of the Port Covington area, which included the sale of Carrier property. This in turn required the abandonment of a segment of mainline track extending less than one mile. This was among more than 100 miles of other trackage which was abandoned, but which did not require ICC review. According to the Carrier, arrangements were made for alternate modes of service to the five firms located in the Port Covington area.

On September 23, 1988 the ICC approved the abandonment of the track in ICC Docket No. AB-55 (Sub-No. 258X), imposing Oregon Short Line employee protective conditions. The track was abandoned on October 6, 1988.

As noted above, the Claimant's position as Drawbridge Operator was abolished on December 11, 1988, and the drawbridge was thereafter left in the open position to permit continuous water traffic. The Claimant displaced to another position.

The Spring Garden Drawbridge, of which the Claimant was the Operator, leads to the Hanover Subdivision. The parties take contrasting views as to the relationship between operation of the drawbridge and the relocation to the ICTF, on the one hand, and the track abandonment, on the other hand.

According to the Carrier:

There were two ways to access the former Port Covington Yard. One was via the Hanover Subdivision on the former Western Maryland Railway and the other was from Riverside Yard on the former B&O Railroad. The route via the Hanover Subdivision traverses [the Spring Garden Drawbridge].

The only trains that operated over this bridge were dedicated Intermodal Trains that serviced the Port Covington Intermodal Facility. When the intermodal functions were relocated to Seagirt on October 6, 1988, the trains were rerouted over a different line and the Hanover Subdivision route became obsolete.

According to the Organization:

The [drawbridge's] normal position was, prior to the abandonment, lined for train traffic. With a daily need to send a train to service one of the Carrier's customers [in the Port Covington area], it was necessary for the Carrier to maintain a full time Bridge Operator. . . . The bridge needed to be opened, for water traffic, as many as five (5) times a day. . . .

To meet [the newspaper's] requirement, the Carrier needed ICC approval to remove the tracks. An approval that would not [have] allowed the Carrier to simply discontinue service to their customers. Thus, the Carrier would have to assist in finding the shipper another means of transporting their goods. Accordingly, the Carrier assisted in making alternate arrangements. . . .

It was the need to service the five (5) firms that required the Carrier to maintain a Bridge Operator. Between these five (5) firms, the Carrier was required to run a train across the [drawbridge] at least once, if not more times a day. The only other route to service these customers would take approximately forty-five (45) minutes longer.

F I N D I N G S

At the outset, it is clear that the transfer of intermodal work from Port Covington to the new ICTF created no protective rights for employees. This is fully supported by the Oregon Short

Line Award (Fredenberger, undated on copy supplied to the Committee), in which it was found that "the Organization cannot establish a causal nexus between the Carrier's abandonment of its main line within the Port Covington Terminal and the relocation of the intermodal facility from Port Covington to ICTF".

This is simply not at issue here. The Organization does not seek protective benefits for the Claimant on the basis of the move to the ICTF, although it is readily discernible that this move reduced in substantial fashion the need for the drawbridge's use.

The Committee finds, however, that examination is required as to the effect of the track abandonment on the remaining (however minor) drawbridge use. The facts are equally clear that the ceding of property for newspaper use (and the resulting track abandonment) resulted in accommodation for the remaining shipper or shippers in the Port Covington area and thus permitted the cessation of use of the drawbridge.

The ICC, in imposing protective benefits, concerned itself solely with this situation, without reference to the separate general relocation to the ICTF. The track abandonment was permitted based on accommodation to the shippers and protective benefits for employees who might be affected. While drawbridge traffic was, in fact, substantially reduced by the ICTF move, the ability to cease use of the drawbridge entirely was a consequence of the rearrangements resulting from the abandonment of the track serving shippers remaining in the area.

In a different but related fact situation, (UTU-CSXT, Walker-Wilsonburg Line, Marx, September 22, 1989), the Award stated:

If the Carrier's contentions were to prevail (that the rerouting was unrelated to the abandonment), then the ICC protection order in connection with the Walker-Wilsonburg line, then engaging no employees, would have been meaningless. The Referee cannot accept that this was intended.

Oregon Short Line III Employee Protective Conditions provide in pertinent part as follows:

1. Definitions. - (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 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 a result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.

The determination here is that the Claimant was affected by the "transaction" (the track abandonment). The Organization makes an arguably sound case that the Claimant was consequently placed in a "worse" position as to the rules (his relative seniority standing) and as to compensation, although the Carrier contends to the contrary as to the latter aspect. The Questions at Issue require an affirmative answer. In the manner that the Questions are set forth, nothing further is here required of the Committee. Specific application of protective benefits, based on the

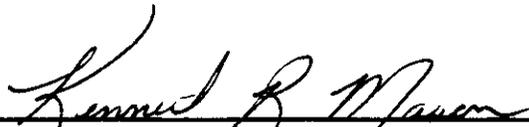
Claimant's resulting circumstances, is in the hands of the parties, subject to arbitral review only if mutual accommodation is not reached.

A W A R D

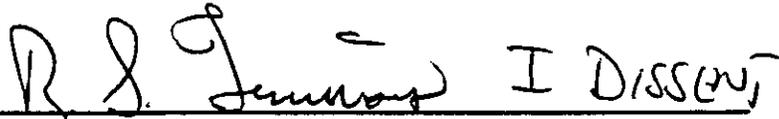
The Questions at Issue are answered in the affirmative.



HERBERT L. MARX, Jr., Chairman and Neutral Member



KENNETH R. MASON, Employee Member



R. S. TIMMONS, Carrier Member

NEW YORK, NY

DATED: April 23, 1993