

Award #7

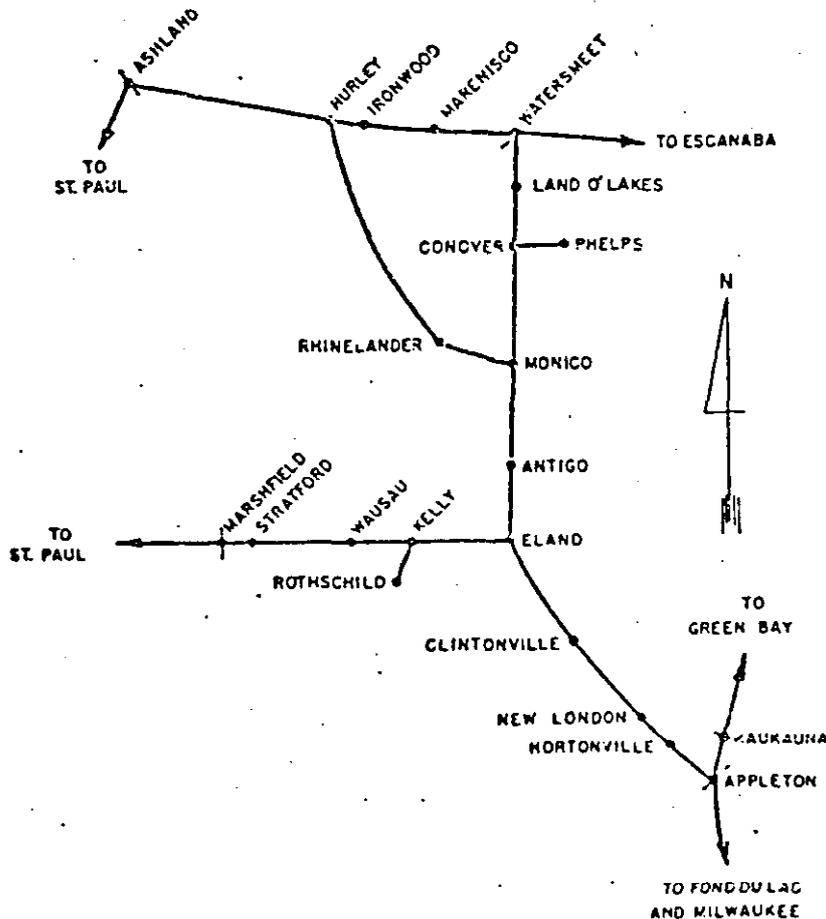
ARBITRATION COMMITTEE
 ESTABLISHED UNDER SECTION II
 OF OREGON SHORT LINE III LABOR PROTECTIVE CONDITIONS,
 I.C.C. DOCKET NO. AB-36 (SUB. NO. 2)

UNITED TRANSPORTATION UNION)	
)	
vs.)	Docket Nos. 1 - 9
)	
CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY)	

OPINION AND AWARD

I. BACKGROUND

The instant dispute involves the interpretation and application of the Labor Protection Provisions of the Inter-State Commerce Commission's decision in Oregon Short Line Railroad and the Union Pacific Company - Abandonment portion Goshen Branch between Firth Mammon, and Bingham and Bonneville Counties, Idaho, (February 9, 1979) which is hereinafter referred to as OSL III. The OSL III conditions were imposed on the Carrier in this case when they petitioned and were granted the right to abandon certain portions of the Carrier's trackage in the State of Wisconsin and Michigan covered by the Northern Consolidated Seniority District (Ashland zone). The territory covered by the various abandonments is depicted below.



The abandonments were the result of at least eight separate petitions by the Carrier to the ICC. The following is a list of the territories covered by the petitions, the mileage involved, the date of the ICC approval, and the date each territory was abandoned by the Carrier:

Points	Mileage	Date of ICC Approval	Date of Abandonment
Conover to Phelps	9.3 mi.	2/20/79	2/20/79
Marenisco to Ironwood	25.0 mi.	12/24/80	3/29/81
Clintonville to Eland	29.7 mi.	3/26/81	6/29/81
Monico to Land O'Lakes	59.2 mi.	5/18/81	11/02/81
Rhinelanders to Ashland	112.0 mi.	7/01/81	11/17/81
Wausau to Marshfield	42.0 mi.	N/A	11/17/81
Land O'Lakes to Watersmeet	9.2 mi.	5/18/81	7/01/82
Antigo to Rhinelanders	47.0 mi.	8/17/82	11/15/82
New London to Clintonville	16.0 mi.	9/13/82	12/23/82
Eland to Antigo	20.0 mi.	8/17/82	1/01/83

As of July, 1981, the Carrier had six way freight assignments and ten yard assignments in this territory. As of January 1, 1983, only three way assignments were still in existence and only five yard assignments were still in existence. The following is a list of the way freight assignments which are still in operation and those which were abolished by the Carrier.

Active	Abolished	Date
1st Appleton S/R (Appleton)	981-982 (Antigo-Ashland)	3/16/82
2nd Appleton S/R (Appleton)	974-973 S/R (Wausau)	11/19/82
282-281 (Wausau-Fond du Lac)	983-984 (Antigo-Rhinelanders)	11/15/82

The following is a list of the yard assignments which are still in operation and those which were abolished:

Active	Abolished	Date
01 Wausau	01 Antigo	10/30/81
01 Appleton	03 Wausau	11/17/81
02 Appleton	04 Appleton	2/11/82
03 Appleton	01 Ashland	3/16/82
01 Kaukauna	01 Rhinelander	3/25/82

The Carrier acknowledges that the three way freight assignments that were abolished since July 1, 1981, were all the result of abandonments. Thus, there is no dispute over the application of the OSL III conditions in respect to these assignments and the employees displaced as a result thereof. The Carrier also acknowledges that the abolishment of the Ashland yard job was the result of an abandonment. However, the parties do not agree on the cause of the abolishment of the other yard assignments. The Carrier generally contends that they were abolished as a result of a reduction in business, and the Union generally contends that they were abolished as a result of the series of abandonments. Thus the neutral focuses his attention on these assignments and the displacements resulting therefrom.

Subsequent to several of the abandonments, pursuant to Article I, Section 4, of the OSL III conditions, the parties negotiated a supplemental agreement to said conditions. The agreement was effective March 16, 1982. However, several outstanding issues under Section 4 were not resolved and were referred to arbitration under Section 4 of the OSL III conditions. Arbitrator Henle issued a decision on these outstanding issues on July 15, 1982.

The application of the OSL III conditions were not in dispute relative to some employees affected by the abandonment transaction. However, a dispute arose surrounding the application of the conditions to nine different employees. The respective claims of these employees are listed by docket number below:

Docket No. 1 (L. C. King) "Claim of Trainman L. C. King, Ashland District, for Oregon Short Line guarantees for the months of September, October, November, and December, 1981, and for January and February, 1982. Claim based under the provisions of the Oregon Short Line Protection Agreement III."

Docket No. 2 (R. A. LaFortune) "Claim of Trainman R. A. LaFortune, Antigo District, for Oregon Short Line Protection guarantee for the months of December, 1981, January, February and March, 1982. Claim based under the provisions of the Oregon Short Line Protection Agreement III conditions."

Docket No. 3 (David D. Smith) "Claim of Trainman David D. Smith, Ashland District, for Oregon Short Line monthly guarantee for January, February and March, 1982. Claim based under the provisions of the Oregon Short Line III protective conditions."

Docket No. 4 (W. L. Sparks) "Claim of Trainman W. L. Sparks, Ashland District, for Oregon Short Line guarantees for the months of September, October, November and December, 1981, and for January and February, 1982. Claim based under the provisions of the Oregon Short Line Protection Agreement III conditions."

Docket No. 5 (T. M. Johnson) "Claim of Trainman T. M. Johnson, Antigo Subdivision for Oregon Short Line Protection guarantee for the months of January, March and April, 1982. Claim based under the provisions of the Oregon Short Line Protection Agreement III conditions."

Docket No. 6 (M. F. Schroeder) "Claim of Trainman M. F. Schroeder, Antigo Subdivision for Oregon Short Line protective guarantee for the months of September, October, November and December, 1981; and for January, February, and April, 1982. Claim based under the provisions of the Oregon Short Line Protection Agreement."

Docket No. 7 (L. A. Lins) "Claim of Trainman L. A. Lins, Antigo Subdivision, for Oregon Short Line Protection guarantee for the month of September, November and December, 1981. Claim based under the provisions of the Oregon Short Line Protection Agreement III conditions."

Docket No. 8 (W. L. Jordan) "Claim of Yard Foreman W. L. Jordan, Antigo Subdivision, for Oregon Short Line Protection guarantee for the month of March, 1982, in the amount of \$288.76. Claim based under the provisions of the Oregon Short Line Protection Agreement III conditions."

Docket No. 9 (J. E. Armstrong) "Claim of Trainman J. E. Armstrong, Antigo Subdivision, for Oregon Short Line protection guarantee for the months of January and February, 1982. Claim based under the provisions of the Oregon Short Line Protection Agreement and its conditions."

The Committee notes that Section 11(a) of OSL III states:

"In the event of the railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, except Sections 4 and 12 of this Article I, within 20 days after the dispute arises, it may be referred by

either party to an arbitration committee. Upon notice in writing served by one party on the other of intent by that party to refer a dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the committee and the members thus chosen shall select a neutral member who shall serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or the highest officer designated by the railroads, as the case may be, shall be deemed the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. Should the members be unable to agree upon the appointment of the neutral member within 10 days, the parties shall then within an additional 10 days endeavor to agree to a method by which a neutral member shall be appointed, and failing such agreement, either party may request the National Mediation Board to designate within 10 days the neutral member whose designation will be binding, upon the parties."

Pursuant to Section 11(a) the Parties mutually selected the undersigned to serve as chairman and neutral member of the arbitration committee. The chairman was advised of this selection in writing on September 8, 1982. A hearing was held in the matter on March 3, 1983, at which the parties presented extensive arguments (both written and oral) and documents in support of their general positions. There were also individual submissions presented by each party on the respective individual dockets. Based on those arguments and the evidence, the following award is rendered.

II. GENERAL CONTENTIONS

As previously mentioned, the parties presented arguments and evidence on several general issues applicable to all dockets and also separate submissions on the individual disputes in dockets one through nine. This award follows the general format utilized by the parties. The general contentions are first noted here followed by discussion of the general contentions. An examination and discussion of the contentions on the individual cases will then follow.

A. The Union

The Union first notes that OSL III conditions support protection of those employees that are affected by a "transaction". "Transaction" is defined along with other important and pertinent terms in the OSL III conditions 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 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."

Protection is operationalized under OSL III conditions for displaced employees by Section 5(a) which states in pertinent part:

"5. Displacement allowances - (a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during this protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him the position from which he was displaced."

Dismissal allowances are provided pursuant to Section 6(a) of the OSL III conditions. Section 6(a) states in pertinent part as follows:

"6. Dismissal allowances. - (a) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to one-twelfth of the

compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the transaction. Such allowance shall also be adjusted to reflect subsequent general wage increases."

It is the Union's belief that all the employees involved in the instant dispute were affected by a "transaction." Further they believe that the Carrier's general position is unconscionable as the Carrier is in a landslide abandonment process within the area involved. Moreover, the Union suggests the Carrier is trying to avoid payment under the OSL III conditions. In this respect they draw attention to the trackage abandoned in this territory noting that the Carrier has abandoned 335.1 miles of a total of 434.1 miles. Because of the vast nature of the abandonments, the Union believes it follows that consequently all men in this territory were affected by the abandonment.

The Union also suggests that the adverse affects of the abandonment were felt long before the actual abandonments. A letter from Local Chairman Evenstad asserted that earnings were dramatically reduced as a result of reduced frequency of way freight operations between Ashland and Antigo for instance. They also submit other letters from Local Chairman Rief which the Union believes establishes that the assignments eliminated by the Carrier were eliminated because of lack of work due to the abandonment and not due to reduction in business. Moreover, certain changes in assignments were, in the opinion of the Union, done in anticipation of the abandonment. In specific respect to the yard engine assignments in Rhinelander and Antigo, Chairman Rief stated in an October 5, 1982, letter the following:

"For six months prior to Rhinelander switch engine being pulled off, the switch engine at Rhinelander only worked an average of 4 1/2 to 5 hours. It is all the Carrier had to do is send cars by the Soo Line and let the Soo Line do more work and off the switch engine came. It was not a lack of business do to the economy. There's more work now than before. No business was lost due to the economy.. The paper mill at Rhinelander is getting 60% of their wood in by trucks because the C.N.W. is abandoning most of their tracks.

The Antigo switch engine would still be on if the cars from the west of Wausau, South of Eland to New London, and north to Monico and Rhinelander to Ashland and Watersmeet were still operating and all cars were still coming into Antigo for Antigo switch engine to line up to go to Fond du lac. It was no economic condition of Antigo why Antigo switch engine was pulled off. Antigo railroad station switching commercially is still just as good, it never was enough for 1 1/2 hours of work. It was the trains going thru Antigo and into Antigo from all points that have been abandoned is why a less need for switching to be needed.

Business isn't that bad. As of now, Johnson, is only man furloughed in Antigo."

Further he stated regarding Rhinelander and Antigo, the following in a November 22, 1982, letter:

"Switching these trains at Antigo was 75% of the Antigo switch engines amount of work performed and if you check the records you will find that the switch engine at Antigo worked eight hours or close to eight hours and some days they worked overtime.

The amount of commercial switching at Antigo was always only about one to two hours only and still was until abandonments started around Antigo and the shippers seen the light and started changing over to trucks.

The Rhinelander switch engine was pulled off March 26, 1982.

There was no shortage or change of amount of commercial work at Rhinelander. The only changes was a lot of work was changed over to trucks hauling the pulp wood to the mill and the Soo Line doing more work hauling coal and pulp wood that normally was hauled by CNW from prior trackage that has been abandoned."

The Union notes that the Carrier in handling the cases on the property has taken a position that the employees were not affected because no transaction was in evidence. The Union disagrees. They also make special note that in negotiations of an implementing agreement a suggestion was placed on the floor that a "diagram" be made of movement of men from the initial abandonment until now. The Carrier agreed in conference that this was an appropriate solution but hence, there has been no action forthcoming in this regard. It is difficult to ascertain every move in the territory without the Carrier's cooperation as they continue the abandonments and no records or offices are in evidence. They suggest such a record is required and they direct attention to Referee Lieberman's award in Illinois Central Gulf Company v. United Transportation Union.

The Union also directs attention to Arbitrator Van Wart's award in Chesapeake and Ohio Railway Company (Pere Marquette District) v. The Brotherhood of Locomotive Engineers and The United Transportation Union (May, 1980.) They believe this award supports the propriety of the claims which they had made in the individual cases.

The Union stresses their assertion that the work was "dried up" by the Carrier and that no economic conditions caused the abandonments. The abandonments had been a long-range policy of the Carrier and by eliminating a portion of the railroad in a piece-meal fashion, it caused a lack of work at another point on the division. As shown by Local

Chairman Reif, this gradual process of reducing trackage caused the abandonments and curtailed work in the area. Moreover they suggest that at some points such as Ashland and Rhinelander, work was given to the Soo Line Railroad or a deal was struck between the Carrier's to perform the service. They note that the Ashland and Rhinelander areas are very stable economically speaking and work there has been of long durability and is still prevalent.

B. The Carrier

The Carrier first asserts with regard to the five yard assignments abolished on the Ashland zone since July 1, 1981, that four of the five yard jobs were abolished because of a decline in business. The yard jobs at Antigo, Wausau, Appleton, and Rhinelander were abolished by the Wisconsin Operating Division as a result of budget cuts made by the Operating Department because of a decline in revenues due to a decline in business on the railroad as well as in the national economy. The only yard assignment which was abolished as a result of the track abandonment was the yard job at Ashland.

As evidence of the fact that the abolishment of these four yard jobs was caused by a general decline in business, the Carrier points to the fact that a large number of employees were furloughed or had their earnings reduced because of the general decline in business throughout the entire railroad. They submit an exhibit which shows the number of employees on the Chicago North Western within the transportation, train, and engine class declined 22 percent from 1981 to 1982, i.e., 3,545 employees in 1981 to 2,752 employees in 1982. There was a similar 22 percent reduction in other employee classes.

In respect to the budget cuts that the Carrier contended forced the abolishment of the Appleton, Wausau, Antigo, and Rhinelander yard assignments, the Carrier notes that in January, 1981, the director of budgets recommended a 5 percent reduction in budget for the entire Operating Department for the third and fourth quarters for 1981. They also note that this recommendation was followed by requested cuts of 7 percent and an additional 6 percent for July; 8 percent and an additional 6 percent for August; 5 percent and 10 percent cuts for December and a general 15 percent reduction in the fourth quarter; 10 percent, 3 percent, and 5 percent cuts added to October; 15 percent and 25 percent cuts in November, and finally 15 percent, 25 percent, and 15 percent cuts in December of 1981. They also note that this exact reduction was not made by each operating division, nor were the cuts equally spread between transportation, engineering, mechanical, and administration; however, these cuts were substantially accomplished by each division and the budget cuts clearly reflected the trend in the decline of business. The budget cuts made during 1981 were repeated during 1982 while the economy continued to decline even more than in 1981. They

believe that the Committee should take judicial note of the economic despair that was prevalent in 1981 and 1982. They believe the Company's revenues and observations of the market clearly forecasts the present downturn long before it became as bad as it eventually became and the Company acted accordingly in order to conserve its cash position.

The Carrier also believes it should be recognized that in making their budget cuts, yard assignments bore the brunt of job cuts in the Operating Department. The reason for this of course is that under the June 25, 1964, National Agreement, as work for yard crews and road crews declined, it became feasible and economically advisable to have switching performed by road crews after abolishment of the last yard assignment. Furthermore, at points where there was more than one yard assignment such as Wausau and Appleton, it was feasible to have the remaining yard assignment at Wausau absorb the work of the abolished yard assignment and the three remaining Appleton yard jobs were able to absorb the work of the abolished yard assignment at that point.

For further demonstration of the impact of the downturn, they draw attention to the fact that for the first time since the UTU Manning Agreement of July 19, 1972, engineer working hours on the Chicago North Western declined during the fourth quarter of 1981 to such an extent, compared with the figures at the end of the previous quarter, that firemen were furloughed in accordance with the provisions of the Manning Agreement.

The Carrier also develops an argument regarding the burden of proof. They assert in general that the Union has not sustained the burden of proof incumbent upon them. They note Section 11(e) in this regard. It states:

"In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove the factors other than a transaction affected the employee."

Applying their analysis of Section 11(e) to the instant case, the Carrier contends that the General Chairman has not identified any specific transactions to support his claim that the Claimants, particularly in Cases 1-5, were displaced as a result of a track abandonment. The Organization has simply based its case on the fact that there were track abandonments on the Ashland zone, ergo that the Claimants are entitled to OSL III protection. This argument, the Carrier notes is similar to the argument by employees in an earlier arbitration involving Chicago North Western under Section 11 of the OSL III conditions.

In that case which involved the American Railway Supervisors Association, the Organization contended that the jobs were not abolished as a result of organizational changes but as a result of track abandonments on the Lake Shore Division over a ten-year period. They direct attention to the portion of the award in which the following is the most pertinent:

"Therefore, the Committee concludes that the Organization failed under Section 11(e) to identify a transaction or transactions and specify the pertinent facts of that transaction(s) linked to the employees who were allegedly adversely affected by the abandonments. Thus, the claim of the Organization for Oregon Short Line protective coverage for the affected employees is dismissed."

The Carrier goes one step further in their argument stating that even if the Board were to consider that the General Chairman had satisfied his obligation under Section 11(e) of OSL III conditions, the Carrier has satisfied its burden of proving that "factors other than a transaction affected the employee." They believe the facts as demonstrated by their submission clearly show that the cause for the abolishment of the positions in Dockets 1-9 was simply a decline in business.

The Carrier, in their submission, also conducted an exhaustive review of a variety of arbitration decisions involving OSL III conditions and other similar labor protective provisions. The cases analyzed by the Carrier include the following:

OSL III Arb. Committee Award, ARSA (Technicians) v. C&NW
Ref. Richard Kasher
WJPA Sec. 13 Committee Docket No. 147
WJPA Sec. 13 Committee Docket No. 157
AMTRAK Arb. Committee 22-11 Award, BRAC v. UP
AMTRAK Arb. Committee Award, UTU v. GTW
AMTRAK Arb. Committee Award, UTU v. UP
AMTRAK Arb. committee Award, BLE & UTU v. C&O
New York Dock II Arb. Committee Award, ATDA v. MoPac
AMTRAK Arb. Committee 20-11 Award No. 4, UTU v. ICG
AMTRAK Arb. Committee 7-11 Award, UTU v. L&N

Generalizing the principles emanating from the cases cited by the Carrier, it is fair to say they generally hold that the fact of abandonment or some other type of transaction occurs does not automatically entitle an employee to benefits unless adverse affects could be said to be a result of the transaction. For instance in WJPA Sec. 13 Committee Docket No. 147, furloughed employees were found not to be affected by Carrier's actions and were found to be affected by seasonal fluctuations and a reduction in traffic. A similar result occurred in WJPA Section 13 Docket No. 157.

Further, in general, the Carrier notes at the AMTRAK Arbitration Committee Awards, among others, generally have held that protection claims are not warranted where the cause of the furlough is the result of a change in the volume and character of employment which is brought on by causes other than a transaction.

The Carrier draws special attention to Referee Zumas' award in New York Dock II Arbitration Committee Award (ATDA v. MoPac) noting that the Board held that New York Dock conditions did not apply because of the lack of a "causal nexus" between the 1976 merger and the transfer of offices. The Carrier believes that expressed in other words, Referee Zumas rejected the employees' century-old "post hoc, ergo propter hoc" fallacy. The Carrier directs attention to Brewer's Dictionary of Phrase and Fable, first published in 1870, which described this argument as follows:

"Post hoc, ergo propter hoc (Lat.). After this, therefore because of this; expressive of the fallacy that because one thing follows another, the former is the cause of the latter. Because a man drinks a glass of beer and then falls over it does not follow that the beer was the cause of his fall. He may have actually slipped on a banana skin."

The Carrier also directs a specific rebuttal to the Union's argument noting that they have contended at times that if there were 10 or 12 trainmen-yardmen positions eliminated on the Ashland zone on account of job abolishments due to track abandonments, that that number of employees subsequently furloughed would be entitled to furlough allowances under the OSL III conditions. The Carrier believes that the AMTRAK Arbitration Committee awards on this issue clearly show that there is no support on this issue. In order to qualify for benefits under the OSL III conditions, as under other protective conditions and agreements, it must be shown that an employee's position was abolished because of the transaction in question or that he was displaced as a result of a chain of bumps originating with such a job abolishment. Further, they do not believe that any indirect impact other than this provides a basis for a sustaining award.

The Carrier in support of their argument that the cause of the abolishment of the disputed yard assignments was the generally deteriorating economic conditions submitted an exhibit which compared the reduction in operations on the Ashland district versus the Fond du Lac district as of January 1, 1981, compared to the operation as of January 1, 1983, on those respective districts. They note that there were 16 assignments on the Ashland district in both yard and road service as of January 1, 1981, and 18 jobs on the Fond du Lac district in yard and road service. As of January 1, 1983, there were 9 assignments in Ashland and 10 assignments on the Fond du Lac district. The Carrier believes that this shows that the Ashland district, overall, did not suffer any greater reductions than the Fond du Lac district which was not subject to abandonment. This would suggest that

the reductions on the Ashland district were also as a result of a reduction in business as was the cause of the reduction in assignments on the Fond du Lac district.

III. DISCUSSION AND FINDINGS ON GENERAL ISSUES

There have evolved certain general principles from the interpretation of ICC imposed protective provisions and from the interpretation of other similar protective conditions. The most notable and pertinent tenet relates to the need for the petitioner to show a causal relationship between his furlough or reduction in compensation and the "transaction", i.e., an abandonment or some other action taken pursuant to an ICC-approved petition. None of the awards in this arena state or summarize as well this point as Referee Zumas' award in New York Dock II -- Missouri Pacific Railroad Company and American Train Dispatchers Association, ICC Finance Docket No. 27773 (July 31, 1981). Referee Zumas stated:

"It is equally clear, however, that the Commission has viewed the imposition of protective benefits as requiring a proximate nexus between the actual merger and the Carrier action at issue. Every action initiated subsequent to a merger cannot be considered, ipso facto, to be "pursuant to" the merger. There must be a causal connection. As it relates to the applicability of New York Dock II to a merger, such nexus is implicit in the term "pursuant to." Otherwise, terms such as "in accordance with," "subsequent to", "following" and "changes consequent upon" have no meaning; they become empty words rattling in a semantic vacuum. For example, in the Southern Ry. - Control - Central of Georgia Ry. case, the Commission stated:

'(T) The 'effect' of subsequent internal technological improvements by either of the (two consolidating) carriers, even if made possible by improved financial circumstances partly attributable to the unification of control, is too indirect and remote to be considered a result of the transaction; and it is not our intention that employees affected by such internal improvements shall be entitled to the benefit of the conditions.' (Underscoring added). Southern Ry. - Control - Central nom. Railway Labor Executives Assn. v. United States, 226 F. Supp. 521, (E.D. Va.), vacated on other grounds, 379 U.S. 199 (1964).

It is the absence of any such causal nexus in this case that defeats the application of the term transaction."

This Neutral adopts and endorses this view taken by Referee Zumas. The mere fact that a position was abolished or an employee's earnings are reduced in some proximate geographic area and time frame as a "transaction" does not per se establish that the abolished assignment was caused by the transaction; there could be other factors. Some of the awards cited by the Carrier demonstrate some of the reasons, other than transactions, that have been considered the cause of adverse employee impact. Certainly, without question, one of the defenses available to Carriers in this respect is the "reduction in business" defense, i.e. arguing that there was a reduction in the volume of traffic and/or employment which was the cause of the abolishment rather than the transaction.

The "nexus" principle therefore requires it be shown that an individual employee was "displaced" or "dismissed" because of the transaction. This is based on the language in Section 1 which defines "displaced and "dismissed" employees as those placed in certain positions "as a result of a transaction." Moreover, the causation must be direct and not general, although both parties agree that an employee is affected if they are displaced through a series or chain reaction of seniority bumps caused initially by an employee displaced due to a transaction.

The Committee, with these principles in mind, would first like to discuss whether there was any causal relationship between the abolishment of the disputed yard assignments and the various abandonments that took place in the Ashland zone. Only if a causal relationship is established between the abolishment of the assignments in general can there be any impact shown on any individuals in the specific. Therefore after a review of the general factor of causation as it relates to the assignments and the abandonments, a review will be made of the specific individuals.

In respect to the Appleton and Wausau yard assignments, which were eliminated on February 11, 1982, and November 17, 1981, respectively it is the finding of the Committee--assuming for the sake of argument that the Union identified the transaction--that the Carrier has put forth convincing evidence that the proximate cause of the abolishment was for reasons other than the abandonments in the Ashland zone.

The comparisons that the Carrier drew between the reduction in employment and operations on other parts of the railroad when considered in conjunction with the fact that both Wausau and Appleton are still viable operations, is convincing to some degree that the abolishment of the yard engines at these points was not the result of abandonments. These comparisons show that at other points on the railroad, reductions in operations also occurred and the reductions in Appleton and Wausau were no more severe than in

other places. This fact alone does not cement the Carrier's case, however. The additional factor which does make their defense acceptable is the fact that because these points are still viable operating points--that is there is industrial switching and road engines operating in and out of these points--it is therefore plausible to believe that with an increase in economic activity and traffic, it is likely or possible that these assignments will be renewed. This possibility is supportive of the Carrier's contention because one indicative test of whether a decline in business was the cause of the abolishment of an assignment is whether, with an increase in traffic, the disputed assignment will be renewed in one form or another. In this case, this seems likely to occur. For instance, there is sometimes enough switching work at Wausau to require an extra switchengine; therefore, with a sustain increase in traffic, it is likely that the extra switchengine would become regular. In respect to Appleton, even some of the Union correspondence recognized that there was some loss of business which impacted on the abolishment of this position.

In respect to the Rhinelander yard engine, it is not necessary to resolve whether this was abolished as a result of economic conditions or an abandonment because none of the Grievants claimed they were affected directly by the abolishment of this assignment.

In respect to the yard assignment at Antigo, it is the finding of the Committee that (1) the Union sufficiently identified the transaction that affected the assignment, i.e., the cessation of all freight service in and out at both points due to track abandonments and (2) the Carrier has failed to convince the Committee that factors other than a transaction caused the abolishment of these positions. Further it is the Committee's finding that even though the abolishment occurred prior to the specific abandonments at this point, the Carrier's action nonetheless affected the assignments pursuant to Section 10 of the OSL III conditions. Section 10 reads:

"Should the railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled to under this appendix, this appendix will apply to such employee."

The Committee recognizes the same economic and budget constraints were faced at Antigo as at Wausau and Appleton. However, there is a critical difference in the situations which justifies the Committee's finding that the economic factors caused one set of abolishments and not the other.

Because all freight service by the Carrier ceased a short time later in and out of Antigo, it is difficult to believe that the abandonment plans did not have a proximate causal impact on the decision to eliminate the yard engine at Antigo. The Committee made note of the fact that the intent to abandon the trackage leading in and out of Antigo was announced prior to the abolishments. Under the individual facts and circumstances of this case, it is further difficult to be convinced that a reduction in traffic was the cause of the abolishment unless the Carrier could show that the volume of traffic or operations significantly dropped below the pre-abandonment levels during the period up to the date of the abolishment. If traffic dropped substantially below the normal levels--which are presumed to be low because of the need to abandon--it would suggest that economic conditions caused the necessity to abolish the job prior to the abandonment especially if there was a correlation to reduce traffic patterns on other points of the railroad. However, the Carrier did not show this to be the case; in fact, in respect to Antigo, they failed to rebut Employee Exhibit K which asserted that approximately 75 percent of the switching activity at Antigo was related to track movements in and out of Antigo as opposed to industry switching.

The general data presented by the Carrier was not enough to overcome the presumption in this record that a yard assignment--in a territory subject to total abandonment--which is abolished after a petition to abandon is filed, is likely to be related to that abandonment. For instance, the Carrier failed to rebut the Union's contention that the abandonments of the track between Wausau to Stratford and Eland to Clintonville and Ironwood to Watersmeet severely reduced the switching activity at Antigo. The Union claimed that it was common for cars generated in these territories to be switched at Antigo and that this traffic constituted 75 percent of the Antigo switch engine's work.

Thus, to summarize the general findings, it has been determined that the Antigo yard engine was abolished as a result of a transaction. While the Committee finds this to be the case, it still must be determined whether any of the Claimants in Dockets 1-9, as individuals, were directly affected or affected by a chain reaction of bumps emanating from the abolishment of the assignments. In this respect, the Committee is rejecting the Union's general contention that because there were abandonments, everyone must be "affected." Whether an individual becomes a "displaced" employee not only depends upon whether there was a general causal nexus between the abolishment of a position and a transaction, but whether there was in fact a specific adverse impact on that individual. This adverse impact is defined in the case of a displaced employee as "...an employee of the railroad who, as a result of the transaction is placed in a worse position with respect to his compensation and rules governing his working conditions." A dismissed employee is

defined as "...an employee of the railroad who as a result of a transaction is deprived of employment with the railroad because of the abolishment of his position or loss thereof or the exercise of seniority rights by an employee whose position is abolished as a result of a transaction."

IV. INDIVIDUAL CLAIMS

Docket No. 1 - L. C. King

Employee King has a seniority date of November 6, 1978. He contends that he was displaced on September 11, 1981, as the result of line abandonments. He stated in his claim, "as of September 13, 1981, after returning from conductor's school, I was unable to hold any jobs. I worked the Rhinelander Extra Board 'till November 13, 1981, and since on the Antigo Extra Board." He further asserted, "I am protected under the Oregon Short Line Agreement because my position as Brakemen, Switchman, and Conductor has been affected from working five days from three to five days to one or two days a month."

The Carrier notes that prior to September 11, 1981, the Claimant was the regularly assigned Yardman on the Yard Job 01 at Rhinelander. While he was at conductor school, he was displaced by Senior Employee A. Budleski. They note that the Claimant had only been affected as the result of a chain reaction of displacements caused by the manning of the one of the two crews operating inner-divisional wayfreight assignments Nos. 281-282 being given to the Fond du Lac district men by agreement between the Organizations involved and the Carrier, which occurred in the latter part of August, 1982. This resulted in the loss of three positions for Trainmen on the Ashland district.

The Committee, after considering the contentions in respect to Mr. King relative to the general principles enunciated above, finds that he was not adversely affected, causally speaking, as a result of a transaction. The Union has not convincingly identified a transaction which would specifically have affected Mr. King. It is apparent that he was not affected by a transaction, but affected instead by the normal exercise of seniority rights. Moreover, the seniority bump was not part of a chain reaction initiated by a transaction; it was initiated by a reduction in positions on the Ashland Seniority Zone because of the exchange of district crews between the Fond du Lac district and the Ashland district under an inner-divisional wayfreight assignment agreement. Therefore, the Claim must be denied.

Docket No. 2 - R. A. LaFortune.
Docket No. 3 - D. A. Smith

It is noted that Claimant LaFortune's request was for December, 1981, and January, February, and March, 1982. It is also noted that he was one of the least senior employees on the district at the time of the Claim. As can best be determined from the record, Claimant LaFortune was not holding a regular job as of or after November 16, 1981, and most probably for some time before that.

Employee Smith's claim is for January, February, and March, 1982. Mr. Smith has the same seniority date as Mr. LaFortune.

The Union's general contention is that because there were positions lost due to the abandonments, employees like the Claimants who normally worked Extra Boards were per se affected. However, this theoretical possibility must be read in light of the specific OSL conditions which clearly require the Union to identify the transaction and to draw a causal connection between that transaction and the adverse compensatory situation in which the Claimant is supposed to be in. In the case of these employees and others similarly situated, their work opportunities were sometimes limited apart from any considerations surrounding the abandonments. When it is recognized that their work opportunities were normally limited as extra employees and further limited by reductions in assignments due to the inter-divisional crew changes and further limited by the economic factors at Wausau and Appleton, it is therefore difficult to determine what factors to what extent caused the alleged diminution of their compensation.

The factors affecting the earnings may be due in part to abandonments or they may be due to the normal fluctuations in the earnings of an extra employee or due to the fluctuations in work opportunities due to the decline in business. The problem is that OSL III and other labor protective conditions require an identifiable and discernable connection between reduced earnings and a transaction. In this case, the cause cannot be determined with proximate precision and where it cannot, the protective conditions, as interpreted many times, do not apply.

Docket No. 4 - W. L. Sparks

Mr. Sparks seniority date is July 16, 1979. Mr. Sparks secured a position on Train 281-282 as of June 18, 1981. He was bumped off this assignment as of July 20, 1981, by Mark Schroeder. He worked vacation vacancies until September, 1981, when he reverted to the Extra Board. After that time he claims that he was unable to work steadily off the extra list.

He claims the abandonments caused this irregularity in his assignments.

In reviewing the record relative to this case, it appears that the initial displacement by Mr. Schroeder was not the result of any abandonment. As stated in Docket Nos. 2 and 3, a causal relationship between the abandonment and the diminution of wages is not readily discernable.

Docket No. 5 - T. M. Johnson

Mr. Johnson's seniority date was July 30, 1979, and like the Claimants in Docket Nos. 1-4 was furloughed on February 22, 1982.

The Claimant was displaced from the Extra Board at Antigo by Employee P. Carroll approximately December 29, 1981. Mr. Carroll had been working on Job 03 at Wausau which was abolished on November 17, 1981.

The Committee has already found that the elimination of the Wausau Yard Engine was not related to abandonments. Therefore the Claimant was not affected by a seniority bump emanating from a transaction. Beyond the time he was bumped by Carroll, the Claimant's case is very much like Docket Nos. 1 - 4. Because of his low position in seniority, the elimination of three positions on Train 281-282, the loss of approximately six positions on the Wausau and Appleton Yard Engines, and the normal fluctuations in an Extra Board employee's wages, a causal nexus between the abolishments and his furlough cannot be found.

Docket No. 6 - M. F. Schroeder

The Committee has reviewed the record in respect to Mr. Schroeder. He claims to have been affected "directly or indirectly" by the various abandonments. He states that he was "indirectly" affected on August 22, 1982, when he was displaced from Train 281-282 by Employee D. Kolz. The Carrier noted that Kolz was displaced from one of the two 281-282 crews when the Fond du Lac district took over one of the assignments. Mr. Schroeder, after displacement by Mr. Kolz, then went to the Rhinelander yard job where his earnings were reduced and where he was eventually displaced. He was displaced again by Mr. Kolz on November 7, 1981. Mr. Kolz had been working the Wausau yard job.

A comparison of the facts surrounding Mr. Schroeder to the principles laid out above does not yield a conclusion that he was directly or causally affected by a transaction. He was affected, instead, as a result of seniority displacements--the cause of which were unrelated to abolishments.

Docket No. 7 - L. A. Lins

Mr. Lins' claim is for September, November, and December, 1981. It is noted that the parties agree that as of March 15, 1982, Mr. Lins was a protected employee.

In respect to the instant claim, it is noted that he was displaced August 24, 1981, from Train 281-282. It has already been determined that any displacements as a result of this change in assignments was not a transaction. After this point, Mr. Lins went to the Wausau freight assignment on August 24, but the Carrier asserts that on August 30, 1981, he voluntarily gave up this position to work the Antigo Extra Board. This assertion is undisputed in the record. Therefore, it is the conclusion of the Committee that at this point in time he was not protected because the displacement from Train 281-282 was not a transaction and because he voluntarily gave up an assignment which does not, under the provisions of the OSL III conditions, effectuate protective conditions.

The next event which may have affected the Claimant was the abolishment of the Antigo yard engine on October 30, 1981. This may have placed him in a worse position; however, a careful review of the record fails to establish that he was placed in a worse position between October 30, 1981, and March, 1982, when through mutual agreement of the parties, he was protected.

Docket No. 8 - W. L. Jordan

It is noted that Mr. Jordan's seniority date is September 20, 1950. His claim is for protection for the months of January, February, and March, 1982. He bases his claim on the fact that he was an occupant of the yard job at Antigo as of the date of its abolishment on October 30, 1981. It is noted that after the abolishment of this position, he went to Wausau and later was on vacation from December 4 through December 31, 1981.

It is the finding of the Committee that, because he occupied the Antigo job and because of the previous finding that the Antigo yard job was abolished as a result of the abandonments, Mr. Jordan was affected by a transaction. However, to determine whether any monetary protection is due, it must be determined whether he was placed in a worse position in respect to compensation subsequent to the date of this transaction. The record is incomplete to a degree for the Committee to make a precise determination on this point. Therefore the Committee will remand this matter to the parties for their review and determination as to whether he was placed in a worse position in respect to compensation, and if so, what his monetary guarantee should be. The Committee will retain jurisdiction if no agreement can be reached on the amount of his guarantee.

Docket No. 9 - J. E. Armstrong

The original claim was for January and February, 1982, and subsequent claims were added for April through September, 1982.

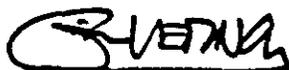
The Claimant was working as a Yardman on the yard assignment in Wausau when he was injured on October 27, 1981, and was off on account of injury or personal illness until December 15, 1981. In the meantime, Mr. Jordan placed himself in the Wausau yard engine effective November 1, while the Claimant was off on account of the injury. This effectively displaced the Claimant from the Wausau yard engine.

It is the finding of the Committee that Mr. Armstrong was affected by a transaction inasmuch as he was displaced from his assignment by Mr. Jordan whose position was abolished as a result of a transaction.

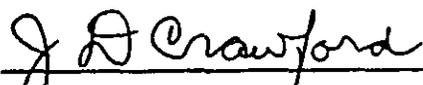
As in Mr. Jordan's case, the Committee remands Mr. Armstrong's case to the parties to determine whether this placed him in a worse position in terms of compensation and to determine the exact amount of his guarantee.

AWARD

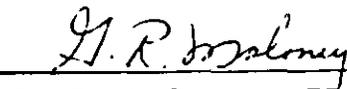
Dockets 1 -7 are disposed of as indicated in the Findings above. The parties are ordered consistent with the Findings to meet within 30 days to give further consideration to Dockets 8 and 9. This decision is based solely on the transactions identified by the employees in the individual cases and the evidence and arguments presented in connection therewith.



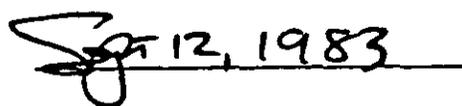
Gil Vernon, Chairman and
Neutral Member



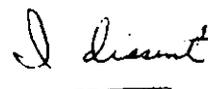
J. D. Crawford, Carrier Member



G. R. Maloney, Employee Member

Dated: 

Sept 12, 1983



I dissent