

Award #8

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A MATTER BEFORE THE ARBITRATION COMMITTEE
ESTABLISHED UNDER SECTION 11 OF THE LABOR
PROTECTIVE CONDITIONS OF OREGON SHORT LINE
RAILROAD AND THE UNION PACIFIC RAILROAD COMPANY -
ABANDONMENT IN ICC DOCKET NO. AB-36 (SUB. NO. 2)

.....
BROTHERHOOD OF RAILROAD
SIGNALMEN

vs.

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

: Docket No. 1
: BRS File No: OSL-G-1
: C&NWT File No: 79-83-2
: Claim for Protective Allowance, by
: Douglas Prentice, Claimant
: Claim Denied
: August 29, 1984
.....

Members of Arbitration Committee

Fred Blackwell, Chairman/Neutral
W. B. Harwell, Jr., Brotherhood Member
B. E. Simon, Carrier Member

STATEMENT OF CLAIM

Claim of the General Committee Brotherhood of Railroad
Signalmen, on the Chicago & North Western Transportation Company,
that:

(a) Carrier is in violation of the Oregon Short Line
III Protective Agreement, as it has failed to compensate Mr. Doug-
las Prentice his protective rate of pay starting January 1, 1983.

(b) Carrier now be required to compensate Mr. Prentice
his protective rate as required by the Oregon Short Line III
Agreement. (Note: "Oregon Short Line III" refers to an Inter-
state Commerce Commission Decision effective February 9, 1979 en-
titled Oregon Short Line Railroad and the Union Pacific Railroad
Company - Abandonment portion Coshen Branch between Firth and
Ammon, in Bingham and Bonneville Counties, Idaho.)

OPINION

I. NATURE OF CASE AND JURISDICTION

This case arises under the Oregon Short Line Protective

RTB 10-9-84

This copy of the Award, our file ARB.-3680 is for your file and information. RTB 10-9-84
cc: All Vice Presidents
H. S. Gerth, GC (Your file is being returned herewith).
Douglas Prentice, Claimant - 958E
F. Nobil, Local Chairman -

FRED BLACKWELL
ATTORNEY AT LAW

19129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000

Conditions granted by the ICC in Docket No. AB-36 (Sub. No. 2), 360 ICC 91 (1979), which were applied to the Carrier's abandonment of trackage between Mile Post 187.9 near Eland, Wisconsin, and Mile Post 256.0 near Rhinelander, Wisconsin, ICC Docket No. AB-1 (Sub. No. 136).

The parties established the herein Arbitration Committee under Section 11 of the Oregon Short Line III Agreement, and framed the herein issue referred to in the Statement of Claim.

A hearing on said issue was held at the Office of the Carrier, Chicago, Illinois, on June 12, 1984, at which both parties presented written submissions and oral argument on the case to the Arbitration Committee. Accordingly, the matter is properly before this Committee for determination under the aforementioned protective conditions.

II. FACTS

There is little or no dispute about the facts of this case.

Claimant Douglas Prentice, with a hire date of January 2, 1980, was the incumbent of a Signal Maintainer position at Warrens, Wisconsin, immediately prior to the Carrier's August 1982 abandonment of about sixty-eight (68) miles of track between Eland and Rhinelander, Wisconsin. In connection with this track abandonment, which was subject to Oregon Short Line Railroad - Abandonment - Goshen Branch, ICC Docket No. AB-36, the Carrier abolished

FRED BLACKWELL
ATTORNEY AT LAW

19129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000

a Signal Maintainer position at Rhinelander, Wisconsin, which was held by Mr. J. Lapcinski. Mr. Lapcinski exercised his seniority to displace Mr. Foreman, the incumbent of a Signal Maintainer position at Eau Claire, Wisconsin. Mr. Foreman, in turn, displaced Claimant Prentice from his Signal Maintainer position at Warrens, Wisconsin.

Claimant Prentice then exercised seniority to take a position at Proviso Yard in the Chicago area. He was afforded moving expense under Section 9 of Oregon Short Line III for his move from Warrens to Chicago; and he worked this new position at Proviso from August thru December 1982 without any wage loss as compared to his former position at Warrens.

In late 1982, as a result of a decline in business, the Carrier abolished fifty-nine (59) jobs in the Signal Department. Claimant Prentice was among the junior Signalmen working at the time and he was not able to place himself on a retained position. Thus, he was furloughed effective January 1, 1983.

Claimant Prentice made claim for a protective allowance under the Oregon Short Line Protective Conditions and such claim has been denied. The matter has been discussed but not resolved by the parties, and this case resulted.

III. POSITION OF THE PARTIES

The position of the Organization is that the Claimant's

RED BLACKWELL
ATTORNEY AT LAW

19129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20878
(301) 977-5000

initial displacement from his Signal Maintainer position at Warrens, Wisconsin, due to the rail abandonment in August 1982, rendered him a "displaced employee" and thereby entitled him to a protective allowance under Section 5 of the Oregon Short Line protective provisions (displacement allowances); that once this entitlement came into existence, such entitlement could be ended under Section 5 only by the Claimant's resignation, death, retirement, or dismissal for just cause; and that his dismissal in January 1983 served to modify his status as a "displaced employee" to that of a "dismissed employee", thereby entitling him to the monthly protective allowance provided in Section 6 of the Oregon Short Line III (dismissal allowances).

The position of the Carrier that its denial of the claim for a protective allowance is proper because the Claimant's furlough in January 1983 was the result of declining economic conditions, and not the result of the track abandonment. In these circumstances the Carrier asserts that the Claimant does not come within the definitions in the protective conditions respecting the terms "displaced employee" and "dismissed employee" and consequently, he is not entitled to the claimed allowance due to being a displaced and/or dismissed employee.

IV. PERTINENT PROVISIONS FROM OREGON SHORT LINE III PROTECTIVE CONDITIONS

The provisions from the Oregon Short Line III Protective Conditions which govern this dispute, now follow:

ED BLACKWELL
ATTORNEY AT LAW

129 ROMAN WAY
SAINTERSBURG,
MARYLAND 20879
(301) 977-5000

"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.

* * *

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 his protective period, be paid a monthly displacement allowance equal to the difference between the monthly

ED BLACKWELL
ATTORNEY AT LAW

19129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000

compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period), and provided further, that such allowance shall also be adjusted to reflect subsequent general wage increases.

If a displaced employee's compensation in his retained position in any month is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of his voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but if in his retained position he works in any month in excess of the aforesaid average monthly time paid for during the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position.

* * *

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for justifiable cause.

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.

* * *

(d) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure to return to service after being notified in accordance with the working agreement, failure without good cause to accept a comparable position which does not require a change in his place of residence for which he is qualified and eligible after appropriate notification, if his return does not infringe upon employment rights of other employees under a working agreement.

* * *

9. Moving expenses - Any employee retained in the service of the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the transaction, and who within his protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects for the traveling expenses of himself and members of his family, including living expenses for himself and his family and for his own actual wage loss, not exceed 3 working days, the exact extent of the responsibility of the railroad during the time necessary for such transfer and for reasonable time thereafter and the ways and means of transportation to be agreed upon in advance by the railroad and the affected employee or his representatives; provided, however, that changes in place of

ED BLACKWELL
TORNEY AT LAW

19129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000

residence which are not a result of the transaction, shall not be considered to be within the purview of this section; provided further, that the railroad shall, to the same extent provided above, assume the expenses, et cetera, for any employee furloughed with three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provision of this section unless such claim is presented to railroad within 90 days after the date on which the expenses were incurred."

V. FINDINGS AND DISCUSSION

After due study of the foregoing and the whole record, it is concluded that the claim is not supported by the facts of record and the cited provisions of the Oregon Short Line Protective Conditions in that the record fails to show that the Claimant was deprived of employment as a result of the transaction to which the protective conditions attach. Accordingly, the claim for a protective allowance will be denied.

In reaching this decision it has been recognized that the Claimant received moving expenses under Section 9 of the Oregon Short Line Protective Conditions, to defray the cost of his move from Warrens, Wisconsin to the Chicago area; and that this move was necessitated by the track abandonment in August 1982 and the resulting displacement of the Claimant from the Signal Maintainer position at Warrens. However, this moving expense entitle-

ED BLACKWELL
TORNEY AT LAW

19129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000

ment accrued to the Claimant under Section 9 of the protective conditions because he was "required to change the point of his employment as a result of the transaction" to which the protective conditions attach, but not because he was a "displaced" or "dismissed employee" as a result of the transaction. More specifically, this entitlement to moving expense is a right that is provided independently of the entitlement to displacement or dismissal allowances under the Oregon Short Line Protective Conditions, and the criterion which gives rise to the moving expense entitlement is not the same criterion which gives rise to entitlement to a displacement or dismissal allowance.

In other words the Claimant's situation in August 1982 met the moving expense criteria of the applicable protective conditions, but not the displacement allowance criteria; and on the facts now existing, the Claimant's prior receipt of moving expenses has no significance in assessing his claim for protective allowance as a result of his furlough in January of 1983.

Beyond this the central consideration in this case is that under the Oregon Short Line Protective Conditions, entitlement to protective benefits (displacement or dismissal allowance) is dependent upon the existence of a causal connection between the factor on which a benefit claim is based and the transaction to which the Oregon Short Line Conditions were imposed in ICC Docket No. AB-1 (Sub. No. 136), namely the abandonment of track between

FRED BLACKWELL
ATTORNEY AT LAW

19129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000

Eland and Rhineland, Wisconsin.

Thus the Claimant's furlough in January 1983 would bring him under the dismissal allowance provisions of the protective conditions if, and only if, that furlough was the causal result of the track abandonment. This is made crystal clear by the following provisions from the Oregon Short Line Protective Conditions:

"Labor protective conditions to be imposed in railroad abandonment or discontinuance pursuant to 49 U.S.C. 10903, (formerly section 1(a) of the Interstate Commerce Act) are 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."

In applying these provisions to the facts of record it is inescapable that the Claimant's furlough was the result of a decline in business in late December 1982, and not as a result of the track abandonment in August 1982. In consequence, it cannot be said that the Claimant "as a result of a transaction" (i.e., the track abandonment) was "deprived of employment with the rail-

ED BLACKWELL
TORNEY AT LAW

9129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000

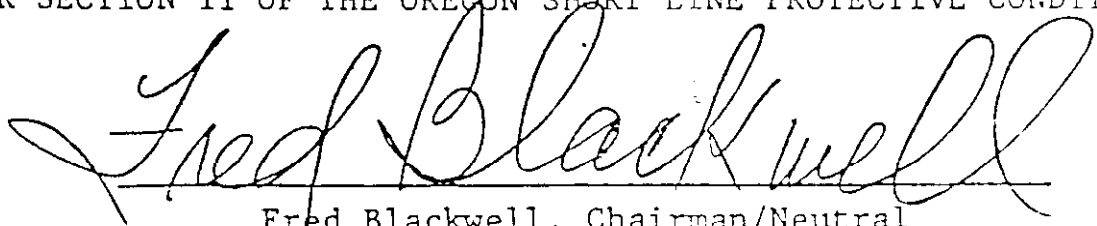
road" within the meaning of Section 1 (c) of the Oregon Short Line Protective Conditions. Accordingly, the required causal connection between the basis of the benefit claimed herein and the transaction is not established by the facts of record and the Claimant is thus not entitled to claimed dismissal allowance.

For a like ruling, see WJPA Docket No. 109, Lighter Captains' Union, Local 996, I.L.A., AFL-CIO and Erie-Lackawanna Railroad Company.

DECISION AND AWARD

The claim is not supported by the evidence of record and the cited provisions from the Oregon Short Line Protective Conditions and accordingly, the claim will be denied.

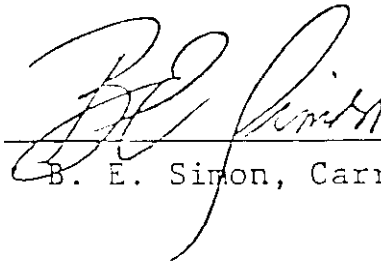
BY DIRECTION OF THE ARBITRATION COMMITTEE ESTABLISHED UNDER SECTION 11 OF THE OREGON SHORT LINE PROTECTIVE CONDITIONS.



Fred Blackwell, Chairman/Neutral



W. B. Harwell, Jr.,
Brotherhood Member



B. E. Simon, Carrier Member

August 29, 1984

FRED BLACKWELL
ATTORNEY AT LAW

19129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000