



Answer # 13

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 In the Matter of the Arbitration Between -
 UNITED TRANSPORTATION UNION- -
 YARDMASTERS DEPARTMENT -
 and -
 BALTIMORE AND OHIO RAILROAD COMPANY -

OPINION AND AWARD
 (DeGenova Claim -
 OSL Conditions)

The hearing in the above matter, upon due notice, was held on January 22, 1986, in the offices of the Baltimore and Ohio Railroad Company in Baltimore, Maryland, before Irwin M. Lieberman, serving as Chairman of the Arbitration Committee, established under provisions of Section 11, Article 1, of the Oregon Shortline Railroad Company abandonment (360 I.C.C. 91(1979)). Carrier's member of the Committee is E. F. Norton, Jr., and the Union's member of the Committee is R. C. Arthur.

The case for the Baltimore and Ohio Railroad Company, hereinafter referred to as the Carrier, was presented by E. F. Norton, Jr., Manager of Labor Relations. The case for the Railroad Yardmasters of America (United Transportation Union-Yardmasters Department), hereinafter referred to as the Union or Organization, was presented by R. C. Arthur, General Chairman. At the hearing, the parties were afforded full opportunity to present evidence and argument and to examine and cross-examine witnesses. Both parties presented written submissions with their basic case and both parties also filed post-hearing briefs at the request of the Chairman of the Arbitration Committee.

ISSUE

The issue involved herein from the entire record may be posed as follows:

"Whether Yardmaster R. P. DeGenova was adversely affected by the abandonment of track by Carrier between Willow and Akron Junction, Ohio, on December 21, 1984 and for that reason is entitled to protection under the provisions of the Oregon Shortline Decision? "

Neither side raised any procedural issues.

BACKGROUND

By decision dated October 23, 1984, the Interstate Commerce Commission approved Carrier's abandonment of certain trackage between Willow and Akron Junction, Ohio (hereinafter referred to as the CT&V Subdivision) in Docket No. AB-19(Sub. No. 87X). In its findings in that decision, the ICC imposed the Oregon Shortline Conditions (hereinafter referred to as OSL Conditions). It is well established that those protective conditions are only applicable to employees who are adversely affected as a direct result of the particular transaction.

Pursuant to the ICC Order, Carrier gave notice to its various labor organizations on September 6, 1984, of its intent to abandon a portion of the CT&V Subdivision effective with the expiration of 90 days or on December 6, 1984. In that notice Carrier indicated that it expected that there would be one engineer, one fireman, one conductor and two brakemen on the Newburgh Local whose positions would be abolished, as well as two trackmen headquartered in Cleveland. Following notification by Carrier to the effect that the third shift yardmaster position (11:00 P.M. to 7:00 A.M.) would be abolished on November 10, 1984, the incumbent, the claimant herein, filed a claim for protection on November 6, 1984. By letter dated November 20, 1984, the Division Manager responded to the claimant herein in the following fashion:

"This has reference to your request of November 6, 1984, for protection under the Oregon Shortline 2 Agreement or Brooklyn Dock Agreement commencing with the end of your tour of duty as third trick yardmaster at Akron Jct., Ohio, on November 9, 1984.

The abolishment of your position and the abandonment of the upper CT&V Subdivision are unrelated. The elimination of your position as third trick yardmaster was as a result of changes in the Akron Yard operation. We have reduced third trick to one crew who serves Goodyear and other industries. Because there is now little or no switching in the yard on third trick, we no longer need a yardmaster.

Therefore, the abandonment of the upper CT&V Subdivision has not been yet affected and will not have an adverse effect on your abolished position. Your claim for protection is declined in its entirety."

Subsequently, the General Chairman, representing the claimant herein, appealed the claim and indicated Carrier improperly failed to serve the required 90-day notice on the Yardmaster Organization. Following appropriate handling on the property, the issue was brought to this arbitrator in accordance with the provisions of Section 11, Article 1, of the OSL indicated above.

The record indicates that the ICC abandonment order and authorization resulted in the abolishment of the Newburgh Local which ran between Akron and Cleveland, Ohio. According to the record, the freight formerly handled by that local was taken west to Sterling, Ohio, for setoff and movement on to Cleveland by a western route.

On a factual basis there are a number of disputes. Carrier indicated that the Newburgh Local did not work at Akron Junction during the hours of 11:00 P.M. to 7:00 A.M. when claimant was working. Furthermore, it generally stopped only a maximum of 40 mins. at the Akron Junction, making straight setoffs and straight pickups. The Organization supplied data which was unrebutted indicating that the Newburgh Local did, indeed, function during the hours when claimant was working and, furthermore, that there was considerable supervision exercised by claimant over the Newburgh Local prior to its abolishment. Furthermore, the Akron turn, which was also drastically changed after the abandonment, according to the Organization, was supervised in its activities at Akron by claimant prior to the abandonment of the subdivision. The facts indicate that claimant supervised two yard crews on the 11:00 P.M. to 7:00 A.M. shift three days a week and one on the other two days. The second yard crew was no longer needed after the abolishment of the Newburgh Local, according to the Organization's data.

Carrier also indicated, in its submission, that there had been a decline in business activity during the hours of 11:00 P.M. to 7:00 A.M. and that industrial switching previously performed on the third trick had been moved to second shift. On the basis of this statement of fact, Carrier indicated that any necessary yardmaster function on the third trip could easily be programmed by the second trick yardmaster or covered by bulletin instruction. This factual position was contested by the Organization which indicated

that their work had not been transferred from the third to the second shift after the third shift yardmaster position was abolished in November of 1984. At the Board's request due to the conflicts indicated above, Carrier made an investigation and determined that industrial work which was performed on third shift at Akron Junction prior to November 9, 1984, continued to be performed on that shift. Carrier also pointed out, effective with the close of business on August 19, 1984, Carrier abolished the second shift yardmaster position at Akron Junction which had been held by claimant and established the third shift position which was awarded to claimant. This change was as a result of Carrier reaching an agreement with the Goodyear Tire and Rubber Company (one of the customers in that area) which permitted the industrial switching to be moved from second to third shift. Following the abolishment of the third shift position on November 9, while the industrial switching activity indeed continued to be performed under the third shift, the supervision was left for the crew, in terms of instructions, by the first shift yardmaster, according to Carrier.

Carrier supplied information concerning inbound and outbound cars handled at Akron Junction during the years 1983, 1984 and 1985. That data provides the following information:

<u>"Year</u>	<u>Inbound Cars</u>	<u>Outbound Cars</u>
1983	2,711	3,344
1984	1,657	2,413
1985	1,195	1,102"

This data indicated that there had been more than a 62% decrease in the number of cars handled at Akron Junction over the period in question. The Organization indicates, however, on a factual basis, that the cars moving through the junction to the CT&V have been included for the years 1983 and 1984 and, of course, were not included for at least part of 1985.

CONTENTIONS

A. THE UNION

The Union's position is based on two premises. First, that the yardmaster's

representatives should have been given the required advance notice of the Carrier's intent to abandon a portion of its track under the requirements of OSL conditions. In addition, that notice should have indicated that the work would be transferred to another yardmaster in a different location. Secondly, and finally most important from the Organization's point of view, the claimant herein was adversely affected by the abandonment of the CT&V Subdivision when his position was abolished and he should, therefore, have been accorded protection.

In support of this position, petitioner cites Section 4 of the conditions which requires a 90-day written notice to representatives of employees who may be adversely affected by any transaction. In this instance, according to petitioner, Carrier in error indicated that the transaction had no effect upon Yardmaster DeGenova. Furthermore, the Organization notes that train movements by the Akron Turn and Newburgh Local were drastically curtailed during the third shift by Carrier's abandonment of the particular route in question and the re-routing of traffic from Akron to Sterling. Prior to the abandonment of the territory (as anticipated by Carrier in its actions), the claimant herein supervised two yard crews three days a week, and one yard crew on the other two days.

Petitioner also notes that in the course of the hearing on this matter there was some problem with respect to facts concerning switching at the Goodyear Plant in East Akron, Ohio. After investigation, petitioner indicates that the Carrier acknowledged that the Organization's position was correct in that the switching of the Goodyear Plant remained a function of the third trick yard crew after claimant's job was abolished. Further, according to petitioner, the third shift yard crew, even after the abandonment of the CT&V territory, continued to do many hours of yard switching each night in addition to the Goodyear work. Substantiation of those facts was submitted by the Organization. During this period of time, however, when this additional work was done, including the Goodyear work, no yardmaster was on duty.

With respect to Carrier's position concerning the reduction on handling of inbound and outbound cars, petitioner notes that the 1983 and 1984 record

includes cars that move through and to CT&V. According to the Organization, when the CT&V territory was abandoned, naturally the freight handled at the Akron Junction declined, thus creating the figures upon which Carrier relies. The Organization concludes that claimant was adversely affected by the abandonment of the CT&V and protective conditions should apply.

THE CARRIER

In its initial position, Carrier, among other arguments, indicated that one of the bases for its determination to abolish the position in question was the moving of industrial switching previously performed on the third trick to the second shift. This referred to the work primarily for the Goodyear Company. Subsequent investigation revealed that Carrier had incorrectly stated that position and the correct indication was that the Goodyear work remained on the third shift but, Carrier insists, there was a decline in activity requiring abolishment of the third trick yardmaster position. Carrier bases this conclusion on the fact that starting in August of 1984 Carrier abolished the second shift yardmaster position at Akron Junction which had been held by claimant and established a third shift position. This change was as a result of an agreement reached with Goodyear Tire and Rubber Company which permitted the industrial switching to be moved from second shift to third shift. However, Carrier contends that since the crew on the third shift primarily worked on Goodyear property, it was determined that direct supervision of a yardmaster was not required and instructions were left for the crew by the first shift yardmaster.

As a second position, Carrier indicates that the abolishment of the third shift yardmaster position was a direct result of a decline in business at that location which was unrelated to the abandonment of the CT&V. In support of that position, Carrier has supplied data which establishes that there has been more than a 62% decrease in the number of cars handled at Akron Junction from November 1983 through November of 1985. Thus, in view of the decline in business at Akron Junction and the rearrangement of yard work and supervision from third shift to first shift, no yardmaster employee was adversely affected as a result of the transaction involved.

Thus, from Carrier's point of view, the Organization has failed to show a causal nexus between the abandonment of the CT&V and any rearrangement of yardmaster forces.

In support of its position, Carrier has cited a number of awards, all of which take the position that the imposition of protective benefits require a proximate nexus between the particular transaction and the Carrier action at issue in order for there to be a protective status created. In other words, that principle requires that it be shown that an employee had either been displaced or dismissed because of a transaction itself. There must be a direct relationship, according to Carrier, which was not the case in this particular situation. Carrier insists that the Organization has failed to bear its burden of proof that the reduction in forces involved herein, that is the abolishment of claimant's position, was caused by anything other than the decline in business and a change in operations which was unrelated to the particular abandonment. Thus, according to Carrier, there was no violation of the OSL conditions. Carrier concludes, therefore, that no yardmaster employee was adversely affected as a result of the particular transaction and the Organization has failed to show causal nexus between the abandonment and any prior or subsequent rearrangement of yardmaster forces. For that reason, the protective benefits do not apply to the claimant herein.

DISCUSSION

There is no dispute but that a transaction took place in the abandonment of the CT&V. Furthermore, as a result of that change in operations traffic was rerouted so that Akron Junction no longer retained a significant amount of switching work, which had been customary prior to that time (specifically work relating to Cleveland). The sole question for determination herein is whether the abolishment of the yardmaster's position on the third track was as a result of the transaction indicated above or rather was caused by a decline in business.

The principles involved in this matter are not in dispute. There is no doubt but that insofar as disputes of this order, the evidence must indicate there has been a causal nexus existing between the particular transaction

and the adverse effect on employees. If such causal nexus exists, then the employees are entitled to protection under OSL conditions. On the contrary, if the connection is not specified and established, the protection is not appropriate.

An analysis of the data submitted provides some insights into the positions taken by the parties. First, it is apparent that the abandonment of the Newburgh Local (called an extra from time to time), which occurred prior to January 1, 1985, was related to the rerouting of Cleveland traffic from Akron to Sterling and the abandonment of CT&V. For that reason, train movements by both the Akron Turn and the Newburgh Local during the third shift were drastically curtailed by Carrier. One crew, the extra yard crew, was no longer needed after the abolishment of the Newburgh Local since yard switching had been reduced. This action was obviously and clearly a direct result of the CT&V abandonment. In addition to the above, it is apparent that Carrier was in error in its initial contention concerning the change in switching requirements for the industrial customer, namely Goodyear Tire and Rubber Company. That work continued to be performed on the third shift and required switching activities. While Carrier may be correct, and there is no reason to doubt the fact, that instructions to the crews working the third shift could have been supplied by first shift yardmasters, it is apparent that this decision was based on reduction in switching activities on the third shift caused by the CT&V changes and the abandonment of the Newburgh Local. There is no indication of any other reduction in switching activities on the third trick. The key to the third trick activities apparently was the Goodyear work plus certain other switching work which continued, namely that of the Akron Turn.

As an important element in the analysis of this dispute, furthermore, there is no convincing evidence that the decline in activity at Akron Junction was as a result of a drop in business at that location. The data supplied simply is not sufficiently convincing to establish that fact. Information concerning a decline in business at a particular point must be comprehensive and detailed in order to show a month-by-month comparison over a substantial period of time. That information was not forthcoming. Furthermore, there is

significant reason to believe that the Akron Junction business was considerably impacted by the change in the routing of traffic as a result of the anticipation of, much less the implementation of, the CT&V abandonment.

Based on the above, it is apparent that the factual basis for Carrier's theoretical position is highly questionable. While Carrier is correct in its assumptions with respect to the necessity for the establishment of a causal nexus between a transaction and an impact on an employee, in this instance that connection appears to have been made contrary to Carrier's position. Sufficient data was established by the petitioner to indicate that Carrier should have put it on notice, that is the Organization, with respect to the possible impact of the abandonment. The lack of decline in industrial business at the particular location for third shift operations as well as the other switching activity, but for the abandonment, is sufficient to establish the causal nexus, as the Arbitrator views it. Thus, petitioner did bear its burden of proof and Carrier failed to invoke and apply the OSL conditions as required by the ICC.

AWARD

Yardmaster R. DeGenova is entitled to protection under the provisions of the Oregon Shortline Conditions beginning November 10, 1984, because of the loss of his regular position as yardmaster as a direct result of the abandonment of the upper CT&V Subdivision by Carrier.



I. M. Lieberman, Arbitrator



R. C. Arthur, Employee Member

E. F. Norton, Jr. Carrier Member

Stamford, Connecticut

March 20, 1986