

Award  
#14

INTERPRETATION OF  
FINDINGS AND AWARD

ARBITRATION COMMITTEE  
ESTABLISHED UNDER SECTION 11,  
OREGON SHORT LINE III LABOR PROTECTIVE CONDITIONS  
(INTERSTATE COMMERCE COMMISSION DOCKET NO. 29458)

In the Matter of Arbitration Between )		
UNITED TRANSPORTATION UNION )	)	INTERPRETATION OF
and )	)	FINDINGS AND AWARD
GRAND TRUNK WESTERN RAILROAD COMPANY )	)	

BACKGROUND:

Under date of November 8, 1985, the General Chairman of the United Transportation Union (UTU) addressed a letter to the chairman and neutral member of the Arbitration Board, with copy to each of the partisan members, that read as follows:

"In January of 1985, an Arbitration Board established under Section II of Oregon Short Line Labor Protective Conditions Interstate Commerce Commission Docket No. 29458 sustained this committee's contention that Bay City yardmen B. L. DePeal, L. M. Schneider and T. J. Kolka were entitled to full back pay for any month after May 4, 1981.

So far, the Grand Trunk has only made partial payments to the employees under this award.

At a meeting on October 22, 1985, with Grand Trunk Labor Relations, it was agreed to resubmit the following issues for interpretation in light of the award:

- I. Is L. Schneider entitled to dismissal allowance for the time he was in furlough status at Bay City, Saginaw?
- II. Is L. Schneider entitled to moving allowance for going to Flint?
- III. Are claimants entitled to payment at the hourly rate of their guarantee for those hours worked in excess of their average monthly time paid for?

Furthermore, the carrier has subsequently received permission for three more abandonments in the area and there exists a dispute in all three cases as to the proper application of Oregon Short Line Protective Conditions.

At the October 22, 1985 meeting, it was agreed to also submit these disputes to you for resolution.

Please notify the parties as to date and place for handling of these matters."

Following receipt of the above letter it was mutually agreed that the Arbitration Board would meet with the parties on January 10, 1986 to consider each of the matters in dispute.

The Grand Trunk Western Railroad Company (GTW) meantime addressed the following letter to the chairman and neutral member of the board, with copy to the partisan members and the General Chairman of the UTU:

"Reference is made to letter of B. R. Wigent, General Chairman, United Transportation Union - Yard of the Grand Trunk Western submitting various issues for interpretation in light of Arbitration Committee Award under Section 11 of the Oregon Short Line III Labor Condition dated January, 1985.

We have been advised that you will be available to meet with the parties on January 10, 1986.

In order to familiarize you with the Carrier's action as regards the issues as referred to in letter cited above the following is submitted:

I. Is L. Schneider entitled to dismissal allowance?

L. Schneider is a prior rights Tri City United Transportation Union employee who enjoys GTW system seniority as of April 1, 1976.

Arbitration Committee Award cited above deemed him and two (2) other employees to be adversely affected as a result of the Carrier's abandonment of trackage in the Saginaw area effective May 1, 1981.

Below is listed Mr. Schneider's record from May 1, 1981 thru the present:

Time Period

Work Location

5/81 thru mid 5/82  
5/24 - 31/82  
6/82 - 3/83

Tri City area  
Flint  
Tri City area &  
intermittent furloughs

\*3/83 - 6/84  
6/84 - Present

Laid Off  
Flint

- \* For period 4/83 thru 6/84 junior employee to Mr. Schneider was working and this employee's earnings were used to off set Claimant's protection claims for period he contended he was furloughed.

II. Is L. Schneider entitled to moving expenses?

A decline in business in the Tri City area caused the abolishment of various assignments starting about May, 1982. Claimant exercised his seniority to Flint and then returned to the Tri City area thru March, 1983 returning to Flint in June, 1984.

The subsequent decline in business after the transaction date of May, 1981 is not directly related to the transaction and does not entitle Claimant to Moving Expenses as listed in OSL III.

III. Are Claimants entitled to payment at an hourly rate?

Claimants while working various assignments are guaranteed a sixth day which amount is included in their pay. For such amount Claimants reflect eight (8) hours for each date payment is made and include these guarantee day hours as hours worked during the month.

An example of the above is:

200 work hours paid for + 32 hours of guarantee = 232 total hours

Earnings represent \$2200. + \$320. = \$2520 - 232 hours = \$10.86/hour

Guarantee of \$2500. based on 220 hours = \$11.36/hour

Hourly difference \$11.36 - 10.86 - \$.50 x 220 hours = \$110. Displacement Allowance

Claimants contend that as they worked and were paid for more hours than what was established in test period then they are entitled to difference as shown above.

Carrier's position is that the above is not applicable as Claimant's guarantee is \$2500./Month and as earnings totaled \$2520. during the month -- no payment is due.

Regarding other abandonments as cited the following is submitted:

1. In January, 1984 the I.C.C. approved for abandonment from MP 17.28 thru to MP 18.2 (end of Track) on the Midland Subdivision. Such abandonment entailed nine (9) street crossings and included the Carrier's George Street Team Track. Prior to abandonment Carrier constructed a new Team Track about one (1) mile east of the previous Team Track.

2. In October, 1984 the I.C.C. approved abandonment of four (4) miles of trackage on the Bay City Belt in Bay City, Michigan.

In addition to the Carrier not handling any Traffic to or from this area the City of Bay City was in need of acquiring a portion of the right of way for the construction of approach footings for a new highway bridge over the Saginaw River and included the elimination of seventeen (17) rail highway crossings.

The single remaining customer was served by establishing trackage rights with the C&O in the event any traffic was to be effected with the Customer.

3. In April, 1985 the Carrier abandoned six (6) miles of track known as the Paines Spur between MP 92.5 and MP 98.6 in the city of Saginaw.

As this portion of track had handled no traffic for two (2) years prior to the date of notice and no local traffic had moved to or from subject line it was abandoned in accordance with applicable I.C.C. directives.

As a result of the aforementioned abandonments no employees were adversely affected.

Please advise whether any further information is required as regards the above."

At the board hearings on January 10, 1986, it was determined that issues involving other than an interpretation of the Findings and

Award in the initial dispute would be handled as separate cases through presentation of ex parte submissions.

As concerns the three separate issues or questions presented for interpretation, each of the parties presented extensive argument in support of their position and thereafter forwarded to the board additional comments relative to past awards on the subjects in dispute.

INTERPRETATION OF FINDINGS AND AWARD:

As stated in the board's findings and award, the action taken by GTW on or about May 4, 1981 was not in accord with ICC imposed labor protective conditions and it is, therefore, necessary that GTW: (1) compensate the Claimants for any loss of regular compensation or fringe benefits; and, (2) give requisite notice and negotiate the required implementing agreement with the UTU.

Since the rights of the Claimants were jeopardized or frustrated by GTW's inaction in not having negotiated an implementing agreement, the board has no alternative but to make a decision on each issue in dispute by means of what is perceived to be literal and strict application to the Oregon Short Line Conditions. We do not believe, as the GTW would suggest, that the questions in dispute may be evaluated on the presumption of what the situation might have been had an implementing agreement been in place prior to the adverse affect experienced by the Claimants.

As concerns the first question, i.e., whether Claimant Schneider is entitled to a dismissal allowance for the time he was in furlough status, the Oregon Short Line Conditions stipulate that a monthly dismissal allowance shall be paid from the date the adversely affected employee is deprived of employment 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. Further, that payment of such dismissal allowance shall cease while the employee is returned to service or reemployed, at which time the employee shall be entitled to protection under those provisions of the Oregon Short Line Conditions which concern payment of a monthly displacement allowance.

In this latter regard, the Oregon Short Line Conditions provide that if a displaced employee fails to exercise seniority rights to secure another position available which does not require a change in the employee's place of residence, that the employee shall thereafter be treated for the purposes of entitlement to a

displacement allowance as occupying the position which that employee elects to decline.

Accordingly, to the extent Claimant Schneider was involuntarily cut-off or furloughed, he shall be entitled to a monthly dismissal allowance. However, Claimant Schneider shall not be entitled to such dismissal allowance for any period of time that he had elected to take a voluntary cut-off or furlough. In this latter regard, Claimant Schneider would be subject to guidelines related to payment of a displacement allowance, or that protective allowance which may be properly reduced on account of voluntary absences for service and failure to exercise seniority to an available position which does not require a change in the employee's place of residence.

For purposes of this interpretation only, and not to be considered in any manner as a precedent, since the Oregon Short Line Conditions do not establish specific parameters as to what highway distance or other factors shall be recognized as constituting the need for a change in an employee's residence, the board would think it appropriate to here hold such matter be resolved through joint check of records to determine the distance Claimant had in fact traveled from his place of residence to cover assignments in the normal exercise of seniority during the 12 months prior to the transaction, and that such distance as traveled, except in an isolated situation, be used to determine what an appropriate distance would here represent for Claimant to cover available assignments without need for a change in his place of residence.

Turning to the second question at issue, namely, whether Claimant Schneider is entitled to a moving allowance for going to Flint, Michigan.

Section 9 of the Oregon Short Line Conditions provides for payment of moving expenses to employees who are "required" to move their place of residence, with "the exact extent of the responsibility of the railroad... for such transfer...and the ways and means of transportation to be agreed upon in advance by the railroad and the affected employee or his representative."

In the absence of probative evidence showing Claimant had been required by the GTW to exercise seniority to Flint so as to be entitled to benefit of a displacement allowance, and absent advance agreement upon the exact extent of responsibility for moving expenses, it must be held that Claimant Schneider is not entitled to reimbursement of moving expenses associated with an apparently unilateral decision to temporarily relocate his place of residence to Flint, Michigan.

Lastly, as concerns the third question at issue and whether the Claimants are entitled to payment at the hourly rate of their guarantee for time worked in excess of their average monthly time paid for during the test period.

The "average monthly time paid for" factor as contained in the Oregon Short Line Conditions is, in the board's opinion, designed to protect a displaced employee in circumstances related the following types of situations: (1) Adjustments to average test period compensation necessary to reflect subsequent general wage increases; (2) Development of appropriate comparisons between average rates of pay for various classes of service; (3) Prorating offsets for time lost in a retained or current position account absences from service; and, (4) Determination of the time at which an employee may be voluntarily absent during a month without deduction being made from the employee's monthly displacement allowance.

The board does not believe the reference to such time factor was for the purpose of providing a protected employee benefit of payment of hours worked in excess of test period time on a basis that would grant reimbursement for time worked in a retained or current position at the rate of that position and, in addition, payment for that same or like period of time at the hourly rate of pay of the employee's test period average compensation.

Actually, even insofar as the Oregon Short Line Conditions make reference to work in excess of average monthly time paid for during the test period, it ~~is~~ merely states that the protected employee shall be additionally compensated for such excess time at the rate of pay of the "retained" position. The Conditions make no reference whatsoever to the employee being compensated at the average rate of pay derived from average earnings during the test period.

We think the intent of the authors of the Oregon Short Line Conditions in providing that a protected employee be additionally compensated for excess hours was to protect the employee's right to the total earnings of an assignment attained through the normal exercise of seniority, as opposed to being cutoff after attaining compensation necessary to satisfy a monthly displacement allowance so as to have the excess earnings be utilized to cover displacement allowances due other protected employees.

As concerns additional questions which came to light during board hearings, the board would hold that the following criteria be used to resolve those questions at issue: (1) If the protected



employee works the equivalent number of test period average hours, but fails to earn compensation equal to or greater than test period earnings, the employee is entitled to full benefit of the monthly displacement allowance. (2) If the protected employee works all available hours, but the total number of hours falls below test period time, the employee is entitled to full benefit of the monthly displacement allowance. (3) If the protected employee works more than the total number of test period hours, the employee is entitled to full benefit of the monthly displacement allowance, but not to additional compensation for the excess hours worked at the rate of the test period average hourly earnings.



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Robert E. Peterson, Chairman  
and Neutral Member

Toronto, Canada  
March 13, 1986