Award No. 470

Case No. SG-42-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) BROTHERHOOD OF RAILWAY SIGNALMEN
)
TO THE) and
)
DISPUTE) CHESAPEAKE AND OHIO RAILWAY COMPANY (C&O)

QUESTION AT ISSUE:

(a) Carrier violated and continues to violate Sections 4 and 5 of the Washington Job Protection Agreement (hereinafter referred to as "WJPA") of May 21, 1936 when it unilaterally placed its coordination with the Baltimore and Ohio Railroad (hereinafter referred to as "B&O") into effect on or about Monday, January 13, 1986 without the required notice and implementing agreement.

(b) Carrier further violated and continues to violate Section 4 of the labor protective conditions set forth in Norfolk and Western Railway Company -- Trackage Rights -- BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway, Inc. -- Lease and Operate, 360 I.C.C. 653 (1980) (hereinafter referred to as "NW-BN conditions") for the same reason set forth in paragraph (a) above.

(c) Carrier further violated and continues to violate Section 12 of the WJPA and/or Section 10 of the NW-BN conditions when at close of work on November 27, 1985 the following employees were adversely affected as a result of their positions being abolished in anticipation of such coordination and/or transaction:

Name	ID No.	Former Position Held	Force Number	Headquarters
R. D. Christensen	2280050	Lead Sig. Mtr.	1643	Richmond, IN
L. E. Nealis	2617185	Signal Maintainer	1644	Peru, IN
R. J. Nealis	2618645	Lead Sig. Mtr.	1644	Peru, IN
J. S. Miller	2623533	Sig. Mtr. Working Independently	1622	Marion, IN

(d) Carrier further violated and continues to violate provisions of such protective conditions, particularly Section 6 of WJPA and/or Section 6 of NW-BN conditions when effective close of work

May 31, 1986, the following additional employees were adversely affected as a result of their positions being abolished for the reasons set forth in paragraph (a) above:

Name	ID No.	Former Position Held	Force Number	Headquarters
M. L. Johnston	2613264	Sig. Mtr. Working Independently	1622	Marion, IN
D. L. Deer	2615388	Sig. Mtr. Working Independently	1625	Malden, IN

(e) Carrier should now be required to recognize:

(1) Claimants R. D. Christensen and M. L. Johnston as "displaced employees"; and,

(2) Claimants R. J. Nealis, L. E. Nealis, J. S. Miller and D. L. Deer as "dismissed employees" - see BRS Attachment A.

Furthermore, Carrier should be required to make employees named in above paragraph (e) (2) whole for all fringe benefits lost, including reimbursement of C&O Hospital Association dues and/or Travelers Group Plan No. 23111 insurance payments.

OPINION OF BOARD:

Claimants were signalmen on the Carrier's Chicago seniority district. Effective April 30, 1987, the Baltimore and Ohio Railroad Company ("B&O") was merged into the Carrier (the Chesapeake and Ohio Railway Company ["C&O"]). Effective September 1, 1987, the C&O was merged into CSX Transportation, Inc.

In 1962, in Finance Docket No. 21160, the Interstate Commerce Commission ("ICC") approved the C&O's control of the B&O, effective February 4, 1963. In 1975, the ICC imposed New Orleans Conditions for labor protection

by supplemental order.

During the period 1962 to 1985, the ICC approved various abandonments or trackage rights petitions filed with it by the B&O and C&O. Generally, very little C&O business originated in the Chicago seniority district.

On January 20, 1985, the ICC approved a joint request by the B&O and C&O for a Trackage Rights Exemption concerning the handling of each other's cars over certain lines for which the ICC had previously approved the mutual granting of trackage rights. Pursuant to the January 20 grant, the ICC imposed labor protection conditions pursuant to Norfolk and Western Railway Company--Trackage Rights--BN, 354 I.C.C. 605 (1978) as modified by Mendocino Coast Railway, Inc.--Lease and Operate, 360 I.C.C. 653 (1980).

In August 1985, the B&O and C&O served notice of their intent to coordinate certain freight operations effective on or after November 11, 1985 in Ohio and Indiana. Both carriers also advised of their mutual intent to exercise already-acquired trackage rights in the same territory. The August 1985 notice anticipated that 75 specific employees would be affected by the coordination but no others.

During the latter part of 1985, the C&O abolished numerous positions system-wide, including 35 maintenance positions, effective November 27, 1985. Three of Claimants' positions were among the positions abolished: a two-man signal maintenance unit headquartered at Richmond, Indiana and a one-man signal maintenance unit headquartered at Peru, Indiana, both of

which are on the Chicago seniority district.

During the period August to December 1985, the C&O system reduced its signal positions from 488 to 458. A further reduction of 30 positions, down to 428, occurred between January and June 1986. The reductions in force were not confined to the signal craft, the Chicago seniority district or the C&O, but extended throughout the entire system. During the period August 1985 to April 1986, total car loadings on the C&O went from 126,574 in August 1985, reached a peak of 127,935 in October, went as low as 96,531 in December and ended at 114,983 in April 1986.

Effective April 27, 1986, the ICC approved overhead trackage rights to the C&O primarily for AMTRAK operations.

Effective May 31, 1986, two signalmen's positions, occupied by an additional two of the Claimants, were abolished on the Chicago seniority district.

In early September 1986, three signal maintenance positions were established on the Chicago seniority district. However, on November 7, 1986, those three positions (which had completed the project for which they were established), along with 76 others, were abolished.

During the period following the abolishment of each of their positions, Claimants have at various times in various combinations, detailed in the record, exercised their seniority; and three of Claimants were recalled from

September 1986 to November 1986 as described above.

The relevant portions of Sections 1 and 2 of the Washington Job Protection Agreement ("WJPA") provide as follows:

> Section 1. That the fundamental scope and purpose of this agreement is to provide for allowances to defined employees affected by coordination as hereinafter defined, and it is the intent that the provisions of this agreement are to be restricted to those changes in employment in the Railroad Industry solely due to and resulting from such coordination. Therefore, the parties hereto understand and agree that fluctuations, rises and falls and changes in volume or character of employment brought about solely by other causes are not within the contemplation of the parties hereto, or covered by or intended to be covered by this agreement.
>
> Section 2 (a). The term "coordination" as used herein means joint action by two or more carriers whereby they unify, consolidate, merge or pool in whole or in part their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities.

At the hearing of this matter, the Carrier agreed to waive the challenge in its brief that these claims were barred as untimely.

The position of the Organization is that the Carrier is in violation of various sections of the WJPA and the Norfolk and Western labor protection conditions by its actions regarding the abolishment of Claimants' signal positions on the Chicago seniority district. The Organization requests that Claimants be made whole for their losses pursuant the alleged violations, and that Carrier be required to enter into an implementing agreement for the further protection of the employees affected.

Specifically, the Organization contends the C&O had been planning the

abandonment of one of its lines between Chicago and Cincinnati since 1962 when the C&O was granted control of the B&O. This, the Organization contends, is clearly proven by the pattern of abandonments and trackage rights agreements approved over the years in that region. This constitutes a coordination such as would entitle the affected employees to labor protection benefits because "but for" the coordination and transactions which occurred over time in that region, the force reductions in the signal maintenance employees would not have occurred.

The Organization rejects the Carrier's contention that Claimants' positions were abolished due to a system-wide decline in business, and points out that the Chicago district was the only one in which the Carrier has totally eliminated signal maintenance units.

The position of the Carrier is that none of the alleged violations has occurred, and that the Board does not have jurisdiction to resolve this dispute.

As to jurisdiction, the Carrier contends that only an arbitration committee established pursuant to the labor protection conditions of Article I, Section 1 of the Norfolk and Western or Article I, Section 6 of Finance Docket No. 21160 approving C&O control of the B&O (317 I.C.C. 261 [1962]) has jurisdiction to "settle any dispute or controversy with respect to the interpretation, application or enforcement of any [of the aforementioned labor protection provisions]."

On the merits, the Carrier contends that the Organization has failed to prove that the B&O and C&O were engaged in a "coordination" as defined by the WJPA. Further, the Carrier maintains that the various applications made to the ICC since 1960 had no effect on Claimants, many of whom were not employed by the Carrier at that time. The Carrier also points out that the coordination notice of August 7, 1985 dealt with certain freight operations and the assignments of operating employees or elimination of non-operating employees; and the notice neither involved nor affected signal employees. The mere fact that trains were rerouted at about the same time that certain signal positions were abolished does not, argues the Carrier, prove that Claimants were affected by that rerouting. The Carrier contends that all signal maintenance work was not eliminated but that it was performed by employees senior to Claimants.

Most importantly, the Carrier contends that Claimants' positions were abolished as part of a system-wide reduction in force due to a decline in business. The Carrier contends that signal maintenance forces can be reduced for reasons other than "coordinations" or "transactions" and that by apparently rejecting that premise in its positions, the Organization ignores the reduction of 139 signal maintenance positions that occurred by the end of November 1987. Finally, the Carrier maintains that the Organization has failed to meet its burden of proving that the abolishment of Claimants' positions by the Carrier is related to or pursuant to the trackage rights agreements or abandonments approved by the ICC.

After considering the entire record, the Board finds that the instant claims must be denied.

Turning first to the jurisdictional question, the Carrier contends that there is no jurisdiction for this Board to hear this matter because SBA 605 is not empowered to make determinations regarding labor protection benefits. The Board, however, is not persuaded by this argument, based on the authority cited by the Carrier. Under the circumstances, the Board gives the Organization the benefit of the doubt in the resolution of the jurisdictional question and will proceed on the merits.

There is substantial, credible evidence in the record that Carrier abolished Claimants' positions due to a system-wide decline in business. The evidence is clear that not only was the volume of the Carrier's business declining, but that it was reducing its forces, including its signal forces, throughout its entire system.

Furthermore, it is well established that in pursuing a claim for labor protection benefits under Norfolk and Western, an Organization has the burden of proving some causal nexus (or connection) between the actions of a Carrier and the adverse results which befall the Claimants. The Organization has not done so. As the Carrier persuasively contends, the mere fact of proximity in time of rerouting certain trains or the exercise of certain trackage rights or abandonments with the abolishment of positions does not establish that critical causal nexus.

AWARD

The answer to Questions (a), (b), (c) and (d) is "there was no violation." The answer to Question (e) is "Claimants are neither 'displaced' nor 'dismissed' employees and there is, therefore, no basis to make them whole."

Nicholas H. Zumas, Neutral Member

Date: 1-4-89