

PARTIES     )  BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
TO            )  
DISPUTE     )  SOO LINE RAILROAD COMPANY

**STATEMENT OF CLAIM**

1. Assistant Foreman Larry J. Anstett and Section Laborer Martin A. Fornengo [were] adversely affected by the abolishment of Section No. 218 at West Duluth, Minnesota.
2. Assistant Foreman Larry J. Anstett and Section Laborer Martin A. Fornengo be allowed the benefits of the *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)*.

**OPINION OF BOARD**

**A. Facts**

On October 26, 1981 in Finance Docket 29745 the ICC issued a Notice of Exemption related to the Duluth, Winnipeg and Pacific Railway's filing of a notice of a series of projects including a relocation of its line in the Duluth, Minnesota and Superior, Wisconsin area which relocation involved an agreement with the Duluth, Missabe and Iron Range Railway granting DWP trackage rights to operate over 15.95 miles of DMIR trackage between Nevada, St. Louis County, Minnesota and South Itasca,

Douglas County, Wisconsin. The projects permitted the DWP to relocate interchange points with the Carrier and other carriers. Employee protection was afforded in accord with *Norfolk and Western* as modified by *Mendocino Coast*.

On October 2, 1984 (also in Finance Docket 29745) another Notice of Exemption issued as a result of an extension of Interstate 35 in Duluth and the line relocation project by DWP. This notice also covered a short segment of trackage owned by the Carrier. Again, *Norfolk and Western* as modified by *Mendocino Coast* conditions were imposed.

According to the Organization, the trackage rights agreements were necessary to build I-35 in Duluth. That project started in 1981 and was completed and cut over on November 6, 1984. The result of the project was that interchange points between the DWP and other carriers, including this Carrier, were changed. Prior to the trackage rights agreements the DMIR and DWP interchanged with the Carrier at the Carrier's West Duluth Yard in Section 218 territory. After the

project was completed in 1984, the interchanges were made as the Carrier's Stinson Yard in Superior, Wisconsin in Section 219 territory. At the time the I-35 project was completed Section Crew 218 was reduced in size.

By notice dated January 23, 1986 Section Crew 218 was abolished effective February 14, 1986. According to the Organization, Claimant Anstett's position as Assistant Foreman was abolished causing Anstett to displace G. L. Henninger who in turn displaced Claimant Fornengo. Claims for protective benefits were filed and denied.

The Organization argues that Section Crew 218 was abolished in conjunction with the trackage rights provided for in Finance Docket 39745 or the I-35 highway project. Specifically, the Organization argues (Org. Submission at

6):

It is the employees position that the diversion of Interchange traffic from the Soo's West Duluth yard to it's Stinson yard in Wisconsin, could only have occurred due to the Trackage Rights Agreements which resulted in the abolishment of Section No. 218 at West Duluth. Although the official cutover of the project that was authorized by the ICC was November 6, 1984. It was very apparent that due to the loss of interchange from the DWP and DMIR at the West Duluth yard would result in the abolishment of Section No. 218 at some future date which did occur on February 14, 1986.

The Carrier argues that the February 1986 abolishment of Section Crew 218 was due to adverse economic conditions and was part of force reductions caused by a system wide downturn in business.

In support of its assertions of poor economic conditions the Carrier offered the following data:

	First Quarter 1985	First Quarter 1986	Change 1985 to 1986 +/- %	
Gross Ton Miles (000's)	10,231,500	9,660,100	(571,400)	(5.6%)
Revenue Ton Miles (000's)	5,098,100	4,985,500	(112,600)	(2.2%)
Train Miles	1,969,782	1,896,100	(73,682)	(3.7%)
Railway Revenues	168,384,000	156,560,000	(11,284,000)	(7.0%)
Gross Tons Per Train	5,194	5,095	(99)	(1.9%)
Revenue Per Unit	730	714	(16)	(2.2%)
Revenue Per Ton Miles (Cents)	.0330	.0314	(.0016)	(4.8%)

	Second Quarter 1985	Second Quarter 1986	Change 1985 to 1986	
			+/-	%
Gross Ton Miles (000's)	10,258,600	9,782,500	(476,100)	(4.6%)
Revenue Ton Miles (000's)	5,401,900	5,280,000	(121,900)	(2.3%)
Railway Revenues	165,585,000	152,060,000	(13,525,000)	(8.2%)
Gross Tons Per Train	5,128	4,793	(335)	(6.5%)
Revenue Per Unit	719	688	(31)	(4.3%)
Revenue Per Ton Miles (Cents)	.0307	.0288	(.0019)	(6.2%)

	Third Quarter 1985	Third Quarter 1986	Change 1985 to 1986	
			+/-	%
Gross Ton Miles (000's)	4,891,600	4,576,800	(314,800)	(6.4%)
Railway Revenues	158,266,000	150,985,000	(7,281,000)	(4.6%)
Gross Tons per Train	5,050	4,985	(65)	1.3%
Revenues Per Unit	715	673	(42)	(5.9%)

	September Year- To-Date 1985	September Year- To-Date 1986	Change 1985 to 1986	
			+/-	%
Gross Ton Miles (000's)	30,096,900	29,618,700	(478,200)	(1.6%)
Revenue Ton Miles (000's)	15,391,500	14,842,300	(549,200)	(3.6%)
Railway Revenues	492,235,000	459,605,000	(32,630,000)	(6.6%)
Gross Tons Per Train	5,125	4,954	(171)	(3.3%)
Revenue Per Unit	721	691	(30)	(4.2%)
Revenue Per Ton Miles (Cents)	.0320	.0310	(.0010)	(3.1%)

	December Year- To-Date 1985	December Year- To-Date 1986	Change 1985 to 1986	
			+/-	%
Revenue Ton Miles (000's)	19,998,200	19,501,900	(496,300)	(2.5%)
Railway Revenues	649,366,000	606,276,000	(43,090,000)	(6.6%)
Gross Tons Per Train	5,092	4,978	(114)	(2.2%)
Revenue Per Unit	720	678	(33)	(4.6%)
Revenue Per Ton Miles (Cents)	.0325	.0311	(.0014)	(4.3%)

	1984	1985	Change 1984 to 1985	
			+/-	%
Gross Ton Miles (000's)	44,683,027	39,360,200	(5,322,827)	(11.9%)
Revenue Ton Miles (000's)	22,471,140	19,998,200	(2,472,940)	(11.0%)
Train Miles	8,755,784	7,729,653	(1,026,131)	(11.7%)
Railway Revenues	732,591,347	649,253,416	(83,337,931)	(11.4%)
Gross Tons Per Train	5,103	5,092	(11)	(.2%)
Revenue Per Unit	734	720	(14)	(1.9%)
Revenue Per Ton Miles (Cents)	.0326	.0325	(.0001)	(.3%)

### **B. Discussion**

The Organization bears the burden of demonstrating that the February 1986 abolishment of Section Crew 218 was caused by the trackage rights and the I-35 project which was completed and cut over on November 6, 1984. We find the Organization's arguments in support of its contention that a nexus existed between the trackage rights and the I-35 project and the February 1986 abolishment of Section Crew 218 to be speculative, at best.

However, even if this Board assumed for the sake of discussion that a causal nexus has been shown so as to shift the burden to the Carrier to rebut the Organization's demonstration, the Carrier's showing that it was experiencing significant adverse economic conditions dictating crew reductions is sufficient to rebut the Organization's demonstration. Indeed, the data supplied by the Carrier set forth above shows downturns in all reported categories and some


amounting to quite significant decreases. There is nothing in this record sufficient to rebut the Carrier's demonstration of adverse economic conditions.<sup>1</sup>

In sum, we find that Crew 218 was abolished as a result of adverse economic conditions and not as a result of trackage rights and the I-35 project. The claim will therefore be denied. In light of this determination, it is not necessary to address the Carrier's procedural arguments.

<sup>1</sup> At the hearing, the Organization took issue with some of the data offered by the Carrier citing to figures obtained from *Moody's Transportation Manual*. We note that the Carrier's data was not previously contested in this fashion. In any event, we find that there is an insufficient showing by the Organization to refute the general conclusion from the Carrier's data taken as a whole that the Carrier faced an economic downturn at the time Section Crew 218 was abolished.

**AWARD**

Claim denied.



Edwin H. Benn  
Neutral Member



M. R. Kluska  
Carrier Member



E. L. Torske  
Organization Member

Dated: 11-9-93