

PARTIES )  
TO )  
DISPUTE )

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOO LINE RAILROAD COMPANY

### STATEMENT OF CLAIM

1. Section Crew 332 at Moffitt, N. D., consisting of Section Foreman Terry Kroll and Laborers Kenneth Wolbaum and Giles Feigitsch and Section Crew 333 at Bismarck, N. D. consisting of Section Foreman Andrew Piatz and Laborers Helmuth Gries and Kurt Weber were affected by the abandonment of 29.23 miles of trackage between Bismarck and Moffitt, N. D.
2. Section Forman Terry Kroll and Andrew Piatz along with Section Laborers Kenneth Wolbaum, Giles Feigitsch, Helmuth Gries and Kurt Weber shall be allowed the benefits of the Oregon Short Line Railroad Company - abandonment - Goshen - 360 I.C.C. 91 (1979 (OSL III) Conditions.
3. Carrier shall now be required to restore the employees affected back to their previous positions at the Carrier's expense until such Agreement is reached.

### OPINION OF BOARD

#### A. Facts

On August 27, 1984 the Carrier entered into a trackage right agreement with the Burlington Northern to handle

cars and traffic over the BN line from Bismarck to Moffitt, North Dakota.

On April 11, 1985 the Carrier abolished Section Crew 332 at Moffitt and Section Crew 333 at Bismarck effective April 30, 1985.

The Carrier filed for exemption from the prior approval requirements to construct a 644 foot connecting track between its tracks and the BN line on June 26, 1986. On July 5, 1986 the Carrier sought similar exemption to abandon 23.10 miles of track between Bismarck and Moffitt. On July 11, 1986 the Carrier sought exemption for overhead trackage rights on the BN between Bismarck and Moffitt. As a condition of the abandonment, in its October 2, 1986 decision the ICC imposed *Oregon Short Line* conditions.

This dispute concerns the Organization's assertion that the Claimants are entitled to protective benefits because the abolishments of Section Crews 332 and 333 were made in anticipation of the trackage rights and abandonment proceedings.

The Carrier denied that the abolishments were made in anticipation of the

trackage rights and abandonment proceedings. The Carrier asserted that the abolishments of Section Crews 332 and 333 were made in conjunction with the abolishments of Crew 337 at Wilton and Crew 342 at Douglas and were accomplished in conjunction with the re-arrangement of crews with the introduction of highrail trucks in that territory. According to the Carrier, similar types of actions have occurred on a regular basis. The Carrier also relies upon the economic downturn in business discussed in detail in Award 3 of this Board.

**B. Discussion**


The burden rests with the Organization to demonstrate a nexus between the alleged transaction and the abolishments of Section Crews 332 and 333. The Organization has not met that burden. Rather, the evidence shows that the crews were abolished for reasons stated by the Carrier. The claim will therefore be denied.

**AWARD**

Claim denied.

  
Edwin H. Benn  
Neutral Member

  
M. R. Kluska  
Carrier Member

  
E. L. Torske  
Organization Member

Dated: 11-9-93