

SPECIAL BOARD OF ADJUSTMENT NO. 1173

**PARTIES) SMART - TRANSPORTION DIVISION
TO)
DISPUTE) CSX TRANSPORTATION, INC,**

STATEMENT OF CLAIM:

- 1. Do the L&N Crew Consist Agreements require the Carrier to establish a requested reserve pool when a supply point that had assignments and a guaranteed extra board of jurisdiction is eliminated if Crew Consist protected employees were assigned to the supply point at the time it was eliminated?**

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

This dispute arises out of a Carrier notice of October 15, 2015 to the Organization in which the Carrier advised that Erwin, Tennessee would be closed completely as a terminal, and work would be based out Kingsport, TN, principally due to a decline in coal traffic in that region. All management, non-agreement, exempt, and agreement positions were thereafter eliminated at Erwin. Several employees were held over for a brief period of time to handle the full closure of the facility.

In an October 19, 2015 letter to the Carrier the Organization stated in part that it has "protected prior rights trainmen and protected trainmen that simply cannot be furloughed or forced to another location outside of their prior rights and protected seniority home district." The Organization asserted that "CSRA [Consolidated Southern Region Agreement] Article 25 affords such protection as does the L&N Crew Consist Agreements." The Organization also said that pursuant to the Findings and Award of Public Law Board No. 5031 "a protected prior rights employee cannot be forced away from his current supply point."

Basically, the Organization describes the dispute as follows in a Statement of Case:

The dispute involves the application of the L&N Codified Crew Consist Agreement and the issue of the Carrier, CSX, shutting down

operations at Erwin, TN, and eliminating all trainmen work and assignments in the yard and evidently the road without providing requested reserve pools for the prior right protected trainmen. The Carrier has also reduced work at other locations that has affected prior rights protected trainmen and refused to provide the requested reserve pools. The Organization has tried to resolve the matter without success as the Carrier has tried to contend these trainmen can exercise seniority to other locations, even though the unambiguous former L&N Crew Consist language and PLB 5031 are clear that the Carrier must provide the protections agreed to in the agreements regardless of actions voluntarily taken by the Carrier.

In its Summary Position, the Carrier describes the dispute to be as follows:

The L&N Consist Agreements *do not* require the Carrier to establish a requested reserve pool when a supply point that had assignments and a guaranteed extra board of jurisdiction is eliminated even if Crew Consist protected employees were assigned to the supply point at the time it was eliminated. Employees working at a supply point at the time the supply point is eliminated must exercise seniority within their prior rights district. Additionally, a reserve pool cannot exist with an extra board jurisdiction which no longer exists. Past practice confirms this position, as demonstrated as recently as four months before the elimination of the supply point that gave rise to the dispute at hand. Even if the Board finds in favor of the Organization, no potential claimants have suffered financial harm, as they were compensated seventy-four days beyond the elimination of the supply point in question and voluntarily exercised their seniority to assignments within their prior-rights seniority district.

The Board has given studied consideration to both the vigorous oral argument and the extensive written presentations of the parties involving the history of the many collective bargaining agreements involving crew consist, job protection, prior rights seniority, reserve pools, consolidation of seniority districts, etc., leading up to the September 19, 1994 Codified Crew Consist Agreement which incorporated all earlier versions of the crew consist agreements on the former properties of the Carrier, including, as more specifically referenced by the Organization former agreements on the Louisville & Nashville Railroad (L&N).

The terms and conditions of the various forms of protective prior rights and security protections for employees as contained in the agreements were in exchange for the right of the Carrier to reduce crew size and to provide for the consolidation of operations and integration of seniority rosters and districts concerning former rail carrier properties. In this latter respect, the Organization attained from the

Carrier a number of financial and other incentives for effected employees such as, for example, a \$5,000 lump sum signing bonus; lump sum separation allowances of up to \$60,000 for employees who took early separation from service; payments of \$20,000 to \$50,000 into a Productivity Fund, with future annual payments into the Fund, and to which Fund employees are given a proportionate yearly share; a transfer allowance of \$15,000 and reasonable expenses for movement of household goods; pay allowances for the performance of certain job functions; certain protections against furlough; guaranteed employment or pay for five-day yard assignments; preferential employment rights to other craft positions; a 401(K) plan; and, a \$35,000 allowance upon retirement.

The complexity of the diverse provisions of the enabling authority of agreements involving a reduction of crew consists, and the respective rights of the parties, was aptly described as follows in the Findings and Award of PLB 5031 (UTU and CSX-Former B&O RR, Jacob Seidenberg, Chair and Neutral Member); the dispute before PLB 5031 involving a Crew Consist Agreement that is not unlike the 1994 Codification Agreement in the dispute here at issue:

This is a difficult and sensitive issue because the Board has to determine just how far and how wide did the negotiating parties intend the security net or ambit of protection to be extended to those trainmen who might be adversely affected by the implementation of the 1989 Revised Crew Consist Agreement.

The Organization for self-evident reasons wanted this security net to be extensive and consequently wanted to fence in at each point where a guaranteed trainmen's extra board was maintained, while the Carrier wanted the seniority District to be the area which would determine whether a trainman was entitled to the contractual protection of the reserve pool.

PLB 5031 then went on to state in part:

The Board finds that the parties covenanted, in order to reach this objective, to establish reserve pools coexistent with the location of trainmen guaranteed extra boards for protected employees in active service on the date of the Agreement who were not needed to protect the service in accordance with the terms of the 1989 Agreement.

In the closing paragraph of its Finding, PLB 5031 said the following in response to a Stipulated Issue as to whether the CSX was required to create a reserve pool position at a supply point where it develops that a protected employee does not stand for a position while at another supply point within the seniority district there are open positions available to him:

In summary, the Board finds that Trainman Monroe was mishandled because he was a displaced employee at De Forest Junction whose services were not needed at this supply point at which an extra board was located, and therefore the Carrier was contractually obligated, under the facts of this case, to establish a reserve pool position coexistent with the jurisdiction of the appropriate extra board, for displaced Trainman Monroe.

As noted above, in the case before PLB 5031 the claimant was on an existing road extra board at De Forest Junction who was displaced by a senior employee. The claimant requested that he be permitted to occupy a reserve pool position at De Forest, which was at the time, and then remained an operational terminal. The dispute before PLB 5031 was thus not the same as concerns the instant dispute, where the location at issue before us, Erwin, was eliminated as an operational terminal.

In the light of the particular circumstances of record before us, and nothing of record showing that the Carrier did not have the unilateral right to eliminate Erwin as a terminal, the Board finds that the L&N Crew Consist Agreements, which agreements are most like those before PLB 5031, are not found to require the Carrier establish a reserve pool at Erwin coincident with its elimination and closure as an active terminal.

AWARD:

The Questions at Issue as set forth the Claim are answered in the negative under the particular circumstances of record. It is without precedent as concerns any future dispute involving the elimination of a terminal where argument of the parties may differ from that presented in this case.



Robert E. Peterson
Chair & Neutral Member

Michael S. Wanner
Carrier Member

Dale Barnett
Organization Member

Jacksonville, FL
Dated: