

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 at a supply point when a Crew Consist protected employee no longer has seniority to hold an assignment at his supply point, and a Guaranteed Extra Board has existed for this supply point of jurisdiction, even though the employee can hold an assignment at other supply points in his seniority district?

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.

The principal issue in this case is whether as a result of reduced operations at Dante, Virginia due to an industry-wide downturn in coal shipments and the resultant displacement of Crew Consist protected train service employees from the Dante supply point requires the Carrier to establish a reserve pool because the protected employees can no longer hold a position at Dante, but can hold a position at another supply point in the seniority district.

The Organization says that justification for the Question at Issue to be sustained is found in the pertinent provisions of the 1994 Codification Agreement in spelling out the specific manner that protected employees who are not able to work at the location of their home district supply point are to be placed on a reserve board. The Organization says that comparable provisions existed in the former consolidation agreements providing such rights and were carried over to the Codification.

The position of the Organization is basically as set forth in the text of a letter of October 19, 2015 to the Carrier. This letter reads in pertinent part as follows:

We have a number of trainmen that have either prior right protected CRR seniority, prior right protected L&N seniority, CRR 1980 protected seniority and/or 1985 L&N protected seniority, and any

other applicable protected trainmen, that work within the Erwin/Dante/Kingsport Terminals that have been affected by CSX reducing or eliminating the work force in these locations in the Carrier's actions as of October 15, 2015.

Our office has advised that we have protected prior rights trainmen and protected trainmen that simply cannot be furloughed nor forced to another location outside of their prior rights and protected seniority home district. The CSRA Article 25 affords such protection as does the L&N Crew Consist Agreements.

CSRA

Section 7 Prior Rights Seniority

- A. Trainmen possessing prior rights on the road and former yard rosters will continue to possess relative prior rights to positions advertised at their home terminal (sub-district).*
- B. Prior rights employees will not be required to protect assignments or vacancies on former districts on which they do not hold prior rights.*

The UTU L&N 1985 National Agreement, Article 52 (SBD T-006-86), Crew Consist Agreement, Article 1, states as follows:

[N]or will a protected employee be furloughed or remain on furlough as long as a reduced crew is operating in his seniority district.

Article 2 of this same agreement states:

- (a) All employees holding seniority dates on road brakeman and/or helper seniority rosters on the effective date of this agreement shall be known and designated as protected employees.*

SBD Agreement T-007-86, Memorandum Agreement between the SBD and the UTU (Former L&N, NC&ST, L and CRR) outlines the three consolidated seniority districts on these former properties. Article 1, (d) and (e) state:

(d) Employees holding seniority on each of the separate seniority districts on the effective date of the consolidation will establish priority rights to work on such former seniority districts, and shall be referred to as prior rights employees.

(e) Employees who presently hold prior rights on seniority districts previously consolidated will continue to hold such rights.

I have advised of the following senior prior right protected trainmen being mishandled at Erwin and Dante due {to} the Carrier's election to reduce/eliminate the assignments and work force at Erwin.

* * * * *

The seniority and prior rights protection afforded by the crew consist agreements must be maintained for these trainmen. CSXT Labor Agreement T-159(b)-88 affords that the Carrier establish reserve pools for the protected trainmen affected by a point furlough at either of these locations. To advise our office that the Carrier can simply furlough these trainmen aforementioned or force them to work another location away from their home seniority district as defined prior to the consolidated rosters and after the consolidated is incorrect. PLB 5031 clearly spells out in that ruling that the Carrier cannot handle these trainmen in such a manner.

* * * * *

In addition to the contents of the above letter, the Organization cites Article 7, "Permanent Vacancies," Q&A 5, and Article 9, "Extra Boards," Paragraph D, "Brakemen's Extra Board," Q&A 12, of the Codification in support of its position. These cited provisions read as follows:

Q-5 In the event the junior protected employee is displaced and there are no positions at that location his seniority would permit him to claim, how may such employee be placed?

A-5 He may be placed as follows:

1. Added to the extra board protecting service from which displaced or,
2. Placed in the reserve pool by creation of an additional reserve pool slot and he will be subject to immediate recall during the advertisement period or,
3. Employees with a seniority date later than January 31, 1986 may be forced to another extra board jurisdiction to displace a junior employee or claim an open must-fill position. If more than one such location exists, the employee will select within 24 hours.

* * * * *

Q-12 Where will a protected “prior rights” or “common rights” employee go when displaced from the extra board and there are open advertised vacancies?

A-12 An employee should promptly place himself on an advertised vacancy, or displace promptly. If no vacancy exists for claiming but the employee’s seniority does allow for active employment in that extra board jurisdiction, he would be considered surplus and a reserve pool position would be created.

NOTE: When this occurs, CMC will determine the number of open vacancies and the number of protected displaced employees, if the number of protected displaced employees exceed the number of open vacancies (including Conductor vacancies where the conductor’s extra prevents claiming vacancies) sufficient reserve pool positions will be created.

It is the position of the Carrier that displaced protected employees working at a supply point at the time there is downturn in business at that location, such as at Dante, must exercise seniority within their prior rights district, or, in the case at issue, the Consolidated Tennessee District. In this respect, the Carrier says that displaced protected employees who were working at Dante have seniority rights on the Consolidated Tennessee District on the former L&N and prior rights on the former Clinchfield District, which is part of the Consolidated Tennessee District.

As concerns protected employees being considered as eligible for placement in a reserve pool, the Carrier says the language of the Codification governing reserve pools is clear that the relevant inquiry is whether the protected employee can hold a position in their prior rights district, not just at their supply point location, as the Organization claims.

The Carrier offers in support of its position, Attachment 3, “Reserve Pools,” Q&A 3 of the Codification; the question being that of how do employees enter a reserve pool, and the agreed-upon answer being:

When protected employees are displaced and no non-protected employees are working on that seniority district, and no open vacancies exist, surplus protected employees may be added to the “A” pool until full, then to the “B” pool. (Emphasis as added by the Carrier.)

The Carrier thus maintains that its handling of the employees was fully in accord with Attachment 3, “Reserve Pools,” of the Codification and, in particular, Article C, Q&A 2, wherein it states: “An ‘A’ pool is the reserve pool related to an extra

board's jurisdiction, (or prior rights seniority district if more than one board exists for that seniority district)."

In this respect, the Carrier says that even after the reduction of manpower at Dante, there was still more than one extra board in the Consolidated District, including extra boards at Kingsport and Bostic, and not, therefore, just a single extra board location. Thus, the Carrier says that the jurisdiction for a reserve pool is the entire Clinchfield District, not just a single extra board location.

The Carrier says that the Organization's reliance on Article 9 D, Q&A 12, and Article 7 A, Q&A 5, of the Codification is misplaced in that the express language in Article 9 D, Q&A 12, does not deal with the establishment of reserve pools; it addresses the filling of a "Brakemen's Extra Board." Further, the Carrier says that nothing in Q&A 12 states that an employee becomes eligible for a reserve pool position if unable to hold an extra board position at their home terminal. Q&A 12, the Carrier says, supports its position because it specifies that if a prior rights employee is displaced from an extra board that employee "should promptly place himself on an advertised vacancy, or displace promptly." The Carrier also contends that Q&A 12 does not limit seniority moves to a specific location, and, in this respect, it goes on to state that Attachment 3, "Reserve Pool," requires protected employees to exercise their seniority rights in the entire Clinchfield District before they are eligible for a reserve pool.

The Board will here note that in addition to the above mentioned Carrier citation of the provisions of Q&A 12 that, in response to the question as to where a protected prior rights or common rights employee will go when displaced from the extra board and there are open advertised vacancies, it states in part: "If no vacancy exists for claiming but the employee's seniority does allow for active employment in that extra board jurisdiction, he would be considered surplus and a reserve pool position would be created."

As concerns argument of the parties involving the meaning and intent of the term, "location," study of the various agreements set forth in the record are found to mention "location" either directly or indirectly in several different manners. Among such findings, "Transfer Program," provides an opportunity for surplus protected employees to elect a transfer "to a location on another seniority district" where it is anticipated that additional employees will be needed. Paragraph L 2(b) of the Codification refers to a transfer to a position "at a location outside his prior rights or common rights district, respectively, but within his consolidated rights district." Paragraph L 3(c) makes reference to an employee being required to remain in active service in the prior rights seniority district, "or location with the district."

In this same respect, the Board finds that whereas Section 7 A of the Codification as offered by the Organization provides protected employees have prior rights to positions "advertised" at what is referred to as "their home terminal (sub-district)," with the term "sub-district" appearing to reference a location within a seniority district, such prior rights appear to only extend to the extent that the seniority standing of a protected employee entitles that protected employee to hold an advertised position at that particular location. This contract language is not found to require the Carrier create and advertise a position for a protected employee; the wording provides that *if* a position is *advertised* a protected employee may exercise prior seniority rights to such position.

The Board does not find the Organization's citation or reference to Section 7 B of the Codification to have application to the dispute here at issue since nothing of record appears to show that the Question at Issue involves a protected employee being required to protect assignments or vacancies on a former district where a protected employee does not hold seniority.

As concerns Organization reference to Article 1 of the UTU L&N 1985 National Agreement as pertains to protected employees and furloughs, although the Carrier acknowledged that a protected employee had been inadvertently placed in a furlough status by the Electronic Bid System that individual was recalled to service as soon as the error was realized, and that this individual thereafter voluntarily marked up for work at the Kingsport Terminal.

In regard to Article 2 of the same 1985 UTU National Agreement, there appears to be no dispute or question of record concerning a covered employee not being "known and designated" as a "protected employee." The Board draws the same conclusion as concerns the Organization's citation of Article 1 (d) and (e) with respect to employees holding seniority on each of the three consolidated seniority districts being referred to as "prior rights employees" continuing to hold such prior rights on seniority districts previously consolidated.

Lastly, as concerns the Organization's citation of Codification Article 7 A, Q&A 5, and Article 9 D, Q&A 12, there is no question, as the Carrier offers, that these particular Q&A's cannot be read in a vacuum. The Q&A's, like many provisions of agreements, must be read together with other provisions of the Codification, in particular, Attachment 3, "Reserve Pools," and whether as the Carrier contends it provides that a displaced protected employee cannot be placed in a reserve pool if there is more than one extra board in his seniority district, unless he is unable to hold any position in his district.

In this latter regard, as concerns Article 9 D, Q&A 12 stating that where no vacancy is found existing for claiming but the "employee's seniority" does allow for "active employment" in "that extra board jurisdiction" being considered surplus and a

reserve board pool position would be created, it seems to the Board that this language intends reference to a protected employee who has prior rights to be recognized as having a continuing active employment relationship at the location of the extra board's jurisdiction; this protective right as opposed to that of a non-protected employee who would not have any protective right to remain at the location of an extra board's jurisdiction if displaced from that extra board.

As concerns the Carrier reference to Attachment 3, "Reserve Pool," Article C, Q&A 2, wherein the bracketed language makes reference to more than one extra board existing for a seniority district, the Board is not persuaded that this provision may be read as offered by the Carrier or intending that no contractual purpose attaches to an "extra board's jurisdiction" as otherwise set forth in Article 9 D, Q&A 12. Further, no probative evidence is shown to establish that reserve pools have previously been recognized as intending the application here sought by the Carrier.

In many respects the Board concurs with and finds significant as concerns the Question at Issue before us, the following excerpts from the Findings and Award of PLB No. 5031, UTU and CSX Transportation (former B&O RR Co.), with Jacob Seidenberg as the Chairman and Neutral Member, dated February 13, 1991, and involving interpretation and application of agreement provisions of a Crew Consist Protection Agreement not unlike the 1994 Codification Agreement in the dispute here at issue:

Stipulated Issue: "Is the Carrier required to create a reserve pool position at the 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?"

* * * * *

Trainman Monroe did not exercise his right to work within his Seniority District by either claiming one of the open positions or by displacing any one of the 31 junior employees. Instead Mr. Monroe requested that he be permitted to occupy a reserve pool position at De Forest which request the Carrier denied on the basis that he was needed to protect the service within the District.

* * * * *

The Board finds that the basic purpose of the 1989 Agreement was to enable the Carrier mandatorily to reduce its complement of trainmen within its System, and at the same time to afford financial protection to those trainmen who might lose their jobs as a result of the

implementation of the agreement. The Board finds that the parties covenanted, in order to reach this objective, to establish reserve pools coexistent with the locations of trainmen guaranteed extra board 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.

* * * * *

The Board finds that the Agreement does not speak to surplus employees being surplus when measured by the service needs of the seniority district. It does speak to reserve pools being established coexistent with extra boards for employees whose services were no longer needed pursuant to the Agreement. The instrumentality for granting protection to trainmen whose services were no longer needed by virtue of the crew consist agreement was the reserve pool, and the agreement stated where the reserve pool concept would be operative. The terms of the 1989 agreement are logically susceptible to the interpretation that it is at the supply point where it is determined that the employee is or is not surplus.

* * * * *

Likewise . . . The Board does not read D(2)(b) as requiring a displaced employee to exercise his seniority elsewhere before being eligible to get a reserve pool position. The Board reads it as an option available to the displaced employee to work elsewhere prior to being entitled to enter the pool. This is an option for the employee to exercise but the provision is not obligatory for the displaced employee. . . .

* * * * *

The Board must note that the Organization has stated, without refutation, that the position it has advanced in this case, has been accepted on the property at such locations as Parkersburg, West Virginia, Toledo, Ohio and Brooklyn Junction, West Virginia, as well as in a recent award at the Cincinnati Terminal [Arbitrator Herbert Marx]. The latter Award held the Carrier could not assign reserve pool employees at the Cincinnati Terminal to fill assignments on the employees' home seniority district.

The Board is not at liberty to ignore or to disregard the interpretation which the Carrier has placed on the Crew Consist Agreement in other locations on the property, or the Findings which an experienced

Neutral has rendered in a related dispute on a current crew consist agreement.

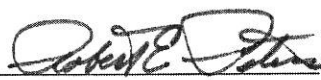
In summary, the Board finds that Trainman Monroe was mishandled because he was a displaced employee at De Forest Junction whose services were not needed at this supply point at which an extra board was located, and therefore the Carrier was contractually obligated, under the facts of this case, to establish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

In the light of the above considerations and overall study of the record it will be the decision of the Board that the Carrier is obligated to create a reserve pool position for protected employees who can no longer hold a position at Dante due to reduced operations and the impact that the Carrier elimination and closure of its terminal at Erwin, TN may have been cause for protected employees to exercise seniority to Dante.

As concerns Organization contentions that certain protected employees are entitled to compensation or a penalty payment based upon the Carrier's actions, the Board finds, as the Carrier submits, that although mention of claims of four employees made its way into certain correspondence of record that such claim or matter is not shown to be included in the Question at Issue as agreed upon by the parties for presentation to this Board.

AWARD:

The Questions at Issue as set forth is answered in the positive under the particular circumstances of record.


Robert E. Peterson
Chair & Neutral Member


Dale Barnett
Organization Member


Michael S. Wanner
Carrier Member

Jacksonville, FL
Dated: