

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33016

INTERNATIONAL ORGANIZATION OF MASTERS, MATES  
AND PILOTS AND CSX TRANSPORTATION, INC.--  
CAPT. MICHAEL T. PATTERSON ARBITRATION APPEAL  
(Arbitration Review)

Decided: January 21, 1997

This decision dismisses an appeal by Captain Michael T. Patterson of an arbitrator's decision finding that he is not entitled to labor protective benefits.

BACKGROUND

For many years, CSX Transportation, Inc. (CSXT), conducted a two-shift rail car float operation across the St. Clair River between Port Huron, MI, and Sarnia, Ontario, Canada. CSXT and the Canadian Pacific Railroad (CP) used the car float operation to move auto rack cars and unusually wide or high cars between Port Huron and Sarnia. Some rail traffic between Michigan and Ontario also moved through two tunnels under the St. Clair River: the CP tunnel between Detroit, MI, and Windsor, Ontario, and the Canadian National Railway Company (CN) tunnel between Port Huron and Sarnia. Neither tunnel was capable of accommodating auto rack cars or unusually large cars, however.

In 1992, CP began expanding the Detroit-Windsor tunnel to permit handling of larger rail cars. In 1993, CN began constructing a new tunnel under the St. Clair River between Port Huron and Sarnia, which also was designed to accommodate unusually large cars. On April 18, 1994, the expanded Detroit-Windsor tunnel opened. Three days later, on April 21, 1994, CSXT eliminated one of the two shifts at Port Huron and furloughed Capt. Patterson, who had been employed as a tug barge captain in CSXT's car float operation headquartered at Port Huron. CSXT asserts that it eliminated Capt. Patterson's shift because of sharply declining car ferry business and a shipper request that it route auto rack cars through the Detroit-Windsor tunnel.

Thereafter, in the fall of 1994, CSXT rerouted through the Detroit-Windsor tunnel all of the traffic previously carried in the float operation. It suspended the Port Huron-Sarnia float operation on October 7, 1994.

In April 1995, the new tunnel between Port Huron and Sarnia opened. CSXT avers that it then determined that its float operation was unnecessary and could not be operated economically. On June 19, 1995, CSXT filed a Notice of Exemption to abandon the Port Huron-Sarnia float operation. In a decision published and served July 14, 1995, in CSX Transportation, Inc.--Abandonment Exemption--In St. Clair County, MI, Docket No. AB-55 (Sub-No. 510X), the Interstate Commerce Commission (ICC) granted the exemption, subject to the labor protective conditions set forth in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979). The exemption became effective on August 13, 1995, and CSXT formally abandoned the float operation on

September 1, 1995. CSXT agreed to provide benefits to employees who were adversely affected by the suspension of the float operation on October 7, 1994. It declined to grant Capt. Patterson protective benefits, however, asserting that he had been furloughed in connection with a decline in business in April 1994, and that his furlough was not in anticipation of the abandonment.

The International Organization of Masters, Mates and Pilots (the union) thereafter filed a claim on behalf of Capt. Patterson and several other employees, requesting labor protective benefits pursuant to the Oregon Short Line conditions. The union claimed that CSXT had acted in disregard of Article I, Section 10 of the conditions, which provides:

Should the railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under the [conditions], the [conditions] will apply to such employee.

The dispute between the parties subsequently was arbitrated under the provisions of Article I, Section 11 of the Oregon Short Line conditions. In a decision dated July 12, 1996, Arbitrator William E. Fredenberger, Jr. found that Capt. Patterson's shift had been eliminated as a result of a decline in business, not in anticipation of abandonment of the float operation. Consequently, he denied Capt. Patterson's claim for protective benefits.

On September 4, 1996, Capt. Patterson filed an appeal of the arbitrator's decision. On October 21, 1996, CSXT replied.<sup>1</sup>

#### POSITIONS OF THE PARTIES

In his petition, Capt. Patterson contends that CSXT's curtailment of his shift was the first step in the chain of events that led to the abandonment of the float operation in its entirety. He argues that, at the time his shift was eliminated, CSXT surely had made firm plans to eliminate the entire float operation. Capt. Patterson avers that there was no difference in the reasons behind the elimination of the two float operation shifts but that the employees furloughed from the second shift received benefits, while those furloughed from his shift did not. Petitioner asks us to review the facts of the case, reverse the arbitrator's decision, and award him protective benefits.

In reply, CSXT argues that Capt. Patterson's petition presents only issues of causation, which are outside the scope of the Board's review of arbitral decisions. In any event, CSXT asserts, Capt. Patterson's claim for benefits was properly

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<sup>1</sup> Concurrently with its reply, CSXT filed a motion for waiver of the regulation at 49 CFR 1115.2(d) which limits reply pleadings to 30 pages in length. CSXT requests the waiver so that the appendix to its reply, consisting of its submission to the arbitrator and the exhibits to that submission, can be accepted into the record. In the interest of having a complete record, we will grant the waiver and accept the appendix.

denied, because his furlough was not causally related to a ICC/Board authorized transaction, i.e., the abandonment.

DISCUSSION AND CONCLUSIONS

The standard of review for arbitration decisions is set forth in Chicago & North Western Tptn. Co.--Abandonment, 3 I.C.C.2d 729 (1987) (Lace Curtain), aff'd sub nom. International Broth. of Elec. Workers v. I.C.C., 862 F.2d 330 (D.C. Cir. 1988). Under the Lace Curtain standard, (1) we do not review "issues of causation, the calculation of benefits, or the resolution of other factual questions," and (2) our review is limited to "recurring or otherwise significant issues of general importance regarding the interpretation of our labor protective conditions." Id. at 735-36. In Delaware and Hudson Railway Company--Lease and Trackage Rights Exemption--Springfield Terminal Railway Company, Finance Docket No. 30965 (Sub-No. 1) et al. (ICC served Oct. 4, 1990) slip op. at 16-17, remanded on other grounds in Railway Labor Executives' Ass'n v. United States, 987 F.2d 806 (D.C. Cir. 1993), the Lace Curtain standard was further explained as follows:

Once having accepted a case for review, we may only overturn an arbitral award when it is shown that the award is irrational or fails to draw its essence from the imposed labor conditions or it exceeds the authority reposed in arbitrators by those conditions. [Citations omitted].

In view of the governing standards, we decline to accept this case for review. Capt. Patterson's appeal does not raise any "recurring or otherwise significant issues of general importance." Rather, the pleading simply disputes the arbitrator's interpretation of the facts and his conclusions with respect to the issue of whether Capt. Patterson was furloughed in anticipation of the abandonment. As noted above, we do not review issues of causation. We conclude that Capt. Patterson's appeal does not lie under the narrow scope of review we must apply to decisions of arbitrators under our labor conditions. Accordingly, the appeal will be dismissed.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CSXT's motion for waiver of the page limitation provision of 49 CFR 1115.2(d) is granted.
2. Capt. Patterson's appeal is dismissed and this proceeding is discontinued.
3. This decision is effective March 2, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary