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SERVICE DATE - AUGUST 7, 1998
SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33627

ELKINS CARMEN -- PETITION TO REVIEW ARBITRATION DECISION

Decided: July 31, 1998

We are denying the petition for review of the May 19, 1998 decision of an Arbitration Committee (John B. LaRocco, neutral and sole member).

BACKGROUND

Petitioners, hereafter the "Elkins Carmen" or "Claimants," are 41 carmen who were, on and before November 1981, employed at the Elkins Car Shop (the shop) of the Western Maryland Railway, one of the railroads that was absorbed into what is now respondent CSX Transportation, Inc. ("CSXT" or "the Carrier"). The shop serviced CSXT's 93-mile line in West Virginia from Elkins to Bergoo. On November 28, 1981, a fire destroyed the roundhouse, one of the buildings of the shop, and it was never rebuilt. The following day, the Carrier initiated an emergency furlough of the carmen working at the shop. Although some of the carmen were recalled to work, by July 1982, all of the petitioning Elkins Carmen had been furloughed. They were never returned to full time active duty. After July 1982, there were at most eight carmen working at the shop, and the Carrier eventually ceased all repair operations at the shop.¹ After the furloughs, the Carrier conducted repairs in the vicinity of Elkins, but these repairs were conducted by carmen brought in from other points or by outside contractors, rather than by the petitioning Elkins Carmen.

In 1987, a Special Board of Adjustment² ruled that the Elkins Carmen were not entitled to benefits under the applicable collective bargaining agreement, finding that the Carrier had not improperly diverted car repair work from Elkins to other locations and that the furloughs were due to the fire and a system-wide decline in business.

On or about August 31, 1993, the Carrier filed an application with our predecessor agency, the Interstate Commerce Commission, to abandon the 122-mile Taggart to Bergoo line, which included the 93-mile Elkins-to-Bergoo segment. The Carrier withdrew the application on January 10, 1994 but renewed it on January 27, 1995. On January 9, 1997, in compliance with a court

¹ The record does not state when the Carrier closed the shop entirely, leaving no actively employed carmen.

² Special Boards of Adjustment are units of the National Railroad Adjustment Board, which mediates minor (non-strikeable) disputes in the railroad industry. The National Mediation Board mediates major disputes.

decision, the Board approved the Carrier's abandonment of the 93-mile Elkins-to-Bergoo segment, subject to the standard Oregon Short Line labor protection conditions.³

On March 4, 1997, the Elkins Carmen requested protective benefits from the Carrier under Oregon Short Line. Then Elkins Carmen argued, and continue to argue, that: (1) the abandonment (rather than the fire and general business conditions) terminated their employment with the Carrier; and, therefore, (2) they are entitled to severance benefits under Oregon Short Line. After the Carrier rejected their claim on April 4, 1997, they took it to arbitration pursuant to Article I, Section 11 of the Oregon Short Line conditions.⁴

On May 19, 1998, the arbitrator issued a decision denying the claim. The arbitrator held that: (1) Claimants bear the initial burden of coming forward with evidence that they were displaced or dismissed as a result of a transaction subject to protection under Oregon Short Line; and (2) if this burden is borne, the burden shifts to the Carrier to prove that benefits may not be awarded because the displacement or dismissal was due to causes other than the protected transaction, such as, for example, general business conditions. The arbitrator then found that Claimants had not met the burden of coming forward for two reasons: (1) Claimants had not shown that there was a causal nexus between the abandonment and their furloughs; and (2) Claimants were not "dismissed or displaced" under Oregon Short Line because they had not been placed in a worse position as a result of the abandonment.⁵ The arbitrator held that, because Claimants had not met the aforementioned burden of coming forward, the Carrier was not required to show that Claimants' furloughs were due to causes other than the abandonment.

By petition filed on June 19, 1998, the Elkins Carmen appealed the arbitrator's decision.⁶ On July 9, 1998, the Carrier filed a reply.

³ These conditions were prescribed in Oregon Short Line R. Co. -- Abandonment -- Goshen, 360 I.C.C. 91, 98-103 (1979), to implement labor protection obligations imposed under what is now 49 U.S.C. 10903(b)(2).

⁴ Oregon Short Line, 360 I.C.C. at 101.

⁵ In support of this latter finding, the arbitrator found that claimants retained the same employment status and seniority rights as furloughed employees after the abandonment that they had before the abandonment, rejecting claimants' argument that the abandonment altered their employment status. The arbitrator relied on precedents holding that employees who were on furlough before a transaction could not be held to have been displaced as a result of it (at least in the absence of anticipatory action, evidence of which was not found here.)

⁶ An "appeal of right" is permitted under 49 CFR 1115.8.

DISCUSSION AND CONCLUSIONS

We will deny the appeal because it does not satisfy our Lace Curtain standard of review.⁷ Under Lace Curtain, we do not review issues of causation or other purely factual issues, in the absence of egregious error. Here, the arbitrator's finding that claimants have not demonstrated that they were displaced or dismissed as a result of the abandonment of the line was a factual finding of causation that, under our Lace Curtain standard, may not be overturned in the absence of egregious error. Claimants' petition for review falls short of showing that the arbitrator's findings were egregious error. Our review of the arbitrator's thorough and well reasoned decision persuades us that it is amply supported by the record.⁸

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

It is ordered:

1. The petition for review is denied.
2. This decision is effective on its date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

⁷ Under 49 CFR 1115.8, the standard for review of labor arbitration appeals is provided in Chicago & North Western Transp. Co. -- Abandonment, 3 I.C.C.2d 729 (1987), aff'd sub nom. International Brotherhood of Electrical Workers v. I.C.C., 862 F.2d 330 (D.C. Cir. 1988), popularly known as the "Lace Curtain" case. Under the Lace Curtain standard, the Board does not review "issues of causation, the calculation of benefits, or the resolution of other factual questions" in the absence of "egregious error." Id. at 735-36.

⁸ The portions of the record cited by the arbitrator showed that the employees involved had been on furlough for more than 15 years, that the furloughs were due to a shop fire and changes in repair policies, events that occurred over 15 years before the abandonment took place, and that their not being recalled during this period was due to lack of work and lack of seniority. As a result, the arbitrator concluded that Claimants' employment status was unaffected by the abandonment." Award, at 25.