"NEW YORK DOCK: FACT OR FICTION? ARE YOU TRULY PROTECTED?"

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U. S. COURT OF APPEALS
NEW YORK DOCK RAILWAY

v

I.C.C. - NOVEMBER 7, 1979

(360 I.C.C. 60; AFF'D 609 F.2d 83)

For those interested in the historical background on the various consolidation of railroad operations, please refer to this case, especially, Pages 86-90.

The entire matter begins with the Emergency Railroad Transportation Act of 1933 and concludes with the New York Dock Railway case.

A SUMMARY OF THE PROVISIONS
OF
NEW YORK DOCK RAILWAY V I.C.C.,

NOVEMBER 7, 1979

New York dock is the name of a labor protective arrangement that offers up to six years of wages and benefits to unionized railroad employees who are adversely affected by a transaction approved by the Surface Transportation Board (formerly the Interstate Commerce Commission).
Transactions covered by New York dock include mergers, acquisitions, and line sales to Class I carriers.
What Does 'ADVERSELY AFFECTED' Mean?
You are adversely affected when you are placed in a worse position due to an STB-approved transaction. There must be a direct connection between the transaction and the adverse effect.

“DISMISSED EMPLOYEE” OR “DISPLACED EMPLOYEE”

Being a DISMISSED employee means that you:
· Have been deprived of employment because of the transaction;
· Have been furloughed as a direct result of the transaction;
· Have been bumped, and subsequently furloughed, by another affected employee;
· Cannot hold a position through the full exercise of seniority.
Being a DISPLACED employee means that you:
· Have been placed in a worse position as it relates to compensation and work rules because of the transaction;
· Have been required, due to the transaction, to exercise your seniority to a lower-rated position.

CALCULATING POTENTIAL NEW YORK DOCK BENEFITS

New York Dock provides up to six years of protection, not to exceed years of service. The allowance for a dismissed employee is based on the earned compensation for the 12 full months preceding the date deprived of employment due to the transaction. This calculation would not include time off for injury or absenteeism. This dismissal allowance would be subsequently adjusted for any general wage increases.

The allowance for a displaced employee would be the difference in earnings in the 12. month period preceding the date displaced by the transaction. As in the dismissal allowance, the calculation is based on earned compensation, so time off for injury or absenteeism would not be included. This displacement allowance is also subject to adjustment for any general wage increases.

It should be noted that a dismissed employee has the option of collecting a separation allowance in lieu of all other benefits. This separation allowance is equal to 360 days pay, and the employee must elect to resign from the company within seven days of being dismissed in order to collect the allowance.

What Are Employees Required to Do Under New York Dock?

TO COLLECT NEW YORK DOCK BENEFITS, YOU MUST:

· Follow your work (including relocation, if necessary);
· Exercise seniority to the fullest;
· Accept comparable employment not requiring a change in residence, including in a different craft;
· Be available for overtime;
· Exercise seniority to a higher-rated position if there is a vacancy.

ARBITRATION

In addition, section 4 of the conditions provides, in pertinent part:

Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this section 4. If at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it [to arbitration].

The departure from an easily administrable rule to a flexible standard will create a great deal of emphasis on the arbitration process. (Because of the unpredictable state of the law, it seems that employers and employees will arbitrate virtually every displacement allowance claim.) Moreover, because of the deference accorded arbitrators by the ICC and the deference accorded the ICC by the D.C. Circuit, arbitrators are likely to draw the boundaries of the New York dock conditions. The law will thus develop on an ad hoc, factually intense bases and will likely remain uncertain for the foreseeable future.

Jonathan, Gottlieb, George

Washington Law Review

June-August, 1996

SUPREME COURT OF THE UNITED STATES

March 19, 1991

Norfolk & Western Railway Company

v.

American Train Dispatchers Association

(499 U.S. 117,111 S.CT. 1156)

EXEMPTIVE LAWS FOR CARRIERS INVOLVED IN MERGERS APPROVED BY THE I.C.C..

Once the Interstate Commerce Commission (ICC) has approved a rail carrier consolidation under the conditions set forth in Chapter 113 of the Interstate Commerce Act (Act), 49 U.S.C. § 11301 et seq., a carrier in such a consolidation 'is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let [it] carry out the transaction ...," § 11341(a). In these cases, the ICC issued orders exempting parties to approved railway mergers from the provisions of collective bargaining agreements.
Held: The § 11341(a) exemption "from all other law" includes a carrier's legal obligations under a collective-bargaining agreement when necessary to carry out on ICC approved transaction. The exemption's language, as correctly interpreted by the ICC, is clear, broad, and unqualified, bespeaking an unambiguous congressional intent to include **1158 any obstacle imposed by law.
This determination makes sense of the Act's consolidation provisions, which were designed to promote economy and efficiency in interstate transportation by removing *118 the burdens of excessive expenditure.

The Interstate Commerce Commission has the authority to approve rail carrier consolidations under certain conditions. 49 U.S.C. § 11301 et seq. A carrier in an approved consolidation "is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let [it] carry out the transaction..." § 11341(a). These cases require us to decide whether the carrier's exemption under § 11341(a) "from all other law" extends to its legal obligations under a collective bargaining agreement. WE HOLD THAT IT DOES.

What happened?

· Work is moved;

· Dispatchers made supervision without rights of union protection.

The carriers notified the American Train Dispatchers' Association, the bargaining representative for certain N&W employees, *122 that they proposed to consolidate all "power distribution"-the assignment of locomotives to particular trains and facilities-for the N&W-Southern operation. To effect the efficiency move, the carriers informed the union that they would transfer work performed at the N&W power distribution center in Roanoke, Virginia, to the Southern center in Atlanta, Georgia. The carriers proposed an implementing agreement in which affected N&W employees would be made management supervisors in Atlanta, and would receive increases in wages and benefits in addition to the relocation expenses and wage protections guaranteed by the New York Dock conditions. The union contended that this proposal involved a change in the existing collective-bargaining agreement that was subject to mandatory bargaining under the Railway Labor Act. (RLA), 44 Stat. 577, as amended, 45 U.S.C. § 151 et seq. The union also maintained that the carriers were required to preserve the affected employees' collective bargaining rights, as well as their right to union representation under the RLA.

THE ICC HELD THAT THE MOVEMENT OF WORK WAS LEGITIMATE SINCE IT WAS PART OF A PLANNED, APPROVED MERGER.

The Commission also held that because the work transfer was incident to the approved merger, it was "immunized from conflicting laws by section 11341(a)." Ibid. Noting that "[i]mposition of the collective bargaining agreement would jeopardize the transaction because the work rules it mandates are inconsistent with the carriers' underlying purpose of integrating the power distribution function,' the Commission upheld the decision to override the collective-bargaining agreement and RLA provisions. Id., let 37a.

ANOTHER CASE: CSX'S ACQUISITION OF CHESSIE SYSTEM, INC AND ITS IMPACT ON THE BROTHERHOOD OF RAILWAY CARMEN

In August 1986, the consolidated carrier notified respondent Brotherhood of Railway Carmen that it planned to close Seaboard's heavy freight car repair shop at Waycross, Georgia, and transfer the Waycross employees to Chessie's similar shop in Raceland, Kentucky. The carrier informed the Brotherhood that the proposed transfer would result in a net decrease of jobs at the two shops. Pursuant to New York Dock, the carrier and the union negotiated concerning the terms of an agreement to implement the transfer. The sticking point in the negotiations involved a 1966 collective-bargaining agreement between the union and Seaboard known as the "Orange Book." The Orange Book provided that the carrier would employ each covered employee and maintain each employee's work conditions and benefits for the remainder of the employee's working life. The Brotherhood contended that the Orange Book prevented CSX from moving work or covered employees from Waycross to Raceland.

THE PARTIES MOVED UNDER TEE GUIDELINES PROVIDED BY NEW YORK DOCK. THEY UPHELD TEE CARRIER AND IT WAS APPEALED TO TEE ICC.

THE ICC UPHELD TEE PROCEEDINGS, IN PART.

TEE MATTER RETURNED TO THE COURTS, WHICH SAID,

The court held that § 11341(a) does not authorize the Commission to relieve a party of collective-bargaining agreement obligations that impede implementation of an approved transaction. The court stated various grounds for its conclusion. first, because the court did not read the phrase "all other law" in § 11341(a) to include "all legal obstacles," it found "no support in the language of the statute" to apply the statute to obligations imposed by collective-bargaining agreements. Id., at 244, 880 F.2d, at 567. Second, the court analyzed the Transportation Act, 1920, ch. 91 § 407, 41 Stat. 482, which contained a predecessor to § 11341(a), and found that Congress "did not intend, when it enacted the immunity provision, to override contracts." 279 U.S. App.D.C., at 247, 880 F.2d, at 570. The court noted that Congress had "focused nearly exclusively ... on specific **1162 types of laws it intended to eliminate--all of which were positive enactments, not common law rules of liability, as on a contract."

BUT, THIS DID NOT HOLD.

Our determination that § 11341(a) supersedes collective-bargaining obligations via the RLA as necessary to carry out an ICC-approved transaction makes sense of the consolidation provisions of the Act, which were designed to promote "the economy and efficiency in interstate transportation by the removal of the burdens of excessive expenditure." Texas v. United States, 292 U.S. 522, 534-535, 54 S.Ct. 819m 825, 78 L.Ed. 1402 (1934). The act requires the Commission to approve consolidations in the public interest. 49 U.S.C. § 11343(a)(1). Recognizing that consolidations in the public interest will "result in wholesale dismissals and extensive transfers, involving expense to *133 transferred employees' as well as "the loss of seniority rights,":

ANOTHER REALITY CREATED BY THIS DECISION;

The decision signifies a substantial filtering-down of authority from the courts, through the ICC, to arbitrators.

U. S. COURT OF APPEALS

JUNE 28, 1994

AMERICAN TRAIN DISPATCHERS

v

ICC
(26 F.3d 1157, 307 U.S. App. D.C. 93)

FACTUAL HTSTORY

Pages 1159-1161, provides an excellent historical summary of mergers and acquisitions which cover:
· CSX and the Chessy System, Inc. and Seaboard Coast Line, Indus.
· CSXT and Lousville Nashville Railroad
· CSXT's Shifting of Train Dispatchers (4)
· Arbitrator's Ruling allowing CSXT to transfer the Dispatchers (4)
· Upholding of Arbitrator's jurisdiction to alter the terms of the CBA by the ICC
SEARCHING FOR A DEFINITION OF "RIGHTS, PRIVILEGES, AND BENEFITS"

ICC may define the terms.
This Court says that -
· "Work Transfers" do NOT infringe upon "Rights, Privileges and Benefits."
· Transferred workers do NOT have the right to "follow their work", as suggested by New York Dock.
· Existing Management Personnel may "Absorb the Transferred Work".

THE CONCEPT OF THE "NECESSITY" STANDARD

Continuing where Norfolk & Western left off, the ICC in its 1992 decision focused on the "necessity" and "approved transaction" predicates of section 11341(a). It decided that "the necessity' predicate is satisfied by a finding that some 'law' (whether antitrust, [the Railway Labor Act], or a collective bargaining agreement formed pursuant to the [Railway Labor Act]) is an impediment to the approved transaction." CSX Corp.--Control--Chessie Sys., Inc., and Seaboard Coast Line Indus., Inc., 8 I.C.C.2d at 721. Thus, it ruled, CSXT was "exempted from any provisions of the collective bargaining agreements ... that might bar the immediate consummation of the transfer of dispatching functions."
In Executives, we held that to satisfy the "necessity" predicate for overriding a CBA, the ICC must find that the underlying transaction yields a transportation benefit to the public, "not merely [a] transfer [of] wealth from employees to their employer." 987 F.2d at 815. In other words, the benefit cannot arise from the CBA modification itself, considered independently of the CBA, the transaction must yield enhanced efficiency, greater safety, or some other gain.
EMPLOYEE DISPLACEMENT

Will occur when movement of work, centralization of functions can be shown to produce "efficiencies".
CONCLUSION

The ICC has the authority to approve work transfers where they are a "necessity" to the process of "acquisitions". (mergers)

U. S. COURT OF APPEALS

MARCH 21, 1997

UTU/BLE

v

STB, ET AL.
(108 F3d 1425)

SUMMARY STATEMENTS

Edwards, Chief Judge: This case arises out of an effort by CSX Transportation, Inc. ("CSXT") to implement an approved merger of operations of portions of four former railroads into a new, consolidated rail district. In so doing, CSXT sought to abrogate terms of existing collective bargaining agreements ("CBAs") in order to merge separate seniority rosters from the former railways into single seniority lists for engineers and trainmen for the entire district and to place the employees of the consolidated district under one CBA.
The Supreme Court and this court have made it clear that the ICC may abrogate certain terms of a CBA as necessary to effectuate an ICC-approved transaction.
The questions at issue here are:
(1) whether established seniority provisions are within the category of interests that are subject to abrogation, and, if so
(2) whether the changes proposed by CSXT are necessary to effectuate the consolidation of railway operations that had been approved by the ICC.
The Commission answered affirmatively to each of these questions, and we can find no error in the agency's judgment.

O'BRIEN ARBITRATION

A neutral arbitrator found

(1) that the coordination proposed by CSXT was linked to an ICC-approved transaction;
(2) that New York Dock arbitration was not barred by the terms of prior implementing

agreements that made reference to Railway Labor Act ("RLA") bargaining;

(3) that CSXT had shown that modification of existing CBAs was necessary; and

(4) that the proposed changes to the existing CBAs could be made, provided, as required by

section 2 of the New York Dock rules implementing 49 U.S.C. § 11347, they did not undermine protected "rights, privileges, and benefits."

CSXT EMPOWERED TO ABROGATE THE CBA

The Commission ruled in favor of CSXT. See Commission decision, reprinted in J.A.224-41.
First, the ICC sustained the arbitrator's finding then CSXT's proposed coordination of train operations in the new, consolidated B&O Eastern District was linked to ICCapproved merger and control transactions. See id. at 8, reprinted in J.A. 231.
Second, the Commission upheld the arbitrator's finding that prior implementing agreements of CSXT do not require that CSXT accomplish the coordination at issue here through Railway Labor Act ("RLA") bargaining procedures, as CSXT's proposed changed involve a different (i.e., greater) territory than that to which the prior agreements applied. See id. at 10-12. reprinted in JA 233-35. The Commission also found that applying New York Dock rules in the instant case comports with the parties' prior implementing agreements. On several occasions, CSXT has consolidated operations within the territory of the former railroads and, without objection from the unions, applied New York Dock rules. See id.
Third, the Commission found that CSXT's proposed changes to seniority rights as established by CBAs were necessary to effectuate the ICC-approved transaction. The ICC also found that CSXT's proposed changes are not a device to transfer wealth from the employees to the railroad, and that the merging of the separate seniority districts will produce real efficiency benefits. See id. at 13, reprinted in J.A. 236.
Finally, the ICC determined that CSXT's proposed changes do not involve "rights, privileges, and benefits" that are protected by 49 U.S.C. § 11347 and section 2 of the New York Dock rules. The Commission noted that "rights, privileges, and benefits" include only "the incidents of employment, ancillary emoluments and fringe benefits." See id. at 14, reprinted in J.A. 237. The Commission concluded that the CBA provisions at issue in this case do not fall within the protected "rights, privileges, or benefits," as they involve scope and seniority changes of the type that consistently have been modified in the past in connection with consolidations. See id. at 15, reprinted in J.A. 238.

THE MERGER OF SENIORITY ROSTERS

In this case, we face two main issues—

(1) Whether CSXT's proposed seniority changes involve terms of a CBA that are shielded absolutely from the ICC's abrogation authority and, if not,
(2) Whether the proposed changes are "necessary" to effectuate an ICC approved transaction.
RIGHTS, PRIVILEGES, AND BENEFITS

The unions argue that the commission erred in finding that CSXT's proposed merger of the seniority rosters in the consolidated district would not undermine protected rights. WE DISAGREE.
DEFINITION OF "RIGHTS, PRIVILEGES, AND BENEFITS"

In this case, the Commission offers a definition: "Rights, Privileges, and Benefits" refers to "the incidents of employment, ancillary emoluments or fringe benefits—as opposed to the more central aspects of the work itself—pay, rules and working conditions." See Commission decision at 14, reprinted in J.A. 237. And "the incidents of employment, ancillary emoluments or fringe benefits" refers to employees' vested and accrued benefits, such as life insurance, hospitalization and medical care, sick leave, and similar benefits. See id. at 15 reprinted in J. A. 238. According to the Commission, seniority provisions are not within the compass of "rights, privileges, and benefits" protected absolutely from the Commission's abrogation authority.

THE CONCEPT OF "NECESSITY"

Under the Commission's interpretation, "rights, privileges, and benefits" are protected absolutely, while other interests that are not inviolate are protected by a test of "necessity," pursuant to which there must be a showing of a nexus between the changes sought and the effectuation of an ICC-approved transaction. Under this scheme, the public interest in effectuating approved consolidations is ensured without any undue sacrifice of employee interest. In our view, this is exactly what was intended by Congress.

THE "BENEFIT OF NECESSITY"

In Executives, we held that, in addition to finding a nexus between the proposed changes and an ICC-approved transaction, "to satisfy the 'necessity' predicate for overriding a CBA, the ICC must find that the underlying transaction yields a transportation benefit to the public, 'not merely [a] transfer [of] wealth from employees to their employer.' 987 F.2d at 815. In other words, the benefit cannot arise from the CBA modification itself; considered independently of the CBA, the transaction must yield enhanced efficiency, greater safety, or some other gain." ATDA 26 F.3d at 1164 (quoting Executives).

CSXT argues, and the ICC accepted, that a consolidation of seniority rosters was necessary to effectuate the merger of the rail lines. This is both obvious on its face and was demonstrated by CSXT.

First, there is little point in consolidated railroads on paper if a consolidation of operations cannot be achieved. It is obvious that separate and distinct parts, operating separately and distinctly, will not generate the value of consolidation.

Second, CSXT demonstrated that changing crews at previous territorial boundaries of the former railroads, we would be required with separate seniority rosters, would increase costs and slow down transit times. Improvements in efficiency generated by a consolidated seniority roster will reduce CSXT's cost of service, resulting in reduced rates to shippers and ultimately to consumers. The unions offered no evidence to the arbitrator or Commission to challenge CSXT's contentions of improved efficiency. Indeed, at oral argument, the unions' counsel conceded that these efficiencies are not open to dispute.

In short, the record supports the Commission's finding that CSXT's proposed changes to the CBAs are necessary to effectuate the ICC-approved transaction.