

**PUBLIC LAW BOARD NO. 5332**

**SYSTEM COUNCIL NO. 6  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**

**and**

**NORFOLK SOUTHERN RAILWAY COMPANY**

**Case No. 185**

**Statement of Claim:**

At various points and dates, listed in the Employees' Statement of Facts, claim was instituted on behalf of furloughed [Claimants<sup>1</sup>]. Said claim was filed due [to] the following Agreement violations by the Carrier:

1. That on or about April 23, 2019 thru[sic] and including January 06, 2020, the Norfolk Southern Railway Company, hereinafter referred to as the Carrier, instituted operational changes which fall within the scope of Appendix M – Employee Protection, as amended, resulting in the Claimants being deprived of

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<sup>1</sup> Claimants include: J.W. Sharp; A.M. Robinson; J.S. Norris; Z.H. Atchley; T.J. Williams; A.L. Potts; L. Robinson; T. Burke; J.J. Davis; T. Karloski; J.R. Zickefoose; A.M. Operchal; M.E. Price; J. Sparks, Sr.; D.B. Sims; R.A. Dooley; C.E. Dooley; D.A. Spicer; J.L. Bridges; C.T. Crowder; C.A. Lee; P.W. Stephenson; J.C. Jenkins; J.C. Walton; W.E. Dalton; C.J. Bolt; T.W. Patsell; T.C. Bedwell; A.J. Hopkins; M.R. Burnett; J.R. Whitesell; J.O. Landreth; J.D. Harris; J.D. Tribett; R.M. Shutt; E.W. Overfelt; C.D. Fisher; B.M. Reynolds; B.W. Harper; V.Q. Banks; E.J. Barksdale; M.P. Bryant; T.G. Turner; J.W. Blank; C.B. Akers; K. Blankenship; C.S. Burke; T.S. Crouch; S.A. Versluis; G. Frederick; W. Appleton; A. Brown; M. Robinson; M. Dukeshire; R. Steele, Jr.; J. Jenkins; A.W. Pulsney; D.J. Ritchey; J.E. Dipko; D.T. Whitehead; B.E. Peters; S.C. Miller; T.R. Wilson; Z.D. Jasper; D.F. Himes; L.H. Lockard; D.H. Miller; M.D. Mason; J.R. Arthurs; J.A. Patterson III; C.S. Kohari; C.E. Workman; L. Lee; R.B. Lowe; J.K. Clement; R.A. Lorup; C.C. Whippen; S.A. Spear; R.S. Tackett; J.D. Maritch; M.J. Palazzi Jr.; A.J. Kensinger; D.A. Goss; B.T. Passonetti; G.E. Baldwin; R.L. Wombacher; D.M. Eckert; J.A. Bowser; R.P. Mervine; J.T. Little; W.R. Keith; S.W. Strohmer; B.L. Baker; A.J. Zavalanski; H.D. Hainley; J. M. Solenski; T.D. Sutton; J.B. Reilly; W.E. Shoeman; S.M. Dolansky; D.J. Weyandt; J. M. St. Louis; R.C. Hoover; J.D. Adams; K.L. Weise; J.R. Terek; T.W. Skebeck; M.D. Socash; B.L. Berkey; V.D. Degol; R.D. Zitalone; Z.J. Mley; B.P. Brojer; J.G. Kikilidis; J.A. Freed; D.D. Bobo; C.S. Banga; M.P. Butto; J.A. Hocanson; J.W. Cortright Jr.; R.L. Flook; W.J. Mackall; S.W. Nath; R.A. Banks; R.D. Crouch; Z.J. Himes; A.M. Phillips; C.M. Schlosser; S.R. Cole; W.E. Thompson; T.W. Blankenship; R.M. Albano; J.W. Burgess; J.J. Barrella; M.W. Nester; J.J. Witt; T.A. Burwell; P.N. McGuire; W.T. Camper; M. Manning; A.C. Caldwell; M.S. White; J.S. Windel; C.A. Rhode; T.R. Shelton; Justin Ogle; D.M. Wesley; C.W. Lindley; T.T. Deaton; D.J. Rouzer; T.A. Watt Jr.; R.E. Settle; E.A. Delozier; A.A. Miller; S.M. Diehl; K.S. Waltermeyer; D.J. Detrich; D.J. Boron Jr.; J.A. Heath; J.C. Shugars; J.A. Hoover; D.M. Walter; N.T. Snowberger; D.F. Kemp; S.C. Bollinger; A.L. Smith; M.E. Lapenna; S.J. Nagy; D.C. Stone; T.A. Ference; T.W. Conway; D.E. Faust; J.D. Miller; S.E. Plazek; B.J. Conrad; N. Cooper; C.E. Mendez; J.L. Price; W.D. Perepechko; P. Romero; T. Crowley; V. Noronha; K.V. Moolamuriyil; H.W. Inhulsen; M. Fares; T.K. Meledathu; J.J. Thomas; N.A. Ables; J.C. Silver; K.J. Lawson; C.J. Featherstone; D.H. Holmes; G.S. Owens; C.J. Higdon; P.M. Parker; C.A. Seale; J.T. Wright; N.E. Rankin; D.R. Tipton; R.S. Newberry; N.B. Fletcher; G.P. Bennett; C. Merrit; J. Hollifield; R.L. Cardona; W.D. Franklin; B.A. Roby; J.M. Ohm; S.Z. Bickhart; J. Osborne; J. A. Lovett-Bynes; S.R. Barnett; K.A. Lee; J.E. Bandy; D.B. Scranton; R.D. Barger; A.W. Brunk; T.A. Seeley; L.W. Linkenhofer; N.D. Copper; C.A. Hale; K.P. Phillips; D.W. Thompson; S.F. Overstreet; D.W. Hale; A.L. Hollandsworth; D.W. Long; J.T. Orange; J.R. Spicer; R.O. Bryant; J.J. Lacy; R.C. Lafoon; E.W. Bondurant; W.J. Regal; C.M. White; D.W. Meier.

employment and/or placed in a worse position with respect to compensation and rules governing working conditions. These referenced dates are to cover multiple claims at various locations per agreement at conference between the parties.

2. That the Carrier erred and violated the contractual rights of the Claimants when they failed to provide the protective benefits of the Washington Job Protection Agreement set forth in Appendix M, Sections 1 – 12, as amended.

3. The Carrier further violated its contractual obligations under Section 2 of Appendix M arising from, but not limited to changes in operations due to; Abandonment/Consolidation of facilities or services; Contracting of work; and, Technological changes.

4. Finally, the Carrier failed to provide a proper sixty (60) days, (ninety (90) days in cases where a change in residence is required) written notice for the abolishment of the Electrical Workers positions, and failed to timely inform the General Chairman of the operational changes or provide a full disclosure of all facts and circumstances involved with the discontinuance of positions.

5. Accordingly, that the Carrier afford Claimants the protective benefits set forth in Section 1 through Section 12 of Appendix M of the Agreement, as amended.

### **Background**

In 2019, Claimants were employed at Carrier facilities in Chattanooga, Tennessee; Conway, Pennsylvania; Bluefield, West Virginia; Shaffer's Crossing, Virginia; Roanoke, Virginia; Bellevue, Ohio; Altoona, Pennsylvania; Williamson, West Virginia; Allentown, Pennsylvania; Asheville, North Carolina; Wilmington, Delaware; Jacksonville, Florida; Knoxville, Tennessee; Columbus, Ohio; Youngstown, Ohio; St. Louis, Missouri; Sheffield, Alabama; Chicago, Illinois; Kansas City, Missouri; Jersey City, New Jersey; Linwood, North Carolina; Norfolk, Virginia; Macon, Georgia; Harrisburg, Pennsylvania; and Decatur, Illinois.

On February 11, 2019, Carrier officials presented a three-year plan, called TOP21, to investors during a Norfolk Southern Corp Investor and Financial Analyst Conference. The TOP21 plan was intended to enhance efficiencies in a variety of ways, leading to the retiring of 500 locomotives by the end of the three-year period (the end of 2021). Chairman, President &



CEO James Squires noted that conversion of locomotives from DC to AC power continued to be performed by contractors as it had for several years.

In the first quarter of 2019, the Carrier experienced a 1% decrease over 2018 in volume of merchandise carried, as well as a 5% loss over 2018 in the amount of coal carried. In the second quarter of 2019, the Carrier had a 3% decline in volume of merchandise carried; a 4% loss in intermodal volume; and a 6% decline in the amount of coal carried, equaling an overall volume loss of 4%, over 2018. As a result, fewer trains were being run and, to cut costs, 550 locomotives were taken out of service. On April 23, 2019, the Carrier posted notices of reductions in forces at Chattanooga, Tennessee; Bellevue, Ohio; Conway, Pennsylvania; and Roanoke, Virginia. The notices affected electricians (IBEW), carmen (BRC), machinists (IAM), boilermakers (IBB), sheet metal workers (SMART); and laborers (NCFO).

On May 28, 2019, a second round of notices was posted at the locations affected on April 23, as well as Bluefield, West Virginia; Altoona and Harrisburg, Pennsylvania; Danville, Kentucky; Andover, Virginia; Cleveland, Ohio; and Binghamton, New York. In this round of reduction in forces, train and engine crafts were also furloughed. Additional notices between May 2019 and January 6, 2020 reduced the number of electricians at Allentown, Pennsylvania; Ashville, North Carolina; Chicago, Illinois; Columbus, Ohio; Croxton, New Jersey; Detroit, Michigan; Jacksonville, Florida; Knoxville, Tennessee; Linwood, North Carolina; Norfolk, Virginia; Sheffield, Ohio; St. Louis, Missouri; Williamson, West Virginia; Wilmington, Delaware; and Youngstown, Ohio. These notices affected all mechanical crafts and more locomotives were taken out of service.

In the third quarter of 2019, the Carrier experienced a 4% loss of volume in merchandise carried, a 5% loss in intermodal volume, and a 15% loss in coal volume, for an overall total

decline in volume of 6% over 2018. At the end of the third quarter, the Carrier's operating revenues were declining over 2018 revenues. In the fourth quarter, the Carrier experienced a 7% decrease in operating revenues over 2018, caused by a 9% loss in total volume of business. By the end of 2019, 900 locomotives had been taken out of service. Similar declines affected all Class I railroads in 2019.

### **Relevant Contract Language**

A September 25, 1964 Agreement between the parties, regarding Employee Protection, provides in pertinent part:

#### **Section 1**

The purpose of this rule is to afford protective benefits for employees who are displaced or deprived of employment as a result of changes in the operations of the carrier due to the causes listed in Section 2 hereof....

#### **Section 2**

The protective benefits of the Washington Job Protection Agreement of May, 1936, shall be applicable, as more specifically outlined below, with respect to employees who are deprived of employment or placed in a worse position with respect to compensation and rules governing working conditions as a result of any of the following changes in operations of this individual carrier:

- 1) Transfer of work;
- 2) Abandonment, discontinuance of 6 months or more, or consolidation of facilities or services or portions thereof;
- 3) Contracting of work;
- 4) Lease or purchase of equipment or component parts thereof, the installation, operation, servicing or repairing of which is to be performed by the lessor or seller;
- 5) Voluntary or involuntary discontinuance of contracts;
- 6) Technological changes; and,
- 7) Trade-in or repurchase of equipment or unit exchange.

#### **Section 3**

An employee shall not be regarded as deprived of employment or placed in a worse position with respect to his compensation and rules governing working conditions in case of ... a decline in a carrier's business.

#### Section 4

The carrier shall give a least sixty (60) days (ninety (90) days in cases that will require a change of employees residence) written notice of the abolition of jobs as a result of changes in operations for any of the reasons set forth in Section 2 hereof....

Appendix M – Employee Protection, of the July 1, 2018 controlling agreement between the parties, includes language to that of the September 25, 1964 Agreement.

#### **Contentions of the Parties**

The Organization contends that the TOP21 operational plan to be implemented in 2019, as described by the Carrier's officers at the February 11, 2019 Investor and Financial Analyst Conference, constituted a new operational plan within the scope of the contractual language of Appendix M. TOP21 was intended to reduce the number of locomotives required by running heavier trains. The three-year strategy was to pull 500 locomotives out of service. The Organization emphasizes that fewer locomotives in service results in a reduced need for mechanical craft employees. It is the Organization's additional argument that the conversion of locomotives from DC power to AC power constitutes a technological advancement for the purposes of Appendix M. Moreover, the Carrier's operational changes included the abandonment/consolidation of facilities and contracting of work. Therefore, the Organization submits, the Carrier should have provided protective benefits under the Washington Job Protection Act as provided by Appendix M.

The Carrier argues that under arbitral precedent, the party making a claim under Appendix M has a burden of proving a *prima facie* case with credible and substantial evidence that the furloughs involved were due to operational changes. According to the Carrier, the Organization has failed to make such a *prima facie* case that Claimants are entitled to protective benefits. Rather, the Organization solely relies on information given to investors on February 11, 2019. The Carrier contends that the TOP21 three-year plan to improve efficiencies was



merely the Carrier's aspirational economic goals for 2019 – 2021. In contrast, the Carrier submits, it has provided substantial evidence of the downturn in business it experienced through 2019, which was commensurate with the reductions in force it made.

The Carrier also argues that none of the criteria of § 2 of Appendix M and the September 25, 1964 Agreement is applicable in the instant case. There has been no transfer of work, abandonment, new contracting out of work, lease or purchase of equipment, discontinuance of contracts, technological change, or trade-in/replacement of equipment. The performance of locomotive conversion from DC to AC power by contractors has been ongoing for years, as evidenced by a November 6, 2015 letter agreement between the parties, which permitted conversions by contractors, provided that the Carrier endeavored to involve Carrier forces to the extent it was practical. Furthermore, both AC and DC locomotives have been in the Carrier's fleet for decades, and the conversions contemplated are not a technological change as intended by Section 2 of Appendix M and the September 25, 1964 Shop Craft Agreement. Rather, the Agreement contemplated technological changes that resulted in the replacement of workers by technology. Additionally, there has been no abandonment of any facility: the Chattanooga, Tennessee site has members of every mechanical craft assigned and working on a daily basis. The amount of available work declined and forced reductions in staffing at numerous system locations in 2019 due to the decline of business the Carrier experienced, but no facility was abandoned.

### **Opinion**

As the Carrier correctly points out, arbitral precedent requires the Organization to establish a *prima facie* case that Claimants' furloughs were the result of operational changes which met the criteria identified by Section 2 of Appendix M and the September 25, 1964 Shop

Craft Agreement. The Organization attempts to do so by tying the Carrier's 2019 reductions in force to the TOP21 plan introduced to investors on February 11, 2019. However, the Board is not persuaded by the Organization's argument in this regard. The TOP21 plan was a *three-year* strategy to increase efficiencies, at the end of which—*by the end of 2021*—500 locomotives would have been taken out of service.

By the end of 2019, 900 locomotives had been taken out of service. The Board finds that this was not the result of the operational changes anticipated by TOP21. Rather, as the Carrier has proved by credible and substantial evidence, its performance in 2019—like the performance of all Class I railroads in 2019—suffered a year-long and worsening decline in business. Under these circumstances, with less available work and a need to cut costs, the Carrier unfortunately was required to reduce forces at numerous locations systemwide. The Board is satisfied that Claimants' furloughs were the result of this increasing decline in volume of business. Under § 3 of Appendix M and the September 25, 1964 Agreement between the parties, therefore, Claimants were not entitled to the protective benefits provided when employees are deprived of employment due to the specific causes listed in § 2.

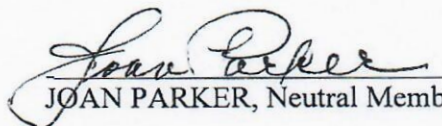
As the Carrier points out, no transfer of work occurred. No facilities were abandoned, although staff was reduced. While the Organization alleges that work was contracted out, there was no new contracting of work, only the conversion of locomotives from DC to AC power by contractors, which had been ongoing since at least 2015, by agreement of the parties. Moreover, while the Organization characterizes these conversions as technological advancements, no workers were replaced by technology due to such conversions. The power conversions therefore were not technological change as intended by § 2, which expressly addresses situations in which employees lose employment because of technology replacing their jobs.

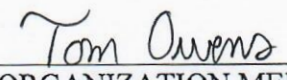
The Board concludes that the Carrier did not violate Claimants' contractual rights by failing to provide protective benefits under Appendix M. Additionally, the Carrier was not required to provide either 60 or 90 days' notice regarding the reductions in force, under § 4 of Appendix M, because such reductions were not caused by operational changes—making § 4 inapplicable to the instant case. The Organization has failed to prove its claim, and thus the claim is denied.

**Award:**

The claim is denied.

  
CARRIER MEMBER

  
JOAN PARKER, Neutral Member

  
ORGANIZATION MEMBER

DATED: 11/12/2020

DATED: 11/11/2020