

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33270
Docket No. MS-34186
99-3-97-3-730**

The Third Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr. when award was rendered.

**(Lawrence Milnar, Tahne Smith, Ray Pringle, Dorothy J.
(Parker-Banning Nelson and John/Jane Does 1-999**

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

- "1) Union Pacific illegally withheld Missouri State Tax from employees transfer allowances in spite of the fact no transferee was actually employed within the state of Missouri at the time relocation payments were made.**
- 2) Union Pacific withheld a flat 3% Missouri State Tax, when in fact the states which employees transferred from have a higher tax rate, thereby under-taxing most transferred employees, by as much as 50% in some cases.**
- 3) Union Pacific withheld Missouri State Taxes on active employees working and living in Texas, where no state tax is applicable.**
- 4) Union Pacific has refused to furnish facts and figures on TPA amounts, and how said amounts were arrived at, what time frame and compensation used.**
- 5) Union Pacific has refused to honor provisions/rulings of New York Docket, primarily on issues of benefits and compensation.**
- 6) Union Pacific has steadfastly and continually refuse (sic) stonewall resolution of these matters. These issues were presented to Union Pacific in May 1997."**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

At the outset the Carrier challenges the jurisdiction of the Board to adjudicate the claim in this case.

The Carrier maintains that the dispute in this case arises under New York Dock Implementing Agreement No. 217 (NYD-217). By way of background, the Carrier notes, the Surface Transportation Board (STB) approved the merger and consolidation of the Carrier and the Southern Pacific Transportation Company and as a condition of such approval imposed the New York Dock Conditions for the protection of affected employees. NYD-217, the Carrier further notes, was negotiated pursuant to Article I, Section 4 of the conditions. The Carrier argues that Article I, Section 11 of the conditions contains the exclusive and mandatory arbitration procedures for issues concerning the interpretation or application of the conditions or the terms of any Article I, Section 4 Implementing Agreement. Accordingly, the Carrier contends, the Board lacks jurisdiction to decide the claim in this case.

The Employees respond that the federal courts have construed the jurisdiction of the Board broadly to include claims involving implied conditions and terms of employment. Specifically, the Employees urge, the Board may review merger protection and tax code requirements that are inextricably intertwined with collective bargaining agreements. The Employees maintain that such review extends to the question of whether an Organization and Carrier have negotiated agreements which provide the level of labor protection required by law. Finally, the Employees emphasize, this Carrier has adjudicated merger protection claims under New York Dock Conditions

before the First Division of this Board without objection, e.g., First Division Award 24512 which forecloses the Carrier from raising the issue of jurisdiction in this case.

The Employees reliance upon First Division Award 24512 is misplaced. Jurisdiction is an issue which may be raised at any time. Accordingly, the fact that the Carrier did not raise the issue of jurisdiction in First Division Award 24512 does not preclude it from raising the issue in this case.

While the Board may have broad jurisdiction to adjudicate issues which are justiciable in other forums, the authorities cited by the Employees stand only for the proposition that such jurisdiction exists when ancillary to jurisdiction to interpret or apply a Collective Bargaining Agreement. The claim in this case clearly arises out of the interpretation or application of NYD-217 and/or the New York Dock Conditions themselves. We believe the Carrier's point is well taken that such questions are justiciable exclusively under Article I, Section 11 of the New York Dock Conditions. Accordingly, we must conclude that the Board lacks jurisdiction to adjudicate the claim in this case.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 6th day of May 1999.