

**IN THE MATTER OF THE ARBITRATION BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY and ILLINOIS
CENTRAL RAILROAD COMPANY
(Hereinafter referred to as the Carrier)**

and

**AMERICAN TRAIN DISPATCHERS ASSOCIATION
(Hereinafter referred to as ATDA)**

and

**ILLINOIS CENTRAL DISPATCHERS ASSOCIATION
(Hereinafter referred to as ICTDA)**

FINDINGS AND AWARD

Don A. Hampton, Arbitrator

Appearances

For the Carrier

Cathy Cortez, Senior Manager, Labor Relations
Robert S. Hawkins, Esq., Buchanan, Ingersoll & Rooney, P.C.

FOR THE ATDA

Michael S. Wolly, Esq., Zwerdline, Paul, Kahn, & Wolly, P.C.

FOR THE ICTDA

Joseph R. Mazzone, Esq.

Hearing Date: November 10, 2009

Hearing Location: Homewood, Illinois

STATEMENT OF FACTS

In Finance Docket No. 33556, the Surface Transportation Board (STB) approved the purchase of the Canadian National Railway Company (CN), Grand Trunk Corporation (GTC) and the Grand Trunk Western Railroad Incorporated (GTW)(After the Control Transaction was allowed the name of GTW was changed to “Grand Trunk Western Railroad Company) Of the Illinois Central Corporation, Illinois Central Railroad Company (IC), Chicago, Central & Pacific Railroad Company (CCP) and Cedar River Railroad Company (CRR) (The “Control Transaction”), effective July 1, 1999, subject to the conditions for the protection of Railroad Employees described in New York Dock Railway – Control – Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979) (“New York Dock”). The purchase enables the Rail system to provide more efficient, more reliable, and more competitive rail service. The Acquisition also allows the consolidated rail carriers (Collectively referred to as the “Carrier”) to respond directly to shipper requirements for improved rail infrastructure to handle the growing north south trade flows stimulated by NAFTA.

During the approval process for the merger the ATDA requested that the STD impose a condition to forbid transfer of train dispatcher responsibilities over domestic trackage to dispatchers in Canada without

certification from the FRA that the transfer without compromising safety. In its decision approving the Control Transaction, the STD explicitly acknowledged the Carrier's intent to centralize dispatching in Illinois.

In February of 2009, the Carrier determined that in order to achieve some of the efficiencies of the Transaction, it would be necessary to transfer GTW dispatching work currently performed in Troy, Michigan to Homewood, Illinois. Consolidating the Dispatching functions into the brand new transportation center, which is substantially better equipped and will achieve substantial savings by eliminating the need for its lease in Troy. The proposed consolidation finally brings together all U.S. dispatching groups under one roof, with associated efficiencies i.e. combined managerial and information technology support.

Such a transfer made it necessary to eliminate excess positions and transfer of dispatching work from Troy to Homewood.

POSITION OF THE PARTIES

While the Parties submitted to the Board detailed positions and voluminous supporting documentation on their positions this decisions will

cover all of these areas in brevity as the parties fully documented their respective positions to all concerned.

CARRIER:

A. The consolidation of work at a single reporting point is precisely the type of transaction that reasonably flows from, and is necessary to effectuate the efficiencies of, the STP – approved Control Transaction.

B. Because the parties complied with the notice and bargaining requirements of Article I. Section 4 of New York Dock, this Board properly has jurisdiction to impose an Implementing Agreement providing for the selection and assignment of forced for the consolidated Homewood dispatching operation.

C 1. The Carrier proposal should be imposed because it is fair and equitable and complies with the requirements of New York Dock.

2. The Carrier's proposed Implementing Agreement provides Full New York Dock protection to eligible Employees, including relocation assistance.

3. The Carrier's proposed Implementing Agreement properly places all dispatchers working at the Homewood Transportation Center, including the transferred GTW dispatchers under the ICTDA agreement in effect on the property.

D The Agreement proposed by the ATDA is excessive and beyond the jurisdiction of this Board.

1. The ATDA's demand to continue representing the GTW Dispatchers is beyond the jurisdiction of this Board.

2. The ATDA's demands for benefits in excess of those required by NEW York Dock are not a proper subject for Section 4 Arbitration.

ATDA

1. That employees willing to transfer to Homewood to work positions that dispatch trains over GTW trackage should be given priority over existing employees at Homewood to bid positions that perform those functions.

2. That employees transferring to Homewood should remain on a separate seniority roster of employees handling dispatching over GTW trackage.

3. That employees whose positions at Troy are abolished but who are not awarded positions at Homewood initially should retain rights to bid on vacancies that later occur at Homewood in positions dispatching trains over GTW trackage and be able to move to take those positions on the same

terms and conditions available to those GTW employees who successfully bid the positions initially.

4. That GTW Train Dispatchers who exercise their seniority to obtain a TCIU/GTW position should be considered eligible for a displacement allowance in accordance with Article I, Section 5 of New York Dock.

5. That the Carrier should provide employment assistance for the spouses of the relocating train dispatchers at no cost to the employee or spouse.

6. That the rates of pay in effect for GTW Train Dispatchers at the time of the relocation should be increased 10 percent (10%) in recognition of the increased cost of living in the Homewood area.

7. That GTW Employees should be allowed five (5) days with pay for the purpose of locating a residence in the Homewood area, with travel expenses associated with house-hunting trips paid by the Carrier.

8. That the Carrier should offer eight (8) separation allowances to Troy dispatchers as an alternative to their moving.

9. That ATDA employees who transfer to Homewood should be given the option of accepting Lump Sum monetary relocation packages in lieu of the moving and real estate provisions set forth in New York Dock Sections 9 and 12.

ICTDA

It is the position of the ICTDA that any award issued in this matter be limited to the issues and positions raised by the parties and contain no restrictive requirements, or orders upon the members of the ICTDA as regards their collective bargaining relationship with the Carrier.

DISCUSSION

This Board is tasked with resolving the issue of whether the Carrier is to be allowed to consolidate the work of GTW Dispatchers with the work of the IC Dispatchers. Such action would override the ATDA-GTW Collective Bargaining Agreement, including the elimination of Scope Rules limiting the GTW Dispatchers to dispatching trains over only the historic lines of the of the GTW. That the ATDA proposal would prevent the Carrier to achieve the efficiencies envisioned by the Control Transaction. The Carrier argues that such a merger would make it possible for the Carrier to immediately achieve the efficiencies of truly merging the GTW and IC Dispatchers. As the IC and GTW Dispatchers have already been trained on and upgraded to common dispatching systems there is no longer any rationale for merely moving the IC and GTW Dispatchers into a common building prior to actually intergrating their work. The Carrier then will immediately be able

to begin reassigning territories between the former GTW and IC desks, as necessitated by the Carrier's business needs.

The Carrier further argues that it is the ATDA who was primarily responsible for the delays in bargaining an implementing agreement as the ATDA continues to reject the core premise of the consolidation, and that there is no reason to believe that additional bargaining would result in a voluntary agreement. That it now rests on the Arbitrator to impose an implementing agreement providing for the selection and assignment of forces for the consolidated Homewood dispatching operation. That while the ICTDA has sought to remain neutral and because it is necessary for the Carrier to consolidate the work of the GTW and IC Dispatchers, IC Dispatchers will unavoidably be affected by the consolidation and the ICTDA is a necessary, if reluctant, party to this Section 4 arbitration proceedings. Because the ICTDA is not currently proposing a specific implementing agreement and has not espoused any strongly held position with to the consolidation other than its desire to remain neutral the Carrier has focused their arguments on the positions advanced by the ATDA. Of course the ICTDA will be bound by the implementing agreement imposed through these proceedings.

The ATDA argues that the Carrier did not bargain in good faith to reach an implementing agreement, that in fact, the Carrier reverted to regressive bargaining to tie the hands of the Arbitrator.

The ATDA avers that the Carrier is not merging the GTW and IC rail traffic control systems. Rather it is moving the GTW control system to a building at Homewood where IC and WC Dispatchers already work. When that happens all of the dispatchers will be under one roof, but they will not be running a single transportation system. Rather, the Carrier will continue to operate three (3) separate rail systems, only now they will be operated out of one facility.

Article I, Section 4 provides “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 that particular case and any reassignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this Section 4.” As it is evident that the transaction will result in employees being displaced or dismissed and forces being rearranged, so the Arbitrator must find an appropriated basis for the selection of forces and assignment of Employees to perform the GTW work being transferred to Homewood. The Arbitrator

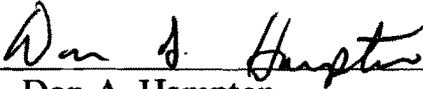
in his decision, must consider working agreement, seniority, prior rights and industry practices as he formulates his decision.

The Board at this time is unconvinced that it is a necessity to merge the duties of the GTW, IC, and WC Dispatchers to promote the efficiencies as envisioned by the Control Transaction. The Carrier has not substantiated that efficiencies would be non-existent should the GTW Roster be maintained and the ATDA Collective Bargaining Agreement remain in effect for those GTW Dispatchers transferring from Troy to Homewood.

There is no doubt that in the future, with changing technology and enhanced training methods that what the Carrier envisions will not only be possible, but common. On this issue the ATDA has been more convincing. The ATDA will be permitted to perform the duties at Homewood as they previously performed on territories covered by GTW Dispatchers.

In their correspondence and in arguments before the Board the parties seek to place blame in their inability to reach a bargained implementing agreement. While it is true the bargaining process left much to be desired, it is evident that the parties did make attempts with their proposals to reach an agreement. The Board will, using their proposals, craft one. This Implementing Agreement is attached as an Addendum to this decision and is

made a part of this decision. These Implementing Agreements are to resolve all outstanding issues and disputes raised by the parties in these proceedings.



Don A. Hampton
Arbitrator

DATED: February 1, 2010

The background of the page is a complex, abstract composition. It features several large, overlapping circles in various shades of gray. These circles are set against a background of a fine, uniform halftone dot pattern. The overall effect is a layered, textured look that is both modern and somewhat industrial.

ADDENDUM

IMPLEMENTING AGREEMENT

PARTIES TO AGREEMENT

**GRAND TRUNK WESTERN RAILROAD
COMPANY, ILLINOIS CENTRAL RAILROAD
COMPANY**

And

Their employees represented by:

**AMERICAN TRAIN DISPATCHERS ASSOCIATION
(ATDA)**

And

**ILLINOIS CENTRAL DISPATCHERS
ASSOCIATION**

WHEREAS, The Surface Transportation Board, in decision dated May 25, 1999 (STB Finance Docket No. 33556), approved the acquisition by Canadian Railway Company ("CNR"), Grand Trunk Corporation ("GTC"), and Grand Trunk Western Railroad Incorporated ("GTW") of Illinois Central Corporation ("I.C. Corp."), Illinois Central Railroad Company ("I.C."), Chicago, Central and Pacific Railroad Company ("CCP") and Cedar River Railroad Company ("CRRC") subject to the conditions for the protection of Railroad Employees described in New York Dock Railway - Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979)

And

WHEREAS, on February 3, 2009 the GTW served notice under ARTICLE I, Section 4 of the Protective Conditions of its intent to change operations as a result of the above transaction, and

WHEREAS, the parties to this agreement between the GTW and the ATDA on behalf of employees represented by the ATDA will establish procedures for the transfer of work and employees whose positions will be abolished on the GTW, and provides the necessary protection of affected employees.

As the ICTDA is not currently proposing a specific implementing agreement and has not espoused any strongly held position with respect to the consolidation other than its desire to remain neutral, the Arbitrator focused his decision on positions advanced by the Carrier and the ATDA. Of course all parties must be bound by this Tripartite Implementing Agreement.

1. On the effective date of this Agreement, sixteen (16) GTW Dispatcher positions, identified in Attachment "C", subject to the Agreement between the GTW and the ATDA will be abolished and the work they perform will be transferred to Homewood.

2. No less than Ten (10) days prior to the effective date of the Agreement, the GTW will post notice at Troy for at least ten (10) GTW

Dispatcher positions at Homewood to perform the work being transferred. Should additional positions be needed to perform such work, these positions shall be offered to those Troy dispatchers who are not part of the initial transfer of employees, as provided below.

3. GTW dispatchers must each (a) Submit their application for a position at Homewood, (b) accept a separation allowance as provided for in paragraph 12, or (c) state his/her intent to exercise seniority to another position under another Collective Bargaining Agreement under which he/she holds seniority (i.e. the GTW/TCIU Agreement), in writing, to the individual designated by the Carrier with copy to the Local Chairman, within five (5) days from date of posting. Employees must select their options in order of preference. Employee elections identified on their application will be considered **irrevocable**. Failure to submit application, or identify options, will result, in the employee being considered as having elected to exercise seniority under existing GTW/TCIU Agreements or otherwise accept a clerical position as provided in paragraph 4 below.

4. Assignments and awarding of positions shall be made in seniority order. In the event all positions provided in paragraph 2 are selected by dispatchers and not all separation allowances are claimed in accordance with paragraph 12, clerical positions, under the GTW/TCIU Agreement will be

made available to the remaining employees of the GTW/ATDA seniority roster. (See Attachment "C"). Employees who accept such clerical positions shall be considered displaced employees who retain rights to bid positions performing the dispatching work transferred to Homewood as such positions become available, and to transfer to such positions on the same terms and conditions applicable to those Troy Train Dispatchers who initially transferred to Homewood. They shall receive advance notice of such vacancies and be offered a minimum of ten (10) days in which to bid. Failure to submit a bid will result in the surrender of all rights under this Agreement.

5. Employees transferring from Troy to Homewood under provisions of this Agreement shall remain subject to ATDA representation and all agreements, including all national agreements, in effect between the ATDA and GTW governing wages, rules and working conditions, subject to the modifications contained herein, until such time as a single agreement is reached covering all ATDA represented train dispatchers.

6. Employees awarded positions created pursuant to Paragraph 2 will retain prior rights to those positions based upon their relative seniority standing as transferred. The rights will only be terminated in the event (1) The transferring GTW Employee successfully bids to another assignment

not covered by the ATDA –GTW agreements or, (2) The Employee resigns, retires, becomes disabled, is dismissed from service, or is promoted. Once a position established under paragraph 2 is no longer subject to prior rights under this agreement, it will, if necessary, be filled in accordance with the ATDA Agreement subject to paragraph 4. above.

7. The Employee protective benefits and conditions as set forth in the **New York Dock Conditions** (Attachment “A”) shall be applicable to this transaction. There shall be no duplication of benefits by an employee under this agreement or any other agreement or protective arrangement or protective agreement.

8. Any employee determined to be a “displaced” or dismissed employee as a result of this transaction, who is otherwise eligible for protective benefits and conditions under some other job security agreement, conditions or arrangement shall elect, in writing, within sixty (60) days of being affected between the protective benefits and conditions under such other arrangements. Such election will be given to the Carrier’s designated representative and the employee’s General Chairman. Should any employee fail to make an election of benefits during the period set forth in this paragraph, such employee shall be considered as electing the protective benefits and conditions of this agreement.

9. GTW Train Dispatchers shown in Attachment "C" who exercise their seniority to obtain a TCIU/GTW position shall be considered eligible for a displacement allowance in accordance with Article I, Section 5 of New York Dock. The Carrier shall provide the respective employee with the calculations used to determine his/her displacement allowance within thirty (30) days of assuming the Clerical position. The Carrier shall pay such displacement allowance in the first (1st) pay period of the month following the month in which a displacement allowance is due.

10. Nothing contained herein shall be construed as depriving any employee of any rights or benefits or eliminating any obligation which such employee may have under any existing job security or other protective conditions or arrangements, the employee shall elect between the benefits under New York Dock and similar benefits under such other arrangement and, for so long as the employee continues to receive such benefits under the provisions which the employee so elects, the employee shall not be entitled to the same type of benefit (regardless of whether or not such benefit is duplicative) under the provisions which he does not so elect; and, provided further, that after expiration of the period for which such employee to protection under that arrangement which the employee so elects, the employee may then be entitled under the other arrangement for the

remainder, if any, of the protective period under that arrangement. There shall be no duplication or pyramiding of benefits to any employee, and the benefits under **New York Dock**, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits.

11. In event any of the employees shown in Attachment "C" cannot hold a position under another GTW Collective Bargaining Agreement (i.e. TCIU/GTW), cannot receive a separation allowance as provided in paragraph 12, or cannot acquire a train dispatcher in Homewood, such employee shall be eligible for a dismissal allowance in accordance with **Article I, Section 6 of New York Dock**. The Carrier will shall provide the respective employee with the calculations used to determine his/her dismissal allowance within thirty (30) days of becoming a dismissed employee. The Carrier shall pay such dismissal allowance in the first pay period of each month.

12. There shall be at least six (6) separation allowances offered by the Carrier which shall be determined in accordance with **Article I, Section 7 of New York Dock**. Employees shall apply for a separation allowance in accordance with paragraph 3, which shall be awarded in seniority order. An employee awarded a separation allowance shall have the option to take it in

a lump sum, payable within thirty (30) days of the position being abolished in Troy, or having it spread equally over a certain number of months to reach age sixty (60). Should an employee choose to have the separation spread over a certain number of months to reach age sixty (60), the first payment shall be made in the first pay period following the abolishment of positions and he/she shall continue to receive health benefits in accordance with the same provisions as active employees for each month in which the separation allowance is received.

13. Employees that transfer from Troy to Homewood under the provisions of this Agreement may at their option and in lieu of any all benefits provided by **Section 9 and 12, New York Dock** conditions (Attachment "A"), be afforded special options as provided in Attachment "B". Such election shall be made at the time of transfer.

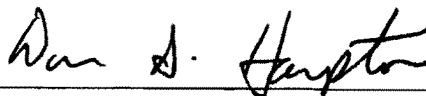
14. This Agreement shall constitute the required Agreement as stipulated in Article I, Section of the protective conditions, for the transfer of work indicated in the notice of February 3, 2009, The parties understand that in the future, other implementing agreements may be necessary to carry out the Financial Transaction set in STB Finance Docket 33556. The parties understand that such agreements are subject to notice, negotiation and possible arbitration under **Article I, Section 4 of the New York** conditions.

15. Any dispute arising out of this Implementing Agreement and the attachments will be handled by the General Chairman with the Officer of the Carrier designated to receive such claims and grievances for the Carrier. All unresolved disputes will be disposed of in accordance with the applicable provisions of New York Dock.

16. The provisions of this Implementing Agreement have been designed to address a particular situation. Therefore, the provisions of this Implementing Agreement and the Attachments are without precedent or prejudice to the position of either of the parties and shall not be referred to in any other case.

17. This Agreement shall be effective no later than March 1, 2010.

Signed this 1st day of February, 2010 at The Villages, Florida



Don A. Hampton
Arbitrator

w/Attachments

- A. New York Dock Conditions
- B. Relocation Benefits
- C. Troy ATDA Seniority Roster



ATTACHMENT “B”

ATTACHMENT B

In lieu of the benefits provided for in Sections 9 and 12 of the New York Dock conditions, employees who accept positions at Homewood may elect, at the time of their transfer, to accept one of the relocation packages as provided below. All transferring employees must select either relocation option (1) or (2), payments subject to taxation:

OPTION (1) GTW Employees who relocate their primary residence to the

Homewood area will receive:

After fifteen (15) working days	\$2,000
After sixty (60) working days	\$2,000
After six (6) months	\$2,000
After one (1) year	\$2,000
After fifteen (15) months	\$2,000

To qualify for the above payments, an employee must be in active service at Homewood at the time such payment is due.

GTW employees who relocate their primary residence and select the benefits of this Attachment at the time of their transfer will be entitled to an additional \$10,000 upon proof of sale, at fair market value, of their primary residence in the Troy area, and proof of relocation to a new primary residence within a reasonable distance of Homewood. To qualify for the benefits of this paragraph, relocation of primary residence, including both sale and relocation, must occur within two (2) years of the date of transfer.

OPTION (2) GTW Employees who rent in the Homewood area:

GTW employees who elect to rent or lease in the Homewood area, will be reimbursed for actual out-of-pocket costs of a rental accommodation, up to One Thousand Three Hundred Dollars (\$1,300) per month ("rent reimbursement"). This rent reimbursement is to be used solely for the accommodations that are necessary in order for the employee to hold a Dispatcher position to Homewood, Illinois and is not intended to, and cannot, be used for any other purpose, including but not limited to enrolling children in school, paying expenses for your present residence (or any other residence), or paying for any additional costs that might incur as a result of relocating.

1. Rent reimbursement includes only the following items: monthly rent; the cost of a basic cable plan; monthly gas (heat) bill; monthly electric bill; and parking at your residence.
2. Rent reimbursement will be provided for only those expenses actually incurred and only up to the amount provided for in paragraph 1. The employee must provide proof that you incurred the expense in a format acceptable to the Company prior to being reimbursed for any expense. Examples of acceptable forms of proof include a signed lease agreement, monthly utility bills issued by the service provider for gas, light, basic cable, and parking. The Company reserves the right to request the employee provide a receipt for proof that the expense has been paid.
3. This is a taxable benefit to the employee, which is subject to taxation as ordinary income. The Company has agreed to pay the taxes for the rent reimbursement to the extent that it is considered ordinary income and

subject to taxation. The employee will remain responsible for all other tax liability. All rent reimbursement and taxes paid by the Company will be reported on the employee's statement of earnings.

4. Rent reimbursement will be provided to the employee for a period of time not to exceed two (2) years, or when one of the following events occur, whichever is sooner: the employee ceases to incur such expense; the employee violates any term of this relocation package; the employee's employment with the Company ends, whether voluntarily or otherwise; or the employee voluntarily chooses to transfer to another position within the Company.
5. Rent reimbursement will be offset if two or more employees rent the same living space.

ATTACHMENT B(1)

GTW Employees shall be allowed four (4) days with pay for the purpose of locating a residence in the Homewood area. Said four (4) days may be split up for up to two (2) house – hunting trips and shall be scheduled in conjunction with the Employees rest days. In addition Employees will receive a one-time lump sum bonus payment in the amount of five hundred dollars (\$500) to defray expenses associated with their home hunting trip to the Homewood area.

Employees receiving the above benefits who do not relocate will have the above benefits deducted from any future earning or protective benefits.



ATTACHMENT “C”

ATTACHMENT C

	<u>Last Name</u>	<u>Initials</u>	<u>Seniority</u>
1.	Gebard	D.V.	4/19/1977
2.	Facknitz	E.A.	5/22/1977
3.	Campbell	L.P.	12/19/1981
4.	McAfee	M.L.	02/07/1987
5.	Mason	J.W.	11/30/1987
6.	Maidment	S.D.	1/14/1990
7.	Martenis	L.R.	06/02/1991
8.	Spring	M.S.	11/13/1991
9.	Plumley	T.R.	3/07/1993
10.	Maier	A.P.	10/19/1994
11.	Evans	T.D.	12/03/1994
12.	White	L.J.	6/05/1997
13.	Wery	N.D.	09/06/1997
14.	McDonough	K.E.	02/28/1998
15.	Cowgar	K.M.	03/05/1998
16.	Schott	J.F.	09/20/2000