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| In the Matter of the Arbitration<br>between<br>RAILROAD YARDMASTERS OF AMERICA<br>and<br>THE CHESAPEAKE AND OHIO RAILWAY COMPANY and LOUISVILLE AND NASHVILLE RAILROAD COMPANY | OPINION AND AWARD |

The hearing in the above matter, upon due notice, was held on March 16, 1981 at the offices of the Chesapeake and Ohio Railroad Company in Baltimore, Maryland before George S. Roukis, serving as sole impartial Arbitrator by selection of the parties and agreement reached on February 18, 1981 and in accordance with the Interstate Commerce Commission Decision in Finance Docket No. 28905 (Sub-No. 1) and related proceedings.

The case for the two Companies, hereinafter referred to as the Carriers, was presented by Warren Comiskey, Manager of Labor Relations of the Chesapeake and Ohio Railway Company and the case for the Railroad Yardmasters of America, hereinafter referred to as the Organization, was presented by D. R. Carver, National Vice President, General Chairman L&N. At the hearing the parties were afforded full opportunity to present evidence and arguments germane to their positions.

BACKGROUND

Pursuant to the notice served on the Organization by Carriers

on January 16, 1981, the parties met on January 27 and again on February 17 and 18, 1981 for the purposes of reaching agreement on the selection and assignment of forces in the coordination and on the application of the New York Dock Conditions to the Coordination. The parties reached agreement on all matters except those identified in the question at issue.[1]

"Part A. Yardmasters regularly assigned at the C&O Lexington, Kentucky Yard or the L&N West Lexington, Kentucky Yard on the date preceding the effective date of coordination that cannot hold a regularly assigned position as yardmaster in the coordinated operation will be placed on the L&N West Lexington, Kentucky Yardmaster Extra Board, and will have their guarantee protected so long as their seniority does not entitle them to a regular Yardmaster assignment and they protect all extra service for which they stand. This protective period will not exceed the protective period as set forth in the New York Conditions."

"Part B. It is further understood and agreed that all work of the craft and class of Yardmaster employee in the C&O Lexington, Kentucky and L&N West Lexington, Kentucky Yard operations covered by this Agreement shall be performed by employees holding seniority rights in and assigned to positions in the coordinated L&N West Lexington, Kentucky Yard."

ORGANIZATION'S POSITION - Part A

The Organization contends that beginning with the Agreement signed on May 4, 1971 vis an end to end or terminal coordination between the Louisville and Nashville Railroad and a foreign line where foreign line yardmasters were transferred to the L&N and merged into the L&N Yardmasters Rosters, never has a yardmaster been required to exercise seniority outside the craft to protect any guarantee for which he was entitled. It argues that the first paragraph of Section 5(a) of Article I of the New York Dock Conditions provided flexible language, such as

[1]The Memorandum of Agreement detailing the agreed upon understanding is dated February 18, 1981.

the words "normal" and "practice" to insure that prior coordinative agreements would be purposely observed in future coordinations. In particular, it asserts that Appendix G to the May 14, 1971 Agreement, does not require that affected employees will be required to return to a lower job classification in a different craft in which they hold seniority, in order to maintain their qualifications for protection. It notes that the the June 7, 1971 Memorandum of Agreement between the Seaboard Coast Line Railroad and Louisville and Nashville Railroad Company and the Railroad Yardmasters of America, incorporated a specific letter of understanding, that placed discontunued yardmasters on a yardmasters extra board at Birmingham. It emphasized that none of these agreements required a yardmaster to exercise his seniority to a lower classification of service in order to retain protective benefits such as those provided under the New York Conditions.[2]

ORGANIZATION'S POSTIION - Part B

The Organization contends that Carrier is attempting to alter paragraph 2 of the July 11, 1975 Agreement, by broadening its application and rendering invalid portions of that Agreement when they refuse to include the "B" provision proferred in the implementing agreement.[3] In effect, it argues that Carriers'

[2]The Organization noted that the Chesapeake and Ohio Railway Co. and the Seaboard Coast Line Railroad entered into an extra list agreement with the Brotherhood of Railway and Airline Clerks on January 8, 1981.

[3]Paragraph 2 states: "Because of the agency work involved along with a certain amount of yardmaster work, we explained we could

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proposal to eliminate the two yardmaster positions and combine two agencies and apply the July 11, 1975 Agreement is inconsistent with the work load history at Lexington. It asserts that when the C&O and L&N operations are effectively coordinated there will be too much work for the Agent-Yardmaster to handle and thus the rational basis for the Gentlemen's Agreement applying at Lexington, Kentucky, will no longer be valid. It cited Fourth Division Award 3793 as controlling herein. In that case, the National Railroad Adjustment Board held that the work assigned to the yardmaster by bulletin became yardmaster's work since both yardmaster and Agent-General Yardmaster's positions were established at Bowling Green, Kentucky.

CARRIERS' POSITION - Part A

Carriers contend that Part A is not a proper provision to include in the required implementing agreement as it seeks a higher level of protection beyond that which is afforded in the New York Dock Conditions. They argue that Part A is premised on the theory that was rejected by a predecessor arbitration that a regularly assigned yardmaster who does not stand for a

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not agree to place the following combination assignments under either the Yardmasters or BRAC Agreements and there is not enough work to justify both an agent and a yardmaster. It was therefore agreed that these positions will continue under the Gentlemen's Agreement.
Agent - General Yardmaster - Bowling Green, Ky.
Agent - General Yardmaster - Lexington, Ky.
Agent - General Yardmaster - Oakworth, Al.
Agent - General Yardmaster - Gadsden, Al.
Agent - General Yardmaster - Anniston, Al."

regular yardmaster assignment in the coordination, need not exercise his seniority in his basic (lower) craft in order to protect his guarantee.[4] They argue that with the exception of Appendix G to the Agreement of May 4, 1971 pertaining to the protection of employees in the merger of the Monon Railroad with the Lexington and Nashville Railroad and the side letter of June 7, 1973 regarding the protection of yardmasters at Birmingham, Alabama, the practice of requiring a yardmaster, who does not stand for a regular yardmaster to exercise his seniority in a lower craft to protect his seniority, is the same. Carriers assert that any yardmaster who does not stand for a regular yardmaster assignment, will automatically be subject to call for extra service by the schedule agreement terms and moreover, the establishment of a guaranteed extra board would expand the level of protection beyond that required in the New York Dock Conditions.

CARRIERS' POSITION - Part B

Carriers contend that when the separate C&O and L&N operations have been coordinated at Lexington, Kentucky, the C&O yardmasters will become employees of the L&N and their seniority will be dovetailed on the seniority roster of L&N yardmasters. Thus they will be subject to all the terms and conditions of existing agreements between Lodge 18 of the

[4]See In the Matter of the Arbitration between Railroad Yardmasters of America and The Chesapeake and Ohio Railway Company and Seaboard Coastline Railroad Company - March 6, 1981 - Referee Irwin M. Lieberman

Railroad Yardmasters of America and the L&N, which includes the May 14, 1946 Gentlemen's Agreement. According to this Agreement, General Yardmasters and Agent General Yardmasters could perform trick yardmaster work at certain locations. Carriers argue that upon coordination of C&O and L&N operations at Lexington, it was their original intention to establish an agreement yardmaster position on second and third tricks, protecting the first trick with L&N's Agent-General Yardmaster. An agreement yardmaster's position was later established on the first trick at this location, in view of the large number of employees to be protected under the New York Dock Conditions. However, in making this decision, Carriers assert that they have not acknowledged de facto that there is too much work to be performed at Lexington by the Agent-General Yardmaster and are not amenable to relinquishing that L&N explicit prerogative under the Gentlemen's Agreement to have an Agent-General Yardmaster perform agreement yardmaster work at Lexington. They aver that the change sought by Part B of the Question at Issue went far beyond the protective conditions set forth in the New York Dock Conditions.[5]

ARBITRATOR'S OPINION - Part A

In reviewing the parties arguments relative to Part A, the Arbitrator agrees that Section 5(a) of the New York Dock

[5]Carriers noted that the matter was a proper subject of collective bargaining, but apart from the execution of an implementing agreement under the New York Dock Conditions. They reviewed the Section 6 Notices served on the L&N on April 1, 1975 and March 5, 1979. In both cases no change was made.

Conditions which is applicable herein, requires that a displaced person follow the normal exercise of his seniority rights "under existing agreement, rules and practices" as a condition precedent to obtaining displacement allowances and such right recognizes that an employee may hold seniority under more than one agreement.[6] In the instant case, this would require that the displaced yardmaster excercise his seniority in a lower craft to protect his guarantee. The record shows that with the exception of Appendix G to the Agreement of May 4, 1971 between the Organization and the Louisville and Nashville Railroad and the side letter of June 7, 1973 vis the protection of Yardmasters at Birmingham, Alabama, the practice on the L&N has been for the Yardmasters to return to their original or lower craft. This practice is not varied by the aforesaid agreements, which were specific and purposely limited. In the absence of such limiting modifications, we must conclude as a matter of fact and law as did Arbitrator Lieberman, In the Matter of the Arbitration between Railroad Yardmasters of America and The Chesapeake and Ohio Railway Company and Seaboard Coastline Railroad Company,

[6] Section 5(a) of the New York Dock Conditions reads: "Displacement allowances (a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreement, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective peried, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced."

that the practice on the L&N has been for Yardmasters to return to their lower craft when displaced. Moreover, the language of Section 5(a) does not envisage a higher level of protection than that contained in existing agreement rules and practices and the establishment of a guaranteed extra board would expand such protection. At present, a displaced yardmaster, if needed, will automatically be called to service consistent with the terms of the schedule agreement.

ARBITRATOR'S OPINION - Part B

In reviewing this proposal, the Arbitrator concurs with the Carriers' position. It might well be that the work load at the Lexington facility will increase as a result of the C&O and L&N coordination and the evidence indicates, at least, since late 1979 that such is the case, but an agreement is in effect, albeit it is a Gentlemen's Agreement that sets forth specified conditions of employment that are akin to the status of a collective agreement. In fact, the Organization recognized this status as evidenced by its two prior Section 6 notices.[7] Importantly, the Gentlemen's Agreement is subject to the authority and constraints of the New York Dock Conditions, especially in this instance, to Section 2 thereof which requires pay, rules and working conditions preservation.[8] Contrary to the Organization's

[7]These notices were served on April 1, 1975 and March 6, 1979.

[8]Section 2 of the New York Dock Conditions state:
"The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preverved unless changed by future collective bargaining agreements or applicable statutes."

position that Fourth Division Award 4793 is dispositive of this issue, the Arbitrator is not empowered herein to interpret or apply the Gentlemen's Agreement. The basic legal question before the Arbitrator is whether part B of the Question at Issue should be incorporated in the February 18, 1981 implementing Agreement. Since the New York Dock Conditions, specifically Section 2, requires the preservation of existing pay, rules, working conditions, etc,, it would be an impermissible extension of the Arbitrator's authority to change the Gentlemen's Agreement. This conclusion does not argue against the merits of the proposed change, only that it would be judicially improper to direct such changes in view of the clear language and unmistakable intent of Section 2. The matter is properly a subject for collective bargaining.

AWARD

The Arbitrator finds no basis for directing that Parts A and B of the Question at Issue be included in the February 18, 1981 Implementing Agreement.

Respectfully submitted,

George S. Roukis
Arbitrator

GSR/mr

April 10, 1981

STATE OF NEW YORK )
: ss.
COUNTY OF NASSAU )

On the 10th day of April, 1981, before me personally came and appeared GEORGE S. ROUKIS, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he duly acknowledged that he executed the same.

MARIA E. ROUKIS
Notary Public, State of New York
No. 30-4672617
Qualified in Nassau County
Commission Expires March 30, 19[illegible]