

In the Matter of Arbitration	:	
Between	:	
Railroad Yardmasters of America	:	
and	:	
Consolidated Rail Corporation	:	DECISION AND AWARD
&	:	
Detroit Terminal Railroad Co.	:	
.. .. .	:	

Background: On June 8, 1981 the Carrier wrote to Mr. W. Harless, General Chairman, Railroad Yardmasters of America, Detroit Terminal RR Co., and to J. C. Thomas, General Chairman, Railroad Yardmasters of America, Consolidated Rail Corporation, that the proposals advanced by these two General Chairmen were not acceptable with regard to negotiating an implementing agreement involved in the Carrier's acquisition of the Detroit Terminal Railroad Company, and that unless the RYA was willing to change its position, the Carrier would invoke the arbitration procedures of Section 4, Article I, of the New York Dock Conditions.

On June 11, 1981, the Carrier wrote the two General Chairmen stating it was invoking the aforesaid arbitration provisions of the New York Dock Conditions and suggesting the names of several neutrals who might function as the arbitrator in the case.

On June 17, 1981, Mr. Thomas wrote the Carrier, on behalf of Mr. Harless and himself, that he was agreeable to the selection of Jacob Seidenberg as the arbitrator.

On June 22, 1981 the parties wrote Dr. Seidenberg informing him of his selection and inquired as to whether he would accept the assignment. Dr. Seidenberg informed the parties he would accept the assignment and fixed July 13, 1981 as the date for a

hearing on the case.

On July 13, 1981 the arbitration hearing was convened at the Philadelphia Headquarter Offices of Conrail with all parties in interest in attendance.

Mr. Thomas, at the outset, stated he was entering a special appearance in the proceeding because ICC Finance Docket No. 29489, wherein the ICC approved the acquisition of control by Conrail of the Detroit Terminal Railroad, had no applicability to Conrail Yardmasters, and, consequently there was no valid basis for the Carrier to send its April 17, 1981 joint letter to both General Chairmen. Mr. Thomas contended that this April 17, 1981 letter, which was the required ninety (90) day Notice pursuant to Article I, Section 4 of the New York Dock Conditions should have been sent only to Mr. Harless representing the Yardmasters of the Detroit Terminal Railroad. Mr. Thomas asserted that the Detroit Terminal employees, and not Conrail employees, would be adversely affected by the proposed acquisition of control of the Detroit Terminal. Mr. Thomas stressed that since Conrail Yardmasters were not encompassed by Finance Docket No. 29489, therefore, they were not required to participate in any arbitration proceedings under Section 4, Article I of the New York Dock Conditions and were not bound by any arbitration award rendered thereunder.

Mr. Thomas stated that, without waiving or prejudicing his procedural objection, he would participate in the hearing to cooperate in the resolution of the pending dispute.

Mr. Harless, on behalf of his members, submitted to the jurisdiction of the arbitration proceedings.

The Carrier maintained that General Chairman Thomas' procedural objection to the Arbitrator's jurisdiction was not well founded, and that his Organization was bound by, and included within the purview of, Finance Docket No. 29489.

At the conclusion of the July 13, 1981 hearing, the Arbitrator directed Conrail Yardmasters' Organization and the Carrier to submit a memorandum of law on the jurisdictional issues raised by Mr. Thomas, on or before July 27, 1981.

On July 24, 1981 Mr. Thomas wrote the Arbitrator that his Organization would not submit the Memorandum of Law, and that it was willing to allow the Arbitrator to decide the issue as to whether the ICC Order encompassed Conrail Yardmasters. It added that if the Carrier adopted the same position, then the parties could confer jurisdiction on the Arbitrator, and they would be bound by the Arbitration Award as in any private arbitration proceeding. The Organization further stated that if the Carrier took a contrary position, it should proceed to the tribunal with jurisdiction.

The Carrier filed its Memorandum of Law on July 27, 1981 setting forth its legal analysis as to why Conrail Yardmasters were "affected employees" within the terms of Finance Docket No. 29489, and covered thereby, and why the Conrail Yardmasters Organization was required to participate in and be bound by an arbitration award rendered pursuant to Section 4, Article I of the New York Dock Conditions.

Before proceeding to the discussion and analysis of both the jurisdictional and substantive issues raised in this proceeding, it is necessary to outline the antecedents of the acquisition of the control by Conrail of the Detroit Terminal Railroad.

The DTRC owns and operated approximately 16 miles of belt track around Detroit. Both Conrail and the Grand Trunk Western owned 50% of its stock. These two railroads shared the operating deficit in proportion to the number of cars they handled each year. In 1979 Conrail handled 89% of the cars, and paid 89% of the deficit, i.e., \$804,214. Conrail proposed to acquire GTW's stock for \$1.00 and have the DTRC become a wholly owned subsidiary of Conrail.

The Interstate Commerce Commission approved this transaction on March 10, 1981 in Finance Docket 29489, subject to the conditions for the protection of employees imposed in the New York Dock case. The New York Dock Condition provides in part in Section 4, Article I:

"4. Notice and Agreement or Decision -

- (a) - Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of any employees or rearrangement of forces, shall give at least ninety (90) days written notice of such intended transaction ... to the interested employees of the railroad and ... to the representatives of such interested employees. Prior to the consummation the parties shall negotiate in the following manner.

.....

These negotiations shall commence immediately and continue for at least thirty (30) days. Each transaction which may result in a dismissal or displacement of employees, 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 the thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment in accordance with the following procedures."

On April 17, 1981 Conrail served the requisite 90 day Notice on the General Chairmen of the Yardmaster Organizations of both Conrail and the DTRC. An initial meeting was held on May 12, 1981 between the Carrier and both General Chairmen. The Carrier proposed an Agreement, which the Conrail Yardmasters found objectional in part for the following reasons: (1) they did not want the DTRC Yardmasters dovetailed into the existing Conrail seniority roster; they objected to the method for determining the seniority of DTRC yardmasters who had the same seniority date as Conrail Yardmasters; they wanted Conrail to assume the legal liability that might ensue if the two seniority rosters were dovetailed. They also wanted to know whether there would be higher rates of pay for the Yardmasters working at the North Yard when the duties of the Detroit Terminal operation would be shifted to the North Yard.

Mr. Harless also interposed objections to the Carrier's proposals in that it did not provide for the continuation of the sick leave rule of the DTRC schedule; or for the continuation of payroll deduction to the "Motor City Credit Union". The DTRC Yardmasters also wanted their existing vacation plan continued with respect to an extra week vacation in an anniversary year when go-

ing from a 2 to 3 to 4 to 5 week vacation entitlement. The Yardmasters also requested prior rights for DTRC Yardmasters to any yardmaster positions that might in the future be established on the territory of the Detroit Terminal Railroad. The DTRC Yardmasters also requested that the Carrier establish a fully funded escrow or Trust fund to cover the benefits under the New York Dock Conditions. The DTRC Yardmasters also requested that one inactive Yardmaster be dovetailed, along with the active yardmasters, into the Conrail Yardmasters Seniority Roster.

The parties met and continued negotiations on June 5, 1981. At this meeting the Carrier submitted a revised proposal. Mr. Thomas stated that, as a condition of agreeing to the Carrier's proposed revised agreement, wherein the four DTRC yardmasters, whose positions were to be abolished would have the option of electing a severance allowance pursuant to Article I, Section 7 of the New York Dock Conditions, that four Conrail Yardmasters should also have, in seniority order, the option of taking a severance allowance.

The Carrier was not amenable to accepting the General Chairman's proposals, and on June 8, 1981, as previously stated, invoked the arbitration provisions of Section 4, Article I of the New York Dock Conditions.

At the Arbitration Hearing held on July 13, 1981, Mr. Thomas asserted that Finance Docket No. 29489 had no application to Conrail Yardmasters, and it applied only to the Detroit Termi-

nal RR Yardmasters because they would be the only employees adversely affected.

The two General Chairmen reiterated their above stated substantive objections, to the Carrier's revised proposal of June 5, 1981. Mr. Thomas objected to the part time, or non-regularly assigned DTRC yardmaster, being dovetailed into the Conrail Yardmaster Seniority Roster. Mr. Thomas further contended that since Finance Docket No. 29489 did not apply to his members, the only solution for the Carrier was to place all the yardmasters on the DTRC Seniority Roster on the bottom of the Conrail Seniority Roster with a seniority date being the effective date of takeover, and bringing with them the New York Dock Conditions. Mr. Harless objected to the proposal.

The evidence adduced at the Arbitration Hearing indicated the unassigned extra yardmaster had four years seniority, and he covered the extra yardmaster assignment every Sunday as well as all vacation vacancies or any vacancy resulting from illness or injury.

The record further indicated that there were ten (10) yardmasters on the DTRC Seniority Roster as of April 14, 1981 and of these, four were actively working and one as an unassigned extra, and five were on furlough. The Carrier proposed to abolish all DTRC yardmaster positions and dovetail the DTRC yardmasters into the Conrail Seniority District No. 3, and to terminate the Detroit Terminal Schedule Agreement and make the current Schedule Agreement in effect between Conrail and RYA applicable to the DTRC yardmasters.

The Conrail Yardmaster Seniority Roster District No. 3 as of June 30, 1981 contained 120 employees, although Mr. Thomas asserted that as of August 8, 1981 there was less than 70 regular, relief and extra yardmaster positions in existence.

The Carrier also introduced four implementing Agreements which it had negotiated arising out of its acquisition of control of the DTRC. Those agreements were with Brotherhood of Firemen and Oilers, the International Brotherhood of Teamsters, the Brotherhood of Railway Carmen, the International Association of Machinists and Aerospace Workers, and the Brotherhood of Electrical Workers. The Carrier stated its agreements with these Organizations were substantially the same as the agreement offered the Yardmasters.

The Carrier requested the Arbitrator to deny the requested proposals and modifications advanced by the Yardmasters as being unreasonable or unnecessary or both, as well as to find that Conrail Yardmasters were subject to, and covered by Finance Docket 29489.

Findings: (jurisdiction)

We find that the Yardmasters on Conrail are subject to and encompassed within ICC Finance Docket No. 29489.

The existing states of the law is that the Interstate Commerce Commission is statutorily required to afford employee protection to employees affected by a transaction which may cause their dismissal or the rearrangement of forces. The law permits the arrangement of this protection to be negotiated by



the Carrier and the duly authorized representatives of the employees. In the case at hand, the ICC permitted the petitioning Carrier, i.e., Conrail, to acquire control of the Detroit Terminal Railroad Co., subject to the employee protective conditions of the New York Dock case. The Conrail Yardmasters are employees "affected" by the ICC approved transaction because there will be a reassignment of forces flowing from the integration of DTRC's operation and forces with those of Conrail's.

The case law is clear that employee protection is always appropriate for the employees of the applicant Carrier, and it may also be for the employees of the Carrier involved in the transaction. Since Conrail is the applicant Carrier, the Conrail Yardmasters are in the class of employees subsumed under "employees of the affected rail carrier", and which, if placed in a worse condition, are eligible for employee protection benefits. The ICC has held in a number of decisions that the employees of the applicant Carrier are always included as the employees who may be adversely affected by the transaction and therefore eligible for employee protection benefits. We find that the existing case law places Conrail employees, as the employees of the applicant carrier, as affected employees within the meaning of the ICC Act.

We find that Conrail Yardmasters must participate in, and be bound by, the award of the arbitration proceedings invoked, since the representatives of the Carrier and Conrail Yardmasters have not been able to negotiate an agreement with respect to the

application of the New York Dock Conditions. The New York Dock Conditions mandates in Section 4, Article I that any assignment of forces made necessary by the transaction, shall be made either by agreement or an arbitration decision rendered pursuant to Section 4. These are mandatory requirements. The negotiations which the parties conducted between May 12, 1981 and June 5, 1981 were negotiations whereby Conrail was attempting to reach an agreement to coordinate and combine its forces with those of the Detroit Terminal Railroad. The consolidation of the two Yardmaster Rosters is critical to the coordination effort. These negotiations were not successful. The purpose of the present arbitration proceeding is to determine or prescribe a method whereby yardmaster forces from each operation will be integrated into a single operation. Since Conrail Yardmasters are employees of an affected Carrier, they are "interested" employees in this coordination. The Conrail RYA Organization is the representative of these "interested" employees, and is required to arbitrate the method of assignment of these employees caused by the transaction, pursuant to Section 4, Article I of New York Dock Conditions because the parties have not been able to negotiate an assignment of forces for the new coordination. The arbitration award will determine how Conrail Yardmasters will be affected by the coordination, and thus entitled to the prescribed employee protective benefits.

Accordingly, we find that the Conrail Yardmasters represented by RYA are encompassed by the terms and provisions of

Finance Docket No. 29489 and, in the absence of negotiating an agreement for the consolidation of forces, must arbitrate the issues in dispute and be bound by the award of the arbitration proceedings.

Findings: (Merits)

After reviewing the evidence of record and the oral arguments of the parties advanced at the Arbitration Hearing, the Arbitrator, pursuant to the authority vested in him by Article I, Section 4 of the New York Dock Conditions, prescribes the terms of the following Agreement to be executed between the Railroad Yardmasters of America, Consolidated Rail Corporation and Detroit Terminal Railroad Company, in connection with the Consolidated Rail Corporation's acquisition of the control, lease and operation of the property of the Detroit Terminal Railroad Company under Article I, Section 4 of the New York Dock Conditions pursuant to Interstate Commerce Commission Order in Finance Docket No. 29489:

All proposals or requests which were proposed or advanced by the parties and which are not included herein in whole or in part, have not been found acceptable and are rejected:

Implementing Agreement shall contain the following:

- (1) The Schedule Agreement dated July 1, 1978 between Conrail and the Railroad Yardmasters of America, including the Union Shop Agreement, will be applicable to the former Detroit Terminal Railroad Company employees covered by this Agreement. The Detroit Terminal Agreements will be terminated except that the present system of making payroll deductions to the "Motor City Credit Union" will be continued.

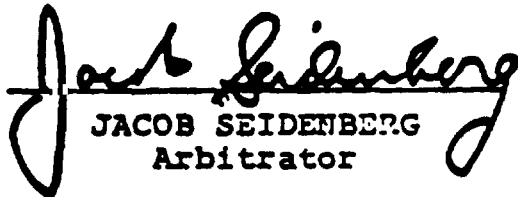
- (2) The territory of Conrail RYA Seniority District No. 3 will be amended to include the entire territory of the Detroit Terminal Railroad Company and the Detroit Terminal Seniority District will be abolished.
- (3) Detroit Terminal Railroad Company Yardmasters who are currently regularly utilized for extra unassigned service shall be dovetailed on Conrail Seniority District No. 3 in the same manner as the regularly assigned yardmasters of Detroit Terminal Railroad Company.
- (4) The four Detroit Terminal employees regularly assigned as Yardmasters will, prior to the abolishment of their positions, have the option of electing a separation allowance to be effective on the effective date of this Agreement under the terms of Article I, Section 7 of the New York Dock Conditions. Failure to indicate an option prior to the date of the abolishment of their positions will be considered a rejection of the separation allowance. The Carrier shall also extend the same option, in seniority order, of taking a severance allowance, to Conrail Yardmasters, equal to the number of Detroit Terminal Railroad Company Yardmasters exercising this option.
- (5) Detroit Terminal Railroad Company employees not electing to take a separation allowance, will have their Detroit Terminal Railroad Company Yardmaster seniority dates dovetailed into Conrail Yardmaster District No. 3 Seniority Roster, and will be permitted to exercise such seniority within ten (10) calendar days of the abolishment of their Detroit Terminal Railroad Company Yardmaster positions.

- (6) Detroit Terminal employees who have Yardmaster Seniority but who are not regularly assigned or who are not currently utilized for extra unassigned service as Yardmasters, will be placed on the Conrail District No. 3 Yardmaster Seniority Roster as of the effective date of this Agreement, with their relative rank being determined by their standing on the Detroit Terminal Yardmaster Seniority Roster.
- (7) Where one or more Detroit Terminal employees have the same seniority date as one or more Conrail employees, their seniority rank shall be determined on the basis of the earliest date of birth.
- (8) Prior continuous service and qualifying years with Detroit Terminal Railroad Company will be counted in determining vacation and sick leave allowance entitlement in 1981 and thereafter.
- (9) An employee who believes he has been adversely affected and who files a written request with the Manager-Labor Relations, will be furnished a written statement of the test period earnings used to determine his average monthly compensation and time paid for.
- (10) An employee shall use the claim form provided by the Carrier to claim the benefits to which he may be entitled.
- (11) Upon receipt of the average monthly compensation and time paid for, the time limit rule of the applicable schedule agreement shall apply to claims for protective benefits.
- (12) The term "change in residence" means transfer to a work location which is located either (a) outside a radius of 30 miles of the employee's former work location and further from his residence than was his

former work location or (B) is located more than 30 normal highway route miles from his residence and also further from his residence than was his former work location.

- (13) This Agreement will become effective upon ten (10) days' advance notice to the representatives of the Railroad Yardmasters of America.
- (14) The Implementing Agreement shall be executed by the appropriate representatives of the Railroad Yardmasters of America, the Consolidated Rail Corporation and the Detroit Terminal Railroad Corporation.

AWARD: The dispute is disposed of in accordance with the above Findings.

  
JACOB SEIDENBERG  
Arbitrator

August 13, 1981

INTERPRETATION OF ARBITRATION AWARD RENDERED  
IN DISPUTE BETWEEN RAILROAD YARDMASTERS OF  
AMERICA AND CONSOLIDATED RAIL CORPORATION

On August 13, 1981, the Undersigned Arbitrator rendered an Award in a dispute between the parties pertaining to the application of the employee protective conditions prescribed by the New York Dock Case. The dispute arose as a result of the Consolidated Rail Corporation acquiring control of the Detroit Terminal Company.

Between September 1981 and March 1982 the parties disagreed as to the implementation of the August 13, 1981 Arbitration Award.

On April 22, 1982 the Arbitrator reconvened the disputants to hear argument, and to receive evidence on the matters in dispute between them. At this hearing several controverted issues were resolved, such as the award being final and binding without the necessity of executing a specific implementing agreement; the Carrier furnishing the Organization a current consolidated Yardmaster roster; the Arbitrator finding that the matter of a wage adjustment for yardmasters alleged performing additional duties was not within the scope of his authority. The Arbitrator did agree to interpret the Award on the issue of granting separation allowances to Conrail Yardmasters.

The parties submitted Post Hearing Briefs on or before May 17, 1982, on the issue of separation allowances.

The dispute devolves around Item 4 of the Award which states:

"(4) The four Detroit Terminal employees regularly assigned as Yardmasters will, prior to the abolishment of their positions, have the option of electing a separation allowance to be effective on the date of this Agreement under the terms of Article I, Section 7 of the New York Dock Conditions. Failure to indicate an option prior to the date of the abolishment of their positions will be considered a rejection of the separation allowance. The Carrier shall also extend the same option, in seniority order, of taking a severance allowance, to Conrail Yardmasters, equal to the number of Detroit Terminal Railway Company Yardmasters, exercising this option."

The Organization stated that the Carrier had offered separation allowances to the Detroit Terminal Yardmasters, and on or about October 1, 1981, three such Yardmasters accepted these allowances. The Organization stated the local officers of the Conrail Yardmasters Organization advised all Conrail Yardmasters that there should be at least three (3) separation allowances offered them. The Organization states that subsequent to the dissemination of this information, two Conrail Yardmasters applied to the Carrier for separation allowances but were denied them.

The Organization asserts that the Carrier has refused to comply with the Award because language of Item 4 thereof is quite clear. It would be discriminatory to favor Detroit Termi-



nal Yardmasters over Conrail Yardmasters, since Conrail and Detroit Yardmasters profited from the acquisition, but only Conrail Yardmasters have been adversely affected. The Arbitration Award sought to make the situation equitable when it directed Conrail to extend the same option of taking a severance allowance to Conrail Yardmasters equal to the number of Detroit Terminal Yardmasters exercising this option.

The Organization states in view of the clear and explicit language of Item (4), the Carrier, in order to comply with the Award, should immediately offer in seniority order three (3) separation allowances to Conrail Yardmasters in Seniority District No. 3.

The Carrier, on the other hand, urges the Arbitrator to reject the Organization's request both for jurisdictional and substantive reasons.

The Carrier maintains that Item (4) of the Award exceeded the jurisdiction of the Arbitrator under Section 7 of New York Dock Conditions which states:

"7. Separation Allowance - A dismissed employee entitled to protection under this appendix, may, at his option within 7 days of dismissal, resign and (in lieu of all other benefits and protection provided for in this appendix) accept a lump sum payment computed in accordance with Section 9 of the Washington Job Protection Agreement of May 1936."

Section 1(c) of the New York Dock Condition states:

"(c) 'Dismissed employee' means an employee of the railroad who, as a result of the transaction is deprived of employment with the railroad because of abolition of his position or the loss thereof as a result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction."

The Carrier states that Item (4) exceeded the Arbitrator's authority because Section 4 of the New York Dock Condition confines his authority to the selection of forces and assignment of employees. The question as to who qualifies as a "dismissed employee" and thus is entitled to a separation allowance is defined in Section 1 and 7 of the New York Dock Conditions and is not subject to interpretation or award under Section 4 arbitration.

The Carrier states, without prejudice to its procedural objections, it presumes that Item (4) of the Award was included because, in direct negotiations between the parties, the Carrier offered to allow four (4) Detroit Terminal regular yardmasters the option immediately to elect a severance allowance despite the New York Dock definition of a "dismissed employee."

The Carrier adds that the Conrail Yardmasters in its Submission only requested a total of four separation allowances. There is no justification to subject the Carrier to eight separation allowances when only four yardmasters could have been dismissed as a result of the transaction. The Carrier adds, arguendo, even if the Arbitrator rejects the basic jurisdic-

tional argument, no more than one additional separation allowance can be awarded, since the Carrier has already paid three separation allowances of over \$30,000 apiece.

The Carrier further adds that this one separation allowance must be limited to active yardmasters in seniority order within 30 miles (change of residence) of North Yard. The Carrier observes that to offer the allowance to Seniority District No. 3 would require the separation of a Yardmaster at La;amazoo, Jackson or Grand Rapids locations ranging from 75 to 150 miles from Detroit and completely unaffected by the transactions.

The Carrier reiterates its jurisdictional objection to the Arbitration Award dealing with separation allowances. It stresses that no Yardmaster either from the Detroit Terminal or Conrail has been deprived of employment as a result of the transaction. The Carrier has met its obligation. The Arbitrator should reject the Organization's request because it seeks to expand the Carrier's liability beyond the New York Dock Conditions to employees who can show absolutely no adverse affect, much less job deprivation.

#### Findings:

The Arbitrator finds that he has jurisdiction to deal with separation allowances under the New York Dock Condition because the retirement of regularly assigned yardmasters as a result of these allowances may have a direct and causal relationship to