

ARBITRATION AWARD

PARTIES) Consolidated Rail Corporation
)
 TO)
)
 DISPUTE) United Transportation Union

QUESTION) The terms and conditions of an implementing
) agreement directed toward consummation of the
 AT) Consolidated Rail Corporation's acquisition of
) control, lease and operation of the property of
 ISSUE) the Detroit Terminal Railroad Company pursuant
 to Interstate Commerce Commission Finance Docket
 No. 29489.

DISCUSSION: Interstate Commerce Commission ("I.C.C.") Finance
 Docket No. 29489, decided on March 10, 1981,
 concerned the Consolidated Rail Corporation ("Carrier") acquir-
 ing control of the Detroit Terminal Railroad Company ("Terminal
 Company"). In its Decision and Order the I.C.C. prescribed
 that protection for employees affected by such transaction would
 be those conditions which the Commission had previously imposed
 in New York Dock Ry. - Control - Brooklyn Eastern Dist., 360
 I.C.C. 60 (1979), now commonly referred to as "The New York
 Dock Conditions."

Pursuant to conditions as imposed by the I.C.C.,
 the Carrier, on behalf of itself and its wholly-owned subsidiary,
 the Terminal Company, served a prescribed 90-day notice upon its
 employees represented by the United Transportation Union ("Union")
 of its desire to initiate negotiations relative to the terms and
 conditions of an implementing agreement directed toward consumma-
 tion of the approved transaction.

The Carrier's notice of intent to negotiate the implementing agreement was served upon the Union by the Carrier in a letter dated April 17, 1981. On that same date, a prescribed notice of intent was placed on employee bulletin boards to notify the affected employees of changes the Carrier anticipated would be made on or about July 16, 1981 as a consequence of its operation and control of the Terminal Company.

Formal negotiations between representatives of the Carrier and the Union commenced May 5, 1981, and continued on various dates over a succeeding two-month period of time. Tentative agreement was finally reached between representatives of the parties on June 25, 1981. Final agreement was subject to ratification by the Local Union, the Union submitting that in accordance with its Constitution it was required to submit the proposed agreement to the Local Union.

Subsequently, by letter dated July 29, 1981, the General Chairman for the Union advised Carrier's Senior Director of Labor Relations as follows:

"Please be advised that I have not been able to get Local Chairman J.A. Holt to agree that the proposed agreement, which would include the Detroit Terminal Railroad Company into Conrail's Consolidated Detroit Terminal, is acceptable.

"Under Article 85 of the UTU Constitution the General Chairman must have the concurrence of the Local Chairman before he can sign a Local Agreement.

"Lacking Local Chairman Holt's concurrence, I must inform you that this matter must be placed before an arbitration tribunal."

Upon notification of the Union's position relative to the agreement, the Carrier instituted steps to formally invoke the arbitration provisions of the New York Dock Conditions. Those provisions, in pertinent part, provide as follows:

"APPENDIX III

"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.....

"Within five (5) days from the date of receipt of notice....a place shall be selected to hold negotiations....and these negotiations shall commence immediately thereafter....If at the end of 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:

"(1) Within five (5) days from the request for arbitration the parties shall select a neutral referee and in the event they are unable to agree within said five (5) days upon the selection of said referee then the National Mediation Board shall immediately appoint a referee.

"(2) No later than twenty (20) days after a referee has been designated a hearing on the dispute shall commence.

"(3) The decision of the referee shall be final, binding and conclusive and shall be rendered within thirty (30) days from the commencement of the hearing of the dispute.

"(4) The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

"(b) No change in operations, services, facilities, or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered."

In implementation of the above arbitration provisions, the parties jointly selected the undersigned to be the neutral referee to finally determine this labor dispute. Formal acceptance of selection as the neutral referee was provided the parties by the neutral referee in a letter dated August 8, 1981.

Thereafter, a hearing on the dispute was held with representatives of the parties to the dispute in Cleveland, Ohio, on August 21, 1981.

As concerns the dispute, it is obvious from a reading of the record that the designated representatives of both parties were satisfied with the agreement they had reached on June 25, 1981. It is an agreement which appears to provide a fair and equitable arrangement to protect employee interests in the transaction. It is evident that all concerned were ably represented by persons experienced in the art of negotiations and familiar with a transaction of the type involved in this dispute.

Accordingly, on the basis of the record, written submissions, and oral presentments by representatives of the parties at the arbitration hearing, it will be the neutral referee's determination that the terms and conditions of agreement between the parties be as set forth in Attachment I to this Award. Except as concerns a few points of clarification, which had been explored and discussed at the arbitration hearing, this Attachment tracks the agreement which the parties had reached in direct negotiation.

It is to be noted for the record that Carrier representatives stated the Union would be promptly furnished the names of employees presently on furlough, and that those persons so named shall be considered as protected employees in the application of a Crew Consist Agreement which the parties had entered into under date of September 8, 1978.

In making a decision as above in this dispute, the neutral referee is guided by what he believes to be a reasonable interpretation of the mandates contained in the I.C.C.'s Order, particularly as concerns representatives of the parties having the principal responsibility for reaching terms and conditions of an agreement which, as here, will provide a fair and equitable arrangement to protect the interests of employees affected by a transaction. Certainly, the Local had a right to invoke its Union Constitutional privileges and have the matter placed in arbitration. However, it should be recognized that regardless of the amount of time one could spend in negotiating an agreement, no amount of effort will solve or cure all individual worker or management needs or desires. The purpose of collective representation is to entrust individual rights with accredited representatives so as to avoid the pitfalls of bargaining on an individual basis. Thus, the neutral referee has placed great weight upon the fact that the representatives for the Union had indicated acceptance of the agreement, and that for the neutral referee to attempt to arbitrarily change that which had been agreed to would no doubt only lead to further controversy.

AWARD: By virtue of and pursuant to powers vested in the undersigned by the Decision and Order of The Interstate Commerce Commission in Finance Docket No. 29489 and the I.C.C. imposition of labor protective conditions as prescribed in the New York Dock Conditions, it is hereby decided that the terms and conditions of an implementing agreement directed toward consummation of the Consolidated Rail Corporation's acquisition of control, lease and operation of the property of the Detroit Terminal Railroad Company made pursuant to the above Finance Docket, shall be as set forth in Attachment I to this Award.



Robert E. Peterson
Neutral Referee

Briarcliff Manor, NY
August 24, 1981

AGREEMENT BETWEEN THE UNITED TRANSPORTATION UNION (C&T), THE CONSOLIDATED RAIL CORPORATION (CONRAIL) AND DETROIT TERMINAL RAILROAD COMPANY IN CONNECTION WITH CONRAIL'S ACQUISITION OF 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.

1. Pending implementation of a single collective bargaining agreement pursuant to Section 504(d) of the RRR Act, the former New York Central Railroad Northern District Schedule Agreement, dated November 1, 1967, including the Union Shop Agreement, and the Crew Consist Agreement, between Conrail and the United Transportation Union will be applicable to the former Detroit Terminal Railroad Company train service employees. Detroit Terminal Railroad Agreements are hereby terminated.
2. The territory of Conrail Seniority District "A" and the "Detroit Consolidated Terminal" will be amended to include the entire territory of the former Detroit Terminal Railroad Company. The entire territory of the former Detroit Terminal Railroad will be included within the Conrail Detroit Terminal switching limits.
3. (a) On the effective date of the Agreement the names of employees of the former Detroit Terminal Railroad Company will be added to the bottom of the existing Conrail District "A" Seniority Roster with prior seniority rights retained in the Detroit Consolidated Terminal subject to the allocation of work as indicated in Section 9 hereof.

(b) Except where a former Detroit Terminal Railroad Company employee's seniority either as Brakeman or Conductor has been terminated, the relative standing determined in accordance with Paragraph 3(a) of this Agreement shall be the employee's relative standing both as a Brakeman and Conductor on the ConRail Seniority District "A" Roster and his seniority date on such roster, both as a Brakeman and Conductor, shall be as of the effective date of this ICC Order.

(c) Former Detroit Terminal Railroad employees who were not promoted on their prior right seniority district prior to the effective date of this ICC Order, shall be eligible for promotion in accordance with the applicable rules and practices.

(d) Former Detroit Terminal Railroad employees given a date as Conductor on ConRail Seniority District "A" Roster in accordance with this Agreement who were not

promoted to Conductor prior to the effective date of this ICC Order will be entitled to exercise such seniority when they have been promoted to Conductor in any prior right seniority district of the appropriate ConRail Seniority District; provided, however, that no employee will be entitled to exercise ConRail seniority as Conductor in any prior right seniority district in which there are eligible prior right employees, other than those who have properly declined promotion, who have not been examined for promotion to Conductor in accordance with the rules and practices applicable on such prior seniority district.

4. Prior continuous service and qualifying years with Detroit Terminal Railroad Company will be counted in determining vacation entitlement.
5. 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.
6. An employee as referred to in item 5 shall use the claim form provided by the Carrier when making a claim for benefits.
7. Upon receipt of the average monthly compensation and time paid for, the applicable time limit on claims rule shall apply when making claim for protective benefits.
8. 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.
9. (a) For the purpose of allocating work and determining equity of the employees affected, ConRail will furnish the General Chairmen subject hereto the engine hours operated in the combined territory during the calendar year 1980, and a list of the proposed assignments to be operated in the Detroit Consolidated Terminal.

- (b) The prior right seniority districts involved will be assigned Job Selection Numbers based on the equity allocation set forth in the Job Selection List attached as Appendix "A".
- (c) The General Chairmen, or their designated representative, will be permitted to choose, in the sequence of the job selection numbers established in Item (b) above, the yard assignments they desire to have allocated to their respective seniority district.
- (d) The yard assignments allocated to each seniority district in accordance with the procedures set forth in Items (b) and (c) above will be advertised and awarded to employees of those seniority districts in accordance with the applicable schedule agreement.
- (e) A sufficient number of job selection numbers will be assigned to each seniority district so as to exceed the number of actual yard assignments in the consolidated terminal.
- (f) Additional yard assignments in such terminal will be allocated to the seniority district entitled to the next choice in accordance with the job selection number.
- (g) When a yard assignment is abolished, the General Chairman, or his designated representative, of the affected seniority district will be permitted to choose a replacement from any of the yard assignments listed on the Job Selection List below that of the abolished yard assignment.
 - (i) In the application of this Item, the General Chairman or his designated representative of the affected Seniority District may exercise his right to select a replacement for the abolished assignment within 72 hours computed from the time the right of selection is afforded or,
 - (ii) In lieu of selecting a replacement as provided in Option "i" he may elect within 72 hours to hold his right of selection in abeyance, retaining the

abolished assignment for a period not to exceed thirty (30) calendar days and under this Option "ii" the right of selection shall be restricted only to those assignments available at the time first afforded the option to select replacement under Option "i".

(iii) If after a period of thirty (30) calendar days no selection is made under Option "ii", the last assignment on the Job Selection List will automatically be assigned to the affected Seniority District failing to exercise their right of selection.

(h) Replacement yard assignments for each seniority district affected by procedures in Item (g) above shall be chosen by the General Chairman, or his designated representative of the affected seniority district in the same manner as set forth in Item (g) until all yard assignments have been reallocated in numerical order on the Job Selection List.

(i) At the request of any General Chairman and/or Local Chairman all yard assignments will be re-allocated in accordance with this Section 9. Any such re-allocation requests will not be made prior than the expiration of 30 days from the last complete allocation, and/or re-allocation.

(j) If a yard assignment is annulled for more than three (3) consecutive working days, the effected Local Chairman may select a replacement assignment in accordance with Item 9(g) above.

(k) In the application of this Item 9, job selection shall be restricted to the respective prior right territory to the extent possible.

(l) In the application of this Item 9, regular independent assignments are not a part of the allocation system and will flow to Michigan Central, Penn Central "I", and ConRail "A", in that order.

10. A consolidated extra list shall be established to protect yard vacancies and extra yard service operating within the Consolidated Terminal. Positions on the extra list will be advertised and awarded to the senior applicants consistent

with their prior right seniority and the job selection list attached as Appendix "B".

11. When prior right employees (employees in service as of the effective date of this agreement) are required to learn new territory as a result of the consolidations covered by this Agreement and no member of the crew is qualified in the territory a train service employee pilot will be furnished. An employee, regular or extra, who stands for service will not be deprived of the assignment account not being qualified on the new territory.

Conrail shall determine the number of trips for which a pilot will be furnished. The Corporation may require the successful applicant to make paid qualifying trip or trips prior to being assigned to a position encompassing territory on which they are not qualified.

12. Prior continuous service and qualifying years with the Detroit Terminal Railroad Company will be counted in determining benefits due former Detroit Terminal Railroad employees which may be legislated by Federal Law applicable to ConRail.
13. Prior continuous service with the Detroit Terminal Railroad Company will be counted in determining Health and Welfare Benefits due former Detroit Terminal Railroad employees.
14. In the application of Item 3(b) of the subject agreement former Detroit Terminal Railroad Company employees who have been dismissed from service and are subsequently reinstated to service under Railway Labor Act appeal procedures shall have their names restored to the ConRail Roster in their proper standing.
15. Where a prior right employee (an employee of ConRail or Detroit Terminal Railroad as of the effective date of this agreement) must travel a greater distance from his home to a position off his prior right territory within the consolidated terminal, he will be compensated at prevailing automobile mileage rate for the additional miles.
16. Furloughed men from each prior right group will be re-called in order of their standing in their respective group to fill prior right assignments (regular or extra) belonging to their prior right group.
17. This agreement will become effective upon five (5) day's notice to the United Transportation Union.

ATTACHMENT "A"

UTU(C&T)
 Detroit Consolidated Terminal
 Pursuant to I.C.C. Finance
 Docket 29489

(Conrail Acquisition of DTRR)

1980 Engine Hours

<u>Conrail</u>	<u>DTRR</u>	<u>Total</u>
143,044	16,956	160,000
89.4%	10.6%	100%

Conrail

NYC-Michigan Central - 90%	
PRR - 10%	
	<u>100%</u>

Job Selection List

<u>Job Selection Number</u>	<u>Seniority District</u>	<u>Job</u>
1	CR-MC	
2	CR-MC	
3	CR-MC	
4	CR-MC	
5	DTRR	
6	CR-PRR	
7	CR-MC	
8	CR-MC	
9	CR-MC	
10	CR-MC	
11	CR-MC	
12	CR-MC	
13	CR-MC	
14	CR-MC	
15	DTRR	
16	CR-MC	
17	CR-PRR	
18	CR-MC	
19	CR-MC	
20	CR-MC	
21	CR-MC	
22	CR-MC	
23	CR-MC	
24	DTRR	
25	CR-MC	
26	CR-MC	
27	CR-MC	
28	CR-PR	

Job
Selection
Number

Seniority
District

Job

29	CR-MC
30	CR-MC
31	CR-MC
32	CR-MC
33	DTRR
34	CR-MC
35	CR-MC
36	CR-MC
37	CR-MC
38	CR-MC
39	CR-PRR
40	CR-MC
41	CR-MC
42	CR-MC
43	DTRR
44	CR-MC
45	CR-MC
46	CR-MC
47	CR-MC
48	CR-MC
49	CR-MC
50	CR-PRR
51	CR-MC
52	DTRR
53	CR-MC
54	CR-MC
55	CR-MC
56	CR-MC
57	CR-MC
58	CR-MC
59	CR-MC
60	CR-MC
61	CR-PRR
62	DTRR
63	CR-MC
64	CR-MC
65	CR-MC
66	CR-MC
67	CR-MC
68	CR-MC
69	CR-MC
70	CR-MC
71	DTRR
72	CR-MC
73	CR-PRR
74	CR-MC
75	CR-MC
76	CR-MC
77	CR-MC
78	CR-MC
79	CR-MC
80	CR-MC

ATTACHMENT "B"
 (Consolidated Extra List)
 UTU(C&T)
 Detroit Consolidated Terminal
 Pursuant to I.C.C. Finance
 Docket 29489
 (Conrail Acquisition of D.T.R.R.)

1980 Man Hours

<u>Conrail</u>	<u>DTRR</u>	<u>Total</u>
468,750.0	50,926	519,676
90.2%	9.8%	100%

Conrail

NYC - Michigan Central	= 91%	425,836.8 hrs.
PRR	= 09%	42,913.2 hrs.
	<u>100%</u>	<u>468,750.0 hrs.</u>

JOB SELECTION LIST

<u>Job Selection Number</u>	<u>Seniority District</u>	<u>Name</u>
1	CR-MC	
2	CR-MC	
3	CR-MC	
4	CR-MC	
5	CR-MC	
6	DTRR	
7	PRR	
8	CR-MC	
9	CR-MC	
10	CR-MC	
11	CR-MC	
12	CR-MC	
13	CR-MC	
14	CR-MC	
15	CR-MC	
16	DTRR	
17	CR-MC	
18	CR-MC	
19	PRR	
20	CR-MC	
21	CR-MC	
22	CR-MC	
23	CR-MC	
24	CR-MC	
25	CR-MC	
26	DTRR	
27	CR-MC	

<u>Job Selection Number</u>	<u>Senirotiy District</u>	<u>Job</u>
28	CR-MC	
29	CR-MC	
30	CR-MC	
31	CR-PRR	
32	CR-MC	
33	CR-MC	
34	CR-MC	
35	CR-MC	
36	DTRR	
37	CR-MC	
38	CR-MC	
39	CR-MC	
40	CR-MC	
41	CR-MC	
42	CR-MC	
43	CR-PRR	
44	CR-MC	
45	CR-MC	
46	DTRR	
47	CR-MC	
48	CR-MC	
49	CR-MC	
50	CR-MC	
51	CR-MC	
52	CR-MC	
53	CR-MC	
54	CR-MC	
55	CR-PRR	
56	CR-MC	
57	DTRR	
58	CR-MC	
59	CR-MC	
60	CR-MC	

NOTE: To the extent necessary, the above Job Selection List is to be carried out to Job Selection Number 100 before the Job Selection List is again repeated.