Arbitration pursuant to Article I - Section 4 of the employee protective conditions developed in New York Dock Ry.-Control-Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) as provided in ICC Finance Docket No. 28905 (Sub. No. 1) and related proceedings

PARTIES TO DISPUTE	Brotherhood Railway Carmen of the United States and Canada and The Baltimore and Ohio Railroad Company Louisville and Nashville Railroad Company	DECISION

QUESTIONS AT ISSUE:

What provisions shall be contained in an arbitrated implementing agreement pursuant to Article I, Section 4 of the New York Dock Conditions in order to provide an appropriate basis for the selection and assignment of forces and the application of the New York Dock Conditions with respect to the transaction which was the subject of the Carrier's September 2, 1982, notice?

BACKGROUND:

On September 25, 1980, the Interstate Commerce Commission (ICC) served its Decision in Finance Docket No. 28905 (Sub. No. 1) approving acquisition of control by CSX Corporation of rail carriers subsidiary to Chessie System, Inc. and Seaboard Coast Line Industries, Inc. The Commission in its Decision imposed conditions for the protection of employees set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 350 I.C.C. 60 (1979) (New York Dock Conditions).

On September 2, 1982, the Baltimore & Ohio Railroad Company (B&O) and the Louisville & Nashville Railroad Company (L&N), two carriers over which CSX Corporation had acquired control by virtue of the Commission Decision in Finance Docket No. 28905 (Sub. No. 1), served notice upon the Brotherhood Railway Carmen of the United States and Canada (BRC or Organization) pursuant to Article I, Section 4 of the New York Dock Conditions. The notice stated that the Carriers intended to discontinue operation of the B&O Car Wheel Shop at Glenwood, Pennsylvania and to transfer and coordinate such work with the work performed on the L&N railroad at its South Louisville shops, Louisville, Kentucky. The notice also stated that two carmen positions would be abolished at the Glenwood Shop and two carmen positions established at the South Louisville Shops.

Further pursuant to Article I, Section 4 of the New York Dock Conditions, the parties met on September 14, 1982, for the purpose of reaching agreement with respect to the selection and assignment of forces resulting from the coordination and with respect to the application of the New York Dock Conditions to the coordination. The Carriers submitted a written proposal at this meeting, but the parties were unable to reach agreement. The parties met again on October 14, 1982, but the dispute remained unresolved.

Thereafter, the Carriers invoked the arbitration procedures of Article I, Section 4 of the New York Dock Conditions. The parties did not select a Neutral Referee as provided in Article I, Section 4 and as further provided therein the Carriers applied to the National Mediation Board for appointment of a Referee. That agency appointed the undersigned

on November 23, 1982. Hearing was held in this matter pursuant to Article I, Section 4(a)(1) on December 13, 1982, at which time the parties presented written submissions and oral argument.

FINDINGS:

The parties have complied with the procedural requirement of Article I, Section 4 of the New York Dock Conditions, and the question at issue noted above is properly before this Neutral for determination.

The gravamen of the dispute in this proceeding is how the two new positions created at the South Louisville Shops should be filled. The Carriers would transfer the two carmen employees who ultimately lose their positions at the Glenwood Shop to the newly created carmen positions at the South Louisville Shops. However, the Organization argues that the two new positions should be offered to the carmen forces at the South Louisville Shops, many of whom are on furlough.

At the outset the Organization questions the propriety of creating two new carmen positions at the South Louisville Shops. The Organization contends that the new positions are not comparable to the positions abolished at Glenwood. The Carriers maintain that a Neutral acting under Article I, Section 4 of the New York Dock Conditions has no jurisdiction to review a Carrier's determination as to the size of its work force. The Organization disagrees contending that the creation of the two positions at the South Louisville Shops is at the heart of this proceeding.

The Carriers' jurisdictional argument is well founded. While it is the duty of a Neutral acting under Article I, Section 4 of the

New York Dock Conditions to resolve all questions which the parties could have settled through negotiations but failed to do so, this duty does not extend to matters beyond the Neutral's jurisdiction. By its Decision in Finance Docket No. 28905 (Sub. No. 1) the ICC granted the Carriers the authority to engage in the transaction which was the subject of the Carriers' September 2, 1982, notice. Creation of two carmen positions at the South Louisville Shops is an integral part of that transaction. The authority of a Neutral acting under Article I, Section 4 extends to the selection of forces to fill the two positions to be created at the South Louisville Shops, but it does not extend to review of the Carriers' decision to create such positions.

The Carriers argue that their proposal to transfer the two carmen employees from Glenwood to Louisville is most appropriate under the circumstances of this case. By closing the B&O's Car Wheel Shop at Glenwood, Pennsylvania, and transferring that work to the L&N South Louisville Shops, all of B&O's car wheel needs will be met by the L&N at its South Louisville Shops. The two new carmen positions reflect the need for additional employees to perform the work transferred to Louisville from Glenwood. The carmen from Glenwood would simply follow the work of their craft to Louisville. The Carriers propose to dovetail the seniority of the transferees with employees on the carmen's seniority roster for the South Louisville Shops. While the Carriers propose that the transferees be subject to the L&N working agreement with the Organization, the Carriers also propose to allow the transferees to be bumped from their new positions only by employees presently working in a position at the South Louisville Shops.

The Organization contends that the two new positions to be created at the South Louisville Shops, a wheel inspector and a Fork Lift-Pettibone Crane Operator, are not comparable to the two positions to be abolished at Glenwood Shop. Crane operation at the South Louisville Shops is not part of the carmen's craft, and the Carriers have not confirmed that the wheel inspector will primarily inspect wheels. The Organization urges that the new positions rightfully accrue to carmen at the South Louisville Shops rather than the two carmen at Glenwood whom the Carrier proposes to transfer to Louisville.

The Organization argues that the two Glenwood carmen who actually are unable to hold a position at Glenwood will be dismissed employees within the meaning of Article I, Section 1(c) of the New York Dock Conditions and that as such the Carriers cannot force them to accept positions in Louisville because to do so would require a change of residence contrary to the protection against such a forced move afforded by Article I, Section 6(d) of the New York Dock Conditions. If, however, the two displaced carmen at Glenwood elect to transfer to Louisville the Organization agrees that dovetailing of seniority would be appropriate and that the L&N working agreement should apply to them. However, the Organization urges that they should receive no special protection from bumping as proposed by the Carriers.

While the record in this proceeding does not contain sufficient evidence to support a finding as to the comparability of the two positions to be abolished at the Glenwood Shop and the two positions to be created at the South Louisville Shops, the record clearly substantiates that work of the carmen's craft at the Glenwood Shop will be transferred to the

South Louisville Shops. The record supports the conclusion that the two positions to be created in Louisville will result from that transfer of work.

The Organization's argument that the two Glenwood carmen who ultimately lose their positions are dismissed employees is without merit. The Organization's reliance upon Article I, Section 6(d) of the New York Dock Conditions is misplaced. That Section provides, inter alia, that a dismissed employee may not be compelled to take a position requiring a change of residence as a condition of continuing to receive a dismissal allowance. However, Section 6(d) does not define a dismissed employee. That definition appears in Article I, Section 1(c). As the Carrier points out, in its decision in Finance Docket No. 28905 the ICC was requested by labor organizations to expand the definition of a dismissed employee so as to protect employees from having to relocate. The ICC specifically refused to modify the definition of a dismissed employee as urged by the Organizations. The ICC has spoken authoritatively on the matter, and this Neutral must follow the ICC's pronouncement.

It follows from the foregoing determination that for purposes of Article I, Section 1(c) of the New York Dock Conditions the Carriers may require the two Glenwood Carmen who ultimately lose their positions at Glenwood to transfer to the two new positions at the South Louisville Shops. Put another way, as urged by the Carriers, these two employees may not refuse to transfer to Louisville and still come within the definition of a dismissed employee set forth in Article I, Section 1(c).

This Neutral believes that the Carriers' proposal for treatment of the two Glenwood carmen who transfer to Louisville is fair and equitable both to the transferees and to the carmen at the South Louisville Shops. The Carriers' proposal would enable the Glenwood carmen to follow their work and would afford them a realistic opportunity to retain it. The Organization's proposal on the other hand effectively would deny the Glenwood carmen a realistic opportunity to follow their work. It would treat the work transferred from Glenwood as work accruing to carmen in Louisville without regard for the fact that the work once belonged to carmen at Glenwood. The Carriers' proposal balances the equities, and it should be implemented.

Pointing to the fact that considerable bumping among carmen employees at the Glenwood Shop will occur as a result of this transaction, the Organization urges that each bumped employee will be a displaced employee within the meaning of Article I, Section 1(b) of the New York Dock Conditions entitled to a displacement allowance as provided in Article I, Section 5. The Organization urges that the Carriers be required to furnish each Glenwood carman in the bumping chain with figures showing his average monthly compensation. The Carriers would furnish the two Glenwood carmen who ultimately lose their positions with such figures, but with respect to all others the Carriers take the position that it is under no obligation to furnish such information until the employee demonstrates a loss of earnings in the new position.

The Carriers contend that no Glenwood carman in the bumping chain is displaced unless or until the employee cannot retain a position paying

the same hourly rate as his previous position. The Organization vigorous disagrees on the ground that the Carriers' position does not consider variations in overtime. The Carriers respond that equalizing overtime in effect at the Glenwood Shop answers the Organization's contention.

Both the Carriers and the Organization raise issues concerning the displacement allowance which are not properly justiciable in this proceeding. As provided in the attachment hereto the New York Dock Conditions are made applicable to this transaction. The question of whether the Carriers are obligated to furnish test period earnings as well as the question of whether a particular employee meets the definition of a displaced employee are dependent upon individual circumstances. These questions are properly justiciable in a proceeding pursuant to Article I, Section 11 of the New York Dock Conditions rather than this proceeding.

Finally the Organization requests this Neutral to rule that all carmen employees at the South Louisville Shops who are junior to the two Glenwood carmen who transfer to Louisville are entitled to the protections of the New York Conditions once the transfer has been effectuated. Again, the Conditions are applicable to the transaction and all of the Carriers' employees affected by it. However, the question of whether a particular employee was affected by the transaction is a matter for an Article I, Section 11 proceeding.

The attached arbitrated implementing agreement, which is hereby made a part of this Decision, constitutes the Neutral's determination under Article Section 4 of the New York Dock Conditions as to the appropriate

basis for the selection and rearrangement of forces pursuant to the coordination which gave rise to this proceeding. This Decision and the implementing agreement are intended to resolve all outstanding issues in this proceeding as provided in Article I, Section 4 of the New York Dock Conditions.

Wm. E. Fredenberger, Jr.
William E. Fredenberger, Jr.
Neutral Referee

January 12, 1983

ATTACHMENT

ARBITRATED IMPLEMENTING AGREEMENT

BETWEEN

THE BALTIMORE AND OHIO RAILROAD COMPANY

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

AND THEIR EMPLOYEES REPRESENTED BY THE

BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND CANADA

WHEREAS, this transaction is made pursuant to Interstate Commerce Commission decisions in Finance Docket No. 28905 (Sub.-No. 1) and related proceedings, and

WHEREAS, The Baltimore and Ohio Railroad Company and Louisville and Nashville Railroad Company, hereinafter designated respectively as "B&O" and "L&N" gave notice in accordance with Article I Section 4(a) of the conditions for the protection of employees enunciated in New York Dock Ry. - Control Brooklyn Eastern Dist., 360 I.C.C. 60(1979) hereinafter designated as "New York Dock Conditions" of the intent of the B&O to discontinue operation of the wheel shop at Glenwood, Pennsylvania and transfer such work to the L&N Railroad South Louisville Shops,

WHEREAS, the parties have conferred, but have reached no agreement,

NOW, therefore, it is determined:

1. The Labor Protective Conditions as set forth in the New York Dock Conditions which, by reference hereto, are incorporated herein and made a part hereof, shall be applicable to this transaction.

2. As a result of this transaction, the B&O will discontinue operation of the car wheel shop located at Glenwood, Pennsylvania, and the B&O carmen positions assigned at that location will be abolished. Thereafter, B&O's car wheel operations will be performed by L&N at their South Louisville Shops, Louisville, Kentucky, and all work at that location accruing to carmen under the provisions of the Collective Bargaining Agreement between L&N and Brotherhood Railway Carmen will be performed by employees on the Carmen's Seniority Roster at South Louisville, Kentucky.

3. Positions to be established on L&N at South Louisville Shops, effective with the date of coordination, will be bulletined at Glenwood, Pennsylvania, for a period of ten (10) days and will accrue to employees on the Glenwood Carmen Roster Central Region Seniority Points 6, 7, 8, 9 and 10.

4. Upon expiration of the ten-day bulletin, determination will be made of the employees who have bid and who have been awarded a position at South Louisville Shops. In the event any position advertised at South Louisville Shops is not filled in accordance with the foregoing, Glenwood carmen may exercise seniority pursuant to B&O Rule 24(h) and the unfilled positions will accrue to employees on the South Louisville Carman Roster.

5. (a) Employees accepting positions at South Louisville on the L&N will have their seniority date, as it appears on the Glenwood Carmen's Roster, dovetailed on the appropriate roster to which transferred upon reporting to work, and their name will be removed from the Glenwood Carmen Roster. Where, following this procedure results in two (2) or more employees having the same seniority date on the dovetailed roster, their respective positions on the roster will be determined by continuous service standing and then by lot.

(b) Employees transferring to South Louisville will be assigned positions in accordance with the bulletins advertising positions; thereafter, changes in the coordinated operation in the filling of vacancies, abolishing or creating positions and reduction or restoration of force will be governed by application of the L&N Scheduled Agreement.

(c) B&O carmen who are awarded positions in the coordinated South Louisville operation will become L&N employees subject to the rules of the Agreement between Louisville and Nashville Railroad Company and Brotherhood Railway Carmen of the United States and Canada.

6. In order that the provisions of the first proviso set forth in Article I, Section 3 of the New York Dock conditions may be properly administered, such employee determined to be a displaced or dismissed employee as a result of this Agreement, who also is otherwise eligible for protective benefits and conditions under some other job security or other protective conditions or arrangements shall, within ten (10) days after notification of his monetary protective entitlement under the New York Dock Conditions, elect between the benefits thereunder and similar benefits under such other arrangement. In the event an employee does not make an election within the ten (10) day period specified herein, he shall be considered to have elected to retain the protective benefits he is presently eligible to receive. This election shall not serve to alter or affect any application of the substantive provisions of Article I, Section 3.

7. (a) Each dismissed employee shall provide either B&O or L&N with the following information for the preceding month in which he is entitled to benefits no later than the tenth (10th) day of each subsequent month on a standard form provided by the Carrier:

1. The day(s) claimed by such employee under any unemployment insurance act.

2. The day(s) each such employee worked in other employment, the name and address of the employer and the

gross earnings made by the dismissed employee in such other employment.

(b) In the event an employee referred to in this Section 7 is entitled to unemployment benefits under applicable law but forfeits such unemployment benefits under any unemployment insurance law because of his or her failure to file for such unemployment benefits (unless prevented from doing so by sickness or other unavoidable causes) for purposes of the application of Sub-section (c) of Section 6, Article I of the New York Dock Conditions, they shall be considered the same as if they had filed for, and received, such unemployment benefits.

(c) If the employee referred to in this Section 7 has nothing to report under this Section 7 account of their not being entitled to benefits under any unemployment insurance law and having no earnings from any other employment, such employee shall submit, within the time period provided for in Sub-section (a) of this Section 7, on the appropriate form annotated "Nothing to Report".

(d) The failure of any employee referred to in this Section 7 to provide the information required in this Section 7 shall result in the withholding of all protective benefits during the month covered by such information pending Carrier's receipt of such information from the employee.

8. Nothing in this implementing agreement shall be interpreted to provide protective benefits less than those provided in the New York Dock Conditions or exclude coverage to those covered by New York Dock Conditions imposed by the I.C.C. and incorporated herein by paragraph 1.

9. The provisions of this Agreement shall become effective upon ten (10) days advance written notice by the B&O and L&N to their respective General Chairman.