

OPINION AND AWARD

IN THE MATTER OF ARBITRATION BETWEEN

UNION PACIFIC RAILROAD COMPANY,
MISSOURI PACIFIC RAILROAD COMPANY

and

UNITED TRANSPORTATION UNION (C&T)

Pursuant to Section 4 of Article I
of the New York Dock Conditions
Imposed by the Interstate Commerce
Commission in Finance Docket
No. 30,000.

ARBITRATOR: DAVID H. BROWN - Selected by the Parties

APPEARANCES

For the Company

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For the Union

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THE ISSUE

Does the implementing agreement which the negotiators for the parties agreed upon provide an appropriate basis for the selection and assignment of forces made necessary by the transaction which were the subject of the Carriers' February 14, 1983 Notices?

BACKGROUND

On October 20, 1982, the Interstate Commerce Commission issued its formal decision in Finance Docket 30,000 authorizing the consolidation of the Union Pacific Railroad Company, Missouri Pacific Railroad Company and the Western Pacific Railroad Company. Among its findings, the ICC held "that the protection of New York Dock is appropriate for the protection of applicants' employees affected by this proceeding without any modification" and imposed New York Dock conditions as a part of its order.

The application to the Interstate Commerce Commission filed by the three railroads included the following proposal for consolidation and joint operation of the Omaha and Council Bluffs terminals:

Proposed Operation - UPRR will operate the Omaha-Council Bluffs terminal under a joint facility agreement between the two carriers. Labor agreements will be negotiated which permit the terminal to operate more efficiently and to take advantage of opportunities for further improvements as they arise. All MPRR road train operations will be conducted out of the Council Bluffs Yard. Switching of industries presently served by MPRR will be assigned to the Eighth Street Yard (See Schematic Map No. 27-4). These changes will result in a savings of 24 switch engine shifts per week. MPRR will acquire trackage rights between Omaha and Council Bluffs. These trackage rights are described in the separate application filed in Finance Docket No. 30000(Sub-No. 7).

The Nicholas and Grace Street Yards will be utilized solely as storage facilities for the Omaha shops, thus separating shop support operations from industrial support and train operations. Portions of MPRR's South Omaha Yard will be utilized for grain train staging and for the interchange between MPRR and the Chicago and North Western of traffic best interchanged at this yard. The remainder of the yard will be retired.

The proposed consolidation will improve car utilization by eliminating multiple handling of cars. Moreover, significant utilization savings will be realized on the large volume of cars presently interchanged between UPRR and MPRR at Omaha, many of which move to area industries or other roads in Council Bluffs. Interchange between MPRR and most other railroads will also be expedited, as all cars will be interchanged at Council Bluffs, with the exception of Omaha industry traffic and those which must be interchanged at Omaha.

In its findings, the Interstate Commerce Commission specifically approved such proposal by the moving parties.

Pursuant to Article I, Section 4 of the New York Dock II Labor Protective Conditions, the parties to the instant dispute undertook to negotiate relative to changes in employment conditions resulting from the merger and which might "cause the dismissal or displacement of any employees, or rearrangement of forces". The negotiating teams were headed by the individuals noted above as appearing herein, and such negotiations were intense and protracted. Involved herein is a two-part agreement resulting from such negotiations: (1) an agreement for the consolidation of the Omaha/Council Bluffs Terminal, for consolidation of Lincoln Terminal and for the movement of traffic between Omaha/Council Bluffs and Kansas City, and (2) an agreement for consolidation of nine (9) UP seniority districts.

The two-part agreement was finalized on January 13, 1984, subject to ratification by the involved local chairmen. Before the agreements

were submitted for ratification, however, the negotiators made minor changes which were concluded on February 1, and the first of the two agreements was submitted to the local chairmen on February 6, 1984. The three involved local chairmen split 2-1 in declining to ratify such agreement. The carriers immediately invoked arbitration, and the parties agreed on the undersigned to settle the issue as stated above. Oral hearing was held in Omaha on February 27, and we consider the question before us on the basis of the record submitted at such hearing.

ANALYSIS AND FINDINGS

The implementing agreement under consideration herein was drawn by skilled and experienced negotiators. All involved interested parties were represented by competent advocates. In particular, it should be noted that the dissident local chairmen (and their general chairman) who press this appeal actively participated in the long negotiations. It should further be noted that the United Transportation Union is not united in this appeal. General Chairman Irving Newcomb of the Missouri Pacific-UTU(T&C) Committee has furnished the arbitrator a brief in support of the proposed implementing agreement and made an appearance and argument at the oral hearing.

Let us consider the two parts of the implementing agreement forged by the negotiating teams.

CONSOLIDATION OF TERMINALS: The first part of such implementing agreement approved the consolidation and joint operation of the Omaha and Council Bluffs Terminals, thereby giving effect to the intent of the carriers' proposal to the ICC and to the Interstate Commerce

Commission's decision in Finance Docket 30,000. The argument now presented to this arbitrator is a refrain voiced from the very beginning of the merger proposal. From the inception of the merger proposal the UP-T&C Committee has attempted to block consolidation of the Omaha and Council Bluffs Terminals. In its submission to the undersigned arbitrator the committee states that in the negotiations between the parties, "It was the position of the carriers that the order in ICC Finance Docket 30,000 gave the carriers the right to coordinate the facilities at Omaha, Nebraska to include the facilities at Council Bluffs, Iowa." And, indeed, we find that such was the intent of the ICC order. Of course, such right was subject to the duty of the carriers to negotiate with the organizations for the purpose of arriving at an agreement implementing its order in the most mutually acceptable manner. Failing final agreement, it cannot be doubted that New York Dock conditions imposed by the ICC order clothe the undersigned arbitrator with full authority to finally resolve the dispute.

The attack on the merger, more particularly on the consolidation of terminals and of seniority districts, by the UP locals has been, and continues, on a broad front. The argument was made before the ICC that the commission lacked jurisdiction under 49 U.S.C. 11343 to exempt a transaction from the requirements of the Railway Labor Act. This argument was specifically rejected in the ICC order. Now it is argued that the arbitrator is not empowered "to state what the work rules would be". In this connection the decision of Referee Zumas in the N&W-Illinois Terminal and BLE-UTU arbitration relative to Finance Docket 29455 is cited. However, the situation therein involved was not

analogous to that before this arbitrator. Here we are not asked to "substitute, modify or abrogate a collective bargaining agreement" *ab initio*. Rather we are charged with responsibility and authority for finally settling the matter under the conditions imposed by New York Dock. Such conditions clearly anticipate that modifications of collective bargaining agreements will usually be necessary.

We take note of the following point made in the complainant committee's brief: "Had it been the intent of the ICC order to permit the carriers to consolidate the three yards into one terminal, it would not have been necessary for the commission to grant Missouri Pacific train crews trackage rights from Omaha to Council Bluffs, as this would have been one terminal." We find no merit in this position. Again, the intent of the carriers in their application and the intent of the ICC in its order is plain. Any inconsistency relative to methodology for achieving the end result is irrelevant.

We have carefully reviewed the lengthy record before us. Such review convinces the arbitrator that the agreement implementing the consolidation of terminals in Omaha and Council Bluffs provides an appropriate basis for the selection and assignment of forces made necessary by the transaction covered by the February 14, 1983 notice. A copy of such agreement is attached hereto, identified as Attachment No. 1, and made a part hereof for all purposes.

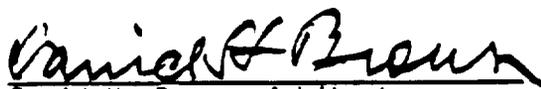
CONSOLIDATION OF SENIORITY DISTRICTS: The second part of the implementation agreement, attached hereto as Attachment No. 2, provides for the consolidation of nine Union Pacific seniority districts. Ironically, this agreement resulted from a proposal by the United

Transportation Union. Under such circumstances, and because we believe that the matter should be finally laid to rest, particularly in view of the obvious merit of the entire agreement as arrived at by the distinguished negotiators, we find that such agreement likewise provides a most appropriate basis for the selection and assignment of forces made necessary by the transaction covered in the aforementioned notices.

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. 30,000 and the ICC 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 unification of the Union Pacific Railroad Company and the Missouri Pacific Railroad Company made pursuant to the above Finance Docket, shall be as set forth in Attachment No. 1 and Attachment No. 2 to this award.

Rendered March 16, 1984.


David H. Brown, Arbitrator