In the Matter of the Arbitration Between:	Pursuant to Article 1 of the New York Dock Conditions
CHESSIE SYSTEM RAILROADS (CHESAPEAKE AND OHIO RAILWAY COMPANY) AND SEABOARD SYSTEM RAILROAD (LOUISVILLE AND NASHVILLE RAILROAD COMPANY), Carriers, and BROTHERHOOD OF RAILROAD SIGNALMEN, Organization.	ICC Finance Docket No. 28905 OPINION AND AWARD (The Chilesburg Dispute)

Date of Hearing: November 2, 1984
Place of Hearing: Cincinnati, Ohio
Date of Award: January 3, 1985

Mr. John B. LaRocco
Arbitrator
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OPINION

I. INTRODUCTION

On September 23, 1980, the Interstate Commerce Commission (ICC) approved CSX, Inc.'s petition (Finance Docket 28905 (Sub-No. 1)) to control and acquire Chessie System, Inc. and Seaboard Coast Line Industries, Inc., which were the parent corporations of the Chessie System Railroads and the Seaboard Coast Line Railroad respectively. The Chesapeake and Ohio Railway Company (C&O) is a subsidiary of the Chessie System Railroads and the former Louisville and Nashville Railroad Company (L&N) has since been merged into the Seaboard System Railroad (SBD) which is the successor enterprise to the Family Lines. To compensate and protect employees adversely affected by the primary acquisition and related proceedings, the ICC imposed the employee merger protection conditions set forth in New York Dock Railway - Central - Brooklyn Eastern District Terminal, 360 I.C.C. 60, 84-90 (1979); affirmed, New York Dock Railway v. United States, 609 F.2d 83 (2nd Cir. 1979) ("New York Dock Conditions") on all corporate parties pursuant to the relevant enabling statute. 49 U.S.C. §11347.

This dispute arises out of a May 25, 1984 notice served on the Organization by the C&O and SBD whereby the Carriers informed the Organization that they intended to transfer C&O signal maintenance work between Chilesburg,

Kentucky, and Lexington, Kentucky, to the L&N effective August 22, 1984. The Carrier and the Organization conferred on July 2, 1984. Subsequently, they exchanged correspondence and engaged in telephone discussions but were unable to negotiate an implementing agreement. The Carriers next invoked the mandatory arbitration provisions in Article 1, Section 4(a) (1-4) of the New York Dock Conditions. Though the parties concur that the dispute over the terms of an implementing agreement is clearly within the scope of Article 1, Section 4, the parties are in conflict regarding whether the entire controversy may be completely resolved by an Article 1, Section 4 arbitration. Furthermore, the Organization asserted that the parties agreed to hold either a consolidated arbitration proceeding under both Sections 4 and 11 or simultaneous Section 4 and Section 11 arbitration hearings. As a result of these disagreements, the extent of the Arbitrator's authority is a fundamental issue in dispute.

An arbitration hearing was held at Cincinnati, Ohio, on November 2, 1984. Both parties filed prehearing submissions and, at the hearing, presented extensive oral arguments in support of their respective positions. The Carriers introduced two prior New York Dock arbitration decisions which purportedly buttress their position in this case. Inasmuch as the Organization's counsel had not had an opportunity to thoroughly review these decisions, the

parties stipulated that the Organization could file a post hearing brief rebutting the efficacy of the two decisions. Though the Carriers later objected to the Organization's brief, the Arbitrator will consider the brief.[1]

At the Arbitrator's request, the Carriers and the Organization agreed to extend the thirty-day limitation period for issuing this decision.

II. BACKGROUND AND SUMMARY OF THE FACTS

The Carriers, by correspondence dated May 25, 1984, notified the Organization of their intent "...to transfer maintenance responsibilities of C&O Trackage, Chilesburg to Lexington, Kentucky, to Seaboard." The Carriers' notice, which was issued pursuant to Article 1, Section 4(a) of the New York Dock Conditions, further declared:

> "Signal Maintenance between Chilesburg and Lexington will be assigned to forces working under the L&N Signal Agreement EK Seniority District of the Corbin Division.
>
> "It is proposed that these changes will become effective August 22, 1984. We do not contemplate any force reduction as a result of these changes. Further, there will be no C&O forces transferred to Seaboard."

Thereafter, the parties held a conference on July 2, 1984 to negotiate an implementing agreement covering the impending transaction. During the meeting, controversies

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[1]The Carriers responded to some of the Organization's arguments in a November 16, 1984 letter. Thus, even if the Organization's post hearing brief violated the parties' stipulation, the Carriers were not deprived of any due process.

arose concerning the amount of work being transferred to the L&N and whether five signal employees would be paid protective benefits. Alleging that the May 25, 1984 notice was vague and obscure, the Organization pressed the Carrier to precisely designate the milepost locations of the C&O signal territory to be transferred to L&N forces. In response, the Carriers confirmed that the territory contained nine grade crossing signals. The parties also discussed who, if anybody, would be detrimentally affected by the change. The Organization insisted that an implementing agreement obligate the Carriers to pay either a displacement or dismissal allowance to five C&O signal workers. According to the Carriers, the Organization made the Carriers promise to provide New York Dock protection to the five workers as a condition precedent to negotiating any implementing agreement.

On or about October 12, 1984, the Carriers proposed an implementing agreement which the Organization rejected. Although the Organization did not proffer a complete, written proposal for an implementing agreement, it enumerated the subjects which, in its view, should be included in a final contract. The record clearly reflects that each party strictly adhered to positions which absolutely thwarted any possibility of reaching a negotiated agreement.

During negotiations, the Organization contended that the transfer of work (from the C&O's Ashland Seniority District) would substantively alter the seniority terms and scope clauses of the applicable collective bargaining agreements contrary to the prohibition set forth in Article 1, Section 2 of the New York Dock Conditions. At the hearing before the Arbitrator, the Organization voluntarily waived the above contention in this particular case and without prejudice to raising a similar Article 1, Section 2 argument in any future dispute.

The Organization has related, in great detail, many facts and factual allegations which occurred prior to the May 25, 1984 notice which, from the Organization's perspective, are inextricably tied to the instant transfer of work. The ICC's approval of the primary control application permitted the Carriers to achieve substantial savings by rerouting rail traffic over the shorter route where one or more of the subsidiary railroads maintained parallel tracks. At the time of the acquisition, the C&O operated a main line from Ashland to Lexington, Kentucky (where it connected with the L&N) via Winchester, Kentucky (the Lexington Subdivision). The L&N ran trains over a shorter rail route between Winchester and Lexington. In conjunction with the primary acquisition, the C&O sought and obtained trackage rights over the L&N between Winchester and Lexington. I.C.C. Finance Docket No. 28905 (Sub-No.

13). Concommitantly, the C&O received ICC authorization to abandon nine miles of track between Winchester and Chilesburg (Milepost 625.38 to Milepost 634.49) and the remaining segment of track running from Lexington to Chilesburg was downgraded to a branch line. I.C.C. Finance Docket No. 28905 (Sub-No. 28).[2] Thus, subsequent to the abandonment, the C&O's Lexington to Chilesburg line was isolated except for a connection with the L&N at Lexington.

After permanently diverting C&O rail traffic to the L&N line between Winchester and Lexington, the C&O moved the headquarters of Independent Signal Maintainer Ullery from Winchester to Mt. Sterling. In early 1982, the Federal Railroad Administration allowed the C&O to discontinue roadway signals on the Lexington to Chilesburg branch line. Beginning in May 1982, Ullery's territory was extended eastward to Salt Lick which was part of the territory previously maintained by Independent Signal Maintainer

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[2]The ICC approvals of the trackage rights and the abandonment were conditioned on the imposition of the Norfolk and Western-Mendocino Coast and Oregon Short Line employee protective conditions. Norfolk and Western Railway - Trackage Rights - Burlington Northern Railroad 354 I.C.C. 605 (1980), as modified by Mendocino Coast Railway - Lease and Operate - California Western Railroad, 360 I.C.C. 653 (1980); Oregon Short Line - Abandonment - Portion of Goshen Branch, 360 I.C.C. 91 (1979). The imposition of these associated employee protective conditions may have little practical significance since any and all affected employees were concurrently covered by the New York Dock Conditions imposed as a condition on the primary acquisition.

Damron. In December, 1983, the C&O further expanded Ullery's maintenance responsibilities to encompass all of Damron's territory resulting in the abolition of Damron's position. Exercising his seniority, Damron claimed a position on the Division Signal Gang displacing Signalman Collins. The bumping continued. Collins displaced Hampton, an Assistant Signalman in Training, who, in turn, displaced Brown who was furloughed. When the Division Signal Gang was abolished in April, 1984, Signalman Damron took an Assistant Signalman position. As of May 25, 1984, Ullery occupied the position assigned to maintain the signal territory which the Carriers intend to transfer to the SBD.

The Organization's C&O General Chairman filed claims on June 4, 1984 (which he amended on June 8, 1984) under Article 1, Section 11 of the New York Dock Conditions seeking displacement allowances for Ullery, Damron, Collins and Hampton and a dismissal allowance for Brown. The C&O denied the claims on August 3, 1984. One of the many disagreements between the parties in this case centers on the Arbitrator's authority within the context of an Article 1, Section 4 arbitration, to conclusively adjudicate the Organization's Article 1, Section 11 claims.

III. THE POSITIONS OF THE PARTIES

A. The Carriers' Position

In summary, the Carriers urge the Arbitrator to focus solely on the intended coordination specified in the May 25, 1984 notice. All other allegations raised by the Organization are either unrelated to the intended transaction or beyond the jurisdiction of an Article 1, Section 4 New York Dock arbitration. Thus, the Arbitrator's jurisdiction is restricted to determining the terms and conditions of an implementing agreement covering the C&O's transfer of signal maintenance work to the SBD.

The Carriers aver that their May 25, 1984 notice contained the essential elements to trigger the Article 1, Section 4 dispute resolution process. All signal work on the Lexington to Chilesburg C&O rail line is to be transferred to the L&N. Designating mileposts at Lexington and Chilesburg was unnecessary since the signal territory to be transferred was on an isolated C&O rail line. Similarly, the notice need not list each signal apparatus on the territory. The notice assured the Organization that no forces would be reduced or transferred which consequently vitiated the Article 1, Section 4 requirement to formulate a selection of forces appropriate for the transaction. Even if the notice was slightly imprecise, the Organization knew the number of grade crossing signal devices involved and was well prepared to negotiate an implementing agreement.

Whatever information the Organization lacked, the Carrier readily provided. The proposed implementing agreement presented to the Organization in October, 1984 precisely described the limits of the territory covered by the intended transfer.

The parties bargained over an implementing contract. Since the Organization made a final settlement contingent on the Carriers' promise to disburse protective benefits to unaffected signal employees, negotiations broke down. The Organization's unyielding position as opposed to any defect in the Carriers' May 25, 1984 notice, precipitated the bargaining deadlock. When further negotiations became fruitless, the Carrier invoked the Article 1, Section 4 interest arbitration provisions so that it could proceed with the ICC authorized transaction.

The main issue before the Arbitrator is what are the most fair and equitable terms of an implementing agreement which conforms to the requirements of the New York Dock Conditions. Whether any employee is or may be adversely affected by this transaction is an appropriate subject for an Article 1, Section 11 arbitration. Brotherhood of Railway Carmen and Baltimore and Ohio Railroad Co./Louisville and Nashville Railroad Co., New York Dock Arb., January 12, 1983 (Fredenberger). If the June 4, 1984 claims for protective benefits are premised on Article 1, Section 10, the claims must be referred to a Section 11

tribunal. Brotherhood of Railway Carmen v. Baltimore and Ohio Railroad/Seaboard System Railroad, New York Dock Arb., May 1, 1984 (Fredenberger). Nothing in the language of Article 1, Section 4 mandates that an implementing agreement certify who may collect past and future protective allowances. An Article 1, Section 11 arbitration committee is the proper forum for determining the rights of individual employees. Section 11 unambiguously governs the "...enforcement of any provision of this appendix, except sections 4 and 12 of this Article 1..." Clearly, protective benefit rights (Sections 5 and 6) are exclusively cognizable under Section 11 and correspondently excluded from the scope of Section 4.

However, the Carriers do not intend to rearrange forces, abolish positions, or furlough workers as a direct result of the transfer of work. The Organization, which first demanded benefits for five and then later seven workers, has not shown a nexus between the transfer of signal maintenance work on a small section of track and the alleged displacement and dismissal of C&O workers on the Ashland seniority district. Thus, the transaction will not affect any signal employee.

Lastly, the Carriers deny that they agreed to participate in a consolidated Section 4 and Section 11 arbitration proceeding. During discussions on the property, the Carriers never represented to the Organization that the

November 2, 1984 arbitration would address the Section 11 claims filed in June, 1984.

The Carriers urge the Arbitrator to adopt their proposed implementing agreement.[3]

B.- The Organization's Position

Instead of narrowly concentrating on the transfer of signal work between Lexington and Chilesburg, the Organization contends that the intended transaction is the culmination of a series of planned coordinations designed to accomplish the Carriers' primary objective, i.e., operating trains over the shorter SBD tracks between Winchester and Lexington. Therefore, an implementing agreement must apply the New York Dock Conditions to employees who were adversely affected by the acquisition, the trackage rights, the abandonment of track between Chilesburg and Winchester, the discontinuance of right of way signals and, finally, the premeditated transfer of grade crossing signal maintenance (between Lexington and Chilesburg) to the SBD.

Initially, the Organization argues that the Arbitrator is without jurisdiction to promulgate an implementing agreement because the Carriers' May 25, 1984 notice was fatally flawed. Article 1, Section 4 requires advance notice containing a "...full and adequate statement of the

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[3]See pages 5 and 6 of Carriers' Exhibit M.

proposed changes to be affected by such transaction..." so that the parties may swiftly conduct meaningful, well-informed negotiations. In this case, genuine bargaining was impossible due to the defective notice. Ensuing discussions were devoted to ascertaining the amount of work to be transferred to the SBD. The Carriers did not even know the number of signal crossing devices in the territory.

Specifically, the Carriers' notice failed to designate the exact mileposts delineating the territory subject to the transfer, to describe the amount of work transferred to the L&N and to identify the obviously affected employees. If the timetable milepost designations for Lexington and Winchester are used to determine the scope of the transferred work, three of the nine signal crossing devices are outside the scope of the intended transaction. Moreover, the incumbent C&O signalman currently assigned to maintain the nine crossing devices will suffer an immediate loss of work. A worker is placed in worse position with respect to his compensation and working conditions even if he is not furloughed. A proper Section 4 notice must embody more than a broad, vague statement of the transaction. The Carriers are barred from implementing the transaction until they issue a notice which satisfies Section 4 and thereafter negotiate an implementing agreement or, in the event of a deadlock, procure an arbitrated contract.

The record reveals that the parties failed to negotiate over the terms and conditions of an implementing agreement not only due to the lack of an adequate notice but also because the Carriers adamantly refused to apply the New York Dock Conditions to displaced and dismissed employees. Therefore, even if the May 25, 1984 notice was proper, the Arbitrator should issue an order compelling the parties to engage in further bargaining.

The Organization was under the impression that the November 2, 1984 arbitration would completely resolve all facets of the instant controversy. The predominant issue is which workers are entitled to receive New York Dock benefits. Claims were instituted under Section 11 before the parties commenced negotiations. The Organization agreed to combine a Section 4 arbitration with a Section 11 proceeding for the Carriers' benefit. The Carriers wanted an agreement so they could implement the transfer of work. Certainly, it is more inefficient and cumbersome to resolve interrelated issues in a piecemeal fashion.

However, even if this arbitration is limited to Article 1, Section 4, the Arbitrator is empowered to structure an implementing agreement which appropriately, fairly, and completely fixes the rights of all adversely affected employees. Section 4 provides that an implementing agreement shall include an "...application of the terms and conditions of this appendix..." Thus, the Arbitrator is

only restricted by the four corners of the New York Dock Conditions. The New York Dock decisions cited by the Carriers are illogical, erroneous, distinguishable and void of precedential value. It is appropriate to identify displaced and dismissed employees where the Carriers, over a period of time, have placed some signal workers in a worse position with respect to their employment.

The Arbitrator should view the Carriers' course of conduct as a single continuing transaction with the ultimate goal (which the Carriers successfully attained) of rerouting C&O rail traffic on the shorter L&N line between Winchester and Lexington. As a result of the CSX primary control case, the trackage rights approval and the Chilesburg-Winchester abandonment, at least five workers suffered a loss of compensation. Ullery, after the C&O moved his headquarters, earned less overtime pay (assuming a base year starting May, 1981). Similarly, Damron's hourly earnings decreased when he was compelled to exercise his seniority rights to a lower rated position. Collins and Hampton were displaced and after they exercised their seniority, Brown was furloughed. In an attempt to circumvent their duty to pay protective benefits to displaced and dismissed workers, the Carriers rearranged forces on the Ashland seniority district in anticipation of transferring the C&O signal maintenance on the Chilesburg to Lexington branch line to SBD workers. Thus, by the time the Carriers

tendered the May 25, 1984 notice, they could superficially but inaccurately represent that no forces would be reduced.

The Organization takes particular exception to Section 4(b) of the Carriers' proposed implementing agreement. According to the Carriers' proposal, any dismissed employee who is eligible for unemployment compensation but fails to file for such compensation will be treated as if he had received unemployment benefits for purposes of computing his dismissal allowance. The Organization points out that while Article 1, Section 6(c) permits the Carrier to deduct unemployment benefits which a dismissed employee actually receives, Section 6(c) does not require a dismissed employee to seek unemployment insurance payments. Since a provision such as Section 4(b) of the Carriers' proposal is inconsistent with the New York Dock Conditions, it cannot be included in an arbitrated implementing agreement.

The Organization respectfully requests the Arbitrator to reject the Carriers' proposed implementing agreement since it neither applies the New York Dock Conditions to readily ascertainable, affected employees nor provides for a suitable selection of forces.

IV. THE STATEMENT OF THE ISSUES

The threshhold issue before the Arbitrator is whether the Carriers' May 25, 1984 notice and the subsequent discussion among the parties satisfied the compulsory notice and negotiation provisions in the New York Dock

Conditions. If the preliminary requirements were properly discharged, the fundamental issue is what shall be the content of an implementing agreement between the Carriers and the Organization covering the impending transaction (as outlined in the May 25, 1984 notice). Finally, the Arbitrator must decide whether this arbitration is relegated to Article 1, Section 4 or broadly encompasses Sections 4 and 11 of Article 1.[4]

V. DISCUSSION

A. The May 25, 1984 Notice

The pertinent notice terms of Article 1, Section 4(a) of the New York Dock Conditions are:

> "Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of employees, or rearrangement of forces, shall give at least ninety (90) days written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representatives of such interested employees. Such notice shall contain a full and adequate statement of proposed changes to be affected by such transaction, including an estimate of the number of employees of each class affected by the intended changes..." [Emphasis added.] 360 I.C.C. 85.

The purpose of the advance notice is twofold: the notice triggers the Section 4 procedures which contain tight time deadlines for obtaining an implementing agreement; and, it

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[4]The parties agree that this arbitration is, at least, held pursuant to Article 1, Section 4 of the New York Dock Conditions.

informs the Organization (as well as all interested employees) of the impending, authorized New York Dock transaction so that the Organization and the Carriers may bargain, in good faith, over the terms of an implementing agreement. 360 I.C.C. 71. The notice must contain a full and adequate statement of the intended transaction and include an estimate of the number of affected workers. Since the ICC, in Article 1, Section 4(a) did not enumerate the essential elements of a New York Dock notice (aside from the adjectives "full and adequate" and the mandatory estimate), whether a particular notice conforms to Section 4(a) must be decided on a case by case basis.

For several reasons, the Carriers' May 25, 1984 notice complied with the minimum requirements of the New York Dock Conditions.

First, the notice described the transaction in sufficient detail including the geographic location, type of work and the end result of the transfer. It is unnecessary for the Carriers to list each signal mechanism so long as they outline the territory subject to the transfer provided all signal maintenance work in the specified territory will be transferred. Second, in this case, the transaction concerns an isolated segment of track (unconnected to any other C&O line). The Organization easily ascertained the limits of the transaction and it was well prepared for negotiations. Third, Article 1, Section 4(a) does not

require the Carrier to identify, by name, all potentially affected employees. Section 4(a) unambiguously states that the notice shall include an estimate of the "...number of employees affected by the transaction." Fourth, even an inaccurate or incorrect estimate of the number of affected employees does not presumptively invalidate the notice assuming the estimate is made in good faith. If, as the Organization contends, the Carriers' estimate is wrong, it may seek remedies provided by the New York Dock Conditions. Thus, under the peculiar circumstances of this case, the Carriers' May 25, 1984 notice was proper.

B. The Negotiations

The Carrier and the Organization engaged in negotiations over an implementing agreement on July 2, 1984 and through later correspondence. Bargaining continued up to the arbitration hearing, which is well past the mandatory minimum time period in Article I, Section 4. Negotiations became deadlocked because neither party was willing to compromise on whether or not workers named by the Organization were affected employees. The Organization took the position that the issue should be resolved as a package deal (with an implementing contract) while the Carrier wanted to defer the dispute to an Article 1, Section 11 arbitration. There is no defect in the bargaining process merely because the parties reach impasse on an irreconcilable issue. Though the record reflects that the

bargaining in this case was fractious and frustrating for both parties, the Carriers and the Organization genuinely and sincerely attempted to reach an accord which would apply the New York Dock Conditions to the intended transaction.

C. The Contents of an Implementing Agreement

When the Carriers' transaction could arguably cause the rearrangement, dismissal or displacement of employees, the Arbitrator is expressly charged with writing an implementing agreement which provides "...for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case..." 360 I.C.C. 85. Most importantly, an implementing agreement must provide for the application of the New York Dock Conditions.

The major dispute herein centers on the Organization's contention that certain signal employees were adversely affected by this transaction, prior related transactions or a continuing transaction commencing with the primary control application. The Carriers submit that this issue is beyond the jurisdiction of an Article 1, Section 4 arbitration. The exact question is whether this Article 1, Section 4 Arbitrator should determine if the employees are entitled to protective benefits, and incorporate the findings into an implementing agreement. In answering the question, the Arbitrator must evaluate the underlying facts

of this particular transaction to write a fair and equitable agreement which applies the level of employee protection set forth in the New York Dock Conditions. The ICC observed that, "Particular problems arising from the varying facts of specific cases are best handled by the individual parties involved within the framework of negotiation and arbitration..." 360 I.C.C. 75.

Regardless of whether or not the Organization correctly argues that one or more employees will be affected by this transaction, the Carriers' proposed implementing agreement (except for one modification which will be discussed later) fairly applies the New York Dock Conditions to any signal employee who may be dismissed or displaced as a result of this transaction. Section 2 of the Carriers' proposal comprehensively provides protection for any affected employee.

Determining if the employees identified by the Organization are entitled to protective benefits as part of this Article 1, Section 4 arbitration is fraught with difficulties. If an implementing agreement were to list each affected employee, it may operate to exclude any other worker who is later affected by the instant transaction. Since it would be necessary to have an open-ended provision for the protection of any employee affected by the unforeseen consequences of the transaction, the Carriers' pro-

posal (Section 2) already accomplishes the same purpose with simple, straightforward language.

The Organization's position is inconsistent with the manner in which it originally brought its claims on the property. The June 4, 1984 claims, as amended on June 8, 1984, were unmistakably filed under Article 1, Section 11 of the New York Dock Conditions. The Organization has not articulated why the claims must now be resolved and incorporated into an implementing agreement governing the transfer of a modicum of signal maintenance work. Surely, if the Organization's factual allegations can be substantiated and the five signal workers are displaced or dismissed employees, the Organization could have instituted the claims for New York Dock benefits (or similar benefits under other employee protective conditions) before the Carriers notified the Organization that they intended to undertake a transaction which would require the negotiation or arbitration of an implementing agreement.

The difficulty with deciding who might be affected by this particular transaction convinces the Arbitrator that the issues raised by the Organization are best left to an arbitration committee formed pursuant to Article 1, Section 11. The ICC recognized the problem which occurred in this case by placing the interpretation and enforcement of the New York Dock Conditions within the jurisdiction of a sep-

arate, neutral tribunal. The relevant part of Article 1, Section 11(a) reads:

> "In the event the railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision in this appendix ... it may be referred to an arbitration committee." [Emphasis added.] 360 I.C.C. 87.

The thrust of the Organization claims cuts directly to enforcing the New York Dock Conditions. Indeed, Article 1, Section 11 not only expressly uses the term enforcement (which is not found in Section 4) but also sets forth the burden of going forward and the burden of proving an entitlement to protective benefits. See Article 1, Section 11(e), 360 I.C.C. 88. Thus, this Arbitrator's jurisdiction, when promulgating an implementing agreement, is limited to the criteria specified in Article 1, Section 4. Brotherhood of Railway Carmen and Baltimore and Ohio Railroad Co./Louisville and Nashville Railroad Co., New York Dock Arb., January 12, 1983 (Fredenberger).

The Organization rightly asserts that it would have been more efficient to resolve the New York Dock entitlement issues in a single arbitration proceeding or in consecutive Section 4 and Section 11 arbitration hearings. However, an arbitrator's authority flows from the submission of the parties as well as the New York Dock Conditions. After perusing the record, the Arbitrator does not find any promise by the Carrier to consolidate the

Section 11 issues with this Section 4 arbitration. Thus, this Arbitrator is confined to adjudicating the Article 1, Section 4 dispute.

The Organization has challenged the portion of the Carriers' proposed implementing agreement which permits them to reduce the allowance of any dismissed employee who has forfeited his right to receive unemployment compensation due to his failure to apply for such benefits. Inasmuch as this Arbitrator has drawn a distinction between Section 4 and Section 11 in the construction of an implementing agreement governing this transaction, the formula for computing the amount of unemployment benefits to be deducted from a dismissal allowance should be referred to a Section 11 arbitration committee if such a dispute arises. Article 1, Section 6(c) requires the parties to agree upon a procedure for dismissed employees to report any benefits received under an employment insurance law. While there may or may not be an implied duty for an eligible worker to apply for unemployment compensation, the arbitrated implementing agreement covering this transaction should provide for reporting requirements which strictly conform to Article 1, Section 6(c). Also, this modification is particularly appropriate for this transaction because the Carriers have represented that no employee will be furloughed as a consequence of the coordination. If the Carriers unilaterally deduct any forfeited unemployment

benefits from the dismissal allowance of a dismissed employee, the Organization is free to bring a claim under Article 1, Section 11. Thus, Section 4(b) of the Carriers' proposal (Carriers' Exhibit M, page 6) should be deleted and Section 4(c) revised.

AWARD AND ORDER

1. The parties shall adopt the Carriers' proposed implementing agreement (Carriers' Exhibit M, pages 5-6) but delete Section 4(b) and substitute the words "having claimed or received" in place of "being entitled to" in Section 4(c);

2. The date of the Agreement should be adjusted; and,

3. The Carriers and the Organization shall comply with this Award within thirty days of the date stated below.

Dated: January 3, 1985

John B. LaRocco
Arbitrator