In the matter of:

Guilford Transportation Industries Companies (Boston & Maine Corporation & Maine Central Railroad Company)	:
and	:
American Train Dispatchers Association	:

Arbitration pursuant to Section 4 of the New York Dock conditions.

ICC Finance Docket 29720

STATEMENT OF THE CASE

Certain work performed by Chief Train Dispatchers was transferred from Portland, Maine to North Billerica, Massachusetts. The Boston and Maine Corpoation (B&M) and the Maine Central Railroad Company (MC) gave notice to the Organization pursuant to Section 4 of the New York Dock conditions.

After the parties met and conferred, they reached agreement on many issues but certain unresolved items are discussed herein. Particularly, the Organization seeks a sixty (60) day temporary living allowance at the new location and it requests a clause which would specifically identify the amount of time an employee is required to keep his home on the market before the "loss on sale" of home provisions of the New York Dock conditions would be automatically applicable.

The undersigned was designated as the impartial Arbitrator by the parties through the auspices of the National Mediation Board. The parties exchanged Briefs, Submissions and related documents and a hearing was conducted on June 20, 1985, in Boston, Massachusetts.

All matters of record have been fully considered by the undersigned.

OPINION

There is no dispute that the ICC, in its approval of the acquisition of control of the B&M by Guilford Transportion Industries, (GTI) imposed the New York Dock provisions upon the surviving Carrier. GTI previously controlled the MC. The Organzation herein represents the Train Dispatchers of the consolidated corporation and further, there is no dispute that a "transaction" occurred under the terms of which the parties were required to meet and negotiate concerning the application of the New York Dock provisions.

A portion of the Organization's Submission deals with a request that the movement of goods shall be by certified mover and that the arrangement for the move shall be made by the railroad. (See Page 4 of the Organization's submission). At the oral hearing on this matter the Carrier stated that it was not aware that there was a dispute in this regard and that in fact the Carrier would supply a mover in the general terms requested by the employees. Accordingly, the undersigned directs that such a provision be placed into the implementing agreement between the parties. Moreover, it was agreed that the insurance provided thereon would be a certain percentage and would not be as estimated by the employee.

Concerning certain proposals made by the Organization under Article I, Section 9, we have noted that the Organization seeks to expand certain expense reimbursement from three to five days. Although this is beyond what the Carrier asserts is required under the New York Dock conditions, it has conceded that the increase is appropriate and accordingly we will direct that it be incorporated into the agreement between the parties. However, the Organization also seeks an additional reimbursement period of sixty (60) days to assist during the unsettled period of time when the employee may be working in a new location but his family is still living at the prior home, etc.

This item will be considered hereinafter.

The Organization seeks traveling expenses to include an automobile mileage allowance at 20.5 cents per mile. At the hearing it was determined that the Carrier is willing to reimburse on the basis of 21 cents per mile and it is directed that said figure be incorporated into the agreement.

Article I, Section 12 of the New York Dock provisions protects employees against potential losses when they are required to move their place of residence. While the parties do not disagree as to the basic protections afforded by the cited section the Organization argues that there should be a specified time period within which the employer is required to purchase the employee's home (if it has not been sold after having been placed on the active market). The Organization suggests that the obligation should mature ninety (90) days from the date the property is placed on the active market, or ninety (90) days following transfer to North Billerica, whichever occurs first.

The request discussed above will be considered hereinafter.

The Carrier argues that the Arbitrator's role is rather limited in proceedings under Article I, Section 4 of the New York Dock conditions, as opposed to possible broader authority under Sections 11 and 12 of these conditions.

Specifically the Carrier argues that an Arbitrator under this type of a proceeding has no authority to alter the level of benefits which are provided by the ICC under the New York Dock conditions or which are mutually agreed to by parties. In this regard, the Carrier cites various authority which, according to the Corporation, have "...avoided expanding Section 4 procedures to cover ancillary issues not related to the selection of forces." See page 6 of Carrier's submission.

The Carrier notes that various Labor Organizations have sought to expand labor protective provisions in the appropriate forum, and from time to time there has been certain success in that area. Commencing at page nine of its brief the Carrier itemizes some of the benefits which the Organizations have attained recently and it also cites various recommended provisions which were rejected. Thus, the Carrier argues that it

would be presumptive for this author (in this forum) to expand upon the New York Dock provisions and grant benefits which the ICC refused to grant based on a total consideration of the entire topic. In this regard the Carrier has cited a Section 4 Oregon Short Line case involving the ICG and UTU in which the Referee decided that implementing agreements properly deal with the means by which certain levels are to be afforded but may not raise or lower them unless the parties so agree.

The Carrier notes that the New York Dock provisions specifically deal with relocation provisions and the Carrier has demonstrated in the past that its implementing agreements (in specific compliance with the New York Dock provisions) have been fair and equitable. According to the Carrier, should an arbitrator extend the various provisions in a piecemeal fashion to different categories of employees there results a totally unworkable hodgepodge of various provisions with little, if any, continuity.

Based upon a review of the entire record the undersigned is reluctant to grant the provisions urged and requested by the Organization. Aside from the jurisdictional argument as to whether or not the undersigned is authorized under a pertinent provisions of the New York Dock conditions to grant the requests urged by the Organization, the author feels that there is a basic rationale for the consistency urged by the Carrier especially since there has been no showing that the existing conditions and those proposed by the Carrier are unduly unreasonable or calculated to be unfair to the employees.

Certainly no group of employees should be compelled to accept certain provisions and conditions merely because another group of employees has agreed to then at a prior time. Nonetheless, a Carrier must understandable be concerned with some form of uniformity of applications so as to avoid chaotic conditions. While it would be highly advantageous to receive a sixty (60) day period with economic considerations, I do not find that there is a compelling basis established for extending the provisions in that regard. Moreover, I am reluctant to restrict the real estate provisions of the

agreement. It must be kept in mind that under Article I, Section 11 of the New York Dock provisions there is provision to redress any wrongs which might result from improper implementation of the New York Dock provisions concerning the real estate requirements. The Carrier recognizes that its actions are subject to arbitral scrutiny. Each real estate situation must be considered individually and on its own merits and if the Carrier acts imprudently redress may be sought.

At the hearing the parties discussed the fact that the Carrier has granted a so called "lace curtain" provision or payment in the amount of $800 and consistency dictates that said amount be incorporated into the implementing agreement between these parties. See page 19 of Carrier's submission.

Finally, we have noted reference to a flat $2,800 in lieu of all moving and real estate provisions of Section 9 and 12. The record is not clear as to the position of the Organization concerning that offer. Thus, it is determined that if the Organization desires to take advantage of such a flat rate arrangement, it may do so and the provisions shall be added to the implementing agreement.

AWARD

The undersigned directs that only those additional provisions specifically referred to herein as being appropriate for inclusion in the implementing agreement should be so incorporated.

Joseph A. Sickles

8/6/85
Date