

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 _____

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|---------|-------------------------------------|----------|
| PARTIES | Brotherhood Railway Carmen of the) | |
| | United States and Canada) | |
| TO |) | |
| | and) | DECISION |
| DISPUTE |) | |
| | The Baltimore and Ohio Railroad) | |
| | Company) | |
| | Seaboard System Railroad) | |

QUESTIONS AT ISSUE:

1. Should the entire L&N roster be dovetailed onto B&O roster?
2. Were the ten employees furloughed in August and September (1983) furloughed in anticipation of the coordination, and if so should these employees be dovetailed on the B&O roster?
3. Should L&N carmen now holding assignment on L&N be dovetailed on the B&O roster?

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).

Subsequently, the Seaboard Coast Line Railroad (SCL) and the Louisville and Nashville Railroad Company (L&N) merged resulting in a

new carrier known as the Seaboard System Railroad (SBD). Agreements between the former SCL and L&N and their employees were retained and the employees continued to work thereunder.

On November 9, 1983, the Baltimore & Ohio Railroad Company (B&O) and SBD, two carriers controlled by CSX Corporation under the Commission's Decision in Finance Docket No. 28905 (Sub. No. 1), served notice upon the Carrier's shop craft organizations including 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 coordinate (consolidate) Mechanical Department work . . . now being performed by B&O employees in the greater Cincinnati, Ohio terminal area and SBD employees in the greater Cincinnati, Ohio terminal area." The notice also stated that of the 43 existing SBD carmen positions 16 would remain at SBD, 13 would be transferred to B&O and 14 would be abolished.

Further pursuant to Article I, Section 4 of the New York Dock Conditions, the parties met on December 13, 1983, and January 24, February 22, and March 28, 1984, 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. However, the parties were unable to reach agreement.

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 March 30, 1984. Hearing was held in this matter pursuant to Article I, Section 4(a)(1) on April 18, 1984, at which time the parties presented written submissions and oral argument.

FINDINGS:

The parties have complied with the procedural requirements of Article I, Section 4 of the New York Dock Conditions, and the dispute underlying the three issues noted above is properly before this Neutral for determination.

The dispute arises from the Carriers' plans to consolidate the Mechanical Department forces at two facilities in the greater Cincinnati, Ohio area. The Queensgate shops and yard located on the north side of the Ohio River are operated by the B&O. SBD operates the DeCoursey shops and yard located south of the river a short distance from the Queensgate facilities. The DeCoursey facility was operated formerly by the L&N. The Carriers will reduce the 43 carmen positions at DeCoursey to 16, abolish 14 and transfer 13 to Queensgate. Although excluded from their notice the Carriers now propose to include in the coordination the trailer-on-flat-car (TOFC) facility operated by SBD which was coordinated in 1981. The present coordination of the TOFC facility will affect four SBD carmen positions but will not reduce the number to be furloughed.

Each of the issues in this case involves the question of whether the seniority of SBD carmen should be dovetailed with that of B&O carmen

on the B&O carmen's seniority roster. All parties agree that the seniority of those 13 SBD carmen who will be transferred to Queensgate should be dovetailed. However, Issues 1 and 2 involve the question of whether furloughed SBD carmen should have their seniority dovetailed on the B&O roster and Issue 3 raises the same question with respect to the 14 SBD carmen whose positions will be abolished and who, without question, will be furloughed as a result of the coordination.

With respect to each of the issues Article I, Section 4 of the New York Dock Conditions provides in pertinent part:

Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this Section 4.

Where, as in the instant case, the parties have not been able to settle the dispute a Neutral Referee in discharging his duties under Article I, Section 4 ". . . should play a major role in formulating or devising a scheme for the rearrangement of forces. . . ." Durango and Silverton Narrow Gauge RR. Co.-Acquisition and Operation, Finance Docket 29096.

1. Should the Entire L&N Roster Be Dovetailed
Onto the B&O Roster?

The SBD General Chairman urges that all employees on the SBD carmen's roster at DeCoursey, including all those on furlough, should be dovetailed on the B&O carmen's roster at Queensgate.

However, the Carriers' proposal on this issue, which is supported by the B&O General Chairman, would dovetail the seniority only of those SBD carmen the Carriers will transfer from DeCoursey to Queensgate to fill the 13 positions transferred from DeCoursey to Queensgate. The Carriers would place all other SBD carmen at the bottom of the B&O seniority roster in order of their seniority on the DeCoursey roster but with a seniority date of the effective date of the coordination.

The Carriers argue that their proposal would enable the SBD carmen to follow their work which will be transferred from DeCoursey to Queensgate but would protect the agreement rights of the B&O carmen, who are only remotely concerned with the transaction in this case, from undue interference. The Carriers point out that so many furloughed SBD carmen have seniority dates earlier than the most junior B&O carman, none of whom are presently furloughed, that dovetailing the entire SBD carmen's roster on the B&O carmen's roster would result in 31 employed B&O carmen being displaced by SBD carmen presently furloughed.

The SBD General Chairman vigorously opposes the Carriers' proposal. He maintains that for some time the Carriers have contemplated the coordination involved in this case and have deliberately diverted substantial traffic from the DeCoursey facilities resulting in extensive furloughs of SBD carmen. The SBD carmen argue that much of their work has been transferred to Queensgate and that, accordingly, furloughed SBD employees should be afforded an opportunity to follow their work by dovetailing them on the B&O roster at Queensgate.

The Carriers, with equal vigor, deny that furloughed SBD carmen are in that status due to any action taken by the Carriers in anticipation of the transaction in this case. The Carriers point to the poor condition of the economy in the past few years resulting in a general decline in business on SBD and L&N, its predecessor. Coal production dropped considerably during this period severely impacting operations at DeCoursey which handles a high percentage of coal shipped on SBD from the eastern Kentucky coal fields. The Carriers also contend that changes in the power brake law effective October 1, 1982, eliminated substantial brake test work which had been performed by the carmen's craft at DeCoursey.

After laborious review of the evidence and arguments, this Neutral must conclude that there is substantial support for both sides of the question whether the furloughed SBD carmen are in such status due to actions by the Carriers taken in anticipation of the transaction in this case. However, such question is more appropriately for a proceeding under Article I, Section 11 of the New York Dock Conditions. In any event, it is not particularly helpful with respect to the question of how the furloughed SBD carmen should be treated in this particular case.

The SBD General Chairman relies upon a Decision by this Neutral under Article I, Section 4 which dovetailed carmen seniority rosters in operations consolidated by the Union Pacific and Missouri Pacific Railroads. The SBD General Chairman cites a provision in the arbitrated implementing arrangement resulting from that Decision which dealt with furloughed employees. Essentially, the furloughed employees were dovetailed on the roster but they were prevented from displacing regularly assigned

employees. The SBD General Chairman urges no less than the same treatment for furloughed employees in this case.

The Carriers view the Decision as distinguishable from the instant case. However, this Neutral believes that the treatment of furloughed employees, not actually at issue in that case, deserves serious consideration for application in the instant case. It would preserve agreement rights of the furloughed SBD employees without impairing those of the B&O employees. Although the Carriers' proposal purports to follow these principles, it would abrogate the seniority dates of SBD furloughed carmen and place them at the foot of the B&O roster.

In the final analysis this Neutral must conclude that the proposal advanced by the SBD carmen for the treatment of furloughed SBD employees is more appropriate than the Carriers' proposal, and the SBD carmen's proposal is included in the attached arbitrated implementing arrangement.

2. Were the Ten Employees Furloughed in August and September (1983) Furloughed in Anticipation of the Coordination, and If So Should Those Employees Be Dovetailed on the B&O Roster?

The SBD carmen allege that ten SBD carmen furloughed in August and September of 1983 clearly were furloughed in anticipation of the transaction in this case. The SBD carmen point to a coordination study undertaken by the Carriers at the same time the employees were furloughed as well as a "history" of the DeCoursey yard as proof that the Carrier anticipated the transaction in this case when it furloughed these ten employees.

The Carriers argue that this issue is beyond the jurisdiction of a Neutral in an Article I, Section 4 proceeding. Rather, the Carriers contend, this issue is justiciable under Article I, Section 11 which governs arbitration of all disputes under the New York Dock Conditions except those arising under Sections 4 and 12. The question of whether the Carriers' furlough of the ten carmen was in anticipation of a transaction arises under Section 10 of the New York Dock Conditions.

The SBD carmen urge that even if the question of whether the furloughs were in anticipation of the transaction in this case is a question for an Article I, Section 11 proceeding, the seniority question resulting from the furloughs is a matter clearly within the jurisdiction of a Neutral in an Article I, Section 4 proceeding, and thus should be addressed in this proceeding.

While the Carriers' advance an appealing argument, it cannot be denied that the question of how the seniority of the ten furloughed employees should be treated for purposes of the coordination is certainly within this Neutral's jurisdiction. There appears to be no sound basis for treating the ten furloughed SBD carmen differently from other furloughed SBD carmen dealt with in Issue No. 1 above. Accordingly, they are treated as other furloughed SBD carmen in the attached arbitrated implementing arrangement.

Any question as to whether the ten SBD carmen were furloughed in anticipation of a transaction should be raised in an Article I, Section 11 proceeding.

3. Should L&N Carmen Now Holding Assignment On
L&N Be Dovetailed On the B&O Roster?

This issue involves the treatment of the SBD carmen to be furloughed at DeCoursey. It is a major point of disagreement among the parties.

Under the Carriers' proposal these employees would be treated the same as all other furloughed employees, placing them at the foot of the B&O carmen's roster in the order in which they appear on the DeCoursey roster, but with a seniority date as the date of the transaction. While the B&O carmen concur in the Carriers' position, the SBD carmen vigorously disagree. The SBD carmen believe that these employees should be dovetailed with the B&O carmen roster allowing them to displace anyone on that roster for available jobs.

At first glance there appears to be substantial equity in support of the claim by the SBD carmen that these employees should be dovetailed on the same basis as SBD employees transferring to active positions at Queensgate. However, in the final analysis, these employees have no work to follow from DeCoursey to Queensgate. The Queensgate facilities are so modern and efficient that fewer carmen are needed at the facility to perform the same work as would be needed at DeCoursey. Thus, 14 SBD carmen positions will be abolished.

There appears to be no basis, legal or equitable, upon which to treat these SBD carmen differently from other furloughed SBD employees. Accordingly, these employees are treated as other furloughed SBD carmen in the attached arbitrated implementing arrangement.

The attached arbitrated implementing arrangement which is hereby made a part of this Decision, constitutes this Neutral's determination under Article I, Section 4 of the New York Dock Conditions as to the appropriate bases for the selection or rearrangement of forces pursuant to the transaction which gave rise to this proceeding. This arbitrated implementing arrangement is to be treated as if signed and fully executed by the parties and their representatives. This Decision and the implementing arrangement are intended to resolve all outstanding issues in this proceeding as provided in Article I, Section 4 of the New York Dock Conditions.


William E. Fredenberger, Jr.
Neutral Referee

May 1, 1984

ARBITRATED IMPLEMENTING ARRANGEMENT

MEMORANDUM OF AGREEMENT

BETWEEN

THE BALTIMORE AND OHIO RAILROAD COMPANY

SEABOARD SYSTEM RAILROAD

AND THEIR EMPLOYEES REPRESENTED BY THE

BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND CANADA

WHEREAS, this transaction is covered by Interstate Commerce Commission decisions in Finance Docket No. 28905, and

WHEREAS, The Baltimore and Ohio Railroad Company and Seaboard System Railroad, hereinafter designated respectively as "B&O" and "SBD" 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 and SBD to consolidate and coordinate work now performed by Carmen at the SBD DeCoursey Yard, Covington, Kentucky, with work performed for B&O at Queensgate Yard, Cincinnati, Ohio, and have such work thereafter performed on a coordinated basis under the B&O Agreement.

WHEREAS, the parties have conferred,

NOW, therefore, it is agreed:

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. (a) As a result of this transaction, SBD operations at DeCoursey Yard, Covington, Kentucky will be coordinated with B&O operations at B&O Queensgate Yard, Cincinnati, Ohio and certain Carmen positions will be either transferred to Queensgate or abolished. Thereafter, such work will be coordinated in the greater Cincinnati, Ohio, terminal area and work accruing to Carmen will be performed by employees on the Carman Roster at Queensgate Yard, Western Region Seniority Point No. 25.

(b) It is understood and agreed that the TOFC ramp operation at Cincinnati will be included in the coordinated operation; however, it is recognized that tie down work, trailer inspection and associated work is not work accruing to Carmen under the B&O Agreement at this facility.

(c) Line of road repair work and wrecking service work may be performed by employees in the coordinated operation in the territory from DeCoursey Yard to Worthville, Kentucky (M.P. T-54) on Short Line and to Patio, Kentucky (M.P. KC-97) on the K-Y Branch. However, nothing in this Agreement shall prohibit the use of L&N employees from other locations to perform such work at any location beyond the yard limits at DeCoursey.

3. Positions to be established in the coordinated Cincinnati Terminal, including those headquartered at DeCoursey Yard, will be bulletined at the SBD DeCoursey Yard for a period of ten (10) days and will accrue to employees on the SBD Carman Roster.

4. Upon expiration of the ten-day bulletin, determination will be made of the employees who have bid and who have been awarded positions in the coordinated operation. In the event any position advertised is not filled in accordance with the foregoing, employees on the DeCoursey Carman Roster will be assigned the unfilled position(s).

5. (a) Employees accepting or assigned to positions in the coordinated operation will have their seniority date, as it appears on the DeCoursey Carman's Roster, dovetailed on the appropriate roster to which transferred upon reporting to work, and their name will be removed from the DeCoursey Carman 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 the coordinated operation 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 B&O Scheduled Agreement.

(c) SBD Carman who are awarded or assigned positions in the coordinated operation will become B&O employees subject to the rules of the Agreement between The Baltimore and Ohio Railroad Company and Brotherhood Railway Carman of the United States and Canada.

6. (a) L&N carmen, whether furloughed or actively employed, who are not awarded or assigned to positions in the coordinated operation will have their seniority date as it appears on the DeCoursey carmen's roster dovetailed onto the appropriate carmen's roster at Queensgate, and the L&N carmen's roster shall be abolished. These employees will be identified as furloughed L&N employees on the combined Carmen seniority rosters. L&N employees identified as furloughed will not be able to activate their seniority to a regular permanent, bulletin assignment until such time as a regular assigned position is bulletined due to resignation, transfer, retirement, increase in force, etc., of any of the current active employees. In the application of the seniority rights of furloughed L&N carmen whose dovetailed seniority will be greater than junior B&O employees who hold a regular assignment at that time, it is understood that such L&N employees will not be subject to recall to service until such time as a permanent position becomes vacant which is not filled by a B&O employee in service holding a regular assignment as of the effective date of this Agreement. Upon assignment to a permanent position and thereafter, such L&N employee's exercise of seniority rights shall be governed by the applicable provisions of the B&O Schedule Agreement.

(b) Employees on the L&N Painters' roster at DeCoursey will be established on a B&O Painters' roster at Cincinnati with a seniority date as it appears on the DeCoursey Painters' roster which will be abolished. The same conditions of paragraph (a) of this Section applicable to the exercise of seniority by L&N carmen will be applicable to L&N Painters subject to this paragraph (b).

(c) The B&O seniority rights of the employees as described in Paragraph 6(a) and (b) above will be confined to the seniority point at Cincinnati until such time as the employee holds a regular, permanent bulletin assignment at that location.

(d) Employees described in Paragraph 6(a) and (b) above will retain seniority rights under the L&N Agreement to the extent of requesting vacancies at other locations on L&N under the provisions of L&N Rule 27½ - however, rights under this paragraph 6(d) will terminate at such time as the employee is assigned a regular, permanent position in the coordinated operation.

7. (a) Those former L&N employees dovetailed onto the B&O rosters pursuant to Paragraph 6(a) and (b) above will be placed on a preference list for positions bulletined to perform program car repair work on L&N cars, if such work is performed in the DeCoursey Car Shop. However, positions bulletined to perform program work on other than L&N cars will accrue to the coordinated roster.

(b) Employees whose names are placed on the preference list established pursuant to 7(a) above, shall have their names removed from such list upon being awarded a regular bulletined assignment in the coordinated operation.

8. (a) L&N employees holding seniority as carman apprentice and carman helper at De Coursey Yard will be established on a B&O tentative carmen roster at Cincinnati, Ohio with a seniority date as of the effective date of the coordination and the respective L&N rosters will be abolished. The B&O roster will be established by placing carman apprentices on the roster in the order they appear on the L&N Carmen Apprentice Roster and then placing helpers on the roster in the order they appear on the L&N Carman Helper Roster.

(b) Employees who establish seniority as Carman Tentative pursuant paragraph 8(a) above will be governed by the provisions of the June 1, 1979 Carman Upgrading Agreement and will be given credit for time worked as an apprentice or worked in an upgraded capacity on L&N consistent with Article II, Section 4(b).

(c) Such employees shall establish seniority as a mechanic in accordance with Article III, Section 3 of the June 1, 1979 Agreement. However, it is agreed that such employees will in no event establish a seniority date on the Mechanics' Roster in a position superior to any journeyman mechanic who is on the roster or placed on the roster on the effective date of the coordination.

9. Employees on leave-of-absence account sickness, promotion and other approved absences, who returned to service subsequent to the coordination, shall be entitled to whatever rights they may have had had they been present at the time of the coordination. When any such person described above returns to service and exercises seniority rights on a position to which he is entitled, the junior protected employee who is adversely affected on the seniority roster to which they exercise their seniority shall revert to his previous status and be afforded such protection to which he would have been entitled had the absent employee been present at the time of the coordination. The number of protected employees shall not be increased or decreased as a result of the return of an employee under this section.

10. 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.

11. (a) Each dismissed employee shall provide either B&O or SBD 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 9 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 Subsection (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 9 has nothing to report under this Section 9 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 Subsection (a) of this Section 9, on the appropriate form annotated "Nothing to Report."

(d) 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.

12. 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 in paragraph 1.

13. The provisions of this Agreement shall become effective on the tenth (10th) day following the date of advance written notice by the B&O and SBD to their respective General Chairmen.