

ARBITRATION ESTABLISHED UNDER ARTICLE I, SECTION 4(a)
OF THE NEW YORK DOCK CONDITIONS

* * * * *
In the matter of Arbitration between: *
*
Brotherhood of Railway Carmen of the *
United States and Canada *
*
-and- *
*
Delaware and Hudson Railway Company *
Maine Central Railroad Company *
*
Finance Docket No. 29772 *
* * * * *

APPEARANCES

For the Brotherhood of Railway Carmen of the
United States and Canada:

William G. Fairchild - General Vice President
James W. Cramer - General Chairman

For the Delaware and Hudson Railway Company and the
Maine Central Railroad Company:

Daniel J. Kosak - Staff Officer, Labor Relations
Robert F. Lamphier - Manager, Labor Relations

BACKGROUND

When the Interstate Commerce Commission (hereinafter referred to as the ICC) approved Guilford Transportation Industries' acquisition of the Delaware and Hudson Railway Company (hereinafter referred to as the Delaware and Hudson) in Finance Docket No. 29772, it imposed the New York Dock labor protective conditions (hereinafter referred to as the New York Dock Conditions). On February 24, 1984, the Delaware and Hudson and the Maine Central Railroad Company (collectively referred to as the Carrier) served notice on

the Brotherhood of Railway Carmen of the United States and Canada (hereinafter referred to as the Organization) which notice provided, in pertinent part, as follows:

The Maine Central Railroad Company will perform start-to-finish paint work of Delaware and Hudson locomotives at the Waterville Shop of the Maine Central Railroad Company. The particular work to be performed involves surface preparation, priming, painting and stenciling. Spot painting and touch-up painting will continue to be performed at various locations on the Maine Central and Delaware and Hudson Railroads as required.

The foregoing notice was served by the Carrier pursuant to Section 4 of the New York Dock Conditions. The Organization and the Carrier met in conference on March 15, 1984 and again on May 10, 1984, in an attempt to reach an agreement as required by Section 4 (a) of Article I of the New York Dock Conditions. The parties exchanged proposed implementing agreements and discussed them in detail. Subsequent to the May 10, 1984, conference, both parties made revisions to their proposed implementing agreements. Nevertheless, a mutually satisfactory agreement could not be reached. Consequently, the Carrier invoked the arbitration provisions of Article I, Section 4 (a) of the New York Dock Conditions, and the undersigned Arbitrator was mutually selected by the Organization and the Carrier to resolve this dispute.

A hearing was held before the Arbitrator on March 26, 1985. The Organization and the Carrier appeared at that hearing and proffered extensive oral and documentary evidence in support of their respective position. Based on the

evidence and arguments advanced by the parties, this Arbitrator renders the following decision.

STATEMENT OF FACTS

The facts evidence that the start-to-finish paint work of Delaware and Hudson locomotives had been performed at its Colonie Shop prior to February 24, 1984. At that time, two employees were on the Delaware and Hudson Roster of Painter Helpers at the Colonie Shop. Both were on furlough, however. The senior Painter Helper, Christopher Sheremeta, had been furloughed as a Painter on January 13, 1982. The junior Painter Helper on the Roster, David R. Villeneuve, had last worked as a Painter on October 11, 1979. Sheremeta and Painter Helper Villeneuve had been furloughed due to severe financial problems experienced by the Delaware and Hudson. Their furloughs were in no way related to the transfer of start-to-finish paint work of locomotives from Colonie Shop to the Waterville Shop of the Maine Central Railroad Company. However, they previously performed this work at the Colonie Shop before their furloughs. The question to be resolved in this proceeding is whether these furloughed employees are entitled to the labor protective benefits prescribed by the New York Dock Conditions.

ORGANIZATION'S POSITION

It is the Organization's contention that transfer of start-to-finish paint work of Delaware and Hudson locomotives from Colonie Shop, where this work had always been performed, to the Waterville Shop of the Maine Central Railroad will

cause an adverse impact to the Carmen Painters holding seniority at the Colonie Shop. Consequently, the Organization submits that the two (2) Carmen Painters affected by the Carrier's decision are entitled to the protective benefits of the New York Dock Conditions. According to the Organization, these employees are entitled to these protective labor benefits since they will be placed in a worse position with respect to their compensation and rules governing working conditions as a result of this transaction. Since they have a contractual right to the work being transferred to the Waterville Shop, the Organization asserts that these employees will be adversely affected by the Carrier's action. It insists that if this painting work had not been transferred from the Colonie Shop the two aforementioned Carmen Painters would have been recalled to service to perform it. That this painting work was transferred by the Carrier to the Waterville Shop does not diminish their contractual right to it, in the Organization's opinion. The Organization insists that the requisite "cause and effect" between the transaction in question and the adverse effect on the two Delaware and Hudson Carmen Painters has been clearly established.

At the very least, the Organization contends that these Carmen Painters who may be recalled to service must be considered "displaced employees" as that term is defined in Article I, Section 1 (c), of the New York Dock Condition as of the date of their return to service. They must, therefore,

be afforded the displacement allowances provided by Section 5 of the New York Dock Conditions, the Organization avers.

In the light of all the foregoing, the Organization respectfully requests this Arbitrator to adopt its proposed implementing agreement, or that an implementing agreement be drafted which will incorporate the contentions set forth in the Brief it submitted to the Arbitrator.

CARRIER'S POSITION

It is the Carrier's position that employees who are on furlough at the time of a transaction are not adversely affected by that transaction. They are therefore not entitled to the labor protective benefits provided by the New York Dock Conditions. Since there was no causal relation between the transfer of start-to-finish paint work of Delaware and Hudson locomotives and any adverse impact on the two furloughed Painter Helpers, the Carrier submits that they therefore cannot be considered "displaced" or "dismissed" employees as those terms are defined in the New York Dock Conditions. Consequently, these employees are not entitled to any "dismissal" or "displacement" allowances under the New York Dock Conditions.

The Carrier further contends that the two Painter Helpers cannot accrue labor protection at some future date should they be recalled to service inasmuch as the transaction never placed them in a "worse position with respect to [their] compensation and rules governing [their] working conditions" as a result of the transaction. To grant

them such benefits on a subsequent prospective basis would significantly broaden the New York Dock Conditions to an entire group of employees who were not adversely affected by a transaction, the Carrier submits.

Finally, the Carrier recognizes that the two furloughed Painter Helpers have an equity right to the work previously performed by them at the Colonie Shop should they be recalled to service. It maintains that its proposed implementing agreement grants them rights to the consolidated start-to-finish paint work at the Waterville Shop.

For all the above reasons, the Carrier requests this Arbitrator to adopt the implementing agreement which it has proposed herein.

FINDINGS AND OPINION

The Carrier recognizes that the transfer of start-to-finish painting of Delaware and Hudson locomotives from the latter's Colonie Shop to the Waterville Shop of the Maine Central Railroad constitutes a "transaction" as that term is defined in Article I, Section 1 (a), of the New York Dock Conditions. It must be observed at the outset that the two Delaware and Hudson Painter Helpers who are seeking the protective benefits provided by the New York Dock Conditions were not furloughed in anticipation of this transaction. Indeed, they were furloughed for economic reasons before Guilford Transportation Industries acquired the Delaware and Hudson. Mr. Sheremeta was furloughed as a Painter in January, 1982 whereas Mr. Villeneuve was furloughed in October, 1979.

Both employees were obviously furloughed long before the transaction involved in this proceeding was even contemplated.

In the light of the foregoing, the question to be resolved here is whether the two Carmen Painters holding seniority as such at the Delaware and Hudson Colonie Shop, but who were furloughed at the time of the aforementioned transaction, are entitled to the protective benefits of the New York Dock Conditions should they be recalled to service ? After carefully reviewing the evidence and arguments pressed by both the Organization and the Carrier this Arbitrator is of the opinion that this question must be answered in the negative.

The Organization contends that the two Painter Helpers will be "displaced employees" upon their recall to service and are, therefore, entitled to the displacement allowances set forth in Article I, Section 5, of the New York Dock Conditions. Yet, Article I, Section 1 (a), of the New York Dock Conditions explicitly defines a "displaced employee" as one who is placed in a worse position with respect to his compensation and rules governing his working conditions as a result of the transaction (emphasis added). This Arbitrator does not believe that the two Delaware and Hudson Painter Helpers were placed in a worse position as a result of the transaction in question since they were furloughed long before this transaction ever occurred.

In my judgment, the transaction had no adverse impact on the Painter Helpers' compensation or rules governing their

working conditions since they were not actively working at the time of the transaction. When the start-to-finish paint work of Delaware and Hudson locomotives was transferred from Colonie Shop there was simply no adverse impact on these employees since they were furloughed at the time.

While the transaction in question had no immediate effect on the compensation or rules governing the working conditions of the two Painter Helpers, this Arbitrator agrees with the Organization that they could be potentially affected by it should they be recalled to active service. Yet, merely because these furloughed employees might be adversely affected by the transaction does not entitle them to the protective benefits of the New York Dock Conditions, in my considered opinion. It is the effect, if any, on employees at the time of the transaction that is controlling, in my view; and not some prospective speculative effect.

It is instructive to note that Arbitrator Cushman addressed this precise issue in a dispute markedly similar to the one at hand. Arbitrator Cushman concluded that at the time of the transaction there was no causal connection between the transaction and the claimed adverse affect on the employees involved in that dispute since they were furloughed when the transaction occurred. The Organization contends that Arbitrator Cushman's Award is distinguishable from this case since Carmen on the Boston and Maine Railroad were on a common seniority roster, and thus had rights to either Painters' positions or to other Carmen positions unlike the

employees here who hold seniority strictly as Painters. In my opinion, this factual distinction does not appreciably change the conclusions reached by Arbitrator Cushman when he had occasion to address this precise issue.

The Organization also asserts that if the start-to-finish painting work was being performed on February 24, 1984 when the Carrier issued its notice, the two Painter Helpers would have been performing this work exclusively. Consequently, they would have been entitled to follow this work to the Waterville Shop, and also would have been entitled to the New York Dock protective benefits, according to the Organization. This Arbitrator unquestionably agrees with the Organization's contention. However, these employees were not in active service on February 24, 1984, and this is a critical factor in determining whether they were entitled to protective benefits. Inasmuch as they were not performing this work when it was transferred from the Colonie Shop since they were furloughed, they were simply not placed in a worse position with respect to their compensation or rules governing their working conditions as a result of the transaction. The necessary causal relationship between the transaction and any adverse impact on their compensation or on their working conditions was clearly absent because of their furloughs.

Although the two Painter Helpers are not entitled to the protective benefits provided by the New York Dock Conditions, they unquestionably have an equity right to the work they previously performed at the Colonie Shop of the Delaware and

Hudson. The Carrier has addressed the rights possessed by these employees should they be recalled to service in its proposed implementing agreement. This Arbitrator has reviewed the Carrier's proposal and finds it fair and equitable. I firmly believe that the Carmen Helpers' right to the work transferred to the Waterville Shop has been preserved.

For all the foregoing reasons, this Arbitrator adopts the implementing agreement proposed by the Carrier.

AWARD

The June 7, 1984 implementing agreement proposed by the Carrier is fair and equitable and fulfills the Carrier's obligation under the New York Dock Conditions. Accordingly, this Arbitrator adopt that agreement, a copy of which is appended hereto.


Robert M. O'Brien
Arbitrator

Boston, Mass.
June 12, 1985

IMPLEMENTING AGREEMENT
BETWEEN
DELAWARE AND HUDSON RAILWAY COMPANY
MAINE CENTRAL RAILROAD COMPANY
AND
BROTHERHOOD RAILWAY CARMEN OF THE U. S. AND CANADA

WHEREAS, this transaction is made pursuant to Interstate Commerce Commission decision in Finance Docket No. 29772, and

WHEREAS, the Delaware and Hudson Railway Company and the Maine Central Railroad Company, hereinafter designated respectively as "D&H" and "MeC" give notice in accordance with Article I, Section 4(a) of the conditions for the protection of employees enunciated in New York Dock Railway - Control - Brooklyn Eastern District, 360 ICC 60 (1979) hereinafter designated as "New York Dock Conditions" of the intent of the D&H to transfer start-to-finish paint work from its Colonie Shop to the Waterville Shop of the MeC,

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 D&H will transfer start-to-finish paint work that formerly was performed in its Colonie Shop to the Waterville Shop of the MeC. Start-to-finish paint work is understood to be surface preparation, priming, painting and stencilling. Start-to-finish paint work does not include spot painting and touch-up painting which will continue to be performed at various locations on the D&H and MeC as required.
3. As of the date of this agreement, the names of two (2) Delaware and Hudson Carmen Painters on the Delaware and Hudson Carmen Painters Roster not holding regular assignments or on furlough will be dovetailed in seniority order with the names of all Carmen either not holding regular assignments or on furlough on the Roster of Waterville Carmen B, Maine Central Railroad Company.
4. When a position must be filled on the Roster of Waterville Carmen R, work will accrue to the dovetailed

list of Delaware and Hudson and Maine Central employees described in Section 3.

5. A newly established position on the Roster of Waterville Carmen B will be bulletined for a period of ten (10) days. Employees described in Section 3 of this agreement will be eligible to bid on said position until said position is filled.
- a. If a Maine Central employee is the senior bidder on the bulletined position, he will be assigned the position according to the terms and conditions of the schedule agreement between the Brotherhood Railway Carmen and the Maine Central Railroad Company.
 - b. If a Delaware and Hudson employee is the senior bidder on the bulletined position, he will be assigned the position according to the following:
 - i. The Delaware and Hudson employee may elect to accept the bulletined position at Waterville Shop or to remain in an unassigned/furlough status on the Delaware and Hudson Railway. If the Delaware and Hudson employee elects to accept the bulletined position at Waterville Shop, the remainder of this Section 5(b) will be applicable.
 - ii. The Delaware and Hudson employee accepting the position at Waterville on the MeC will have his/her seniority date, as it appears on the D&H Carmen Painters Roster dovetailed into the Roster of Waterville Carmen B upon reporting to work, and his/her name will be removed from the Delaware and Hudson Carmen Painters Roster.
 - iii. The D&H employee accepting the position at Waterville will be assigned his/her position in accordance with the bulletin advertising the position; and in accordance with the preceding Section (a); thereafter, changes in the coordinated operation in the filling of vacancies, abolishing or creating positions and reduction or restoration of forces will be governed by application of the MeC schedule agreement.
 - iv. The D&H employee accepting the herein described Waterville position will become a MeC employee subject to the rules of

agreement between the Maine Central Railroad Company and the Brotherhood Railway Carmen of the United States and Canada.

- v. The moving and relocation provisions provided in the "New York Dock Conditions" will be applicable.
6. As to employees covered by this agreement, it is clearly understood that the provisions of the New York Dock Conditions will apply only to those employees affected by a "transaction" as defined in Article I, Section 1(a) of the New York Dock Conditions..
7. This agreement will become effective upon ten (10) days advance notice to the representative of the Brotherhood Railway Carmen of the United States and Canada.

Signed this day of June 1984.

**BROTHERHOOD RAILWAY CARMEN OF
THE U. S. AND CANADA**

DELAWARE AND HUDSON RAILWAY COMPA

J. W. CRAMER
General Chairman (D&H)

~~M. F. MELIUS~~
~~Director~~ Labor Relations

E. D. JONES
General Chairman (MeC)

B. L. PETERS
Director-Human Resources

APPROVED:

B. E. RICE, JR.
Vice President-Human Resources