

ARBITRATION AWARD
(NEW YORK DOCK II LABOR PROTECTIVE CONDITIONS)
(Interstate Commerce Commission Finance Docket No. 30000)

In the Matter of Arbitration

Between

BROTHERHOOD OF RAILWAY CARMEN
OF THE UNITED STATES & CANADA

And

MISSOURI PACIFIC RAILROAD COMPANY

FINDINGS & AWARD

QUESTION AT ISSUE

"Under the terms of the Memorandum of Agreement appended to the arbitration award integrating UP carmen at Kansas City, Kansas, with MP carmen at Kansas City, Missouri, is it proper for Carrier to recall junior (furloughed) protected carmen to active service ahead of senior (furloughed) non-protected carmen at that point?"

BACKGROUND

The dispute here at issue arises from contentions of the Brotherhood of Railway Carmen of the United States and Canada (BRC) as to the manner the Missouri Pacific Railroad Company (MP) has determined it to be proper to recall to active service certain of its employees represented by the BRC who are currently in a furloughed employment status.

On October 20, 1982, the Interstate Commerce Commission (ICC), in a Decision and Order in Finance Docket No. 30000, approved the merger of the Union Pacific Railroad (UP), the Western Pacific Railroad (WP) and the MP. As a condition of its approval of the merger of the carriers, the ICC imposed labor protective conditions commonly known as the New York Dock Conditions, or those labor protective conditions imposed initially by the ICC in its Finance Docket 28250 (New York Dock Ry.-Control-Brooklyn Eastern District, 360 I.C.C. 60 (1979)).

In pursuance of Article I, Section 4, of the New York Dock Conditions, the UP and the MP served notice upon the BRC under date of March 23, 1983 of the desire to coordinate UP Mechanical Department forces at Kansas City, Kansas, with MP Mechanical Department forces at Kansas City, Missouri, and thereafter to perform such operations on a consolidated basis under the MP schedule agreement. The

notice also stated that ten Carmen positions would be abolished as a result of the coordination.

Although the parties were able to reach agreement on certain of the matters contained in the aforementioned notice, questions concerning the method of consolidation of seniority rosters at Kansas City, Kansas and Kansas City, Missouri, together with similar questions related to the consolidation of forces at Council Bluffs, Iowa and Omaha, Nebraska, were placed in arbitration.

On December 6, 1983, the Arbitrator for the questions at issue, William E. Fredenberger, Jr., issued a decision which, as is pertinent to the dispute at issue before this Arbitration Board, held as follows:

"The attached arbitrated implementing arrangements (Exhibit 1 - Kansas City; Exhibit 2 - Omaha/Council Bluffs) which are hereby made a part of this Decision, constitute the Neutral's determination under Article I, Section 4 of the New York Dock Conditions as to the appropriate bases for the selection and rearrangement of forces pursuant to the transaction which gave rise to this proceeding. These arbitrated implementing arrangements are to be treated as if signed and fully executed by the parties and their representatives. This Decision and the implementing arrangements are intended to resolve all outstanding issues in this proceeding as provided in Article I, Section 4 of the New York Dock Conditions. The provisions of the arbitrated implementing arrangements shall become effective upon advance notice by MP and UP to their respective General Chairmen."

The above-mentioned implementing arrangements for Kansas City, as attached to the arbitration decision, included the following provisions:

"3. (a) On the effective date of this Agreement, UP Kansas City Carmen seniority roster, will be integrated with MP Kansas City Carmen seniority roster by date dovetailing seniority of all employees on the rosters. Those employees who are furloughed at Kansas City, Missouri (MP) or Kansas City, Kansas (UP), on the effective date of this Agreement will be identified as furloughed on the combined Carmen seniority roster. Employees identified as

furloughed will not be able to activate their seniority to a regular assigned position 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 those employees who will be in a furloughed status as of the effective date of this Agreement and whose dovetailed seniority will be greater than junior employees who hold a regular assignment at that time, it is understood that such employees will not be subject to recall to service until such time as a permanent position becomes vacant which is not filled by an employee in service holding a regular assignment as of the effective date of this Agreement. Upon assignment to a permanent position and thereafter, such employee's exercise of seniority rights shall be governed by the applicable provisions of the Schedule Agreement between MP and BRCUS&C."

POSITION OF THE PARTIES

Position of the Employees (BRC):

It is the position of the BRC that employees who were in furloughed status on the effective date of the Implementing Agreement, January 1, 1984, are to be recalled to work before junior employees who were on active status on the effective date of the implementing agreement once the junior employees are furloughed and a regular assigned position is thereafter bulletined.

In this respect, the BRC directs attention to those provisions of Section 3(a) of the Implementing Agreement, supra, whereby it is provided:

"Employees identified as furloughed will not be able to activate their seniority to a regular assigned position until such time as a regular assigned position is bulletined due to resignation, transfer, retirement, increased force, etc., of any of the current active employees." (Underscoring by BRC)

The BRC says it is readily apparent by reading Section 3(a) of the Implementing Agreement in its entirety that senior furloughed

carmen were not intended to be permitted to obtain a position merely because of the integration of the seniority rosters. Further, the BRC states: "[O]nce 'a regular assigned position is bulletined due to resignation, transfer, retirement, increase in force, etc.,' a furloughed employee's seniority is 'activated.'" (Underscoring by BRC.) It urges that once a position is bulletined, the normal exercise of seniority rights under the Collective Bargaining Agreement is permitted and required.

The BRC maintains that the MP position that a senior employee (who was on furlough status on the effective date of the Implementing Agreement) can never be recalled unless all junior employees who were on active status on the effective date of the Implementing Agreement are holding permanent positions, is totally untenable and unsupported by any reasonable reading of Section 3(a) of the Implementing Agreement.

Position of the Carrier (MP):

It is the position of the MP that Section 3(a) of the Implementing Agreement is clear and precise and means that carmen working at the time of consolidation are entitled to preference over those carmen who were not working at the time of consolidation.

The MP maintains that the consolidation of seniority at Kansas City was done in the face of an unusual seniority problem. In this respect it states:

"Apprentices on the Missouri Pacific hired between April 1, 1973, and September 17, 1980, were entitled to 732 days retroactive seniority upon completion of apprenticeship. Employees hired pursuant to Rule 154 of the UP Agreement obtain seniority as a carman upon completion of 1040 workdays. The question arose as to how seniority should be dovetailed. The parties were unable to agree and this dispute was submitted to arbitration. The arbitrator ruled that seniority should be dovetailed on the basis of straight seniority without any adjustment. The Implementing Agreement proposed by the Carrier accomplishing that purpose was adopted by the arbitrator.

* * * * *

"[T]he Carrier was well aware of the fact that Missouri Pacific carmen were working who had less seniority than Union Pacific carmen who were furloughed at the time of consolidation. Unless some provision was made to the contrary,

consolidation on a straight seniority basis would result in Union Pacific carmen who are not entitled to protection under New York Dock being able to work while Missouri Pacific carmen who were entitled to protective benefits under New York Dock were sitting at home drawing protective benefits.

"In the consolidation of work, the work consolidated is the work being performed by those employees on active duty. If 100 carmen are working and 10 are furloughed, it is the work being performed by the 100 carmen that is consolidated. The 10 furloughed carmen are not performing any work and have no work to follow or participate in. Of course, they have the potential of being recalled and participate in what work is available. The fact remains that it is the work being performed by employees on duty that is consolidated. It is also anticipated when making consolidations that increased efficiency in operations will result in force reductions. This proved to be true at Kansas City and carmen were furloughed following the consolidation of the two separate repair tracks at Kansas City.

"With respect to work opportunities at Kansas City, it is unfortunate that business declined generally on the UP system and that carmen have been laid off at all points on the system. In addition to the force reductions due to increased efficiency as a result of consolidation, the Carrier was also able to make force reductions due to the decreased level of business. This of course further reduced the work opportunity of furloughed carmen at Kansas City. To minimize this effect, the Carrier offered separation allowances to carmen on active duty so as to encourage retirement and make work available for junior furloughed carmen. A total of 18 more senior carmen accepted separation allowances. In spite of the separation allowances, business has continued at such a low level that there are still protected carmen who are furloughed although the number has now been reduced to 3 furloughed protected carmen."

In support of its position the MP states that the Implementing Agreement, particularly Section 3(a), says furloughed employees are to be identified on the combined seniority roster; furloughed carmen "will not be able to activate their seniority to a regular assigned

position until such time as a regular assigned position is bulletined due to resignation, transfer, retirement, increase in force, etc.;" carmen in a furloughed status will have a greater seniority on the dovetailed roster than carmen who held a regular assignment at the time of consolidation; and, furloughed employees may exercise full seniority rights if they are once recalled to a regular assignment under the limited conditions described.

The MP also states that the same format was used in negotiating implementing agreements consolidating the seniority of sheet metal workers and electricians at Kansas City, and that provisions of the two agreements covering the consolidations are similar to the one in dispute in this docket, namely, Section 3(a), and that no dispute has arisen by reason of consolidating seniority of sheet metal workers and electricians at Kansas City.

As concerns the principle that employees who are furloughed at the time a transaction is implemented are entitled to share in the work in the future but are not entitled to protective benefits under New York Dock, the MP submits this Board read the Opinion and Award of Arbitrator Bernard Cushman in a dispute between the Boston and Maine and Maine Central Railroads and the BRC. In this connection, the MP directs special attention to the following excerpt from that Opinion and Award:

"Under the circumstances of this case the Organization's claim for such a displacement allowance for employees who were on furlough or inactive status at the time of the transaction is not supported by the record. The second proposal made by the Carrier appears to be a fair and equitable proposal. It provides for the opportunity, as work becomes available, for six furloughed B&M employees to work at Waterville on the Maine Central and participate in the consolidated work opportunities at the Waterville shop of the Maine Central."

Finally, the MP would remind the Board that its authority is limited to interpreting the Implementing Agreement and does not extend to rewriting the Agreement or addressing itself to any alleged inequity the BRC now belatedly may feel exists.

FINDINGS AND OPINION

This Board thinks it clear that notwithstanding BRC opposition to this sensitive application of seniority, that the Award of Arbitrator Wm. E. Fredenberger, issued under date of December 6, 1983, resolved the issue to provide there would be other than a rigid adherence to seniority

standing on the consolidated roster at Kansas City. That Arbitration Award, in balancing the concerns of the BRC for rigid application of seniority, determined that the MP had a legitimate right to seek to insulate its liability from the impact of having employees in a cut-off or furloughed status on the date of the consolidation have at that time or on a latter date, the right to exercise their newly allocated seniority on the consolidated roster so as to cause the displacement of "adversely affected" employees.

Thus, while under the existing circumstances, placement of a furloughed employee's name on the consolidated roster would give a furloughed employee opportunity for employment in the broader and consolidated work environment, such seniority only may be exercised so long as it does not preclude an employee who was working on the date of the consolidation from continuing to have a first employment relationship to available jobs.

However, during that time a senior non-protected employee is recalled to service and occupying a position covered by the consolidated seniority roster, that employee has the full exercise of senior rights with respect to all other working conditions and rules of the Schedule Agreement, i.e., bidding, displacement, vacation selection, etc.

It is the further finding of this Board that the aforementioned first employment relationship right shall accrue to a junior protected employee only for that period of time that the junior protected employee is considered or treated as an "adversely affected" employee pursuant to the New York Dock Conditions.

AWARD

The Question at Issue is answered in the affirmative. Under the terms of the Memorandum of Agreement appended to the arbitration award integrating UP carmen at Kansas City, Kansas, with MP carmen at Kansas City, Missouri, the Carrier may recall junior (furloughed) protected carmen to active service ahead of senior (furloughed) non-protected carmen.



Robert E. Peterson, Arbitrator

St. Louis, MO
November 6, 1985