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

"Is Carrier obligated to pay premiums to insurance companies for Health and Welfare benefits in behalf of employes who are furloughed and receiving dismissal allowances under the New York Dock Conditions in excess of those paid in behalf of furloughed employes who are not protected under said New York Dock Conditions?"

BACKGROUND

The dispute here at issue arises from the claim of the Brotherhood of Railway Carmen of the United States and Canada (BRC) that the Missouri Pacific Railroad Company (MP) was obligated to continue health and welfare payment benefits for furloughed employees receiving dismissal allowances by reason of paragraph 8 of the New York Dock Conditions, or those labor protective conditions imposed by the Interstate Commerce Commission (ICC) in its Finance Docket No. 28250 (New York Dock Ry.-Control-Brooklyn Eastern District, 360 I.C.C. 60 (1979)) and made a condition of ICC approval of the merger of the Union Pacific Railroad (UP), the Western Pacific Railroad (WP) and the MP in ICC Finance Docket No. 30000, issued under date of October 20, 1982.

Paragraph 8 of the New York Dock Conditions reads as follows:

> "8. Fringe benefits. - No employee of the railroad who is affected by a transaction shall be deprived, during his protection period, of benefits attached to his previous employment, such as free transportation, hospitalization, pensions, reliefs, et cetera, under the same conditions and so long as such benefits continue to be accorded

> to other employees of the railroad, in active or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authoriziation which may be obtained."

The merger of the carrier properties was effective December 22, 1982, and carmen forces at Kansas City, Kansas and Kansas City, Missouri were thereafter consolidated on a seniority basis effective January 1, 1984. At the time of such consolidation, no carmen employees were "adversely affected," as that term is set forth in the New York Dock Conditions. However, in April, 1984, the MP consolidated all repair track work at the former Union Pacific facility at Kansas City, Kansas,with the former Missouri Pacific facility at Kansas City, Missouri being closed. This consolidation of repair track facilities resulted in the furloughing of carmen who were protected by the provisions of the New York Dock Conditions.

When the protected carmen were furloughed at Kansas City, the MP computed test period avergage earnings for the carmen and began allowing such furloughed protected employees a dismissal allowance in accordance with paragraph 6 of the New York Dock Conditions. The carmen involved also continued to enjoy the benefit of health and welfare benefits under Travelers Group Policy GA-23000, but only for four months following the month in which they furloughed. After that time, coverage under the policy was terminated by the MP for reasons hereinafter to be set forth in the Position of the Carrier.

POSITION OF THE PARTIES

Position of the Employees (BRC):

It is the position of the BRC that as protected employees under the New York Dock Conditions, the carmen claimants are entitled to full benefit coverage for all health and welfare programs which attached to the active employment status they enjoyed on the effective date of the Implementing Agreement.

The BRC contends that the Carrier position that all the carmen claimants are entitled to are those fringe benefits which accrue to furloughed employees is "indeed ludicrous." In this respect, the BRC says:

> "First, Claimants were active employees, and not furloughed, on the effective date of the implementing agreement. Second, Carrier has already admitted Claimants have been adversely affected and displaced as a result of a New York Dock transaction. Consequently, even

> if we assume arguendo that Claimants are now 'furloughed,' it is readily apparent that these 'furloughs' are the result of a New York Dock transaction. It is ludicrous for Carrier to suggest, as Carrier has, that a protected employee on active status--like each of the instant Claimants--can suddenly be deprived of full coverage of their fringe benefits because as a result of a covered New York Dock transaction, the employee becomes 'furloughed.' This is precisely what Section 8 was designed to prevent. For Carrier to treat such protected employees as 'furloughed' would render Section 8 of New York Dock meaningless. Any employee displaced as a result of a New York Dock transaction would thus be 'furloughed' and not entitled to all of the protective provisions of Section 8. Obvisously, Section 8 was not included in the New York Dock Conditions, imposed by the I.C.C., only to be abrogated by this ludicrous interpretation by the Carrier which is not supported by language or spirit of the New York Dock Conditions."

Position of the Carrier (MP):

It is the position of the MP that paragraph 8 of the New York Dock Conditions provides that employees affected by a transaction shall not be deprived during the protective period of benefits attached to their previous employment only under the same conditions and so long as such benefits continue to be accorded to other employees of the company. In this regard, the MP directs particular attention to that portion of paragraph 8 of the New York Dock Conditions whereby it is stated that such benefits are to be accorded employees "in active or on furlough as the case may be;" the MP urging that this means that protected employees who continue working are not to be deprived of benefits accorded to other employees of MP who are working, and that furloughed employees who are protected by the New York Dock Conditions will not be deprived of benefits accorded to other employees of MP who are furloughed. Thus, MP maintains that since health and welfare benefits continue for other furloughed employees only for the four months following the month in which furloughed, employees protected under New York Dock who are furloughed are entitled to no more than other furloughed employees.

The MP also contends that employees who are laid off in force reductions normally seek other employment and obtain medical insurance through their new employer. Further, that in the case of railroads, furloughed mechanics are frequently able to find employment on the same railroad at another point or with another railroad.

The MP also states that it has never paid premiums for furloughed employees receiving monthly protective benefits in the form of a dismissal allowance beyond the aforementioned four-month period.

FINDINGS AND OPINION

The Board has given careful and considered attention to the positions of the parties as well as to the past decisions of boards on the issue in dispute. Although the cases cited involved interpretation of the protective conditions of the Washington Job Protection Agreement of 1936, Appendix C-1 of the AMTRAK Conditions, and, the Oregon Short Line Conditions, the applicable benefits provisions were most consistent with or similar to those set forth in paragraph 8 of the New York Dock Conditions with respect to benefits.

Contrary to the BRC contentions that the decisions cited by the MP bear no relationship to the instant dispute, this Board finds that these other disputes did in fact involve furloughed employees and that in each instance it was held the affected protected employee be treated the same as other furloughed employees with respect to fringe benefits.

The Board, also finds, contrary to the contention of the BRC, that it was in fact the findings of Special Board of Adjustment No. 570 in its Award No. 282, with Referee David Dolnick serving as the chairman and neutral member of that Board, that the carrier in the dispute before the Board was not obligated under Section 8 of the Washington Job Protection Agreement to make payment to the claimant in the dispute before that Board of a monthly premium the carrier would otherwise have paid to the insurer of the national plan of health and welfare benefits if the claimant had not been affected by a reduction in force. This Board does not find that because Special Board of Adjustment 570 had held that the claimant in the dispute before it would have been entitled to benefits provided in the health and welfare plan had he required hospitalization and/or medical care during the time he was entitled to a coordination of benefits allowance, that the Board was at this time making reference to the claimant being in a furloughed status, but rather that the claimant was for this purpose to have been treated as having been an active employee, albeit he had not been called for available work.

On the basis of the record as presented and developed, this Board believes it must be held that the Question at Issue be answered in the negative and that the claimant carmen are only entitled to the same benefits as accorded to other non-protected employees of MP while on furlough.

AWARD

The Question at Issue is answered in the negative. The Carrier is not

obligated to pay premiums to insurance companies for Health and Welfare beneifts in behalf of employees who are furloughed and receiving dismissal allowances under the New York Dock Conditions in excess of those paid in behalf of furloughed employees who are not protected under said New York Dock Conditions.

Robert E. Peterson, Arbitrator

St. Louis, MO
November 6, 1985