PART 1

In the Matter of Arbitration Between

Union Pacific Railroad Company
Western Pacific Railroad Company
Sacramento Northern Railway Company

- and -

United Transportation Union
Sacramento Northern
Western Pacific

OPINION
AND
AWARD

Pursuant to New York
Dock Conditions,
Article 1, Section 11
ICC Finance Docket
No. 28250

Fourteen Claims:
C. P. Remy, et al.

The undersigned, Charles M. Rehmus, was nominated by the National Mediation Board to sit as referee with the parties to resolve these fourteen claims. Each claim is for either a displacement, dismissal, or separation allowance under Sections 5-7 of the New York Dock Conditions applied to the consolidation of the Union Pacific Railroad Company (UP) and the Western Pacific Railroad Company (WP) with the latter's subsidiary, the Sacramento Northern Railway Company (SN). These conditions were applied in an arbitration award and Implementing Agreement for this consolidation dated March 1, 1985.

Hearings were held on these claims in Sacramento, CA on December 9 and 10, 1985. The parties waived their right to appoint members to a Section 11 arbitration committee and requested the referee to sit and render awards alone.

Appearing for the Carrier:

A. C. Hallberg, Director of Labor Relations, (UP)
Dianne R. Woolsey, Assistant Manager, Labor Relations, (UP)

Appearing for the Union:
Kenneth Levin, International Vice President, UTU
Norman J. Lucas,General Chairman, UTU/SN
H. A. Siler, General Chairman, UTU/WP
Monte G. Nelson, Vice General Chairman, UTU/SN
C. D. Grimshaw, Vice General Chairman, UTU/SN

Witnesses:
Lloyd G. Edland, Trainman
G. W. Hansen, Trainman
Charles P. Remy, Trainman

The Union filed its Brief on each claim at the hearing. The Company filed a post-hearing Brief on January 10, 1096. The Union's Rebuttal Brief was filed on February 2, 1986. Thereafter the record was closed.

BACKGROUND

The Sacramento Northern Railway Company operates branch lines in the Sacramento Valley in and around Chico, Yuba City-Marysville, Sacramento, Vacaville, and Pittsburg-Port Chicago. These branch lines are connected by jointly-used trackage with the Southern Pacific, Western Pacific and Santa Fe Railroads (Jt. Ex. 3). The Sacramento Northern had for some time prior to the 1985 consolidation been operated as a subsidiary of the Western Pacific, which latter railroad was merged with the Union Pacific and the Missouri Pacific in 1982 (ICC Finance Docket 30,000). At that time the ICC imposed conditions for the protection of employees as set forth in New York Dock Ry., Brooklyn Eastern District, 350 ICC 60 (1979).

Thereafter, on May 24, 1983 the UP, the WP, and the SN

managements served notice on the General Chairmen of the UTU/SN and UTU/WP "to transfer all Sacramento Northern train service employees, together with all work performed by said employees, to Western Pacific Railroad Company." The parties held meetings thereafter but were unable to reach agreement on the terms of this proposed consolidation. Thereupon at the Carrier's request the National Mediation Board appointed Walter G. Phipps to serve as a New York Dock Section 4 referee to arbitrate an agreement. His award and accompanying Implementing Agreement merged the WP and SN trainmen's seniority rosters on a "top and bottom" basis with retention of prior rights to work customarily performed by the respective groups of employees, modified existing collective bargaining agreements to the extent necessary to allow implementation of the consolidation, and referred approximately a dozen other questions raised by the respective UTU groups to a New York Dock Section 11 referee. The Implementing Agreement for the merger became effective on March 1, 1985.

Thereafter, management of the consolidated carrier initiated two operational changes that had an adverse impact on some UTU/SN members. Effective April 13, 1985 the Company changed its operations on the route Sacramento-Stockton-Pittsburg. Prior to that date traffic on the route, most importantly the "steel train" from Geneva, Utah to Pittsburg, California was handled from Sacramento to Pittsburg by SN crews who received their assignments through the Sacramento Extra Board. On April 13, 1985, SN crews lost that segment of the route between

Sacramento and Stockton to WP crews. SN crews continued to handle the route from Stockton to Pittsburg, but it was now a regular assignment out of Stockton rather than a Sacramento extra assignment. Further, it of course became a shorter territorial assigment and the new SN regular crews received considerably less compensation for it.

A second transaction was ordered on May 15, 1985 which also adversely affected SN assignments. The Yuba City-Oroville road switching assignment which hitherto had belonged to SN crews was consolidated with WP assignments. As a result, one full SN assignment was abolished.

These two specific transactions underlie thirteen of the fourteen claims for protection presented here, although several of the claims raise individual issues.

ELEVEN SIMILAR CLAIMS

Eleven UTU-represented trainmen from the SN assert that they were deprived of employment as the result of the "Sacramento Northern Western Pacific's coordination" - that is, the coordination itself as well as the two additional specific transactions referred to above - and essentially all rely on the same events. Two of the claims are for separation or dismissal allowance, two are for separation allowances, and seven are for dismissal allowances only. The specific individual requests will be dealt with subsequently, as appropriate and necessary.

Position of the Union

First, the UTU asserts that a transaction occurred on March 1, 1985 when the SN and WP trainmens' seniority rosters were consolidated. It notes that all eleven of these individuals were among the thirty-three employees of whom the Carrier wrote in its Brief to Referee Phipps:

> . . . Thus, there remains a total of 34 employees in the SN Operating Department represented by the UTU that are not party to a coordination agreement with the former WP. One of these [is now a UP official.] Therefore, 33 SN employees are directly affected by the instant coordination.

Second, the UTU argues that all eleven of these men were adversely affected by the chain of bumping and consequent displacements that occurred when SN employees lost work opportunities on the SN Extra Board as the result of the loss of the steel train run from Sacramento to Stockton. Further, it is argued similarly that these eleven claimants were adversely affected by the chain of displacements that occurred when an SN assignment was lost on the Yuba City-Marysville assignment when it was co-mingled with WP assignments.

Third, the UTU notes that prior to March 1, 1985, Carrier officers did not actively participate in regulating the SN Trainmens' Extra Board, leaving its regulation and size to the crew calling manager and the UTU general chairman in Sacramento. After that date, however, beginning as early as March 20 and repeatedly thereafter through April 15, 1985, the weekend of the first steel train run-through, Carrier officers intervened to order that the SN Extra Board be reduced to and held at only six

men. The Union argues that this was done in anticipation of future transactions. The Union alleges that Carrier officials deliberately manipulated the size of the Extra Board to keep the Board's size larger during the test period and smaller after the coordination, both actions designed deliberately to reduce the dollar amount of protection that might becoome necessary and the number of employees protected.

Position of the Carrier

The Carrier maintains that only employees who can point to direct adverse effects of a specific transaction undertaken as the result of a coordination of this kind may qualify for the salary protection provisions of New York Dock. Specifically, only those "displaced" to a lesser paying job than that which they held during the previous year's test period, or those "dismissed" or deprived of employment because of a trnsaction or a consequential chain of bumps by senior employees, are entitled to protection. The Carrier argues that none of these eleven claimants meets these tests.

With regard to the Union's claim that there was a merger transaction on March 1, 1985, the day the referee's Implementing Agreement for the consolidation was given the parties, the Carrier simply argues that it did nothing on that date. No operational change took place that had an adverse effect on SN employees, and hence no transaction occurred within the meaning of New York Dock.

The Carrier concedes that transactions within that meaning

took place on April 13 and May 14, 1985. It argues, however, that no job opportunities were lost as a result of the April 13 transaction, for the loss of work to the SN Extra Board was offset by a newly-created regular assignment from Stockton to Pittsburg and return. Six trainmen from the Extra Board who were senior to these claimants were given displacement protection as a result of the fact that the new shorter regular assignment produced smaller earnings for its holders.

Similarly, with regard to the job combination and reassignment in the Yuba City-Marysville area, three SN employees had been regularly assigned to this job. All three were given displacement protection, as was the one individual subsequently displaced. In all, nine SN brakemen and three SN conductors have been given displacement protection as a result of these two transactions. The Carrier argues there is no basis for more.

With regard to those claimants who were furloughed from the Extra Board in the period from March 20 to April 15, 1985, the Carrier argues that this was the result of a decline in business on the SN rather than the result of its desire to avoid protection payments. The Carrier notes that it has always had the right to regulate the size of the Extra Board under Article 33(f) of its Agreement with the UTU/SN. Moreover, while it did act to reduce the Extra Board during the months of March-April, 1985, employment was reduced by a smaller percentage than the SN business decline, the latter measured by comparing the

difference in freight cars handled per month in 1984 and 1985. Hence the incremental employment decline not only followed in time but was less in percent than the percentage decline in business.

Finally, the Carrier argues that those among the claimants who were on extended sick leave or had been furloughed prior to the April 13 or May 14 transactions have only re-employment rights. According to precedents its cites they are not considered entitled to either displacement or dismissal allowances.

Discussion

As a preliminary matter and although it does not in and of itself resolve these claims, I cannot agree with the Carrier's argument that no transaction occurred on March 1, 1985. The ICC defined a transaction as "any action taken pursuant to authorizations of this Commission on which these provisions [New York Dock] have been imposed." While no "action" by the Carrier took place on March 1, 1985, on that date the Carrier achieved objectives it had long sought, such as the right to rearrange forces and a consolidated WP/SN seniority roster. These were actions approved by the Referee on that date, actions which the Carrier had used ICC-established procedures to achieve. As such, they appear to be Commission-authorized actions under New York Dock conditions. Moreover, I note that when this identical Question was addressed to Referee Phipps he answered with an undoubted affirmative (Carrier's Ex. A, p.4).

Turning to the Union's contentions, it first argues that

the Carrier in its Brief to Referee Phipps seemed to concede all of these claims when it wrote, "Therefore, 33 SN employees are directly affected by the instant coordination." I cannot conclude that this represents an admission of the validity of these claims, however. Instead, it appears rather to be a simple statement of the number of employees involved in the coordination dispute that was before the Section 4 Referee. Moreover, the statement is without reference to any particular or specific transaction that would have an adverse effect upon the 33 employees involved.

Section 11(e) of the New York Dock Conditions provides:

> In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of the transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

Each of the eleven claimants here relies upon the same three transactions: that of March 1, that of April 13, and that of May 14, 1985; all discussed above.

No one was displaced or dismissed as the immediate result of the March 1, 1985 transaction. Since an individual is obligated to show a relationship, or what is sometimes referred to as a "causal nexus," between a transaction and the adverse affect that happened to him, I do not conclude that any of these eleven claimants is entitled to protection because of the March 1, 1985 transaction.

As noted earlier, the Carrier has traced nine brakemen who

were displaced as a result of the two later specific transactions discussed above, and has provided them with New York Dock protection. So far as the April 13 transaction is concerned, I conclude the Carrier is correct. Six men from the SN Extra Board were adversely affected as a result of the transaction but a new regular assignment was also created as a result. Six men from the Extra Board or on the new assignment received displacement allowances because the new assignment had lesser earnings than the old. No other specific pass-through bumping has been identified. In this situation I do not see that the Carrier is required to do more.

In the case of the comingled Yuba City-Marysville assignment, I cannot accept the Carrier's argument on the lack of pass-throughs. The Carrier argues that the second and third men displaced as a result of this transaction went to the Brakemen's Extra Board and no further cut-offs ensued. But the two individuals who are stated to have been placed on the Extra Board as the result of the May 14 transaction were already on the Extra Board and already protected as a result of the April 13 transaction (Compare Carrier's Brief, pp. 12 and 14). This being the case, there must have been two more pass-through displacements, not counting N. Lucas, that occurred as a result of the May 14 transaction, yet no one was protected. Two individuals, the next two most senior active trainmen, should have been protected.

There remains the issue raised by the Union regarding manipulation of the Extra Board to avoid protection. Section 10

of New York Dock provides:

> Should the railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this appendix, this appendix [New York Dock Conditions] will apply to such employee.

The Union contends the size of the SN Extra Board has been adjusted for precisely this purpose and contends that some unspecified number of these claimants are therefore entitled to protection. The Carrier responds that furloughs from the Extra Board were its prerogative under the Agreement and it exercised this right solely because of a decline in business.

Neither contention seems proven without doubt. The Carrier appears under 33(f) of the Agreement to have the right to regulate the size of the Extra Board. However, it offers no evidence that during the period January 1, 1984 through March 1, 1985 it ever attempted to do so. According to testimony, the number of men on the SN Extra Board during 1984 varied from five to ten or more and averaged about eight. In January and February of 1985 the number ranged from five to nine and averaged about seven. Yet within three weeks of the March 1 date that they received authority to rearrange and consolidate their work forces--providing employees received appropriate protection---three different Carrier managers from Salt Lake City repeatedly ordered Sacramento crew schedulers to cut the SN Extra Board by two men, from eight to six, and hold it at no more than six (Un. Exs. 5-7; Carrier Ex. E). Considering that this was in the

several weeks immediately prior to the announcement that the SN Extra Board would lose the steel train work, the cuts can hardly be viewed as other than a work force adjustment preliminary to a transaction with the purpose of depriving some SN employees of protection.

The Carrier responds that the reductions were the result of business declines,and this may have been a partial cause. But it is also true, as the Union asserts, that the Carrier has a financial incentive to keep Extra Board employment high during the test period to reduce average earnings and then to reduce the number on the Board when protection began. Without attempting to ascribe malicious motives to anyone, it is not unreasonable to view these cuts as being motivated at least in part by minimization of protection obligations. According to precedent, if a transaction is a partial cause of displacement, the fact that there may also have been other causes does not eliminate the requirement for protection of those adversely affected.

Finally, while the Carrier produces evidence based on cars handled per month in 1984 vs. 1985 that there has been a decline in business on the SN, this evidence is susceptible to differing interpretations. For example, the cuts ordered in the SN Extra Board started in mid-March 1985. If one compares January-February of 1985 with January-February of 1984, cars handled were down only fifteen percent, seemingly not sufficient to justify cutting the Extra Board from eight men to six when no similar action had been taken at any time during the previous year. One

must also note that the Carrier can schedule car routings through alternate yards which, as the Union notes, will now permit a reduction in the number of cars handled through the SN yard.

On balance, and given the fact that the railroad has the burden of proof regarding other factors once the employee has identified the transaction that he believes has adversely affected him, I have concluded that it is entirely likely that the reduction of the Extra Board to six men that Carrier officials ordered in March and early April of 1985 was in anticipation of forthcoming transactions. I conclude that two more members of the SN Extra Board were adversely affected thereby, and as a result two additional active members of the SN Extra Board should have been entitled to New York Dock protective conditions.

CLAIM OF B. G. DAVIS

Trainman B. G. Davis claims a dismissal allowance on a basis that in all material elements is the same as the claims of the eleven men discussed previously. His situation is different in only one significant respect; namely, that unlike those men discussed earlier, Davis had been on extended medical leave of absence. His medical leave began prior to March 1, 1985 and so far as the record shows continues to the present (Union Brief, p.2). Nevertheless, he was furloughed from the SN Extra Board and his subsequent claim for a dismissal allowance was denied.

The Union's arguments for Davis' claim are identical with

those made for the preceding eleven men, except that it asks this allowance begin when he is physically able to return to service. The Company's objections are fundamentally the same with one significant addition. It argues that individuals on extended leaves of absence prior to and after a transaction are not affected thereby and are not entitled to protective benefits.

New York Dock does not speak specifically to the issue raised by Davis' claim. It does define a dismissed employee as one who has lost "his position" because it was abolished or he was bumped out of it by a senior. Similarly, employees are displaced to a "worse position." Davis did not hold a position to lose at the time of these transactions and thus had none either to lose or be worsened.

Other referees had faced this same issue in other carrier reorganizations under New York Dock conditions. Preston Moore held in AMTRAK Board of Arbitration 15 that a "furloughed employee's position is not abolished" in a transaction adversely affecting active employees. Both Harold Gilden in System Federation 97 (ATSF) and Joseph Sickles in a Section 11 Arbitration (Penn Central-TWU) considered the status of employees on extended sick leave at the time of transactions adversely affecting active employees. Both concluded that because those on sick leave did not hold a position at the time of the transaction they were not among those adversely affected. The UTU cites no precedents to the contrary.

I have concluded that Mr. Davis' right is to reinstatement

should he become physically able to return to work, but that he is not among those adversely affected by these transactions. His claim for a displacement allowance must therefore be denied.

CLAIM OF N. J. LUCAS

Mr. Lucas' situation is unique among the claimants here in that he was adversely affected by both carrier-ordered transactions. He was displaced from his position as a result of the April 13, 1985 steel train transaction and on May 9, 1985 was given monthly displacement allowance protection which, under the terms of New York Dock, he shold have retained for six years. Then he was furloughed as a result of the Yuba City-Marysville comingled road switcher transaction. At this time his displacement allowance was discontinued on the basis that he had been furloughed as a result of a decline in business (Union Ex. 6).

At the arbitration hearing it became apparent that Lucas was in fact adversely affected once again by the May 14 transaction, and the Carrier now concedes that he was "dismissed" within the meaning of New York Dock as a result thereof (Carrier's Brief, p. 15). I still do not agree.

It is my conclusion that Lucas became and should have remained a "displaced employee" for six years following the April 13, 1985 transaction. It is the purpose of the New York Dock Conditions to ensure that employees do not bear the full burden of adverse effects consequent upon railroad consolidations and similar transactions. Once having become displaced, an individual remains in that status regardless of subsequent

transactions or even declines in business. He can only lose that status for one of the reasons stated in Section 5 (c) of the New York Dock Conditions, none of which apply to Mr. Lucas. What may change after a displacement is the amount of monthly protection payments to which the individual is entitled. For example, if the Carrier has no work for a displaced individual who is furloughed from time to time, then his monthly allowance will equal his test period guarantee (See Union Response Brief, Exhibit A, Issue 2). But the displaced individual's status remains unchanged. Hence Lucas' claim for a continuing displacement allowance must be granted, and his subsequent request for a dismissal allowance is moot.

CLAIM OF L. G. EDLAND

Mr. Edland worked as Yardmaster in the SN Sacramento Yard on an irregular basis beginning in 1971 and on a regular basis from 1974 until he was advised his job was abolished on June 14, 1985. Thereafter he has worked as a Conductor in accordance with Item 5 of Referee Phipps' Implementing Agreement of March 1, 1985. Since his present earnings are considerably less than he formerly received, he asked for a displacement allowance. This request was denied on the basis that his displacement was "due to a reduction of work at [the SN Sacramento Yard".] (Union Ex. 5). This denial was appealed on the basis that Edland's work had been transferred to WP Yardmasters in West Sacramento (Union Ex. 6). This appeal was denied on the basis that Edland's work had been eliminated as the result of technological change;

namely, the introduction of Transportation Control System (TCS) into the WP Customer Service Center in Stockton on February 1, 1984 (Union Ex. 7).

The Union supports Edland's claim on the basis that the TCS system would never have come to the Sacramento Northern but for the transaction. Further, some of his work remained in any event, work that now has been assigned to WP yardmasters in the WP South Sacramento Yard. The Carrier opposes Edland's claim on the basis that technological change, not the coordination, abolished the need for his work on June 15, 1985. It notes that TCS has made possible the elimination of yardmaster positions at other smaller satellite stations on the WP system, and argues that it is not true that WP yardmasters took over Edland's work.

I cannot accept the Carrier's arguments for a number of reasons. First, on May 24, 1983, the Carrier notified the SN General Chairman that it intended to abolish the SN Yardmaster positions under the authority granted it in ICC Finance Docket 30,000, and would place those affected under New York Dock Protective Conditions. The Carrier does not explain why it subsequently changed its position regarding protective conditions.

Second, TCS is a capital intensive installation. There is genuine doubt that it would ever have been installed on a small branch line railroad such as the SN were it not for the coordination of the SN with the WP.

Third, TCS was coordinated between the SN and the WP on

February 1, 1984. No explanation is given why Edland was kept in place for so long a period as sixteen and one-half months longer; certainly nothing specific happened on June 14, 1985 to "abolish" his position on that date. It is a reasonable inference that the Carrier finally implemented the authority given it in the March 1, 1985 Implementing Agreement. In this sense, Edland was adversely affected by the March 1, 1985 transaction.

Fourth, it appears that there are still some yardmaster functions that need to be performed in the SN Yard in Sacramento. In another proceeding, J. F. Pennington, the WP yardmaster in Sacramento, testified that he performed them (Union Ex. 10). This too is only permissable because of the March 1, 1985 transaction.

Finally, while yardmaster positions elsewhere on the WP system were eliminated because of the introduction of the TCS system, it appears that they were protected against adverse effects thereby, although not by means of New York Dock Conditions. There seems no equitable reason why Edland should be treated differently.

For the foregoing reasons, the claim of L. G. Edland will be sustained.

AWARDS

1. The claim of J. G. Zervos for a dismissal allowance is sustained.

2. The claim of G. W. Hansen for a dismissal or separation

allowance is sustained.

3. The claim of C. P. Remy for a dismissal or separation allowance is sustained.

4. The claim of G. L. Ramirez for a dismissal allowance is sustained.

5. The claim of J. M. Medina for a dismissal allowance is denied.

6. The claim of H. J. Redmond for a dismissal allowance is denied.

7. The claim of L. Guttierez for a separation allowance is denied.

8. The claim of E. L. McMillan for a dismissal allowance is denied.

9. The claim of R. M. Guzman for a separation allowance is denied.

10. The claim of L. G. Ramirez for a dismissal allowance is denied.

11. The claim of W. Bowie for a dismissal allowance is denied.

12. The claim of B. G. Davis for a dismissal allowance is denied.

13. The claim of N. Lucas that his displacement allowance which became effective on May 9, 1985 should remain in effect for 6 years is sustained, and his subsequent claim for a dismissal allowance is moot.

14. The claim of L. G. Edland for a displacement allowance

is sustained.

Charles M. Rehmus

Referee

February 14, 1986