

## ARBITRATION BOARD

(ESTABLISHED PURSUANT TO ARTICLE I, SECTION 11,  
OF THE EMPLOYEE PROTECTIVE CONDITIONS IN NEW  
YORK DOCK RY. - CONTROL - BROOKLYN EASTERN DIST-  
RICT, 350 I.C.C. 60 (1979) AS PROVIDED IN I.C.C.  
FINANCE DOCKET NO. 30,000)

BROTHERHOOD OF RAILWAY CARMEN OF )  
THE UNITED STATES & CANADA )

vs. )

FINDINGS & AWARD )

UNION PACIFIC RAILROAD COMPANY )

QUESTION AT ISSUE:

"Whether or not Carmen R. E. Bailey, J. R. Barber, and  
E. W. Row, St. Joseph, are entitled to benefits of the  
New York Dock Conditions as a result of their furlough  
from service in May, June and September, 1984."

BACKGROUND:

Prior to their positions being abolished at the close of business  
on May 31, 1984, June 29, 1984, and September 21, 1984,  
respectively, the Claimants held regular assignments at the rip  
track and in the train yard of the St. Joseph Terminal Railway  
Company (SJTRC) at St. Joseph, Missouri. Although they worked at  
the SJTRC, the Claimants were employees of the Union Pacific  
Railroad Company (UP or Carrier).

The SJTRC was incorporated January 5, 1887, and, before it ceased  
operations as a terminal operating company on or about August 1,  
1984, was owned one-half by the St. Joseph & Grand Island Railway  
Company, now part of the UP, and one-half by the Atchison, Topeka  
& Santa Fe Railway Company (SF).

In addition to its primary function of performing switching and  
terminal services for the above carriers, the SJTRC also handled  
interchange traffic for the Missouri Pacific Railroad (MP), as  
well as for the Burlington Northern (BN), and Chicago & North  
Western (CNW) railroad companies.

The UP, Carrier party to this dispute, and the MP, together with  
the Western Pacific Railroad Company (WP), were granted authority  
by the Interstate Commerce Commission (ICC) to merge in Finance  
Docket No. 30,000, issued on October 20, 1982. The merger was  
consummated on December 22, 1982, the MP and WP being merged into  
the UP.

As a condition of its approval of the merger, the ICC imposed  
labor protective conditions commonly known as the New York Dock  
Conditions (New York Dock Ry. - Control - Brooklyn Eastern  
District, 350 I.C.C. 60 (1979)).

When application was initiated to the ICC for approval of the merger, the following statement was offered relative to operations at St. Joseph, Missouri:

"Presently all UP switching is performed by the St. Joseph Terminal Railroad (STR) which is jointly owned by UP and Santa Fe. The STR performs switching in both St. Joseph, Mo. and across the river in the UP Elwood, Ks. yard. After the consolidation MP will perform all its own switching in St. Joseph and it will perform all UP switching and mechanical work in the St. Joseph area except Elwood, where the Terminal railroad will continue to handle switching, MP will perform all St. Joseph station and Agency work including the work which would have been performed at Elwood. UP trains will operate into and out of the MP yard via a new connection from the UP Missouri River Bridge to MP trackage. Direct UP operation into the MP yard will permit UP cars destined to industries located on MP in St. Joseph to be delivered approximately 12 hours earlier than at present. Traffic at Elwood will be switched by the terminal railroad's crews with the clerical and accounting functions being performed by MP. Benefits from the improved operations at this facility are shown below." (p 767)

On July 23, 1984 the Carrier advised the General Chairman of the Brotherhood of Railway Carmen of the United States & Canada (BRC) as follows:

"Please consider this as formal notice under provisions of Article I, Section 4, of Agreement dated September 25, 1964, with respect to force changes that will be made at St. Joseph, Missouri, as a result of a change in operations involving the abandonment of car maintenance and repair work now being performed by the incumbents at this location.

This will result in the abolishment of two (2) Carman positions currently assigned with headquarters at St. Joseph, Missouri, effective as of close of business September 21, 1984. Copies of this notice are being posted on bulletin boards accessible to employees at St. Joseph, Missouri.

Consistent with provisions of Article I, Sections 4 and 11, of Agreement dated September 25, 1964, I would suggest a meeting on this matter on Thursday, July 26, 1984, at 10:00 AM in my office at Omaha, Nebraska.

Will you please advise if suggested time and date will be convenient."

Following the meeting between the Carrier and the BRC on July 26, 1984, the Carrier addressed a letter to the General Chairman, stating in pertinent part the following:

"In our discussion on this date, we reviewed the changes that are contemplated to take effect as of the close of business September 21, 1984.

In connection with the abolishment of these positions, you contend that there are a number of carmen duties yet to be performed at this point and you indicated considerable concern as to how this work was to be handled in the future. As a result of our discussion, it was indicated that we would again meet on this issue after we have both had an opportunity to review the present and future work requirements at this location. In this regards, it was decided that our next meeting would be held on August 13 at 1:30 p.m., in my office."

On November 1, 1984, the General Chairman for the BRC filed formal claim with the Carrier on behalf of the Claimants. In this letter of claim, the General Chairman stated:

"This claim is filed under the provisions of the New York Dock protection Agreement, which clearly states that no employe of the Carrier involved in the coordination who is continued in service shall for a period of six (6) years following the effective date of such coordination, in a worse position. The effective date of this coordination between Union Pacific and the Missouri Pacific was January 1, 1984.

Mr. Barber was furloughed on June 29, 1984, at that time we the U.P. received 683 cars from the Santa Fe and forwarded 581 cars. They received 279 cars from connecting lines and forwarded 338 cars. 189 cars were sent out on the branch. They handled 551 cars from Union Pacific Railroad.

This is just a sample of what the Carmen did in St. Joe during the month of June, 1984, when Mr. Barber was furloughed. Two months later during the month of August, 1984, we handled 953 cars for the Santa Fe, 600 cars from connecting lines, 337 Union Pacific cars and handled 256 cars on the branch lines.

I was told that Union Pacific was only sending two (2) trains a day over to the M.P. to be worked, one inbound and one outbound. What are you going to do about the rest of the work we are leaving behind, M.P. Carmen are going to work.

The Carrier has the burden of proof of demonstrating claimant's have not been deprived of employment or placed in worse position. You failed to meet that burden of proof in this case. To the contrary the claimants have adduced evidence and proof through the Carriers statement of cars handled at St. Joseph, File 65-0702-T.

It is furthermore our position that each claimant listed herein is entitled to all rights and benefits under the New York Dock Agreement."

On December 8, 1984 the Carrier responded to the above letter and claim, stating in part as follows:

"At the outset, while you have stated that Carrier has 'the burden of proof of demonstrating claimants have not been deprived of employment or placed in worse position,' I cannot agree with the position you have taken inasmuch as you have failed to show sufficient evidence that would indicate that any of these employees have been affected as a result of a 'transaction' due to the merger. It is interesting to note that in the statistical information you have indicated concerning the cars received from the Santa Fe during June and August, 1984, you have failed to give a complete picture as to the business conditions at St. Joseph.

As I am sure you are aware, the Carrier has been required to reduce a number of positions the last several years and the reductions of the positions at St. Joseph was a result of the continuing effort to reduce our expenses. Notwithstanding the above position, you have been sufficiently notified in advance as to the fact that the Carrier would be abolishing positions at St. Joseph and there were a number of attempts made to obtain alternative employment for the individuals involved. It is interesting to note that one of the claimants for whom you have filed a claim is currently being compensated under the provisions of the Agreement dated September 25, 1964, as a result of previous notice

that was furnished to you and I am somewhat confused as to your current claim for protective benefits under the New York Dock Conditions.

As a result of the circumstances involved and the basis for furloughing the employees, I cannot agree with your contention that these employees have any basis for protective benefits under the New York Dock Conditions. Accordingly, your claim on behalf of Messrs. Row, Bailey, and Barber is declined in its entirety account lack of merit and agreement support."

Although the above Carrier letter made reference to one of the Claimants being compensated under the provisions of the September 25, 1964 Agreement, it was subsequently developed that it was not a Claimant, but rather another Carman, Mr. H. B. Seever, Jr., who had apparently of his own volition elected to take a lump-sum severance allowance on August 27, 1984.

In a further letter dated June 7, 1985, the Carrier reiterated its contentions and set forth that statistical data which it said reflected the declining state of business during the six-month period commencing January 1, 1984. At the same time, the Carrier stated in its letter to the General Chairman, the following:

"You have indicated in our discussions that the work previously performed by the claimants has been transferred to the Missouri Pacific Railroad at St. Joseph. As was indicated in our past discussions, it is my understanding that the Missouri Pacific Railroad has not increased Carman forces at St. Joseph (1 Lead Carman & 1 Carman) nor have they assumed any substantial duties due to the alleged transfer of Carmen's work from Union Pacific Railroad to Missouri Pacific Railroad. As you have verbally been advised, carmen for the Missouri Pacific at St. Joseph have not increased their workload except for supplying the two locomotives on Local 361. Local 361 has an average of approximately 12 cars. It takes approximately 30 minutes to supply these locomotives on each inbound trip. The supply of locomotives has not been recognized as being assigned to Union Pacific carmen by agreement nor past practice. As additional information, Local 361 went into St. Joseph 6 days per week until May 1, 1985, when it was reduced to 3 days per week.

While you adamantly maintained work of the claimants has

been transferred to carmen on the Missouri Pacific Railroad, you were advised that I am unable to identify any evidence to support this position you have taken. It is my understanding that inspection work performed by claimants was also being performed by Missouri Pacific carmen. As a result of the dissolution of the SJTRC, there was no longer any work required to be performed by Union Pacific carmen at St. Joseph. In this regard, the work previously performed by Messrs. Seever and Row has been abandoned and the July 23, 1984 notice to you was entirely proper. Your position that the three claimants' work has been transferred to the Missouri Pacific has not been supported by any evidence whatsoever.

Therefore, I am unable to find any basis for your vague and indefinite claim on behalf of Messrs. Row, Barber, and Bailey, and this will serve to reaffirm my previous declination of this claim."

Since the dispute continued unresolved between the parties, it was agreed to place the Question at Issue to this Arbitration Board.

#### POSITION OF THE BRC:

Essentially, the BRC maintains that abandonment and transfer of work from the SJTRC was the result of merger planning between the Carrier and the MP, and that if it was not for the merger it would not have been feasible for Carrier to liquidate the SJTRC and the Claimants would still be employed.

In support of its basic contention, the BRC directs particular attention to internal memoranda of the Carrier and SF which BRC was able to obtain relative to dissolution of the SJTRC. This correspondence, the BRC submits, shows that extensive study and planning had gone into the question of abandonment of SJTRC as part of the merged operation of the UP and MP at St. Joseph, MO.

In this latter regard, the BRC especially cites excerpts from this record of correspondence which read as follows:

"We have recently learned that as a result of the merger of the Missouri Pacific and Union Pacific Railroads, the Union Pacific is contemplating withdrawing all of its business from the St. Joseph Terminal, and diverting it

to the Missouri Pacific yards at St. Joseph and Atchison, Kansas.

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It seems reasonable that any protection of employees should be the responsibility of the Union Pacific because it negotiated its merger with the Missouri Pacific and is making the move from the St. Joseph Terminal to its own property. However, there is no provision in the Operating Agreement to sever employee protection payments, and I presume that is one subject that should be negotiated with the Union Pacific, incident to the possible termination of the Operating Agreement, effective when the Union Pacific leaves the Terminal." (Copy SF Memo 14160-C)

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"For the past few weeks, study has been conducted to determine how our interests can best be served by the most economical means at St. Joseph following merger with the Missouri Pacific.

Analyzation of the operational aspects of having the Terminal Company perform the work compared to turning it over to the MP reveals the work can be handled by the MP at only a fraction of the cost of the Terminal Company.

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All switching presently accomplished by Terminal Company's switch engines can be done by MP switch engines in their yards at St. Joseph.

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There was agreement by all concerned that retaining the Terminal Company under a diminished work load would hold no advantages for either party...[and] our position, from an Operating standpoint, should be to dissolve the Terminal Company and approach the other departments involved for their views..." (UP Memo dated May 20, 1983)

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"The cost of protective benefits for St. Joseph Terminal

Railroad Company BRAC employees cannot be addressed in absolute terms. Because of the number of variables involved and our inability to predict what position BRAC will take on the issues, we can only speculate on what the protective benefit costs will be.

With the factual information currently available and in light of BRAC's previous stance in regard to similar situations, we can develop a 'best case' and a 'worst case' scenario. Of course, it is possible that the actual costs could fall somewhere between the two extremes.

In the worst case situation, New York Dock Conditions would be strictly applied....

\* \* \* \* \*

In a best case situation the UP, MP and ATSF would serve a joint notice under New York Dock of their desire to dissolve the Terminal Company and abolish all the jobs. In the ensuing negotiations, we would attempt to gain some leverage with respect to the February 7, 1965 Protection Agreement and could seek the right to transfer employees to the UP-MP or ATSF. In the negotiations, we may well be able to work out separation options, transfer options, etc., to reduce our six-year liability. In either event, we could force the dissolution through New York Dock arbitration if necessary." (UP Memo dated February 28, 1984)

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"It is apparent the Union Pacific is working toward reaching agreement with various crafts to effect this move [of the Union Pacific to the Missouri Pacific facilities at St. Joseph] in the near future...[T]hey do not plan to transfer their work to the Missouri Pacific and leave Santa Fe holding the bag for all expenses at the St. Joseph Terminal Railroad. It is the consensus of those present at the meeting on February 21 [1984] that the most desirable alternative available is to dissolve the St. Joseph Terminal Railway Company as an operating entity.

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Mechanical Department employees of the St. Joseph Terminal Railroad Company are Union Pacific employees and can be moved to other locations." (SF Memo dated February 28, 1984)

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"St. Joseph will be wholly operated by the Missouri Pacific and Union Pacific will require no mechanical forces at that location." (UP Memo dated June 8, 1984)

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"Since its merger with Missouri Pacific Railroad, Union Pacific has transferred much of the terminal work previously performed on its behalf by St. Joseph Terminal to Missouri Pacific facilities, in view of which Santa Fe and Union Pacific no longer consider maintenance and operation of a separate common carrier terminal corporation at St. Joseph necessary or desirable." (SF Memo dated June 26, 1984)

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"At a meeting with the ATSF...in St. Joseph on Friday, July 20 [1984], it was determined that operation of the St. Joseph Terminal Railroad Company would cease on August 1, 1984.

In order to accomplish this will be necessary that the Legal Department file an exception notice with the ICC advising of the change that Union Pacific switching operations now performed by the St. Joseph Terminal Company will be performed by the Missouri Pacific at St. Joseph effective August 1, 1984.

The scheduled dissolution of the terminal will occur on a later date when the 1.47 miles of main line owned by the St. Joseph Terminal Company is approved for abandonment by the ICC....

All St. Joseph Terminal forces will be terminated in accordance with the agreements negotiated by Labor Relations

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It will be necessary to install the connection between the Union Pacific off the end of the St. Joseph bridge and the Missouri Pacific trackage leading to their yard in order to yard Union Pacific trains." (UP Memo dated July 23, 1984)

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"We met with the Union Pacific people on July 20 at St. Joseph to further discuss the cessation of operations of the Terminal and it was agreed that we would discontinue the Terminal operation as of August 1, 1984. To accomplish this, it is planned that Santa Fe will lease certain yard tracks from the St. Joseph Terminal, in order that we may handle the switching. The Missouri Pacific will lease a connecting track from the Terminal extending from the yard tracks to a connection with the Missouri Pacific to enable them to have access to the trackage which will be leased by Santa Fe for delivering and picking up interchange cars. Each railroad will assume the cost of maintaining the trackage leased and, in addition, Santa Fe will assume the maintenance obligation of that portion of the St. Joseph Terminal main line presently used by the C&NW." (SF Memo dated July 27, 1984)

#### POSITION OF THE CARRIER:

Contrary to BRC contentions, the Carrier maintains the Claimants were furloughed as a result of unfavorable business conditions, and that they were furloughed in accordance with the applicable Agreement rules.

As concerns its position with respect to there having been a decline in business, the Carrier cites a number of economic indicators which it says were used to weigh internal business activities. The Carrier says that it was on the basis of such statistical review that it became necessary for it to reduce 903 positions in the Mechanical Department during the period April to July 31, 1984.

The Carrier also states that the decision to cease operation of the SJTRC was made between the UP and SF, and that this should not be construed as merger-related under any stretch of the imagination.

In challenging the materiality of memoranda or correspondence as

introduced by the BRC, the Carrier urges that the documents be viewed as representing opinion and assumption of the authors and not necessarily all the facts as related to the basis for Claimants being furloughed at St. Joseph, MO.

The Carrier also says that no evidence was presented by BRC during handling of the claim on the property or to this Board to support the BRC contention that MP Carmen had taken over work that was previously handled by the Claimants. In this same regard, the Carrier states that even assuming arguendo that MP forces were doing UP Carmen's work, this would not justify the contention that a "transaction" had occurred.

The Carrier further submits the fact that the ICC approved the consolidation of the UP, MP and WP does not guarantee New York Dock Conditions to all employees, let alone to employees in those instances where it is shown that employees have not been adversely affected by a transaction.

In summary, the Carrier maintains:

"1) The Organization has failed to identify a 'transaction' and any specific facts that the claimants were furloughed due to a 'transaction'.

2) The furloughing of Claimants Barber and Bailey was due to unfavorable business conditions. Therefore, the claimants are not entitled to any protective benefits and the protective benefits of New York Dock Conditions are not applicable.

3) This [Arbitration] Committee lacks jurisdiction to decide on whether Claimant Row is entitled to any protective benefits, since the Carrier properly served formal notice to abandon the car repair and maintenance work at St. Joseph. Thus, Mr. Row was entitled to protective benefits contained in Agreement dated September 25, 1964, and any decision on disputes as to the application of the September 25, 1964 Agreement is not vested in the Committee."

#### FINDINGS AND OPINION OF THE BOARD:

In careful and studied consideration of the record as developed and presented, this Board is persuaded that consolidation of the Carrier's operations at SJTRC with those of the MP at St. Joseph Yard was related to authority which had been provided the Carrier in ICC Finance Docket No. 30,000.

Clearly, it must be presumed from overall actions both before and after merger of the MP into the UP that it was fully intended there be a consolidation of UP operations at SJTRC with MP operations at MP's St. Joseph Yard. The application for merger as submitted to the ICC included mention of the intended consolidation of operations at St. Joseph, MO; internal memoranda and correspondence described the extensive planning and consideration given to the UP abandonment of operations at the SJTRC and consolidation of operations at MP's St. Joseph Yard; and, the consolidation of operations did in fact take place in a manner not unlike that which had been contemplated both in the ICC application and in the internal documents of the carriers.

Moreover, review of the internal documents as presented by the BRC show that the Carrier had recognized that it was necessary to reach agreement with those labor organizations who represented other classes and crafts of employees before it could abandon its operations at the SJTRC. This same documentation also recognized that it was also highly probable that the New York Dock Conditions would be held to be applicable to such operational changes.

In the circumstances of record, we think it may be properly concluded that the Carrier knew or should have known that the consolidation of operations at St. Joseph, MO was covered by ICC Finance Docket No. 30,000. Further, this Board believes it may be properly presumed that the Carrier knew as a condition precedent to abandonment or consolidation of operations at St. Joseph, MO, that it was necessary proper notice be posted to interested employees and provided the BRC. Thus, while the Carrier would urge that factors other than the cited transaction affected the Claimants, this Board does not find that it can give credence to such argument since it is apparent there must first be positive evidence of record to show that the Carrier had met its primary obligation to give notice and negotiate an implementing agreement pursuant to the ICC Order.

Accordingly, this Arbitration Board must conclude that the action taken by the Carrier was not in accord with ICC imposed labor protective conditions and that it is, therefore, proper to hold that the Claimants are entitled to the full benefits of the New York Dock Conditions.

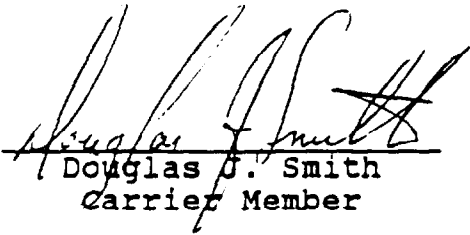
#### AWARD:

For those reasons as stated in the above Findings and Opinion, this Board finds that the Question at Issue must be properly

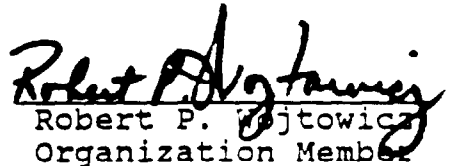
answered in the positive. The Claimants are entitled to the benefits of the New York Dock Conditions as a result of their being furloughed from service in May, June and September 1984.



Robert E. Peterson, Chairman  
and Neutral Member



Douglas C. Smith  
Carrier Member



Robert P. Wojtowicz  
Organization Member

St. Louis, MO  
July 23, 1986