

IN THE MATTER OF ARBITRATION :  
 :  
before an :  
 :  
ARBITRATION COMMITTEE :  
 :  
under :  
 :  
ICC FINANCE DOCKET NO. 28250 :  
(NEW YORK DOCK CONDITIONS) :  
APPENDIX III, SECTION 11 :  
 :

HEARING HELD IN ST. PAUL, MINNESOTA, JUNE 26, 1984

PARTIES BROTHERHOOD RAILWAY CARMEN OF THE  
UNITED STATES AND CANADA

TO

and

DISPUTE:

BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT FILE NO. SCA 82-11-3  
(1) That the Burlington Northern  
OF Railroad Company, hereinafter (BN or Carrier)  
violated and breached the letter and intent  
of the provisions of ICC Finance Docket No.  
CLAIM: 28250 (commonly known as New York Dock  
Conditions), particularly Section 6 and 7  
thereof, when the aforesaid Carrier furloughed  
the employees listed below at Kansas City,  
Missouri, as a result of a "Merger related  
transaction to change operations" within the  
meaning of the New York Dock Conditions but  
failed and refused to provide said employees  
with the protective benefits provided for in  
New York Dock. The following employees,  
hereinafter referred to collectively as Claimants,  
were improperly denied protective benefits:  
J. D. Anders, J. Brown, Jr., R. L. Burton,  
L. J. Burks, D. M. Bush, R. W. Clark, C. E.  
Espeland, J. A. Farris, J. R. Fink, L. M.  
Galloway, R. W. Gering, J. R. Heshion, J. R.  
Henninger, W. D. Hopkins, K. D. Kenagy,

R. B. Malkames, III, C. E. McCoy, T. M. Osbern, M. W. Railey, F. E. Rickman, J. M. Ryan, W. A. Shaw, L. E. Shipman, T. A. Sack, D. P. Sevedge, F. J. Toth, G. D. Webb, L. R. White.

(2) That BN violated the provisions of Section 4 of the New York Dock Conditions by failing to furnish appropriate notice of the aforesaid transaction.

(3) That BN be required to award Claimants the protective benefits set forth in Section 6 and 7 of New York Dock and all fringe benefits provided for in Section 8 of New York Dock.

### F I N D I N G S

This dispute arose based on the Carrier's action in reference to change in forcelevel for Carmen at the Carrier's North Kansas City, Mo. facilities. Twenty-eight employees, the Claimants herein, were displaced and claim that this was as a result of a "transaction". The Organization argues that the Claimants are eligible for protective benefits under the New York Dock Conditions.

This dispute is similar, although not identical, to a dispute resolved by an Arbitration Committee on January 17, 1983 (File SCA 82-2-4B) between the same parties. In that dispute, the Arbitration Committee found that the Claimants were not entitled to protective benefits as claimed.

The background here is the same as that in the Award cited above. The Burlington Northern (the Carrier herein) and the St. Louis San Francisco Railway Company effected a merger as of November 21, 1980. Following this, on January 29, 1981, the Carrier and the Organization entered into an

Implementing Agreement, recognizing coverage of New York Dock Conditions (Finance Docket No. 28250). The Implementing Agreement specifically referred to the locations at issue here, as follows:

3. Consolidation of St. Louis and Kansas City facilities and functions:

(a) As a result of this transaction, certain Frisco Carman assignments at Rosedale yard will be abolished and consolidated with BN work at Murray yard, North Kansas City, Missouri; and, thereafter, all car department functions in the Kansas City terminal will be performed on a coordinated basis under the BN collective agreements. . . .

As in the previous Award, the sole issue for resolution by the Arbitration Committee is whether the Carrier's actions between September 1981 and July 1982 constituted a "transaction" resulting from the merger, as claimed by the Organization, or whether it was a result of "factors other than a transaction".

The New York Dock Conditions are applicable here, and relevant portions are as follows:

. . .

1. Definitions - (a) "Transaction" means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed.

Section 1 (c) of the Conditions reads as follows:

(c) "Dismissed employee" means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.

11. Arbitration of Disputes . . .

(e) 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 that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

There is no question that the merger involved the consolidation of the Rosedale and Murray Yards, with the eventual elimination of the Rosedale Yard. At the time of the consolidation, protective benefits were granted to certain affected employees. The Carrier, however, has presented conclusive evidence of a later substantial decline in business and the resulting need to reduce its force levels. Most significant to this dispute, these changes occurred not only at the Rosedale-Murray facilities but generally throughout the Carrier's operations.

(The general right of the Carrier to reduce forces is, of course, covered by Rule 22 (a) which states in part, "When it becomes necessary to reduce expenses, forces will be reduced.")

Kansas City is a part of the Springfield Region. For the period involved in the Claimants' furlough dates (September 1981 to July 1982), monthly carloadings declined from 49,119 to 38,049. Train miles for the same period declined from 677,412 to 525,460. Revenue carloadings for Kansas City itself from September 1981 to September 1982 showed a decline of 41

per cent. The number of Carmen assigned at Murray/Rosedale during the same period declined in virtually the same degree -- 43 per cent.

In rebuttal, the Organization presented to the Arbitration Committee a thorough analysis, from its viewpoint, of the Carrier's activity between 1981 and 1984. This appears to show a less drastic downturn than reported by the Carrier. Nevertheless, a review of the Organization's data confirms a downtrend in carloadings and inbound inspections during the pertinent period (1982). That activity recovered after this period does not affect the Carrier's argument that the 1981-82 reductions were due to lowered business activity in that period.

The Organization would have the Arbitration Committee believe that the consolidation of Rosedale and Murray Yards (the transaction) resulted in the severe reduction in forces over an 18-month period. Rosedale did eventually close. But, had the Kansas City activity continued on a relatively even level, there is no basis to show that the merger of the two yards would have caused reductions as severe as occurred. After review of the data presented in this dispute, the Arbitration Committee comes to the same conclusion as in the similar dispute resolved on January 17, 1983, in which the Committee stated:

It is obvious, as the Organization argues, that the merger had its long-range effect as to the consolidation of operations at Rosedale and Murray and the eventual elimination of the Rosedale Yard.

However, this by itself does not explain the decline in force beyond that effective at the time of the Implementing Agreement. The Carrier has sufficiently proved that the reduction in force in either or both points at the time of this departure was rationally grounded in concern for reduction in expense owing to decline in business.

As a procedural note, the Carrier argued as a threshold issue that the claim by the Organization was not timely under Rule 34 (a). However, the Committee concurs with the Organization's view that Rule 34 time limits are not applicable under New York Dock Conditions agreement.

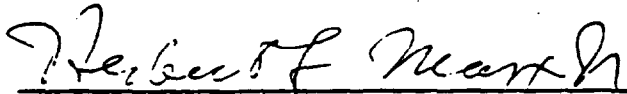
In view of the Committee's findings above, the Carrier also did not violate Section 4 of the New York Dock Conditions by failing to furnish appropriate notice, since the conclusion is that the reduction herein reviewed did not constitute a merger "transaction".

#### A W A R D

The Carrier did not violate ICC Finance Docket No. 28250 (New York Dock Conditions) by failing to provide the Claimants herein with protective benefits.

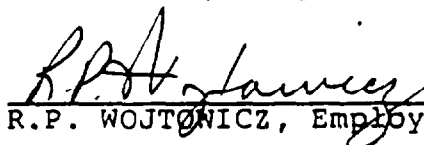
New York, New York

Dated: August 30, 1984



HERBERT L. MARX, JR., Neutral Member  
and Chairman

*We Dissent*

  
R.P. WOJTONICZ, Employee Member

 KAU  
CLEMENT LANE, Carrier Member