

# ARBITRATION COMMITTEE

In the Matter of the	)	
Arbitration Between:	)	Pursuant to Article I,
	)	Section 11 of the New
BROTHERHOOD RAILWAY CARMEN	)	York Dock Conditions
OF THE UNITED STATES	)	
AND CANADA,	)	
	)	
Organization,	)	ICC Finance Docket No. 30000
	)	
and	)	
	)	
MISSOURI PACIFIC RAILROAD	)	OPINION AND AWARD
COMPANY; UNION PACIFIC	)	
RAILROAD COMPANY,	)	The Sedalia Shops Case
	)	
Carriers.	)	

Hearing Date: August 28, 1986  
Hearing Location: Salt Lake City, Utah  
Date of Award: October 24, 1986

## MEMBERS OF THE COMMITTEE

Employees' Member: Robert J. Wojtowicz  
Carriers' Member: D. J. Smith  
Neutral Member: John B. LaRocco

## ORGANIZATION'S STATEMENT OF THE CLAIM

1. That the Union Pacific System Railroad Company violated the terms of the New York Dock Railway Protective Agreement when they deprived Carmen R.J. Thomas, M.E. Thomas, R.L. Rayl, R.L. Simmons, J.W. Priesendorf, D.L. Wiskur, D.W. Moellman, J.W. Thomas, T.J. Curry, D.L. Bergman, S.C. Pritchard, D.D. Wimer, R.G. Hamby, Jr., R.D. Bailey, G.D. Adair, D.L. Long, C.D. Keele, G.R. Christian, R.E. Embry, L.L. Koeller, J.L. Burlingame, D.L. Moore, Jr., J.L. Stacy, R.J. Phillips, K.D. Koeller, S.D. Phillips, D.F. Bryce, L.F. Martin, D.A. Koeller, R.V. Sudduth and D.L. Fall of their employment at Sedalia, Missouri prior to December 30, 1985, this took affect some 67 days before notice was posted on bulletin board at Sedalia closing the shop, and failed to compensate them under this protective agreement. By furloughing these carmen prior to this date, they became dismissed employees at this time under Article I, Section 1(c) of said New York Dock Agreement, and therefore became entitled to preservation of employment under the provisions of the aforementioned agreement, which the Union Pacific System Railroad has denied them.

ORGANIZATION'S STATEMENT OF THE CLAIM, Continued

2. That the above mentioned carmen be afforded the protective benefits of the New York Dock Protective Agreement including, but not limited to, their test period earnings, as outlined in Article I, Section 6 of the New York Dock Protective Agreement, and their fringe benefits, as outlined in Article I, Section 8 of the same protective agreement. It was the intention of the Union Pacific System to transfer work and close Sedalia Shop before the furloughing of the Carmen prior to December 30, 1985.

Regarding the intention of closing Sedalia Shop before December 30, 1985, check Exhibit A "letter dated August 17, 1984" stating estimated value of 120 acres that shop is on. Note exhibit B "letter dated August 7, 1984" a list of machines and notations at top of the letter "some of this equipment may be available from either Sedalia or Palestine, Texas." Exhibit C - 1st Paragraph "This has reference to recent discussions concerning operating department reorganization to take effect January 1, 1986." Exhibit D - Budget reference dated 1985, which had to be ready and placed in force before 1985. Exhibit E Page 1 thru 5, will prove the intention of closing Sedalia Shop as far back as 1983. Number of employees the cost to each employee for transferring work the dovetailing of seniority, the amount of people to be transferred to four (4) other shops, transfer of road truck to Jefferson City, Missouri, tax and utilities savings also 1983 Sedalia utilities building removal - note date on this exhibit of August 30, 1984.

With the above mentioned documents it is positive proof that the intent to close Sedalia shops goes back to the year of 1983.

CARRIERS' QUESTION AT ISSUE

Were the employees identified below furloughed from service in anticipation of the closing of the Sedalia Car Shops and, therefore, entitled to New York Dock Conditions' protective benefits?

R.J. Thomas	D.D. Wimer	J.L. Stacy
M.E. Thomas	R.G. Hamby, Jr.	R.J. Phillips
R.L. Rayl	R.D. Bailey	K.D. Koeller
R.L. Simmons	G.D. Adair	S.D. Phillips
J.W. Priesendorf	D.L. Long	D.F. Bryce
D.L. Wiskur	C.D. Keele	L.F. Martin
D.W. Moellman	G.R. Christian	D.A. Koeller
J.D. Thomas	R.E. Embry	R.V. Sudduth
T.J. Curry	L.L. Koeller	D.L. Fall
D.L. Bergman	J.L. Burlingham	
S.C. Pritchard	D.L. Moore, Jr.	

OPINION OF THE COMMITTEE

I. INTRODUCTION

In September, 1982, the Interstate Commerce Commission (ICC) approved the merger and consolidation of the Union Pacific Railroad Company (UP), the Missouri Pacific Railroad Company (MP or Carrier) and the Western Pacific Railroad Company. [ICC Finance Docket No. 30000.] To compensate and protect employees adversely affected by the merger, the ICC imposed the employee merger protection conditions set forth in New York Dock Railway - Control - Brooklyn Eastern District Terminal, 360 I.C.C. 60, 84-90 (1979); affirmed, New York Dock Railway v. United States, 609 F.2d 83 (2nd Cir. 1979) ("New York Dock Conditions") on the three railroads pursuant to the relevant enabling statute. 49 U.S.C. §§ 11343, 11347. The merger was completed on December 22, 1982.

On June 28, 1986, the Organization initiated a claim seeking dismissal allowances on behalf of thirty-one Carmen who had been furloughed from the MP's Sedalia Car Shops on or before December 30, 1985. Unable to resolve the claim on the property, the parties submitted the dispute to this Section 11 Arbitration Committee for a final and binding decision.<sup>1</sup>

At the Neutral Member's request, the parties waived the Section 11(c) forty-five day time limitation for issuing this award.

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<sup>1</sup>All sections pertinent to this case are set forth in Article I of the New York Dock Conditions. Thus, the Arbitrator will only cite the particular section number.

## II. BACKGROUND AND SUMMARY OF THE FACTS

Beginning in 1983, the Carrier considered constructing a modern, large car repair facility at Tucker, Texas. The Carrier envisioned that the new shop would replace its Sedalia, Missouri Shops and its Palestine, Texas car repair facility. Later, the Carrier decided against building the Tucker plant.

In fiscal year 1984, the Carrier slashed the Sedalia Shops operating budget by almost fifty percent. More budget restraints were imposed on Sedalia car repair operations for 1985 and 1986.

During 1983, 1984, and 1985, the employment level at the Sedalia Shops fluctuated between approximately fifty-six and ninety-four workers. On December 30, 1985, the Carrier laid off thirty-one Sedalia workers including twenty Carmen. Eighteen of those Carmen are among Claimants herein. Except for two, the remaining Claimants were furloughed in June, 1985 (although some were recalled to fill temporary vacancies for short periods). Claimants Suddeth and Fall were furloughed after 1982 but before June, 1985. Subsequent to the December, 1985 furloughs, only fifty-two workers were actively employed at Sedalia.

Pursuant to Section 4 of the New York Dock Conditions, the Carrier issued a March 8, 1986 notice of its intent to transfer car repair work from Sedalia to the UP at Omaha. The Carrier predicted that the work transfer would entail the abolition of five Sedalia Carman positions and the establishment of an equivalent number of Omaha jobs. Simultaneously, the Carrier tendered the Organization notice, under Article I, Section 4 of the September 25, 1964 Agreement that it was abandoning the

Sedalia Car Shops. Aside from shifting work to Omaha, the residual Sedalia car work would be moved to the MP's DeSoto, Missouri facility. The latter notice contemplated the establishment of twenty-three positions at DeSoto and two positions at Jefferson City.

The Carriers and the Organization successfully negotiated a consolidated Implementing Agreement, dated May 6, 1986, covering both the transfer of work and the shop abandonment. On June 11, 1986, the Carrier closed the Sedalia Car Shops. At the time of the abandonment, there were apparently thirty-two Carmen working at Sedalia. Nineteen workers opted for separation pay offered to regularly assigned Sedalia Carmen under the terms of the May 6, 1986 Implementing Agreement. The remaining Carmen transferred to three other locations as follows: Nine went to DeSoto; two took positions at Jefferson City; and two transferred to Omaha. Most importantly, Section 6(b) of the May 6, 1986 Implementing Agreement expressly recognized that the New York Dock Conditions covered Carmen transferring from Sedalia to Omaha.<sup>2</sup> By implication, the May 6, 1986 Implementing Agreement did not extend New York Dock benefits to Claimants. However, in a May 6, 1986 letter attached to the Implementing Agreement, the parties understood "...that the Implementing Agreement was consummated without prejudice to ... the filing of a claim for furloughed

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<sup>2</sup>Workers who elected to transfer from Sedalia to either DeSoto or Jefferson City were accorded protection under the September 25, 1964 Agreement. See Section 6(a) of the May 6, 1986 Implementing Agreement.

employees ... at Sedalia." [Emphasis added.] Thus, the May 6, 1986 Implementing Agreement was negotiated despite a dispute over whether or not furloughed Sedalia Carmen were also entitled to protective benefits arising out of the transfer of car repair and maintenance work from Sedalia.

### III. THE POSITIONS OF THE PARTIES

#### A. The Organization's Position

According to the Organization, the Carrier laid off Claimants in anticipation of abandoning the Sedalia Shops.

The Carrier planned to close Sedalia Shops long before the 1985 layoffs. As far back as 1983, the Carrier appraised the Sedalia Shops equipment and real property. At the arbitration hearing (and on the property), the Organization presented internal Carrier engineering and accounting notes estimating the savings generated if the Carrier ceased operations at the Shops. Although much of the planning also concerned the construction of a new back shop at Tucker, the Carrier decided to phase out Sedalia even if the new facility was not built.

Consistent with its preconceived notion, the Carrier reduced the Sedalia Shops operating budget and periodically furloughed workers to limit its liability for protective benefits under the New York Dock Conditions. Specifically, the Carrier arbitrarily curtailed program repairs (from fifty-six to twenty-six during 1985) in a futile attempt to justify the December 30, 1985 layoffs. Also, the Carrier reorganized its Mechanical Department in early 1986 again with the underlying intent to close the Shops. Despite the Carrier's manipulations of Sedalia

work and budgets, Claimants are entitled to receive dismissal allowances pursuant to Section 10 of the New York Dock Conditions which reads:

"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 will apply to such employee."

Furloughing thirty-one workers just sixty-seven days before notifying the Organization of the imminent abandonment of Sedalia Shops can hardly be attributed to mere coincidence.

The abundant amount of repair work at Sedalia on June 11, 1986 belies the Carrier's assertion that the Shops were closed due to a decline in business. The available work included not only a large number of bad order cars awaiting repairs but also seventy-three automobile cars needed deracking (a task which would consume eighty manhours per car). Since only nine Carmen were actually performing car repair work at Sedalia on June 11, 1986, the available supply of work far exceeded the capacity of the car repair force. Therefore, there is no doubt that had the work remained at Sedalia, the Carrier would have recalled Claimants to accomplish the needed repairs. However, after shutting down the Shops, Claimants' recall rights were rendered worthless. The Organization concludes that Claimants were adversely affected by the June 11, 1986 transaction and are therefore dismissed employees as specified in Section 1(c) of the New York Dock Conditions. Under Section 11(e) of the New York Dock Conditions, the burden of proof shifts to the Carrier and

given the railroad's substantial profits, it cannot blame the December 30, 1985 furloughs on a decline in business.

Finally, the Organization alleges that Claimants were victims of Carrier discrimination because the Carrier offered separation allowances or buy-outs to actively employed Sedalia Carmen as well as many clerks. The Carrier should have extended a similar offer to furloughed Sedalia Carmen so that, at the very least, they would have some monetary resources for meeting day to day living expenses or training for new careers.

B. The Carriers' Position

The Carrier emphasizes that the decision to close Sedalia Shops was not made until a few days before the Carrier issued the March 8, 1986 notice. Since the shops were shut down more than five months after Claimants were laid off, the furloughs were not made in anticipation of the transaction. Instead, the December 30, 1985 furloughs were caused by three factors: unfavorable business conditions; Mechanical Department budget cuts; and the completion of two special car repair programs. None of the factors was merger related.

Initially, the Carrier contends that the Organization failed to either identify a Section 1(a) transaction or specify pertinent facts linking the December 30, 1985 layoffs to the 1982 merger. Not every post merger force adjustment triggers an employee's entitlement to New York Dock protective benefits. ATDA v. MP, NYD § 11 (Zumas, 7/31/81). In a written statement, the Carrier's Chief Mechanical Officer attested that, as of December 30, 1985, no decision had been reached regarding the



future of Sedalia Shops. The decision to close the Shops, he declared, was made in early March, 1986 and the decision was promptly communicated to the Organization. Prior to March, 1986, the Carrier operated Sedalia Shops as a viable facility. The 1986 budget projected a force of fifty-two workers at Sedalia for the entire year. The 1984 studies reviewed the financial and operational feasibility of constructing a new shop to replace the Sedalia and Palestine Shops. Because the new shop was not constructed, Sedalia remained open. Since the Carrier did not know if or when Sedalia Shops would close, there was no nexus between Claimants' layoffs and the June 11, 1986 transaction. That is, the Carrier could not possibly furlough Claimants in anticipation of an event which it did not know would occur.

Alternatively, for the three reasons previously stated, Claimants were furloughed due to causes other than a New York Dock transaction. First, the economic climate on the Carrier was sluggish from 1984 to 1986. Gross freight revenue and net income decreased slightly during 1985 (as compared to 1984) but was still well below 1981 levels. The systemwide decline in business precipitated reduction in both rank and file and managerial positions. Mechanical Department forces decreased from 2,832 workers on October 1, 1984 to 2,374 employees on January 1, 1986. During the same period, poor business conditions compelled the Carrier to furlough three hundred and one Carmen across its system. All four major shops, including Sedalia, absorbed their share of the force reductions. Second, the decreased revenue and net income placed severe budget constraints on mechanical

operations. Less revenue led to proportional spending curtailments. At Sedalia, the AFE expenditures were eliminated from the 1986 budget. Thus, whenever possible, repair projects were indefinitely postponed. Third, work on an all-electric maintenance of way train was completed in November, 1985. Instead of being furloughed, Carmen who worked on the special project were reassigned to caboose work during December, 1985. But, the caboose work also ran out resulting in a lack of work at the end of the year. While deracking work is not exclusively reserved to Sedalia Carmen, the work cited by the Organization was clearly insufficient to justify the continued employment of thirty-one Carmen. Moreover, Trailer Train owned the auto rack cars and the company itself could discard the racks. If the Organization is accusing the Carrier of improperly farming out Carmen's work, it should make a claim under the September 25, 1964 Agreement.

Lastly, the Carrier denies discriminating against Claimants. The Carrier negotiated a severance option for certain clerical employees to reduce the number of workers receiving protective pay under the February 7, 1985 Agreement. Contracts covering each craft are separate and distinct. A benefit accruing to one craft may not be applicable to other workers.

#### IV. DISCUSSION

At the onset, this Committee notes that when it closed the Sedalia Shops, the Carrier engaged in both a New York Dock transaction and an operational change under the September 25, 1964 Agreement. For purposes of implementing the shop closure,