ARBITRATION PURSUANT TO SECTIONS 11(a) and (c)
OF THE NEW YORK DOCK CONDITIONS

In the Matter of	:	
PORTLAND TERMINAL RAILWAY COMPANY (Guilford Transportation Industries)	:	
and	:	ICC Finance Docket 29720
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	:	Claim C - 1 (PT)

STATEMENT OF THE CASE

In January of 1984 the Organization submitted a claim on behalf of twenty-three Employees asserting that the acquisition of the Boston and Maine Corporation (BM) by Guilford Transportation Industries (GTI) enabled the BM and the Maine Central Railroad Company (MC) to operate as an end-to-end rail system, creating run-through trains and it eliminated substantial amount of work for PT Employees assigned to Rigby Yard. The Organization concluded that the employees who have been furloughed by PT since the beginning of run-through service (August 11, 1982) must be considered as having been placed in a worse position with respect to their compensation and accordingly they are entitled to displacement and dismissal allowance under Sections 5 and 6 of the New York Dock Labor Protective Conditions.

The Carrier denied the claim and the matter was submitted to Arbitration.

The undersigned was designated as Arbitrator by the parties and a hearing was conducted in Boston, Massachusetts on July 12, 1984; at which time all parties were represented and ample opportunity was afforded for presentation of evidence, testimony and argument.

The parties have submitted submissions, and documents, rebuttals and argument; all of which has been considered by the Board.

STATEMENT OF ISSUE

Did the action of establishing run-through service constitute a "transaction" which affords relief to the Employees under the terms of the New York Dock Labor Protective Conditions?

STATEMENT OF FACTS

The Portland Terminal Company (PT) was a wholly-owned subsidiary of the Maine Central Railroad Company (MC) and Rigby Yard is a major classification yard and interchange point of the terminal company. In fact, the Yard comprises most of PT's property and facility.

Guilford Transportation Industries (GTI) acquired MC (and thus PT) on June 16, 1981. Approval by the Interstate Commence Commission (ICC) was neither required nor sought and thus, no labor protective provisions were mandated.

GTI subsequently acquired Boston and Maine Corporation (BM) and the ICC approved that acquisition on April 23, 1983 (Finance Docket 29720-SUB-No. 1) The ICC imposed the "New York Dock" Labor Protective Provisions.

A reorganization court approved BM's plan on June 30, 1983 and that date finalized GTI's common control of the various Carriers.

A notice was posted concerning maintenance of way employees on May 5, 1982 and thereafter the General Chairman requested (May 9, 1983) that the Carrier furnish certain information since it disputed the Carrier's position that the reduction and consolidation of forces at PT was ". . .caused by economic conditions and has not affected the operations and changes which have caused a consolidation and reduction of forces of the Maintenance-of-Way Employees at the Portland Terminal Company." (See Carrier's Exhibit N).

On June 3, 1983 the Director of Human Resources advised the Organization that it continued to be the Carrier's position that any force reduction at PT was the ". . .direct result of the severe decline in business and has no relationship whatsoever, to ICC Finance Docket No. 29720. . ." (See Carrier's Exhibit O).

DISCUSSION

Although the Carrier indicated that two PT trackmen would be affected as a result of the approved transaction, it continues to deny that the remaining twenty-one trackmen were furloughed as a result of Carrier's pre-blocking of trains.

Although the Carrier concedes that it established run-through trains in 1982, it asserts that said action did not eliminate the work of any maintenance-of-way employees and it claims that there was no substantial change in the work of PT trackmen since no trackage was abandoned as a result of run-through trains. At the time, according to the Carrier, the run-through trains (allegedly a common interrailroad practice) was the action of two independent Carriers outside of any common control of MC and BM by GTI. Moreover, the Carrier notes that no ICC approval is required for such service modification.

The Carrier has not denied that a number of PT maintenance-of-way employees have been furloughed since 1982 but it contends that numerous employees, in all crafts, have been furloughed and there was an employee decline of thirty-one percent (31%) as a direct result of a severe recession in 1982 and increased competition by motor carrier and rail deregulation.

The Carrier notes that the Employees are required to relate the furloughs of any specific employees to a "transaction". Article 11 (e) of the Labor Protective Provisions state:

"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.

Section 1(a) of the Labor Protective Provisions defines transaction as:

". . .Any action taken pursuant to authorizations of this Commission on which these provisions have been impqsed."

A "Displaced Employee" and a "Dismissed Employee" under Sections 1(b) and (c) are Employees who are placed in a worse position or deprived of employment "as a result of a transaction".

In commenting upon those pertinent portions of the Labor Protective Provisions, the Carrier has stressed that numerous Arbitration Awards have required that there be a "causal nexus" between the "actual consolidation and the Carrier action at issue" and they have held that "every action initiated subsequent to a merger cannot be considered, ipso facto, to be 'pursuant to' the merger" See for example Missouri Pacific Railroad and American Train Dispatchers Association - New York Dock Arbitration. In fact, most Arbitration Awards concerning New York Dock and other Labor Protective Provisions have determined that there must be a "direct connection" or a "direct result" between the "transaction" and adverse personnel action.

It is conceded by both parties that acquisition accommodates end-to-end rail connection but again, the Carrier stresses that Railroads do not require common control in order to operate run-through trains.

The Carrier also stresses the fact that the Organization has not identified the "allegedly" affected Employees with the "asserted" transaction and since there has been a significant fluxuation of employment among maintenance-of-way forces over the years, the Carrier insists that such an identification is mandatory.

The parties negotiated an Implementing Agreement on August 9, 1983 subsequent to a March 24, 1983 notice of intention to rearrange track sections under the February 7, 1965 National Agreement. Thus, the Carrier argues that the Organization was fully aware that 54 maintenance-of-way employes would be furloughed, system wide, as a result of the Agreement and in fact, over a two-month period, track sections were rearranged pursuant to the Implementing Agreement and 50 Employees were furloughed. As a part of that negotiation, the Carrier granted certain demands to the Organization.

Concerning the specific facts surrounding the run-through operation, the Carrier insists that the total operation at Rigby Yard was much larger than the number of cars handled by run-through operations. No tracks were retired or abandoned in the Yard as a result of the run-through operation and, according to Carrier, no maintenance schedules were altered in the Yard as a result of the run through. In short, the Carrier insists that the direct impact of run-through trains on the Maintenance-of-Way craft was "nil".

The Carrier also argues that run-throughs have been utilized since as early as 1980 from time to time concerning the BM and MC without the need for ICC approval. There were no labor protective conditions imposed, nor was there protest by labor organizations.

Thus, for all those various reasons stressed in the oral hearing as well as in its written submissions, the Carrier urges that the Board find no "transaction" and that we deny the Organization's claim.

The Organization notes that one year prior to the Implementing Agreement the Carrier started operating run-through trains which eliminated the need to perform blocking operations at PT and because the Carrier had assertedly indicated in its papers before the ICC that said action was ". . . one of the major benefits to be derived from the acquisition, . . ." the Organization submitted these claims on behalf of all employees who had been furloughed from PT after commencement of the run-through operation. The Organization stresses that the operating plan submtted to the ICC concerning GTI's ultimate acquisition showed that the prime benefit would be an integrated operation.

The Organization also stresses the "burden of proof" concepts set forth in the Labor Protective Provisions and the Organization emphasizes that it is merely necessary for the Employee to identify the transaction and the facts upon which he relies at which time the burden switches to the railroad to prove that factors other than a transaction affected the Employee. The Organization claims that its obligation has been satisfied in the second paragraph of the January 23, 1984 claim:

> ". . .As a result of acquisition of the Boston and Maine corporation by Guilford Industries, the Boston and Maine and Maine Central Railroad Company are able to operate as an end-to-end railroad system that connects the main central points in Maine with the Boston and Maine Western points located at Mechanicville and Rotterdam Junction, New York."

Moreover, the Organization argues that the further portions of the claim satisfy the additional obligation imposed on the Employees, i.e., specifying the pertinent facts of the transaction relied upon and in that regard it asserts that the creation of run-through trains has eliminated a substantial amount of work and since that "transaction" was approved by the ICC and the Carrier is now allowed to operate run-through trains, the the basis for displacement and dismissal allowances is obvious.

The Board has considered the rather extensive record at length and after due consideration, we are of the view that the various issues and sub-issues yield to the ultimate determination of whether or not the institution of the run-through operation and related incidents constitutes a "transaction" within the meaning of the New York Dock Labor Protective Provisions. In reducing the issue to this rather simplistic concept, we do not lose sight of the various contentions set forth by the Carrier which have tended to indicate that a general loss of business has contributed to the reduction of employees nor have we failed to contemplate the Carrier's assertion that the Organization has failed to show a causal nexus between the reduction of forces and the acquisition and related "transaction". However, in viewing the matter in a limited focus, our attention has been invited to a recently adopted Award before an Arbitration Committee established under New York Dock provisions between the Maine Central Railroad Company (Portland Terminal) and the United Transportation Union pursuant to ICC Finance Docket No. 29720.

The August 10, 1984 Award specifically stated the issue to be whether the establishment of run-through trains and/or run-through power between the Maine Central Railroad Company and the Boston and Maine Corporation constitute a "transaction" as contemplated under New York Dock provisions imposed by the ICC in Finance Docket 29720 (sub-no 1) in anticipation of common control which was finalized on June 30, 1983.

The Award set forth the same basic factual circumstances as presented here concerning GTI's acquisition of MCPT and BM. It noted a May 5, 1982 New York Dock Notice; various implementing agreements and a claim under New York Dock. The Award cites the same definition of "transaction" quoted previously in this Award and the Board stated that it has been held that ". . .historically protective agreements are intended to provide protection from the impact of decisions for which ICC approval is required." Moreover, it refers to a proximate nexus between the actual merger and the Carrier action at issue. The Award held that:

". . .The establishment of run-through trains and/or run-through power by the Maine Central and the Boston and Maine, which commenced on or about August 11, 1982, did not constitute a "transaction" as contemplated under the provisions of New York Dock. Several significant factors have compelled this Arbitration Committee to reach this conclusion, not the least of which is the definition of transaction. . . "

The Award relied, to a significant extent, upon a conclusion that it is not uncommon for run-through trains to be operated in this industry and Carriers " . . clearly do not need an ICC authorization to operate run-through trains."

Awards resolving disputes between the same parties and concerning the same issues must be adopted in subsequent proceedings unless the original Award is so erroneous that it would unconscionable to adopt the Award in the second case. This concept is the doctrine of "res adjudicata." Clearly, that doctrine does not apply here because this Organization was not a party to the just cited Arbitration dispute. Nonetheless, prior Awards between different parties, dealing with the same basic issue, may be persuasive under the doctrine of "stare decicis." That is particularly true when the issue is generated by the same factual circumstances in both cases.

Our extensive review of the entire record leads us to conclude that a definition of "transaction" controls the issues before us and we are compelled to agree with the expressions set forth in the August 10, 1984 Arbitration determination between this Carrier and UTU.

AWARD

For reasons set forth above, we will deny the claim.

Joseph A. Sickles
Chairman and Neutral Member

Bradley L. Peters
Carrier Member

William E. LaRue
Organization Member

12/3/84
Date