

Arbitration pursuant to Article I - Section 11 of the  
employee protective conditions developed in New York  
Dock Ry.-Control-Brooklyn Eastern Dist., 360 I.C.C.  
60 (1979) as provided in ICC Finance Docket No. 30,000

|         |                                   |   |            |
|---------|-----------------------------------|---|------------|
| PARTIES | UNION PACIFIC RAILROAD COMPANY    | ) |            |
|         | MISSOURI PACIFIC RAILROAD COMPANY | ) |            |
|         |                                   | ) | CASE NO. 1 |
| TO      | AND                               | ) |            |
|         |                                   | ) | DECISION   |
|         | UNITED TRANSPORTATION UNION (C&T) | ) |            |
| DISPUTE |                                   | ) |            |

ORGANIZATION'S QUESTION AT ISSUE:

Claim of Brakeman J. M. Albers for protection  
under New York Dock account displaced by a  
former Missouri Pacific employee.

CARRIER'S QUESTION AT ISSUE:

Was the exercise of seniority by a former Missouri  
Pacific employee made pursuant to a transaction,  
thereby entitling J. M. Albers to protection under  
New York Dock?

BACKGROUND:

a. History of Dispute

On October 20, 1982, the Interstate Commerce Commission (ICC)  
served its Decision in Finance Docket No. 30,000 approving the merger of  
the Union Pacific Railroad (UP), the Missouri Pacific Railroad (MP) and  
the Western Pacific Railroad (WP). The ICC in its Decision imposed  
conditions for the protection of employees set forth in New York Dock  
Ry. - Control - Brooklyn Eastern District, 350 I.C.C. 60 (1979) (New  
York Dock Conditions).

On February 14, 1983, the UP and MP served notice pursuant to Article I, Section 4 of the New York Dock Conditions upon the operating crafts' General Chairmen. Among other things the notice provided that:

The Omaha-Council Bluffs Terminal will become a single, combined terminal operation controlled by UP with all work performed under the applicable UP schedule rules. The present MP yard in Omaha will be used to the extent necessary and for the purposes needed in the operation of the combined terminal. See Attachment "A" for an estimate of the number of employees of each class affected by this intended change.

Attachment A to the notice stated that fourteen yardmen, three hostlers, three firemen and three engineers would be affected.

Further pursuant to Article I, Section 4 the parties entered into negotiations for an agreement to implement the transactions which were the subject of the Carrier's notice. However, the parties could not reach agreement, and they invoked arbitration as provided in Article I, Section 4 of the Conditions. The arbitrated implementing arrangement which resulted from that proceeding contained the following provision:

On the effective date of the consolidation described in Article I(a)(1), above, MP employees on the Omaha Subdivision, Northern Division will be given the opportunity to transfer to the UP with seniority dovetailed into the present UP Nebraska Division Consolidated Yardmen-Brakemen-Conductors Seniority Roster, thereby securing yard rights on the Nebraska Division and road rights on the First Seniority District. MP employees so transferring will forfeit all MP seniority.

Because the work of fifteen MP yard positions was transferred to UP in the consolidated terminal, the arbitrated implementing arrangement afforded fifteen MP employees the option to follow their work by transferring

to the UP or to accept separation allowances. Three MP yardmen accepted separation allowances and twelve elected to transfer.

Although all transferees went to UP yard positions, they also held road seniority. Seven of these transferees held road seniority dates prior to June 23, 1962, the date UP yard employees established road seniority pursuant to the Dual Rights Agreement.

A dispute arose between the Organization and the Carrier concerning the seniority dates for UP road service of the twelve MP employees electing to transfer. The Carrier took the position that the twelve MP transferees should be dovetailed onto the UP road seniority roster in accordance with their MP road seniority date. The Organization maintained that the transferees should not be afforded a road seniority date prior to June 23, 1962. The parties could not resolve the dispute. They sought an interpretation of the arbitrated implementing arrangement. The arbitrator sustained the Carrier's position.

When the twelve MP employees actually transferred to the UP the Carrier offered twelve additional separation allowances to yardmen in the Omaha-Council Bluffs consolidated yard and to first seniority district roadmen. Upon transferring the MP yardmen became subject to the UP collective bargaining agreements, including the Dual Rights Agreement. Under that agreement yardmen were required to make application for road positions which were granted on the basis of seniority when the road board expanded. The twelve MP transferees remained in the UP yard in excess of thirty days after their transfer, and none took any of the twelve additional separation allowances. All twelve were taken by UP employees.

When the twelve MP transferees were allowed to exercise seniority to road positions under applicable agreements MP transferee Don Harrison was added to the brakemen's board on May 15, 1984. Harrison bumped a UP employee, D. Holland, for a regular assignment, and Holland in turn bumped Claimant, another UP employee, from his regular assignment. Claimant was forced onto the brakemen's extra board on May 15, 1984. His compensation diminished as a result.

The Organization filed a claim contending that Claimant had been adversely affected by a transaction in that he was in the chain of bumping set in motion by the transaction. The Carrier rejected the claim on the ground that Claimant's displacement was not the result of a transaction. The dispute remains unresolved, and the parties have placed it before this Arbitration Committee for final and binding determination.

The hearing on this case was held on April 15, 1986 in Omaha, Nebraska. The parties filed prehearing submissions, and presented oral argument at the hearing. The parties agreed to extend the time within which this Committee must render its award.

b. Parties' Positions

The Organization contends that Claimant was affected by a transaction because Claimant was forced from a regular position to the brakemen's extra board as a result of one of the twelve MP transferees exercising his road seniority. The Organization emphasizes that Claimant was in the chain of bumping. The Organization maintains that but for the transaction Claimant would not have been displaced. The Organization

alleges that as a result of Claimant's displacement his earnings have been diminished.

The Organization argues that the Carrier's unilateral offer of twelve separation allowances in addition to those provided in the arbitrated implementing arrangement did not relieve the Carrier's of its burden under the New York Dock Conditions to provide protection to employees such as Claimant who were adversely affected by the transaction. Nor, urges the Organization, does the fact that those twelve separation allowances went to UP employees and not to the MP transferees. That result, the Organization contends, was due to the operation of the Dual Rights Agreement which required the MP transferees, who came to the UP as yardmen, to remain in the yard until the road board expanded. While the MP transferees were working in yard service awaiting the opportunity to exercise their seniority to road positions, the UP employees took the twelve separation allowances offered by the Carrier. Accordingly, when road vacancies developed and the MP transferees exercised their seniority Claimant was displaced to the extra board.

The Carrier argues that the Organization has failed to sustain its burden of proof under Article I, Section 11(e) of the New York Dock Conditions providing:

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.

The Carrier cites several arbitration awards which it urges stand for the proposition that in order for an employee to sustain his burden of proof under Section 11(e) he must establish a causal nexus between a transaction and any adverse effect he has suffered such as loss of his position or decreased compensation. These awards, urges the Carrier, clearly establish that a showing of adverse effect without the additional showing of the causal nexus to a transaction is insufficient to meet the burden placed upon the employee by Section 11(e). The Carrier argues that in the instant case the Organization has shown adverse effect upon the Claimant in that Claimant was displaced to the brakemen's extra board which resulted in a decrease in his compensation. However, contends the Carrier, the Organization has failed to establish the requisite causal nexus between Claimant's displacement to the brakemen's extra board and a transaction.

While the Carrier acknowledges that Claimant's displacement resulted from the exercise of seniority by an MP transferee, the Carrier maintains that such exercise of seniority was pursuant to applicable UP agreements. The Carrier emphasizes that the MP transferees, upon transferring, became UP employees subject to the UP agreements. Accordingly, urges the Carrier, the transaction was completed when the twelve MP employees transferred to the UP. The Carrier maintains that any exercise of seniority by the MP transferees after their transfer was not as a result of the consolidation of the Omaha-Council Bluffs Terminal, the only transaction to which Claimant has pointed, but as a result of the operation of UP agreements. The Carrier points out that the Organization's position,

carried to its logical conclusion would mean that each time an MP transferee exercised his seniority any employee in the chain of bumping who was displaced or dismissed would receive protection. The Carrier argues that the New York Dock Conditions were never intended to have such far reaching effect.

The Carrier contends that by offering the twelve additional separation allowances it attempted to minimize the displacements and dismissals which it anticipated would result from the transfer of twelve MP employees to the UP. However, argues the Carrier, its efforts were frustrated by the interpretation placed upon the Dual Rights Agreement by the Organization which required that the twelve MP transferees remain in UP yard service until road vacancies developed to which they could exercise their seniority. The Carrier argues that as a result of this position taken by the Organization the twelve vacancies created by the additional separation allowances were filled by UP employees. The MP transferees were forced to remain in yard service until road vacancies developed. As a result of one such vacancy MP transferee Harrison exercised his seniority which resulted in Claimant's displacement from a regular assignment to the extra board. Claimant's displacement, argues the Carrier, resulted from the exercise of seniority under UP agreements and not from the consolidation of the Omaha-Council Bluffs Terminal.

FINDINGS:

The threshold question this Committee must resolve is whether the Organization has sustained its burden of proof required by Article I,

Section 11(e) of the New York Dock Conditions. Clearly the Organization has identified the transaction. However, it remains to be determined whether a causal nexus has been established between the consolidation of the Omaha-Council Bluffs Terminal and Claimant's displacement from a regular road assignment to the road extra board.

The essence of the Organization's case is that Claimant was in the chain of bumping initiated when an MP transferee exercised his UP road seniority. The Organization argues that but for the transaction the MP transferee would not have been in a position to exercise UP road seniority which resulted in Claimant's displacement. The essence of the Carrier's case, on the other hand, is that the effects of the transaction ended when the MP transferees entered UP yard service and that the exercise of road seniority thereafter by the MP transferees, including the effects of bumping upon less senior road employees, resulted from the application of UP agreements and not from the consolidation of the Omaha-Council Bluffs Terminal.

We are persuaded on the record before us that the Carrier has the superior position.

When the MP employees transferred to the UP yard they became subject to the UP agreements, including the Dual Rights Agreement which held the MP transferees in yard service for over thirty days and effectively precluded them from filling any of the vacancies created by the twelve additional separation allowances. Any adverse effect from the exercise of seniority by the MP transferees to UP road positions was the result of the application of UP agreements and not as a result of the consolidation



of the Omaha-Council Bluffs terminal. It is true, as the Organization urges, that but for the transaction one MP transferee would not have been in a position to exercise seniority to a road position which resulted in Claimant's displacement. However, we believe the Carrier's argument is well taken that, carried to its logical conclusion, the Organization's position would of necessity mean that any exercise of seniority by an MP transferee at any time in the future would result in the Carrier being liable for protection for anyone bumped or furloughed. We read nothing in the New York Dock Conditions which would persuade us that they were intended to be applied in such broad fashion.


In the final analysis we must conclude that the Organization has not met its burden of proof under Article I, Section 11(e) of the New York Dock Conditions. Accordingly, the claim must fail.

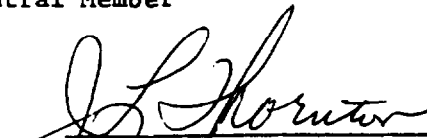
AWARD

Claim denied.

The Carrier's Question at Issue is answered in the negative.

  
William E. Fredenberger, Jr.  
Chairman and Neutral Member

  
W. E. Naro  
Carrier Member

  
J. L. Thornton  
Employee Member

DATED: *June 24, 1986*