

IN THE MATTER OF ARBITRATION  
  
between  
  
MAINE CENTRAL RAILROAD COMPANY  
DELAWARE AND HUDSON RAILWAY COMPANY  
  
and  
  
BROTHERHOOD RAILWAY CARMEN OF THE  
UNITED STATES AND CANADA  
  
Case No. 3

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)  
) Pursuant to Section 4(a) of  
) New York Dock Railway-Contro  
) Brooklyn Eastern District  
) 369 ICC 60 (1979)  
)  
) ICC Finance Docket No. 29772  
)

HEARING HELD AT BOSTON, MASS., January 8, 1987

HERBERT L. MARX, JR.  
Referee

APPEARANCES

For the Organization:

William G. Fairchild, General Vice-President

Earl D. Jones, General Chairman

For the Carrier:

Byron E. Ricke, Jr., Vice-President, Human Resources  
Guilford Transportation Industries Companies

Daniel J. Kozak, Assistant Vice-President, Labor Relations  
Guilford Transportation Industries Companies

## I S S U E

What shall be the Implementing Agreement between the parties in reference to the Carrier's proposed transfer of start-to-finish painting of locomotives and cars from the Maine Central Railroad Company (MeC) shop at Waterville, Maine to the Delaware and Hudson Railway Company (D&H) shop at Oneonta, New York?

## F I N D I N G S

On October 3, 1986, Carrier sent written notice to the Organization of its intent to transfer start-to-finish painting of locomotives and cars from its MeC Waterville shop to the D&H shop at Oneonta. In such notice, the Carrier proposed to establish at Oneonta one Painter position to be offered first to an employee on the Waterville Carman D roster. The notice was pursuant to conditions imposed by New York Dock-Railway-Control-Brooklyn Eastern District, 360 ICC 60 (1979) ("New York Dock") in Interstate Commerce Commission Finance Docket No. 29772.

Thereafter, the parties conferred as to the conditions covering such transfer and eventually exchanged drafts of proposed Implementing Agreements. While most of the language of such agreements were agreed upon, several significant issues remain unresolved. The matter was then referred to final resolution by the Referee as provided in Section 4 of New York Dock.

The parties are divided on the following issues:

1. The number of Painter positions to be transferred to Oneonta.
2. Whether Painters or Painter Helpers accepting assignment at Oneonta shall be considered "displaced employees" under Section 5 of New York Dock. Likewise, whether the number of D&H active Painters and Painter Helpers equal to the number of employees transferring to Oneonta shall be considered "displaced employees".
3. The point at which furloughed Painters and Painter Helpers holding seniority as such on the Colonie, New York locomotive Painters roster shall be included in the list of those being offered positions at Oneonta.
4. Whether Painters and Painter Helpers holding assignments as such in March 1986 shall be restored to service prior to establishing new Painter positions at Oneonta.

The first two issues set forth above are closely similar to those covered in the Award in Cases No. 1 and 2, the reasoning of which is incorporated here by reference. As with the car repair employees covered by Case Nos. 1 and 2, the Referee finds that the number of employees required is a matter for Carrier determination and it is beyond the jurisdiction of the Referee under Section 4 of New York Dock.

Likewise, as found in Case Nos. 1 and 2, the determination of "displaced employee" status is not a matter of speculation but depends on an employee's actual situation as defined by Sections 1(b) and 5 of New York Dock. It would be premature

to make such determination in the Implementing Agreement.

The Carrier and the Organization differ as to the order in which groups of employees shall be offered the new Painter position. The parties agree that the bulletined position shall first be offered to employees on the Waterville Carman D roster, then to employees on the Waterville Carman B roster, and then to D&H employees on the Oneonta Painter and Painter Helpers rosters. Thereafter, the Organization proposes that the position be offered to Painter and Painter Helpers holding seniority as such on the Colonie locomotive Painters roster and then to D&H employees on the Oneonta Carmen's roster. The Carrier would reverse the order of the last two groups.

The Carrier argues that Painters at the D&H shop at Colonie had, in a previous transaction, been offered the opportunity to transfer to Waterville and declined to do so. Because of such declination, the Carrier argues that Oneonta Carmen, who have made no such previous refusal, should have priority. The Organization disagrees, pointing out that locomotive painting work is now being transferred back to the D&H and that the Painters at the D&H shop at Colonie should have the opportunity for the work, regardless of their previous posture as to a transfer to Waterville.


In this instance, the Referee will follow the reasoning of the Organization in its determination of seniority preference among the employees it represents. This will in no way impede the performance of the work established by the Carrier.

As to the restoration of Painters and Painter Helpers to service prior to the transfer from Waterville, this is similar to a proposal for Carmen covered in Case Nos. 1 and 2, and the same finding is made here.

The attached Implementing Agreement is made part of this Award and constitutes the Referee's determination under Section 4 of the New York Dock conditions as to the appropriate basis for selection and rearrangement of forces pursuant to the notice of transaction which gave rise to this proceeding.

A W A R D

The parties are directed to execute the attached Implementing Agreement promptly.

  
HERBERT L. MARX, JR., Referee

DATED: January 26, 1987

IMPLEMENTING AGREEMENT  
BETWEEN  
DELAWARE AND HUDSON RAILWAY COMPANY  
MAINE CENTRAL RAILROAD COMPANY  
AND  
BROTHERHOOD RAILWAY CARMEN OF THE U.S. AND CANADA

WHEREAS, this transaction is made pursuant to Interstate Commerce Commission Decision in Finance Docket No. 29772, and

WHEREAS, the Delaware and Hudson Railway Company and the Maine Central Railroad Company, hereinafter designated respectively as "D&H" and "MeC," gave notice on October 3, 1986 in accordance with Article I, Section 4(a) of the conditions for the protection of employees enunciated in New York Dock Railway-Control-Brooklyn Eastern District, 360 ICC 60 (1979), hereinafter designated as "New York Dock Conditions," of the intent of the D&H and MeC to transfer start-to-finish car and locomotive paint work from the MeC back shop in Waterville, Maine to the D&H shop located at Oneonta, New York.

NOW, THEREFORE, it is determined:

1. The labor protective conditions as set forth in the New York Dock Conditions which, by reference hereto, are incorporated herein and made a part hereof, shall be applicable to this transaction.

2. As a result of this transaction, all car and locomotive start-to-finish paint work at Waterville shop will be transferred to and consolidated at the D&H shop in Oneonta, New York. Oneonta shop will perform joint Boston and Maine, D&H and MeC operations. Waterville paint shop will be closed.
3. On or about February 9, 1987 one (1) painter position will be established at Oneonta shop to handle car painting. Ten (10) days prior to this date this position will be bulletined at Waterville and will accrue in seniority order to employees on the Waterville Carman D roster. If a Waterville employee on the Carman D roster fails to bid on said position, this position will be offered to employees on the Waterville Carman B roster. If an employee on the Waterville Carman B roster fails to bid on said position, this position will be offered to D&H employees on the Oneonta painter and painter helper rosters, and then if the position remains unfilled, to furloughed painters and painter helpers holding seniority as such on the Colonie, New York locomotive painters rosters. If the position still remains unfilled, such position will be offered to D&H employees on the Oneonta carman roster. If this position still remains unfilled, it will be filled by a new hire.

4. Future car painting positions to be filled at Oneonta will be first offered in seniority order to employees on a combined seniority roster composed of furloughed employees on the Waterville Carman D and B seniority rosters and Oneonta painters and painter helpers seniority rosters who were in furlough status on the date of this transaction. When locomotive painting commences said position(s) will be offered initially to employees on the combined seniority roster of furloughed employees who did not have an opportunity to bid on an available position at Oneonta. If future positions remain unfilled after complying with the previous sentence, they then will be filled according to applicable schedule rules of the Brotherhood Railway Carmen of the U.S. and Canada agreement with the D&H.
5. Employees electing to transfer to Oneonta will become D&H employees and work under the terms and conditions of the applicable working agreement between the Brotherhood Railway Carmen of the U.S. and Canada and the D&H. MaC employees transferring to Oneonta will have their respective seniority date dovetailed into the D&H seniority roster at Oneonta, New York. MaC employees who transfer to Oneonta will retain seniority on any MaC seniority roster on which they hold seniority, will retain service rights existing at the



time of transaction, and will be given one opportunity to return to any MeC roster on which they hold seniority rights. In the event MeC employees change their residence and claim moving expenses under Section 7 of this agreement, the Carrier will not again compensate such employees for moving expenses involving exercise of seniority under the schedule agreement except as specified in Section 9 of the New York Dock Conditions where an employee is furloughed within three (3) years after changing his point of employment as a result of a transaction and elects to move his place of residence back to his original point of employment.

6. Employees rostered at the time of transaction returning from authorized leaves of absence, returning to service from suspension/dismissal, or management officials returning to agreement positions will have ten (10) calendar days from the date of return to exercise any rights he would have had if he had been working at the time of the transaction to obtain any of the newly established painter or painter helper positions at Oneonta, New York.
7. Employees who change their residence as a result of this transaction will be afforded moving benefits provided by the New York Dock Labor Protective

Conditions in Section 9 and 12. In addition, the Carrier will provide the employee five (5) days under pay for the purpose of moving himself and members of his family and to secure a place of residence in his new location. This provision is in lieu of any such provision in the New York Dock Conditions. The Carrier will also provide to each employee who changes his residence a sum of \$800.00 for such costs as telephone, water and electrical hookups, appliance installation, cleaning and other such miscellaneous costs related to moving to the new location.

For the purpose of application of the above, it is understood that the benefits of Section 9 and 12 of the New York Dock Conditions and other moving benefits detailed above apply only in those cases where an employee actually moves his residence to a location closer to Oneonta than his former residence.

Employees will be granted the option of electing a flat \$2,800 in lieu of all moving and real estate provisions contained in this Section 7.

8. In the application of the seniority rights of those employees who will be in a furlough status as of the effective date of this agreement and whose dovetailed seniority will be greater than junior employees who

hold a regular assignment at that time it is understood that such employees will not be subject to recall to service until such time as a permanent position becomes vacant which is not filled by an employee in service holding a regular assignment as of the effective date of this agreement. Upon assignment to a permanent position and thereafter such employees exercise of seniority rights shall be governed by the applicable provisions of the schedule agreement between Delaware & Hudson Railway Company and BRC of US&C.

9. This agreement will become effective upon ten (10) calendar days advance written notification to the General Chairman by the Carrier.