

ARBITRATION ESTABLISHED UNDER ARTICLE 1, SECTION 4
OF THE NEW YORK DOCK CONDITIONS

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In the matter of arbitration between: *

International Association of Machinists and *

Aerospace Workers (District 22) *

-and- *

Guilford Transportation Industries *

(Boston & Maine Corporation) *

(Delaware & Hudson Railway Company) *

(Maine Central Railroad Company) *

Case No. 5 (Transfer of wheel machine work from *

Colonie to East Deerfield) *

* * * * *

APPEARANCES

For the International Association of Machinists and
Aerospace Workers (District 22):

W. F. Mitchell - General Chairman (B&M/McC)

W. D. Snell - Asst. President/Directing General
Chairman (D&H)

For Guilford Transportation Industries:

D. J. Kozak - Asst. Vice President - Labor Relations

BACKGROUND

In 1981, Guilford Transportation Industries (hereinafter referred to as Guilford) acquired control of the Maine Central Railroad Company (hereinafter referred to as the Maine Central). On June 30, 1983, Guilford acquired control of the Boston & Maine Corporation (hereinafter referred to as Boston & Maine or the B & M). In Finance Docket No. 29720, the Interstate Commerce Commission (hereinafter referred to

as the ICC) imposed the labor protective conditions set forth in NEW YORK DOCK RY.- CONTROL-BROOKLYN EASTERN DISTRICT, 360 ICC 60, (1979) (hereinafter referred to as the New York Dock Conditions) on this acquisition. Guilford subsequently acquired the Delaware & Hudson Railway Company (hereinafter referred to as the Delaware & Hudson or the D & H) in January of 1984. The ICC imposed the New York Dock labor protective conditions on this acquisition also.

On May 10, 1984, the International Association of Machinists and Aerospace Workers (District 22) (hereinafter referred to as the Organization) served identical notices, pursuant to Section 6 of the Railway Labor Act, on the Boston & Maine; the Delaware & Hudson; and the Maine Central. The Organization requested these respective carriers to negotiate certain employee protection arrangements, including a Master Implementing Agreement, with it which would govern prospective New York Dock transactions which may affect Machinists on these properties. These three carriers subsequently served notice on the Organization pursuant to Article I, Section 4, of the New York Dock Conditions.

The facts evidence that on February 28, 1986, the Guilford Carriers served notice pursuant to Section 4 of New York Dock that all locomotive wheel machine work would be transferred from the D & H shop located in Colonie, New York to a facility to be constructed on B & M property located in E. Deerfield, Massachusetts. Guilford met with the Organization in an attempt to negotiate an Implementing Agreement in accordance with Section 4 of the New York Dock

Conditions. However, a final agreement could not be reached.

Consequently, arbitration under Section 4 was invoked.

The parties agreed to submit this dispute to the undersigned Referee pursuant to Section 4. Hearings were held before the Referee on November 6, 1986. Guilford and the Organization appeared at that hearing and proffered extensive evidence and arguments in support of their respective positions. Based on the evidence and arguments advanced by these parties, this Referee renders the following decision.

FINDINGS AND OPINION

On October 9, 1986, Guilford forwarded the Organization a final proposed Implementing Agreement under Section 4 of the New York Dock Conditions. That proposed Agreement did not contain any provision which allowed employees to refuse to transfer with available work and still be considered "dismissed employees." The Organization rejected the agreement since it did not include such a provision. The Organization maintains that the Machinists employed at the Colonie shops do not hold seniority rights on any other carrier. And even if they did hold such rights, the Organization claims that in order to exercise these rights, the Machinists would be required to change their respective residences since Colonie, New York, is more than thirty (30) miles from E. Deerfield, Massachusetts. Consequently, the Organization requests that the Implementing Agreement arbitrated in this proceeding contain provisions allowing a dismissal allowance, or a separation allowance in lieu

thereof, for those Machinists at Colonie who do not stand for a position which does not require a change of residence.

In Case No. 1 (Transfer of wheel shop work from Oneonta and Waterville to Billerica) between these same parties, the precise issue involved in this dispute was addressed by this Referee. This Referee ruled that employees who refuse to transfer with available work are not considered "dismissed employees" and therefore are not entitled to either a "dismissal allowance" or a "separation allowance" under the New York Dock Conditions. Accordingly, the findings in Case No. 1 are incorporated by reference herein. The Machinists at Colonie whose work is being transferred to E. Deerfield, Massachusetts are not entitled to the protective benefits of New York Dock if they refuse to transfer with their available work.

At the hearing held on November 6, 1986, the parties agreed to delete from the Implementing Agreement proposed by Guilford on October 9, 1986, any reference to the July 1, 1968 Norfolk & Western Inclusion (DERECO) agreement. That change is acceptable to this Referee.

In its proposed Implementing Agreement, Guilford suggested that it is willing to provide a full ninety (90) day advance notice prior to the actual transfer of Colonie wheel machine work to East Deerfield. This Referee considers this a reasonable proposal inasmuch as the B & M facility where wheel machine work will be performed at East Deerfield has not been completed. In the light of all the foregoing,

subject to deletion of paragraph 3 thereof, this Referee is of the opinion that the Implementing Agreement proposed by Guilford on October 9, 1986, constitutes a fair and equitable arrangement for resolving the transfer of locomotive wheel machine work from Colonie to East Deerfield. It shall therefore be the arbitrated Implementing Agreement governing this transaction. That Implementing Agreement is appended hereto and incorporated into this Award.

Robert M. O'Brien
Robert M. O'Brien, Referee

Boston, Mass.
February 2, 1987

October 9, 1986

Mr. W. D. Snell, Asst. President/
Directing General Chairman
Int'l Assn. of Machinists and
Aerospace Workers
2600 Dixwell Avenue
Hamden, CT 06514

Mr. W. F. Mitchell, General Chairman
Int'l Assn. of Machinists and
Aerospace Workers
50 Temple Street
North Haven, CT 06473

RE: Transfer of Wheel Machine Work from Colonie to
East Deerfield

Gentlemen:

Attached please find a copy of a proposed implementing agreement pertaining to the transfer of wheel machine work from Colonie to East Deerfield.

This agreement is patterned after other proposed New York Dock implementing agreements. The major difference pertains to Section 3. Since the two (2) incumbents holding the Colonie wheel machine positions are protected under the Norfolk and Western Inclusion (DERECO) Agreement, these employees have the right pursuant to Section 3 of New York Dock to waive their New York Dock benefits and elect a separation allowance under the DEREKO Agreement. Section 3 of the implementing agreement recognizes the pre-existing rights of the DEREKO protected employees to elect a separation allowance in lieu of transfer and the pre-existing right of the Carrier to permanently abolish on a one-for-one basis the number of positions equivalent to the number of employees who elect separation allowances.

The second point worth mentioning is Section 12 of the proposed implementing agreement. Since the transfer of the Colonie wheel machine work is contingent upon facility construction and the delivery of equipment at East Deerfield, the Carrier is unable at the present time to provide a firm date when the Colonie work will be transferred. In this regard the Carrier is willing to

grant a minimum ninety (90) day advance notice to the General Chairmen to activate this agreement.

Notwithstanding the fact that the parties have scheduled to arbitrate this case on November 6, 1986, the Carrier still desires to effectuate a negotiated agreement. Please review the attached proposal to determine if we can reach an agreement. If an agreement is not possible, it will be in our mutual best interests to clearly identify those issues that remain in contention and present these issues to Mr. O'Brien in arbitration.

Very truly yours,

A handwritten signature in cursive script, appearing to read "David J. Kozak".

D. J. KOZAK
Staff Officer-Labor Relations

Attachment

IMPLEMENTING AGREEMENT
BETWEEN
BOSTON AND MAINE CORPORATION
DELAWARE AND HUDSON RAILWAY COMPANY
AND
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS

WHEREAS, this transaction is made pursuant to Interstate Commerce Commission Decision in Finance Docket No. 29720 (Sub-No.1) and No. 29772 and,

WHEREAS, the Boston and Maine Corporation and the Delaware and Hudson Railway Company, hereinafter designated respectively as "B&M" and "D&H," gave notice on February 28, 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 B&M and D&H to transfer wheel machine work from the D&H shop at Colonie, New York to the B&M shop at East Deerfield, Massachusetts,

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. Wheel machine work will be transferred from the D&H shop located in Colonie, New York to the B&M shop located in East Deerfield, Massachusetts. East Deerfield will perform consolidated B&M and D&H work.
3. Not less than fifteen (15) calendar days prior to the date of the transaction two (2) Colonie wheel machine positions to be transferred will be bulletined at Colonie for a ten (10) calendar-day period. Said positions will accrue in seniority order to employees holding seniority on the Colonie machinists' roster. Copies of the bulletins will be sent U.S. Mail to those machinists who do not hold a regular assignment at Colonie on the date the bulletins are posted at the Colonie shop. On the effective date of the transaction the two (2) Colonie wheel machine positions will be abolished. At the end of the ten (10) calendar day period a determination will be made of the employees who have bid and who have been awarded the two (2) machinist position.

In the event the two (2) positions to be established at East Deerfield and bulletined at Colonie are not filled

as provided above, the remaining position will be assigned to active Colonie machinists in inverse order of seniority on a one for one basis. Such assignment shall be in writing to the employee and within five (5) days following receipt thereof the employee may elect one of the following options: (1) accept assigned positions in Oneonta, (2) exercise his seniority, (3) place himself on voluntary furlough with a suspension of all protection benefits under this agreement; (4) accept a separation allowance pursuant to the Norfolk and Western Inclusion (DERECO) Agreement if the incumbent of the position is protected thereunder. In the event the employee(s) elect option 4, this agreement recognizes the pre-existing right of the Carrier to permanently abolish on a one-for-one basis the number of positions equivalent to the number of employees who elected separation allowance.

4. The employee electing to transfer to East Deerfield will become a B&M employee and work under the terms and conditions of the applicable working agreement between the International Associations of Machinists and the B&M. The employee transferring to East Deerfield will have his D&H machinist seniority date dovetailed into the respective B&M seniority roster. The employee who transfers to East Deerfield will retain seniority on

any D&H seniority roster on which he holds seniority, will retain service rights existing at the time of transaction, and will be given one (1) opportunity to return to any D&H roster on which he holds seniority rights. When a permanent vacancy or permanent new position is created at his former work location the transferred employee will be notified in writing of the vacancy or new position. He will have ten (10) days from date of such notice to elect to return to his former location and forfeit seniority held on the roster at the location to which transferred or forfeit seniority at his former work location and retain the provisions of this agreement. In the event a D&H employee changes his residence and claims moving expenses under Section 7 of this agreement, the Carrier will not again compensate such employees for moving expenses for a voluntary transfer as a result of the exercise of retained D&H seniority rights to Colonie 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.

5. 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 retain any rights that they had prior to the time of coordination. No employee will be adversely affected as a result of a supervisory/management employee returning to a machinist position pursuant to this transaction.

6. If an insufficient number of D&H employees elect to follow the transferred positions to East Deerfield, the Carrier will offer said positions to furloughed and/or unassigned B&M employees on the B&M machinist seniority roster. If said position still remains unfilled, they will be offered to a new hire.
7. The moving and relocation provisions provided in Sections 9 and 12 of the "New York Dock Conditions" will be applicable to any employee who transfers to East Deerfield pursuant to this transaction. In addition to such benefits employees shall receive a transfer allowance of eight hundred dollars (\$800) and five (5) working days instead of the two working days provided by Section 9 of the New York Dock Conditions. In lieu of the benefits contained in this Section 7, employees may elect a flat cash payment of \$2,800.

8. A. The employee accepting the position at East Deerfield will be provided his average monthly compensation and average monthly hours determined according to the terms and conditions outlined in Section 4 of the New York Dock Conditions with copy provided to the General Chairman within sixty (60) days of the transaction.
- B. A "change of residence" is required and defined as when an employee accepts a position pursuant to this agreement which is located either (1) outside a radius of 30 miles of the employee's former work location or, (2) is located more than 30 normal highway route miles from his residence and also farther from his residence than was his former work location.
- C. Should an employee or his duly authorized representative notify the appropriate Carrier officer that the employee is entitled to the protective provisions of this agreement, the appropriate Carrier officer will respond to the claim as soon as practicable, but no later than sixty (60) calendar days following receipt of such notice. The employee will be furnished a statement showing length of his protected period, his

average monthly earnings and average monthly time paid for during the test period. If the Carrier does not respond within sixty (60) calendar days to the employee's notice, the employee will be deemed eligible for protective benefits up to the date the Carrier's decision is issued.

D. Copies of notices to employees relating to their protective benefits will be furnished to the General Chairman or his designated representative. Such notices are subject to correction of errors, if necessary. Failure to furnish such copy will not constitute failure to respond to the employee's request.

9. In order that the provisions of the first proviso set forth in Article I, Section 3, of the New York Dock Conditions may be properly administered, each protected employee who also is eligible for protective benefits and conditions under some other job security or other protective conditions or arrangements shall, within ten (10) calendar days of being advised by Carrier in writing of his protective benefits under the New York Dock conditions, elect between the benefits thereunder and similar benefits under such other arrangement. This election shall not serve to alter or affect any

application of the substantive provisions of Article I,
Section 3 of the New York Dock Conditions.

10. A. Each employee dismissed/displaced as a result of the herein described transaction shall provide the appropriate Carrier officer with the following information for the preceding month in which he is entitled to benefits no later than the fifteenth (15th) calendar day of each subsequent month on a standard form provided by the Carrier:

(1) The day(s) claimed by such employee under any unemployment insurance act.

(2) The day(s) each dismissed employee worked in other employment, the name and address of the employer and the gross earnings made by a "dismissed" employee in such other employment.

B. In the event an employee referred to in this Section 10 is entitled to unemployment benefits under applicable law but forfeits such unemployment benefits under any unemployment insurance law because of his or her failure to file for such unemployment benefits (unless prevented from doing

so by sickness or other unavoidable causes) such employee for purposes of the application of Sub-section (C) of Section 6, Article I, of the New York Dock Conditions, shall be considered the same as if he had filed for, and received, such unemployment benefits.

- C. If the employee referred to in this Section 10 has nothing to report under this Section 10 due to his not being entitled to benefits under any unemployment insurance law and having no earnings from any other employment, such employee shall submit, within the time period provided for in Sub-section (A) of this Section 10, on the appropriate form annotated, "Nothing to Report."
- D. The failure of any employee referred to in this Section 10 to provide the information required in this Section 10 shall result in the withholding of all protective benefits during the month covered pending Carrier's timely receipt of such information from the employee. In any event, the Carrier shall pay any protective benefits within thirty (30) calendar days after such information is received and verified by the Carrier.

E. Dismissal allowances paid to eligible employees will be subject to all lawful deductions such as Federal and State Income Tax, Railroad Retirement Tax, Union Dues and other applicable deductions.

11. This shall constitute the required agreement as stipulated in Article I, Section 4 of the protective conditions deriving from ICC Finance Docket No. 29720 (Sub-No.1) and No. 29772. This agreement shall not constitute a precedent or prejudice the position of the either the Carrier or the Organization signatory hereto in future transactions.

12. The provisions of this agreement shall become effective on or after ninety (90) days advance written notice by the Carrier to the General Chairmen signatory hereto. Bids under Section 3 of this agreement may be issued fifteen (15) days prior to the effective date of this agreement.

Date of this Agreement:

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS

BOSTON AND MAINE CORPORATION

W. D. SNELL, Asst. President/
Directing General Chairman-D&H

J. J. CRONIN
Senior Director-Labor Relations
DELAWARE AND HUDSON RAILWAY CO.

W. F. MITCHELL
General Chairman-MeC

J. T. DELANO
Asst. Director-Labor Relations

APPROVED:

D. J. KOZAK
Staff Officer-Labor Relations