ARBITRATION ESTABLISHED UNDER ARTICLE I, SECTION 11
OF THE NEW YORK DOCK CONDITIONS

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. 6 (Three Machinists at the Oneonta Wheel Shop who were offered positions at Binghampton, N.Y.)

ARBITRATION COMMITTEE

Robert M. O'Brien - Neutral Member
W. D. Snell - Organization Member
D. J. Kozak - Carrier Member

APPEARANCES

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

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

W. D. Snell - Assistant 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 the 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 also imposed the New York Dock labor protective conditions on this acquisition.

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. In serving these notices, the Organization was requesting these carriers to negotiate certain employee protection arrangements, including a Master Implementing Agreement, to govern prospective New York Dock transactions which may affect Machinists represented by it on these properties. On July 17, 1984, these three carriers served notice on the Organization pursuant to Article I, Section 4, of the New York Dock Conditions. The notice proposed to rearrange Guilford system wheel work so that all locomotive wheel work

would be performed at the Maine Central Shop located in Waterville, Maine; and all car wheel work would be performed at the B & M shop situated in North Bilerica, Massachusetts. This rearrangement would require two (2) D & H Machinist positions at the Oneonta, New York shop to be transferred to North Billerica, and one (1) Machinist position to be transferred to Waterville, Maine.

A dispute arose between the parties over whether Guilford had the right to consolidate its wheel work while Section 6 of the Railway Labor Act notices were pending. That dispute was eventually resolved by the Federal District Court in February, 1986. On July 28, 1986, the carriers modified their July 17, 1984, notice. Their new notice proposed to consolidate all locomotive and freight car wheel work into the B & M shops in North Billerica. The parties subsequently met on several occasions in an attempt to reach an Implementing Agreement pursuant to Article I, Section 4, of the New York Dock Conditions. They could not reach a mutually acceptable Implementing Agreement, however, and the arbitration provisons of Article I, Section 4, were thereby invoked in October, 1986.

The instant controversy involves a dispute under Article I, Section 11, of the New York Dock Conditions. The parties mutually agreed to submit this dispute to the aforementioned Arbitration Committee. It involves three (3) Machinists who were employed at the D & H shops located in Oneonta, New York, - Larry W. Potter; Edward G. Burns; and Randy E. Burns. Operations at the Oneonta wheel shop were suspended during

the course of the 1986 strike and associated secondary picketing against the Guilford Railroads by the Brotherhood of Maintenance of Way Employees. On May 16, 1986, an Executive Order was signed by President Reagan establishing an emergency board under Section 10 of the Railway Labor Act thus ending picketing activity against the Guilford Railroads. The Oneonta wheel shop was not reopened at that time. Certain of the work formerly performed at Oneonta was transferred to the B & M shop at North Billerica, Mass. and the three Oneonta wheel shop positions were not reestablished.

On July 2, 1986, Guilford had three (3) Machinist positions to fill at its engine house located in Binghampton, New York, approximately sixty (60) miles from Oneonta. Since there were no furloughed Machinists at Binghampton, Guilford offered these positions to Messrs. Potter, Burns and Burns. Mr. Potter accepted one of the positions, but Messrs. Burns and Burns (hereinafter referred to as the Claimants) declined the respective positions offered them. The Claimants were therefore furloughed.

On August 5, 1986, Guilford forwarded a proposed Implementing Agreement to the Organization which Agreement recognized that all of its wheel work was scheduled to be consolidated at the B & M shops in North Billerica. The three (3) Machinist positions at Oneonta were scheduled to be transferred to North Billerica. On September 9, 1986, the Organization filed claims on behalf of furloughed Machinists

Potter, Burns and Burns. The Organization requested that they be allowed the protective monies and benefits granted by the New York Dock Conditions, commencing May 17, 1986, the date on which they were furloughed. Guilford honored these claims for the period May 17, 1986 to July 11, 1986, the date on which bids closed for the Machinist positions at Binghampton which had been offered to Messrs. Potter, Burns and Burns.

Guilford recognized that the Claimants were "dismissed employees" as that term is defined in the New York Dock Conditions. However, it insisted that any protective benefits due them terminated on July 11, 1986, when they refused to accept comparable employment at Binghampton, New York. The Organization retorted that the Claimants did not have to accept employment at Binghampton since this would require a change in their place of residence. When Guilford disagreed, the Organization requested arbitration pursuant to Section 11 of the New York Dock Conditions. A hearing was held before this Arbitration Committee on November 6, 1986. Guilford and the Organization appeared at that hearing and proffered evidence and arguments in support of their respective positions. Based on the evidence and arguments presented at that hearing, this Arbitration Committee renders the following decision.

ORGANIZATION'S POSITION

It is the Organization's contention that Messrs. Burns and Burns were not offered comparable employment on July 11, 1986, inasmuch as Guilford did not even recognize them as

"dismissed employees" under Section 6 (d) of the New York Dock Conditions until September 17, 1986. And even if they were offered positions at Binghampton after Guilford recognized them as "dismissed employees," the Organization avers that Messrs. Burns and Burns had the right to decline those positions without forfeiting their New York Dock benefits since a move from Oneonta to Binghampton would require a change in their place of residence.

The Organization stresses that Section 6 (d) of New York Dock explicitly states that an offer of comparable employment can only affect an employee's dismissal allowance if it does not require a change in his place of residence. However, since Binghampton is located some sixty (60) miles from Oneonta, the Claimants would be required to change their place of residence had they accepted Guilford's offer, the Organization submits. The Organization therefore requests this Arbitrattion Committee to rule that the Claimants are entitled to full New York Dock benefits and to sustain the claims submitted on their behalf.

GUILFORD'S POSITION

Guilford contends that the positions offered the Claimants at Binghampton were comparable to the positions they held at Oneonta. They were qualified for the machinist positions; they were properly notified of them; and there were no furloughed machinists on the Binghampton roster. Consequently, the offer made to the Claimants did not infringe upon the employment rights of other employees at

Binghampton, according to Guilford.

Guilford further maintains that the Claimants would not be required to change their place of residence were they to accept the Machinist positions at Binghampton. According to Guilford, the distance between Oneonta and Binghampton is approximately sixty (60) highway miles. Moreover, two of the Claimants reside in Otego, New York, which is ten (10) miles closer to Binghampton. Guilford submits that it is reasonable to assume that they could commute to Binghampton in approximately one (1) hour. It asserts that it is not unusual for employees on the Delaware & Hudson to commute 50 or 60 miles to work each day.

For all the above reasons, Guilford respectfully requests the Arbitration Committee to deny the New York Dock claims submitted by the Claimants.

FINDINGS AND OPINION

The pivotal issue before this Arbitration Committee is a narrow one, namely, whether the Claimants were offered comparable positions at Binghampton which did not require a change in their place of residence. Section 6 (d) of the New York Dock Conditions is quite clear. It states, in pertinent part, that "[T]he dismissal allowance [under Section 6 (a)] shall cease prior to the expiration of the protective period in the event of the employee's ... failure without good cause to accept a comparable position which does not require a change in his place of residence for which he is qualified

and eligible ...." It is uncontroverted that the Claimants were qualified and eligible for the positions offered them and that they were properly notified of them. Thus, the central question to be decided is whether acceptance of the Machinist positions at Binghampton would have required a change in the Claimants' place of residence ?

This Arbitration Committee deems it noteworthy that in formulating the New York Dock Conditions, the ICC declined to establish a strict definition of the term "change of residence." Rather, the ICC believed that this determination was best left to negotiation and/or arbitration between the parties based on the particular facts surrounding each proceeding. In the light of the facts presented to this Arbitration Committee, we are inclined to agree with the Organization that were the Claimants to accept Machinist positions at Binghampton, this would require a change in their place of residence.

The Claimants, it should be observed, reside approximatley fifty (50) miles from Binghampton. They would thus be required to commute approximately 100 miles each workday. Assuming no delays caused by traffic conditions or by inclement weather, this would add two (2) hours to their regular workday. It is unreasonable to impose such a commute on the Claimants, in our considered judgment. That other employees of the Delaware & Hudson routinely commute comparable distances to work does not, by itself, render a 100 mile daily commute reasonable for all D & H employees. As explained by the ICC, the facts attendant each New York Dock

proceeding must be examined when deciding whether a dismissed employee is required to change his place of residence. This Arbitration Committee is of the firm opinion that the Claimants in this particular dispute would be required to change their respective residences were they to accept the Machinist positions offered them at Binghampton, New York. Accordingly, they were not required to accept these positions and therefore their dismissal allowances did not cease on July 11, 1986, when they declined to accept them.

However, it should be understood that the provisions set forth in the arbitrated Implementing Agreement issued in Case No. 1 may impact upon the Award rendered in this case to the extent that a refusal to accept a position offered at North Billerica pursuant to Case No. 1 would cause the dismissal allowance to cease.

AWARD

The positions offered Machinists Edward G. Burns and Randy E. Burns on July 11, 1986, would require them to change their respective places of residence. Consequently, their dismissal allowances did not cease when they declined the Machinist positions at Binghampton, New York. Their claims are therefore sustained.

Robert M. O'Brien - Neutral Member
Dated: 2/2/87

W. D. Snell - Organization Member
Dated:

D. J. Kozak - Carrier Member
Dated: