MAINE CENTRAL RAILROAD COMPANY BOSTON AND MAINE RAILROAD CORP. AND INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, (DISTRICT 22)	*	ARBITRATION ARTICLE 1 SECTION 4 OF NEW YORK DOCK CONDITIONS TRANSFER OF LOCOMOTIVE HEAVY REPAIR WORK CASE NO. 1 DATE OF AWARD: FEB. 16, 1987

On February 5, 1987 I held a hearing in Boston, Massachusetts to arbitrate the following dispute. Daniel J. Kozak, Assistant Vice President Labor Relations represented the Carrier. William D. Snell, Assistant President, represented the International Association of Machinists and Aerospace Workers.

THE ISSUES

The issues the parties agreed upon to be decided are as follows:

"1. Can an employee turn down an offered position that requires a change of residence and still be entitled to a dismissal or severance allowance?"

"2. Is the number of positions to be offered to employees subject to arbitration?"

THE FACTS

On October 3, 1986 the Carrier served notices pursuant to Section 4 of the New York Dock Labor Protections Conditions to transfer locomotive heavy repair operations formerly performed at the Maine Central Railroad Company shop at Waterville, Maine to the Boston and Maine Corporation shop at Billerica, Massachusetts. A conference was held between the parties on October 14, 1986. The parties were unable to agree upon an implementing agreement and on November 17, 1986 the matter was referred to arbitration. Despite subsequent negotiations the two issues listed above remained unresolved.

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DISCUSSION

ISSUE NO. 1

The first issue for resolution is whether once declining an offered position involving a change of residence, an employee would be entitled the benefits which would be tendered to one who was dismissed or severed without such alternative job offer.

The Union asserts that those who are offered other positions elsewhere are not required to accept them since it would require a change of residence; that they only have seniority at the location where currently working; and that when they decline such alternative locations they, in fact, lose their seniority and should be granted a dismissal allowance or a separation allowance.

The Carrier contends that such employees are not dismissed employees unless deprived of employment; and that those grievants offered positions elsewhere are retained in employment and thus are not entitled to such allowance.

The New York Dock Labor Protective Benefits provide that an employee may have to change his residence as a result of a transaction. The ICC recognized this in providing for moving expenses and for the loss of home benefits. Employees with such transfer options have their employment prospects protected.

If under those circumstances they decline the offer of positions at new locations, they do so voluntarily and exclude themselves from the protections prescribed by the New York Dock Conditions. In the circumstances of such offers of continued employment with available work they can not be considered as dismissed employees or entitled to either a dismissal allowance or a separation allowance.

ISSUE NO. 2

The second issue is the union's right to challenge in arbitration the number of positions offered by the Carrier to employees.

The Union seeks to have the number of offered positions correspond with the number of positions the Carrier earlier contemplated establishing.

The Carrier asserts that the earlier offer was made prior to a change in the economic health of the Maine Paper Industry, prior to the retrenchments that flowed therefrom, prior to the impact that such changes had upon Carrier's operation, and prior to the Brotherhood of Maintenance of Way Employees strike of 1986 and its adverse economic impact on the Carrier's operation and profitablity. It argues that the decision of Judge Carter in abolishing 725 positions on the three railroads as a result of the financial crisis caused by the strike is a controlling restriction on available positions. The Carrier concludes that setting the number of available positions at a consolidated facility is solely within the Carrier's prerogative and therefore is not arbitrable.

This issue has been considered in earlier arbitration decisions. In the decision of Special Board of Adjustment 570 under the September 25, 1964 National Shop Crafts Agreement, Referee Jacob Seidenberg held, on November 28, 1966, that:

> "On the record before it, the Special Board had no rational basis for determining that the Carrier's judgment is erroneous or faulty and that its actions in this case were arbitrary because it exercised in an unreasonable or capricious manner its managerial judgment of determining the number of machinists to be transferred."

Similarly in a New York Dock award involving the Brotherhood of Railway Carmen and the Baltimore and Ohio Railroad Company and the Louisville and Nashville Railroad Company, Referee William E. Fredenberger found on January 12, 1983 that:

> "The authority of the neutral acting under Article 1 Section 4 extends to the selection of forces to fill the two positions to be created at the South Louisville Shops, but it does not extend to review of the Carrier's decision to create such positions."

In the light of the foregoing decisions and others comparable to them, I find the Union's second claim to be without merit.

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AWARD

ISSUE 1. An employee who turns down an offered position is not entitled to a dismissal or severance allowance.

ISSUE 2. The number of positions to be offered to employees is not subject to review in arbitration.

Arnold M. Zack
Arbitrator

Dated: February 16, 1987

Boston, Massachusetts
Suffolk County