AWARD NO. 2
CASE NO. 2

ARBITRATION COMMITTEE
UNDER THE
NEW YORK DOCK EMPLOYEE PROTECTIVE CONDITIONS
(IMPOSED BY THE INTERSTATE COMMERCE COMMISSION
IN FINANCE DOCKET NO. 29430)

RAILROAD YARDMASTERS OF AMERICA	)	
	)	
vs.	)	FINDINGS AND AWARD
	)	
SOUTHERN RAILWAY COMPANY	)	

QUESTION AT ISSUE:

"Is Mr. P. B. Ingram entitled to the benefits of Section 9 of Article I under the New York Dock II Conditions relative to his move from Lynchburg, Virginia to Raleigh, North Carolina, in June of 1983?"

BACKGROUND:

As a condition of its approval of the coordination of operations on the Norfolk and Western Railway Company (the "NW") and Southern Railway Company (the "SR"), the Interstate Commerce Commission (the "ICC"), under Finance Docket No. 29430 (Sub - No. 1), decided March 19, 1982, imposed the labor protective provisions commonly known as the New York Dock II Conditions (New York Dock Ry. - Control - Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock), affirmed sub. nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979).

Representatives of NW and SR (the "Carrier") met on several occasions with representatives of the Railroad Yardmasters of America (the "Organization") in an attempt to negotiate an implementing agreement covering the coordination of operations at Lynchburg, Virginia, Winston-Salem, North Carolina, and Norfolk, Virginia. When their efforts failed to produce a mutually agreeable disposition of differences, the parties agreed to have the matter resolved through arbitration as provided in Article I, Section 4 of the New York Dock II Conditions.

In its presentation to the arbitration board, the Carrier, among other things, stated the following relative to creation of a new third shift Yardmaster position at Lynchburg, Virginia:

"[There] is no third shift operation at this time. After the coordination, NW's Kinney Yard will be closed, the two non-contract yardmaster positions will be abolished, and all work will be performed at Montview Yard in an SR controlled operation. It is anticipated

that a third shift RYA position will be added."

In giving recognition to such an intent, the arbitration board said the following in its award:

> "In the dispute at issue, Carrier has proposed that this division of work between RYA-represented yardmaster employees and non-represented, non-contract yardmaster employees be accomplished in a manner that would provide for the creation of one RYA-represented position at Lynchburg, and the abolishment of a like position at the Salem Yard in Winston-Salem. . . . ."

The coordination of facilities, operations and services was made effective on June 1, 1982.

On June 3, 1982, Carrier issued Bulletin No. G-53, advertising a Relief Yardmaster vacancy at Lynchburg, Virginia. The bulletin identified the position as a new position with assigned hours on both the second and third shifts.

The Claimant (Mr. P. B. Ingram) exercised his seniority right for the vacancy by bid dated June 4, 1982. At the time, as he had prior to the coordination of facilities between the NW and SR, Claimant was working as a Yard Foreman and Extra Yardmaster at Raleigh, North Carolina.

On June 8, 1982, by Bulletin No. G-56, the Claimant was awarded the advertised position at Lynchburg, Virginia as the senior bidder. He thereafter moved his place of residence some 120 miles from Raleigh, North Carolina to Lynchburg, Virginia at his own expense.

Three months later, effective after the end of tours of duty on September 9, 1982, the Carrier abolished both the regular third trick and the relief yardmaster positions at Lynchburg, Virginia. In this regard, the Carrier states the abolishments were related to the Carrier having determined that efficiency of operations called for the third shift yard engine to be moved to the first shift.

On November 27, 1982, Claimant submitted a Request for Entitlement to Benefits form to the Carrier, stating that he had been placed in a worse position or deprived of employment effective September 9, 1982 as a result of the merging of the Montview Yard and Kinney Yard at Lynchburg, Virginia. In this connection the Claimant stated:

> "I had been working Extra Yardmaster work in Raleigh, N.C. since 8/2/74 and id not stand for regular work as Yardmaster at Raleigh, N.C. On or about the last of May 1982 there was a bulletin for Regular Relief Yardmaster at Lynchburg, Va. On June 1, 1982 I went to Lynchburg to investigate and to train at my expense for this position. By investigation and the word of Trainmaster J. A. Giles assured me that the job would be permanent

and therefor I bid on same and was assigned. My expenses for June were $1327.15. Therefor everything look in order so I purchased home & moved to Lynchburg, VA on July 4, 1982. On September 9, 1982 job was abolished. I live in Lynchburg and only stand for extra work at Lynchburg or Raleigh, N.C. 135 miles away."

Although the question of whether or not Claimant was entitled to the protection claimed by submission of the above form is not before this Board, the Carrier submits that it denied the request of Claimant to be recognized as adversely affected.

There followed an exchange of correspondence between the Claimant and the Carrier. However, as concerns the instant claim, it is especially worthy of note that by letter to the Carrier dated April 26, 1983, Claimant, among other things, stated:

"In this situation at Lynchburg I feel that I have been delt a great injustice by Southern Railway and do not like to have to handle this in this way, but have been left no other choice.

The move to Lynchburg was made of my own choice as my contract and I am willing to except this, but there are claims pending now concerning the operation at Lynchburg where the only job eliminated was 3rd shift Yardmaster. There is a 3rd shift clerk and 3rd shift carinspector; trains setting off and picking up and #126 and #127 passing thru Yard at these times with no other Yardmaster or Supervisors on duty.

Mr. Mallard in your department and Mr. J. L. Roy, Yardmaster's of America are handleing this grievance pending the outcome of these claims. I feel I have no other recourse but to return to Raleigh, N.C. which under all this situation of trying to perform a service to our company. I feel if nothing else Southern should compensate me to get back to Raleigh, N.C.

Southern Railway proposed to establish a 3rd shift Yardmaster at Lynchburg in their merger proposal with the Norfolk and Western and did so establish It being the first regular assigned Yardmaster job on the Eastern Division that I stood for, I excepted it and as all records will show that I was prepared to except the expense in doing so but having worked this job for a period of 93 days and then left me hanging. I feel that I was affected by this merger and the least the Southern Railway could do to correct this injustice is to relocate me back to where I was to begin with." (Copied as Written)

Subsequently, on June 7, 1983, Claimant addressed the following letter to several Carrier officials and the Organization:

"It having been one year since being assigned to

Yardmasters job at Lynchburg Va. and job beinging cut off on Sept. 9, 1982 having not been called to preform work at Lynchburg, Va. in the year of 1983 I am as of this date relocating back to Raleigh, N.C.

Please note change of address." (Copied as Written)

Shortly thereafter, on June 15, 1983, Claimant submitted to the Carrier an itemized statement of expenses which he said he had incurred in relocating to Raleigh, North Carolina. Claimant indicated the "Total Cost to Date" of June 14, 1983 was $1,508.90, "Plus Phone calls 4/27/83 until House Sold = . . ." In a letter accompanying the statement, the Claimant said:

"Enclosed are itemized statement of Expenses in the Amount of $1508.90 incurred by me in relocating to Raleigh, N.C.

This expense is found to be covered by Southern Railway And N.W. Railway Proposal to Merge and the Implementing Agreement to Merge and the New York Dock Agreement.

Please refer to my correspondence of: 11/27/82, 2/1/83, 4/2/83, 4/26/83, 5/7/83, and yours 4/8/83 and 5/4/83."

On July 28, 1983 Carrier's Director of Labor Relations addressed the following response to Claimant:

"I have your letter of June 15, 1983, addressed to Mr. R. R. Hawkins, wherein you claim expenses in the amount of $1,508.90 for your relocating back to Raleigh, North Carolina.

The Carrier has explained to you and the Organization, particularly in Mr. Hawkins letter of April 8, 1983 to you and in Mr. Mills' later letter to the general chairman, that you have failed to follow the prescribed grievance process for submitting claims for compensation. In this instance, you have again submitted claims for protective benefit compensation directly to the Labor Relations Department rather than initiating your claim at the first level of supervision.

For the above reason, your claim is invalid. And, it is further without merit for reasons which you were advised of earlier in the record. Therefore, this claim for protective benefit compensation, as all your claims relative to this matter, are declined."

The instant dispute was thereafter handled in conference between the Carrier and the Organization and progressed to this Board by agreement of the parties.

POSITION OF THE CARRIER:

It is the position of the Carrier that Claimant's request to be afforded benefit of moving expenses as provided under Section 9 of Article I of the New York Dock Conditions is without merit. It says that Claimant was not affected by any action taken by the Carrier "pursuant to" to the consolidation as approved by the ICC and that neither Claimant nor the RYA have shown any specific information that would link Claimant to the coordination which took place on June 1, 1982.

The Carrier argues that Section 9 benefits are specifically limited to employees who are entitled to receive a "dismissal" allowance and that Claimant neither meets the criteria of such an employee or, in the alternative, the definition of a "displaced" employee as those terms are described in the New York Dock Conditions.

In this regard, the Carrier states that the touchstone for determining whether an employee qualifies for either a displacement or dismissal allowance, is whether such employee is adversely affected as to compensation due to the loss of employment, or from being involved in a chain of displacements that resulted form the transaction. However, the Carrier says, in the instant case Claimant neither lost a regular job, nor was he involved in a chain of displacements that resulted from the transaction nor was he required to change his point of employment as a result of the transaction.

Thus, the Carrier urges that the situation Claimant found himself in did not flow from a transaction, but rather from an exercise of seniority initiated solely by the Claimant himself to a position that was created subsequent to the ICC granting the NW and SR the authority to coordinate facilities, services and operations.

The Carrier also directs specific attention to Claimant's letter dated April 26, 1983, supra, whereby, it submits, the Claimant admitted that his move to Lynchburg was of his own volition in an exercise of seniority, not because of the consolidation; and, he could have remained at Raleigh, North Carolina to work as a Yard Foreman and Extra Yardmaster. Further, the Carrier says that Claimant relocated his residence back to Raleigh again of his own choosing, and not by reason of any directive from the Carrier.

The Carrier says that the factors which caused Claimant's position of Relief Yardmaster at Lynchburg, Virginia to be abolished some three months after the consolidation is outside the umbrella of protection afforded by the ICC. It says: "[The] authors of this and other protective arrangements never intended for them to be used to afford absolute and complete financial protection to any railroad employee who might in some way be tangentially affected by a merger, consolidation, etc."

POSITION OF THE ORGANIZATION:

It is the Organization's position that since the positions at Lynchburg were clearly established as a result of the merger or coordination of facilities between the NW and SR that it must be presumed that Claimant had relocated from Raleigh, North Carolina to work one of the newly created positions as a result of a "transaction".

The Organization, therefore, says: "[Since] Mr. Ingram clearly moved his residence as a result of a 'transaction' and since Carrier furloughed him, Mr. Ingram elected to move his place of residence back to his original point, Raleigh, N.C., of employment."

In this regard, the Organization urges that the provisions of Section 9, Article I of the New York Dock Conditions "amicably provide the vehicle for restitution to Mr. Ingram when moving back to their original place of employment when furloughed from a position created by a 'transaction.'"

Article I, Section 9, of the New York Dock Conditions reads:

> "Moving expenses. - Any employee retained in the service of the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the transaction, and who within his protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects [,] for the traveling expenses of himself and members of his family, including living expenses for himself and his family and for his own actual wage loss, not [to] exceed 3 working days, the exact extent of the responsibility of the railroad during the time necessary for such transfer and for reasonable time thereafter and the ways and means of transportation to be agreed upon in advance by the railroad and the affected employee or his representatives; provided, however, that changes in place of residence which are not a result of the transaction, shall not be considered to be within the purview of this section; provided further, that the railroad shall, to the same extent provided above, assume the expenses, et cetera, for any employee furloughed with three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provision[s] of this section unless such claim is presented to the railroad with[in] 90 days after the date on which the expenses were incurred."

FINDINGS AND OPINION OF THE BOARD:

There is no question that the position of third shift Yardmaster at Lynchburg, Virginia was established as the result of the coordination of facilities, services and operations between the NW and the SR as approved by the ICC in Finance Docket No. 29430 on March 19, 1982, and further provided for by award of an arbitration award in disposition of a dispute related to an implementing agreement with respect to the coordination.

It is also clearly evident that by reason of seniority accorded Claimant under applicable agreement rules, that he had the right to bid for and be awarded the position of Relief Yardmaster at Lynchburg, Virginia.

However, that the position in question was created pursuant to a coordination, or that Claimant had a right to exercise seniority to the position at Lynchburg, Virginia, may not be said to have necessarily established Claimant as having a right to be treated as a protected employee under the New York Dock Conditions.

At the time of the coordination, Claimant had dual seniority and was working at Raleigh, North Carolina as both a Yard Foreman and a Relief Yardmaster. The positions he occupied or worked were not shown to have been affected by the coordination in either a direct or indirect manner. Further, there is no probative showing of record that Claimant was deprived of an opportunity to have continued that same employment relationship as a consequence of the coordination. Rather, the record reveals that of his own volition, Claimant decided to change the past or then existing working relationship at Raleigh by exercising seniority to the Relief Yardmaster position at Lynchburg, Virginia, and, admittedly of his own choosing, to move his place of residence from Raleigh to Lynchburg.

Therefore, that Claimant found himself at Lynchburg when the Carrier abolished the Relief Yardmaster position at such location may not be held to have been a circumstance created as a result of the coordination or by reason of the Carrier having forced him to a position at Lynchburg.

Just as the Carrier was not obliged to have reimbursed Claimant for the movement of his residence from Raleigh to Lynchburg in the first instance, it was not obligated to reimburse Claimant for relocation expenses in moving back to Raleigh.

Since Claimant was not "required," in pursuance of Section 9 of Article I of the New York Dock Conditions, supra, to change the point of his employment as a result of the transaction, it must be concluded that he is not entitled to subsequent reimbursement for expenses of moving his household and other personal effects back to his original point of employment, as requested of the Carrier in Claimant's letter of June 15, 1983. As Section 9 states: "[Changes] in place of residence which are not a result of the transaction, shall not be considered to be within the pur-

view of this section."

Under the circumstances of record, the Question at Issue must be answered in the negative.

AWARD:

The Question at Issue is answered in the negative. Mr. P. B. Ingram is not entitled to the benefits of Section 9 of Article I under the New York Dock II Conditions relative to his move from Lynchburg, Virginia to Raleigh, North Carolina, in June of 1983.

Robert E. Peterson, Chairman
and Neutral Member

K. J. O'Brien
Carrier Member

J. L. Roy
Organization Member

Atlanta, GA
May , 1987