IN THE MATTER OF ARBITRATION

between

AMERICAN TRAIN DISPATCHERS ASSOCIATION

and

BURLINGTON NORTHERN RAILROAD COMPANY

Pursuant to Article I, Sections 4 and 11, New York Dock Railway Control-Brooklyn Eastern District Terminal, 360 ICC 60 (1979)

ICC Finance Docket No. 30061

and

Article II, Section 1 of the Mediation Agreement of June 16, 1966

HEARING HELD AT NAPERVILLE, ILLINOIS, APRIL 6, 1987

POST-HEARING BRIEFS SUBMITTED APRIL 16, 1987

APPEARANCES

For the Organization:

Erick J. Genser, Esq.
Mulholland & Hickey

Marlin A. Swartz, Vice President

George J. Nixon, Jr., Director of Research

Kenneth Ray Chambless, Jr., General Chairman

For the Carrier:

Clyde Illg, Assistant Vice President

John M. Starkovich, Director, Labor Relations

C. J. Abrahamson, Assistant Director, Labor Relations

Gene L. Shire, Assistant Director, Labor Relations

F I N D I N G S

This dispute concerns the announced intention by the Burlington Northern Railraod Company ("Carrier" or "BN") of transferring train dispatching functions from its Fort Worth, Texas office to two other locations. Train Dispatchers at Fort Worth are covered under the scope of the former Fort Worth & Denver Railway ("FW&D") Train Dispatchers Agreement. Involved at Fort Worth are 18 Train Dispatcher positions, plus two positions on a Guaranteed Extra Board.

By letter dated December 26, 1986, the Carrier advised the American Train Dispatchers Association ("ATDA" or "Organization") of its intent to transfer Amarillo, Texas-Pueblo, Colorado train dispatching from Fort Worth to McCook, Nebraska. The Carrier served a similar notice on January 13, 1987 of its intention to transfer the balance of Fort Worth dispatching functions from Fort Worth to Springfield, Missouri. The Carrier announced its intention to establish seven positions at McCook and 15 positions at Springfield.

A threshold controversy arose between the parties as to whether conditions governing such transfer fall under the Mediation Agreement of June 16, 1966 (the "1966 Agreement"), as contended by the Carrier, or under the so-called New York Dock Conditions, as provided by ICC Finance Docket No. 30061, concerning the merger of FW&D into BN, treated by the ICC as an "Exemption", as argued by the ATDA.

Whichever of these two protective conditions apply, BN and the ATDA are also in dispute as to the terms of appropriate implementing agreements covering the transfers to McCook and Springfield, with particular reference (among other issues) to the rights of employees who may elect to take other positions at Fort Worth, rather than transfer to McCook or Springfield.

Jurisdiction for the resolution of disputes under the 1966 Agreement rests with an "Arbitration Board", as specified in Article II, Section 1; such jurisdiction under New York Dock rests with an "Arbitration Committee", as provided under Article I, Section 11 -- except as to formulation of an implementing agreement under Article I, Section 4, which is assigned to a referee.

As a procedural resolution, BN and the ATDA agreed that the undersigned neutral should serve, with Carrier and Organization members where appropriate, as both an Arbitration Board under the 1966 Agreement and as an Arbitration Committee under New York Dock, as well as the neutral referee, if required, to formulate an implementing agreement under New York Dock. For convenience only, and without regard to conclusions to be reached, the Findings will refer to the "Board".

While BN and the ATDA each suggested formulation of the issues to be resolved, the Board finds the following a fair statement of the disputes:

1. Are the transfer of positions from Fort Worth to McCook and Springfield governed by the conditions set forth in the 1966 Mediation Agreement or New York Dock?

2. In either case, what shall be the terms of appropriate implementing agreements?

3. If New York Dock applies, what protective benefits apply to a Train Dispatcher who elects to exercise his seniority in another craft at Fort Worth rather than accept a Train Dispatcher position at McCook or Springfield?.

Determination of Applicable Protective Agreement

In brief summary, the Carrier proposes to move certain Train Dispatcher positions from Fort Worth to McCook and to consolidate such positions with those at McCook. In slightly different fashion, the Carrier proposes to transfer the remainder of the Fort Worth positions to Springfield but without consolidating such positions with those already at Springfield. (The Carrier advised the Organization that such consolidation may follow, but such is not before the Board for consideration.)

There is no dispute that protective benefits apply to affected Fort Worth employees. The issue is whether the 1966 Agreement or New York Dock is applicable. Some background is required before evaluating the contesting claims of the parties.

Burlington Northern Railroad Company came into existence by dint of the so-called "Northern Lines Merger" in 1970 which merged the Great Northern Railway Co., the Northern Pacific Railway Company, the Chicago, Burlington & Quincy Railway Company (the "CB&Q") and others. At some subsequent time, BN and the ATDA agreed to an overall "Northern Lines" schedule agreement.

McCook is a location covered under such agreement.

The St. Louis-San Francisco Railway Company ("SL-SF") was merged into the BN around 1980, with the Interstate Commerce Commission imposing New York Dock coverage for employee protection. A separate schedule agreement is maintained by BN and the ATDA for former SL-SF Train Dispatchers.

The Fort Worth & Denver Railway Company was a subsidiary of a subsidiary of the CB&Q (one of the BN Northern Lines components). In 1982, BN obtained ICC approval for merger of the FW&D into BN, but on an "exemption" basis. Nevertheless, the ICC imposed New York Dock protective conditions as indicated in the Notice of Exemption in Finance Docket No. 30061, which reads in pertinent part as follows:

> This is a transaction within a corporate family and will not result in adverse changes in service levels, significant operational changes or a change in the competitive balance with carriers outside the corporate family. Therefore, the proposed transaction is the type specifically exempted from the necessity for prior review and approval. See 49 C.F.R. 1180.2(d)(3) [formerly 49 C.F.R. 1111.2(d)(3)].
>
> Although the parties indicate the existence of a prior merger protective agreement involving the Brotherhood of Locomotive Engineers dated January 16, 1980, which may protect employees affected by this transaction, as a condition to use of the exemption, any employee of the BN or FW&D affected by this transaction shall, as a minimum, be protected pursuant to New York Dock Ry.-Control-Brooklyn Eastern Dist., 360 I.C.C. 60 (1979). This will satisfy the statutory requirements of 49 U.S.C. 10505(g)(2).

As needs little review here, New York Dock provides protective conditions to employees adversely affected by a

"transaction", which is defined as "any action taken" by a Carrier pursuant to ICC authorizations "on which these provisions have been imposed".

The 1966 Agreement provides similar, but somewhat varying, employee protection. It provides in pertinent part as follows:

ARTICLE I - EMPLOYEE PROTECTION

Section 1 -

(a) The purpose of this agreement is to afford protective benefits for train dispatchers who are displaced or deprived of employment as a result of one or more of the changes in the operations of the carrier listed in Section 2 hereof. Subject to the provisions of this agreement the organization recognizes the right of the carrier to introduce technological, organizational and operational changes of the character listed in Section 2 hereof, and any schedule agreement rules which would prevent the carrier from making such change or changes are hereby superseded. . . .

(d) None of the provisions of this Agreement shall apply to any transactions subject to approval by the Interstate Commerce Commission or to any transactions covered by the Washington Job Protection Agreement of May 21, 1936.

Section 2 -

The protective benefits as specifically outlined below in Sections 5 to 11, inclusive, of this Article I, shall be applicable with respect to train dispatchers who are deprived of employment or placed in a worse position with respect to compensation and rules governing working conditions as a result of any of the following changes in the operations of a carrier party to this Agreement subject to the provisions hereafter set forth in Section 3 of this Article I:

(a) Train dispatching offices are consolidated;

(b) Train dispatching offices are moved from one point to another;

(c) Train dispatching districts or territories are combined or separated, in whole or in part;

(d) Train dispatcher territory is transferred from one train dispatching office to another, either permanently or temporarily;

(e) Technological changes, such as centralized traffic control, which have a direct effect on the dispatching of trains. . . .

ARTICLE III - EFFECT OF THIS AGREEMENT

This agreement is in settlement of the disputes growing out of the notices served on the carriers listed in Exhibits A, B and C on or about July 1, 1963 relating to "Employment Security" and out of proposals served by the individual railroads on organization representatives of the employees involved on or about July 15, 1963 relating to "Technological, Organizational and Other Changes" and "Employee Protection". This agreement shall be construed as a separate agreement by and on behalf of each of said carriers and its employees represented by the organization signatory hereto. . . .

Without further review of the details, there can be no doubt that the transfer, consolidation, movement and/or combination of "train dispatching offices" here proposed by the Carrier are of the character described in Article I, Section 2 of the 1966 Agreement and are covered thereby, provided all other conditions of the 1966 Agreement are met. One of these conditions is that as stated in Article I, Section 1(d), the 1966 Agreement is inapplicable to "any transactions subject to approval by the Interstate Commerce Commission". The Board must thus determine if, as argued by the Organization, the transfer of operations to McCook and Springfield are such "transactions" arising from the ICC Notice of Exemption in Finance Docket No. 30061 covering the merger of the FW&D into BN.

Aside from its argument that the 1966 Agreement is applicable, the Carrier argues that there cannot be found any direct

connection between the 1982 merger (providing for New York Dock benefits) and a proposed movement of dispatching operations five years later, which the Carrier characterizes as simply a "reorganization of regional boundaries". As the Organization has demonstrated in its submission, there is ample support for the view that a consequence of a transaction need not occur simultaneously or immediately following an ICC-sanctioned transaction. On the other hand, it has been repeatedly determined, in many other awards and interpretations, that there must be a "causal nexus" between the event and the transaction (as set forth in the frequently quoted Missouri Pacific-ATDA award, Neutral Nicholas Zumas, July 31, 1981). The Board finds here that there is such a direct connection, based principally on the following:

1. Prior and subsequent to the merger, FW&D Dispatchers were and are covered by a separate schedule agreement. The transfer and consolidation of forces is made possible by dint of the merger transaction (sharply contrasting with an individual Carrier's pre-existing rights under Article III of the 1966 Agreement).

2. The Carrier argues that the FW&D-BN transaction was simply a "paper merger" recognizing the continuation of existing operations and covered by the ICC on an "exemption" basis. Nevertheless, the ICC imposed New York Dock benefits. If, in fact, the merger was simply a change in corporate structure and no more, the provision for employee protection would be redundant. The ICC, however, determined otherwise.

3. Of some significance is an amendment to the 1966 Agreement on December 5, 1983 which, according to the Organization, related only to the Carrier's operations within the "Northern Lines" schedule agreement (which did not include FW&D). This amendment begins with the following statement:

> [NOTE: The purpose and intent of this agreement is to give the BN the right to consolidate offices or make other changes as provided in and under the auspices of the June 16, 1966 Agreement, instead of the Merger Protective Agreement. It is not the intent to effect other changes in contractual obligations by or for either party, except as herein agreed concerning improvements in the protective conditions of the June 16, 1966 Agreement.]

It is a reasonable inference that the parties involved therein employed this amendment to clarify and resolve the very point at issue here. The absence of such amendment covering FW&D is supportive of the Organization's view of the matter now before the Board.

The right of the Carrier to make the transfers and consolidation from Fort Worth to McCook and Springfield is not disputed. As set forth above, however, such right comes to the Carrier as a result of the FW&D-BN merger, to which the ICC afforded New York Dock protection for affected employees.

Rights of Employees Who Do Not Accept Transfer

Before approaching the question of appropriate terms of an implementing agreement under New York Dock, the Board will first review the question of protection of Fort Worth Train Dispatchers who may wish to exercise their seniority in another

class or craft at Fort Worth in a lower paid position, rather than transfer to McCook or Springfield. It is the Organization's view that employees may do so, while retaining New York Dock benefits as displaced employees. The Carrier reads the applicable provisions as barring protection for such employees.

Article I, Section 5 of New York Dock reads in pertinent part as follows:

> 5. Displacement allowances -- (a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced. . . .
>
> (b) If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position he elects to decline. . . .

The genesis of Section 5 (a) and (b) (as well as New York Dock in general) is acknowledged to be the Washington Job Protection Agreement of 1936, which contained the following comparable language in its Section 6(a):

> Section 6 (a). No employee of any of the carriers involved in a particular coordination who is continued in service shall, for a period not exceeding five years following the effective date of such coordination, be placed, as a result of such coordination, in a worse position with respect to compensation and rules governing working conditions than he occupied at the time of such coordination so long as he is unable in the normal exercise of his senioirty rights under existing agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination, except,

> however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline.

Note that in the WJPA the language of New York Dock Section 5(b) is subsumed in an "except however" phrase. Does the fact that the WJPA language in Section 6(a) has become two separate subsections of New York Dock change the meaning? A careful review of the two separated sections does not suggest that a significant change was intended.

At the outset of the discussion of this issue, it should be noted that the Board is concerned with a hypothetical question, rather than facts relating to a specific employee's situation. Since both the Carrier and the Organization seek the Board's guidance, however, such will be offered -- provided it is kept in mind that this must be a generalization, unaltered by unusual circumstances or fact situations which may later arise.

The bases for the resolution of the hypothetical question may be stated as follows:

1. There are sufficient Train Dispatcher positions available at McCook and Springfield to accommodate all Fort Worth Train Dispatchers.

2. There will be no positions remaining in Fort Worth under the ATDA working agreement.

3. Certain Train Dispatchers hold seniority under other agreements which would permit them to continue to be employed at Fort Worth, but presumably at lower compensation.

4. The Organization does not dispute that an employee who holds no other seniority at Fort Worth must accept transfer to McCook or Springfield or, if he does not do so, is without protection under New York Dock.

5. The Carrier does not dispute an employee's right to accept a position at Fort Worth outside the ATDA agreement, although contending (which the Organization disputes) that he would then not be entitled to New York Dock protection.

Read by itself, Section 5 (a) (and the equivalent language in the WJPA) is unambiguous. A reasonable paraphrase would be that an employee displaced from his position is entitled to New York protection as a "displaced employee" only if he cannot obtain -- "under existing agreements (emphasis added)" -- another position of at least equal compensation. Thus, if a Fort Worth Train Dispatcher did not have sufficient seniority to remain a Train Dispatcher at McCook or Springfield (not the case here), he would be obliged to exercise seniority, if any, in another class or craft before obtaining protection (as to the resulting difference in compensation). Alternately, as here, if he could obtain a position equal in compensation (i.e., at McCook or Springfield), he would be obliged to do so; failure to do so would forfeit protection under New York Dock.

Attention now turns to Section 5 (b). The Organization argues that this, in effect, modifies the requirement of Section 5 (a) by stating that maximization of compensation is only required without a change in residence. The Board finds no problem with this conclusion, with a significant and determinative exception. Section 5 (b) refers to a position "under the working agreement" (as does

the WJPA language). This is quite different from the reference to "existing agreements" under Section 5 (a) (and WJPA).

"Working agreement" can be interpreted to mean only the agreement between the Organization (ATDA) and the Carrier. Thus, the situation might well be different if other positions under the ATDA agreement remained available in Fort Worth. As indicated above, this is not the case here.

Thus, Section 5 (b) would be applicable here only if there were other positions available without change of residence under the ATDA agreement. Since there are not, Section 5 (b) is inoperable here. It must thus be concluded that employees who elect to exercise their seniority in Fort Worth under a different agreement do not obtain the protection provided by Section 5 (b) -- and they have obviously not met the requirement of Section 5 (a).

A review of the previous awards on this point submitted by both the Organization and the Carrier are not out of consonance with this conclusion. The Organization refers to WJPA Section 13 Committee Docket No. 58 (Bernstein), Order of Railroad Telegraphers and Norfolk and Western Railway Company. This states that an employee

> does not forfeit his protection if he declines to take a position requiring a change in residence but takes or retains an available position, even if it produces less compensation, which does not require a change in residence.

Note, however, that no mention is made as to whether the "available position" is within or outside the ORT-NW "working agreement".

Likewise, in Board of Arbitration No. 289 (Bernstein), BRAC and Erie Lackawanna Railroad Company, March 17, 1967, the right to remain protected without relocation is upheld, but again no indication is given as to whether the local position is or is not within the "working agreement". In a New York Dock arbitration (Rehmus), UP-WP-SN and United Transportation Union, February 14, 1986, the same right is upheld but in this instance the context appears to indicate that the positions involved are within the same working agreement.

The awards cited by the Carrier are also not determinative. Public Law Board No. 1376, Award No. 25 (Sickles, Penn Central and BRAC, May 24, 1976) interprets protection language not identical to New York Dock. A New York Dock arbitration award IAMAW and B&O-LN, Fredenberger, January 19, 1983) does not directly address the issue here under review. However, that award includes the following language:

> It must be borne in mind that the function of the New York Dock Conditions as well as most protective arrangements is to preserve employment for those capable of holding it through the exercise of seniority and to make whole those employees who must take positions producing less compensation or who lose their positions altogether.

Another New York Dock award (Seaboard System & BRAC, Zumas, June 10, 1983) again does not review the dispute here. Nevertheless, it does suggest support for the conclusion reached here by noting that the organization (BRAC) involved in that award "concedes that the 'New York Dock' conditions do not entitle an employee to refuse to move with a position".

Based on all the above, the Board must necessarily conclude that a Train Dispatcher who elects to accept a position under a different working agreement, when continuance of his position as Train Dispatcher is available, is not entitled to protection under New York Dock.

A W A R D

1. The transfer of positions from Fort Worth to McCook and Springfield are governed by the conditions set forth in New York Dock.

2. A Train Dispatcher who elects to exercise his seniority in another craft at Fort Worth rather than accept a Train Dispatcher position at McCook or Springfield is not entitled to protective benefits as a displaced employee.

ARBITRATION BOARD

Herbert L Marx Jr

HERBERT L. MARX, JR., Neutral Member

Erick J. Genser - Dissent to Question 3 (see attached dissenting opinion).

ERICK J. GENSER, Employee Member

John M. Starkovich - Dissent to Question 1.

JOHN M. STARKOVICH, Carrier Member

New York, N. Y.

DATED: 5-21-87

Implementing Agreements

As noted above, the formulation of an implementing agreement is sanctioned by Article I, Section 4 of New York Dock. Where the parties do not agree, the matter is referred to a neutral Referee. What follows, therefore, is the responsibility not of the Arbitration Board/Committee but of the Referee acting individually.

As a further preliminary matter, the Referee notes that the parties herein, up to this point, have understandably been principally concerned with the application of either the 1966 Agreement or New York Dock and secondarily with the issue of the rights of non-relocating employees. It follows that the full energies of the parties have not been devoted to attempts to reach mutual accord on terms of implementing agreements under either of the protective agreements. Based on the hearing and the parties' submissions, the Referee is convinced that the parties would have had relatively littly difficulty in formulating an implementing agreement without neutral assistance, had the other two issues been previously resolved. As a result, what follows will be an attempt to prescribe agreements which might otherwise have been reached by the parties themselves.

As a basis for formulating separate implementing agreements for the transfer from Fort Worth to Springfield and Fort Worth to McCook, the Referee looks to the proposed draft provided by the ATDA, concurrent with its submission in this matter, and the proposed drafts submitted by BN with its submission (with the understanding, however, that -- as discussed above -- the Carrier argued the application of New York Dock to be inappropriate).

Article I, Section 4 of New York Dock provides as follows:

> Within five (5) days from the date of receipt of notice, at the request of either the railroad or representatives of such interested employees, a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotations shall commence immediately thereafter and continue for at least thirty (30) days. Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this section 4. If at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment [to a referee]. . .

While the Carrier argues that an implementing agreement should provide only for an appropriate "selection of forces"; the Organization points out that the same section provides for "negotiations for the purpose of reaching agreement with respect to appliction of terms and conditions" of New York Dock, without limitation. While awards of implementing agreements have taken various views on this apparent disparity, this Referee views

the language as requiring an adherence to the specific terms of New York Dock but without necessarily prohibiting inclusion of matters directly related to the particular transaction.

The Referee finds that there is little disagreement of substance as to the provisions proposed by the Carrier and as revised by request of the Organization. No further comment is required thereon. As to the Organization's proposals which would add to such proposals, the Referee offers the following conclusions, references below being to the draft provided by the Organization:

Article I, Section 1(b) and 2(b) -- According to the Organization these list the positions which the Carrier has indicated will be established. Their inclusion is appropriate, assuming that they are an accurate reflection of the announced positions.

Article II, Section 2, 5 and 6 -- These concern definitions of change in residence, traveling and living expense, and loss on sale of homes. The Referee finds that New York Dock conditions adequately cover these matters. Resolution of possible disputes arising from these benefits is provided in Article I, Sections 11 and 12 of New York Dock.

Article II, Section 3 and 4 -- These concern retention of vacation and sick leave time and qualifying time. Arguments as to why these would not be appropriate were not offered or were not convincing. These sections are appropriate to the implementing agreement. Since the Train Dispatchers will be concerned with territory already known to them, however, the Referee finds that a familiarization period of 30 days, rather than 60 days, is sufficient.

Article II, Section 7 -- This would spell out the Organization's position as to the right of employees to retain protection while not transferring to Springfield or McCook and in the alternative,exercising their seniority to positions under other agreements at Fort Worth.

The Arbitration Board determined that this is not sanctioned by New York Dock, but it is not inappropriate for the Organization to seek such additional right under an Implementing Agreement.

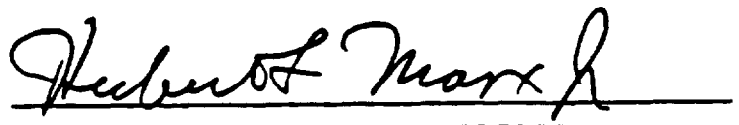
What is fundamentally involved here is a transfer of functions from one location to two other locations. In accompanying the movement of the work, Train Dispatchers are able to continue to do the same assigned work; to be remunerated for expense involved in moving; and to retain seniority and other benefits. For some employees, such a move may represent a considerable, possibly personally insurmountable, inconvenience. Some of these employees have available to them, through their additional seniority rights, alternate positions at Fort Worth -- at lower compensation but without the inconvenience of disrupting their personal lives. They cannot be denied this alternative, but the Referee finds it inappropriate to go beyond the New York Dock provisions to protect them against any loss of earnings. These employees can properly be compared to others, who may not have such alternative and who are required to relocate or to lose any protection and, as well, have no further employment opportunity with the Carrier.

Article II, Section 8 -- This section concerning procedural rights of employees "who believe they are either a displaced or dismissed employee". The Referee finds that New York Dock already provides the necessary means for the provision of test period earnings as well as the resolution of disputes which may arise over the failure to pay claims as presented.

The Referee notes for the record an agreement dated April 1, 1986, signed by the FW&D General Chairman and the Carrier concerning arrangements to be extended to FW&D Dispatchers.

A W A R D

The implementing agreements which follow and which are made part of this award shall become effective in 10 days following the date of this award, provided that the parties may mutually agree to a different date.



HERBERT L. MARX,JR., REFEREE

New York, N. Y.

DATED: May 21, 1987

IMPLEMENTING AGREEMENT

between

BURLINGTON NORTHERN RAILROAD COMPANY

and

AMERICAN TRAIN DISPATCHERS ASSOCIATION

WHEREAS, by notice dated January 13, 1987, Burlington Northern Railroad Company ("BN") served notice of intent to transfer train dispatching territory presently under the jurisdiction of its Fort Worth, TX office to the Springfield, MO office,

IT IS DETERMINED THAT:

Section 1 (a) The Amarillo-Houston train dispatching territory will be transferred to the Springfield office upon ten days' notice, or when otherwise mutually agreed.

(b) One additional Assistant Chief Dispatcher or Night Chief Dispatcher position will be established on each of the three shifts in the Springfield office, having the territory referred to in paragraph (a) above. Six additional Trick Train Dispatcher positions, four Relief Dispatcher positions and two Guaranteed Assigned Dispatcher positions will also concurrently be established in the Springfield office.

(c) Carrier will post a "Master Bulletin" identifying the additional positions which will be established and any which

will be changed at the office to which employees are being transferred, in that office and all other train dispatching offices from which work and employees are being transferred. The date of issuance need not be the first day of the month issued, and the bulletin will close on the fifteenth (15th) day following date of issuance or such earlier date as mutually agreeable. Applications will indicate the order of preference for each position listed, and assignment thereto will be made as follows:

(1) Train Dispatchers, including Extra Train Dispatchers, who hold seniority at Fort Worth will be assigned on the basis of their seniority.

(2) For any Train Dispatcher position remaining unfilled preference will be given in seniority order to other employees holding seniority on the seniority district or districts involved.

(d) In the event that all of the positions cannot be moved and established at the office to which the work and employees are being transferred at the same time, arrangements will be made for filling jobs on a temporary basis, between the office chairman and designated carrier officer. Such temporary assignments may be maintained until the last transfer of territory to the new location.

Section 2 -- Any employee who transfers from one seniority district to another seniority district under the circumstances described in Section 1 of this implementing agreement shall have

his seniority transferred from his old seniority district and dovetailed into the seniority roster covering the office to which transferred, and he shall retain his seniority on his old seniority district unless the parties agree otherwise. The ranking of any such employees who have the same seniority date as another employee on their new seniority district, shall be determined on the basis of length of total continuous service with the Carrier and if still unresolved, on the basis of chronological age.

Section 3 -- The former Fort Worth & Denver Railway Train Dispatchers schedule agreement applicable in the Fort Worth office shall remain applicable to positions established in the Springfield office under the provisions of this implementing agreement, until such time as the work is appropriately consolidated in the Springfield office.

Section 4 -- The employee protective conditions as set forth in the New York Dock conditions [New York Dock Ry. -Control-Brooklyn Eastern Dist., 360 I.C.C. 60, 84 (1979)], which, by reference hereto, are incorporated herein and made a part hereof, shall be applicable to Train Dispatchers, including Extra Train Dispatchers, who become "displaced employees" or "dismissed employees" as those terms are defined in said conditions, as a result of the changes made in this transaction.

Section 5 -- Regularly assigned Train Dispatchers in the Fort Worth office whose positions are abolished shall be treated as regularly assigned Train Dispatchers for the purpose of vacation and sick leave benefits during their protective period.

Continuous service performed in the Fort Worth office will be included for the purpose of determining vacation and sick leave entitlement.

Section 6. Qualifying Time

(a) Guaranteed Assigned or Extra Train Dispatchers will be used to relieve regularly assigned train dispatchers to become familiar with new territory and the method and manner that trains are dispatched within.

(b) Regularly assigned Train Dispatchers so relieved will retain the rest day of their regular assignment, and if they so desire, will be allowed to train on those rest days for which straight time will be allowed. If required by the Carrier to train on rest days, time and one-half will be applicable.

(c) Regularly assigned Train Dispatchers will not suffer any loss of compensation as a result of training in the new territory. Extra employees will be allowed Trick Train Dispatchers' rate while training in the new territory.

(d) Carrier will pay Train Dispatchers engaged in training necessary actual expenses, travel time to and from the training assignment, and automobile mileage at the prevailing rate.

(e) If on the assigned rest days of the employee being trained, he desires to stay away from his headquarters and at the training point rather than return to assigned headquarters on rest days, Carrier shall continue payment of necessary actual expenses, or he may return to headquarters on travel time and mileage.

(f) A total of thirty (30) working days will be allowed to become familiar on new territory, to become qualified in the office the employee is not then qualified in, and to become competent on unfamiliar equipment; additional time may be allowed at the discretion of the Chief Dispatcher.

DATED: May 21, 1987

IMPLEMENTING AGREEMENT

between

BURLINGTON NORTHERN RAILROAD COMPANY

and

AMERICAN TRAIN DISPATCHERS ASSOCIATION

WHEREAS, by notices dated December 26, 1986 and January 2, 1987, Burlington Northern Railroad ("BN") served notices of intent to transfer train dispatching territory presently under the jurisdiction of its Fort Worth, TX office to the McCook, NE office,

IT IS DETERMINED THAT:

Section 1. (a) The Amarillo-Pueblo train dispatching territory will be transferred to the McCook office upon ten days' notice, or when otherwise mutually agreed.

(b) One additional Trick Train Dispatcher position will be established on each of the three shifts in the McCook office, having the territory referred to in paragraph (a) above. An additional third shift Assistant Chief Dispatcher position, two Relief Dispatcher positions, and one Guaranteed Rotating Extra Board position will also concurrently be established in the McCook office.

(c) Carrier will post a "Master Bulletin" at the Dispatching Offices at McCook, Nebraska and Fort Worth, Texas identifying the positions being established or affected at McCook, Nebraska. The date of issuance need not be the first day of

the month issued, and the Bulletin will close on the fifteenth (15th) day following the date of issuance, or such earlier date as mutually agreeable. Applications for any advertised position will indicate the order of preference for any position listed and assignment thereto will be made as follows:

1. Train Dispatchers, including Extra Train Dispatchers, who hold seniority at Fort Worth, will be awarded the advertised positions on the basis of their seniority date as a Dispatcher.

2. Any positions remaining unfilled will be awarded to Train Dispatchers, including Extra Train Dispatchers, at McCook who have indicated a preference based upon their seniority date as a Dispatcher.

3. Any positions remaining unfilled will be awarded to any Train Dispatcher on the Central Seniority District who has indicated a preference, based upon seniority date as a Train Dispatcher.

(d) In the event that all of the positions cannot be moved or established at McCook at the same time, arrangements will be made for filling these positions on a temporary basis, between the Office Chairman at McCook, the General Chairman at Fort Worth, and the designated Carrier Officer. Such temporary assignments may be maintained until the last transfer of territory to McCook.

Section 2.

Any employee who transfers from Fort Worth, Texas to McCook, Nebraska under the circumstances described in Section 1 of this

Implementing Agreement shall have his seniority dovetailed into the seniority roster for the Dispatchers Central Seniority District and shall forfeit any seniority on the Fort Worth Seniority Roster. The ranking of any such employees who have the same seniority date as another employee on the Central Seniority District shall be determined on the basis of length of total continuous service on this property and, if still unresolved, on the basis of chronological age. If ranking cannot be determined pursuant to the foregoing, it will be determined by a flip of a coin.

Section 3.

The Central Seniority District for dispatchers will be expanded to include that portion of the dispatching of Carrier's traffic, Amarillo, Texas and north to Pueblo, Colorado formerly performed at Fort Worth, Texas.

Section 4.

Any exempt employee holding train dispatchers seniority at Fort Worth, Texas at the time of his promotion and this consolidation will be placed on the Central Seniority District Roster and handled in accordance with Section 2 above and will retain his position on the Fort Worth Seniority Roster. Upon leaving exempt status, a dispatcher holding dual seniority shall elect to exercise his seniority on either district whereupon his seniority on the District not elected will be forfeited and his name shall be stricken from that roster.

Section 5.

The BN Northern Lines schedule agreement shall become applicable to positions established in the McCook office under the

provisions of this implementing agreement.

Section 6.

The employee protective conditions as set forth in the New York Dock conditions [New York Dock Ry.-Control-Brooklyn Eastern dist., I.C.C. 60, 84 [(1979], which, by reference hereto, are incorporated herein and made a part hereof, shall be applicable to Train Dispatchers, including Extra Train Dispatchers, who become "displaced employees" or "dismissed employees" as those terms are defined in said conditions, as a result of the changes made in this transaction.

Section 7.

Regularly assigned Train Dispatchers in the Fort Worth office whose positions are abolished shall be treated as regularly assigned Train Dispatchers for the purpose of vacation and sick leave benefits during their protective period. Continuous service performed in the Fort Worth office will be included for the purpose of determining vacation and sick leave entitlement.

Section 8.

(a) Guaranteed Assigned or Extra Train Dispatchers will be used to relieve regularly assigned train dispatchers to become familiar with new territory and the method and manner that trains are dispatched within.

(b) Regularly assigned Train Dispatchers so relieved will retain the rest day of their regular assignment, and if they so desire, will be allowed to train on those rest days for which straight time will be allowed. If required by the Carrier to

train on rest days, time and one-half will be applicable.

(c) Regularly assigned Train Dispatchers will not suffer any loss of compensation as a result of training in the new territory. Extra employees will be allowed Trick Train Dispatchers' rate while training in the new territory.

(d) Carrier will pay Train Dispatchers engaged in training necessary actual expenses, travel time to and from the training assignment, and automobile mileage at the prevailing rate.

(e) If on the assigned rest days of the employee being trained, he desires to stay away from his headquarters and at the training point rather than return to assigned headquarters on rest days, Carrier shall continue payment of necessary actual expenses, or he may return to headquarters on travel time and mileage.

(f) A total of thirty (30) working days will be allowed to become familiar on new territry, to become qualified in the office the employee is not then qualified in, and to become competent on unfamiliar equipment; additional time may be allowed at the discretion of the Chief Dispatcher.

DATED: May 21, 1987