

A R B I T R A T I O N

PURSUANT TO NEW YORK DOCK PROTECTIVE CONDITIONS,
ARTICLE I, SECTION 11

In the Matter of Arbitration :

between :

NORFOLK AND WESTERN RAILWAY COMPANY :
and SOUTHERN RAILWAY COMPANY :

and :

AMERICAN TRAIN DISPATCHERS UNION :

and :

TRANSPORTATION-COMMUNICATIONS UNION :

HEARING HELD AT NORFOLK, VA., DECEMBER 18, 1987

A P P E A R A N C E S

For the ATDA:

H. E. Mullinax
Vice-President

J. W. Parker
General Chairman

For the TCU:

W. M. Flynn
Vice-President

R. H. Rankin
General Chairman

C. L. Gilbert
Vice General Chairman

For the Carriers:

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Counsel

M. C. Kirchner
Director, Human Resources

M. R. MacMahon
Director, Labor Relations

STATEMENT OF THE ISSUE

1. Does the Implementing Agreement proposed by the Carriers meet the criteria set forth in Article I, Section 4 of New York Dock conditions in effecting the coordination of certain Southern Railway Company train dispatching work performed in Greensboro, North Carolina into the Norfolk and Western Railway Company facility at Crewe, Virginia?

2. If the answer in Question No. 1 is "no", what rearrangement of forces is appropriate in this coordination?

I N T R O D U C T I O N

The Interstate Commerce Commission, in 1982, approved the coordination of the operations of the Norfolk and Western Railway Company ("NW") and the Southern Railway Company ("Southern") under the common control of Norfolk Southern Corporation. In doing so, the ICC directed that any employees affected by this would be covered under the so-called "New York Dock" protective conditions.

As one part of the coordination, NW and Southern (the "Carriers") propose to coordinate certain train dispatching work previously performed at Greensboro, North Carolina, a Southern facility, with work at Crewe, Virginia, a NW facility. Dispatching work at Greensboro is performed by employees represented by the American Train Dispatchers Association ("ATDA"), while dispatching work at Crewe is performed by employees represented by the Transportation-Communications Union ("TCU").

To this end, the Carriers advised the ATDA and the TCU, by letter dated July 8, 1987, of their intention concerning the "transaction". The Carriers stated in their letter that, while New York protective conditions are "applicable", they saw no need for an agreement with the Organizations, since they anticipated that no employees would be "adversely affected". The ATDA and the TCU advised the Carriers as to their belief that an Implementing Agreement was required. To this end, the parties met to negotiate such agreement. While the TCU did concur with the terms of an agreement as proposed by the Carriers (with one change, which was accepted by the Carriers), the ATDA proposed a substantially different agreement. As a result, the Carriers advanced the matter to resolution under Article I, Section 4 of New York Dock conditions and selected a neutral referee for this purpose. Section 4 reads in pertinent part as follows:

4. Notice and agreement or decision -- (a) Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representatives of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes to be affected by such transaction, including an estimate of the number of employees of each class affected by the intended changes. Prior to consummation the parties shall negotiate in the following manner.

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

negotiations 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 in [arbitration]. . .

At the arbitration hearing, the parties agreed that an award should be devised by an arbitration committee, consisting of the neutral referee and members selected by the parties (the "Committee").

F I N D I N G S

The operational changes giving rise to the proposed change in locale of certain train dispatching work is described by the Carriers in their submission as follows:

The first is the transfer of operational control, from Southern to NW, of a line of railroad extending from Burkeville, Virginia, to West Point, Virginia, as part of a general realignment of the Carriers' operations in that region in 1987. The second is the Carriers' abandonment in 1987, pursuant to ICC approval, of a deteriorated railroad bridge that had carried a Southern rail line over Albemarle Sound in North Carolina; as a result of this abandonment, the portion of that line extending from Norfolk, Virginia, to Waddill, North Carolina (just north of the abandoned bridge) has been cut off from other Southern properties and is operationally linked only to NW's facility in Norfolk.

As a result, the Carriers intend to provide dispatching services from the NW facility at Crewe rather than the Southern facility at Greensboro for the Burkeville-to-West-Point line and

for the Norfolk-to-Waddill line. The Carriers contend that the Burkeville-to-West-Point line involves dispatching work of 45 minutes a day, and the Norfolk-to-Waddill line of up to 15 minutes a day. The Carriers advised the ATDA and the TCU that they planned no decrease in forces at Greensboro nor any increase at Crewe to accomplish these changes.

As a result, the Carriers propose, with the concurrence of the TCU, that an Implementing Agreement under Section 4 provide only the following:

Due to the relatively small amount of work being transferred, there is no need to provide for the selection and/or rearrangement of forces, the transaction will go forward as set forth in the notice dated July 13, 1987. While it is anticipated that no employees will be adversely affected by this transaction, the New York Dock protective conditions will apply to any employee who may be affected under the meaning to those conditions.

The ATDA, while not contesting the Carriers' right to realign their dispatching functions, does not agree with the Carriers' formulation of an agreement. The ATDA points out that some of its work is in fact being transferred; that the amount of dispatching time involved may well vary from that suggested by the Carriers; and that the move, admitted by the Carriers to be a "transaction", does not guarantee any change in force level at Greensboro.

The Implementing Agreement proposed by the ATDA has two principal elements. The first -- and most significant here -- is as follows, in pertinent part:

One [ATDA] Train Dispatcher holding seniority in the Greensboro office will be allowed to transfer to the Crewe office The senior applicant shall

have his seniority transferred and dovetailed into the roster covering the Crewe office, and allowed to displace any junior Train Dispatcher in that office.

The remainder of the ATDA proposal concerns the benefits, qualifying time, conditions for moving expenses, etc., frequently included in such agreements where displacement of forces is involved.

The transfer of an employee from Greensboro to Crewe would presumably require the addition of an employee at Greensboro as a replacement, as well as the displacement of a present TCU employee at Crewe.

The Committee finds no basis to support the ATDA's proposal to transfer an employee from Greensboro to Crewe. Even if the Carriers' estimate of the work involved were found to be somewhat understated, the dispatching work involved is minimal. The Carriers' right is undisputed to determine where its dispatching work shall be conducted.

The Arbitration Committee recognizes the viewpoint of the ATDA that no guarantee of force levels at Greensboro is offered by the Carrier. Nevertheless, the facts as presented demonstrate that the dispatching work involved in this transaction will not adversely affect the present level of employment at Crewe. There is simply no basis to require the Carriers to transfer an employee currently assigned and occupied at Greensboro to a new location. Clearly such employee, if transferred, would be principally occupied with work now being performed by Crewe dispatchers, with

only a small share of time devoted to the transferred dispatching work. In sum, since no "rearrangement of forces" (as referred to in Section 4) is required or contemplated, an Implementing Agreement to initiate such rearrangement is inappropriate.

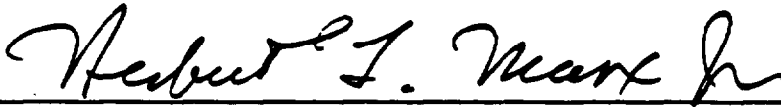
The further question arises, then, as to whether an Implementing Agreement detailing conditions for employees who may be adversely affected is nevertheless required, even though no force rearrangement can be foreseen. The Arbitration Committee finds that such would also be inappropriate. The Carriers recognize, in their proposed Implementing Agreement, that New York Dock conditions are appropriate, if and when applicable. Section 11 provides the safeguard of arbitral resolution of any future dispute arising out of the Agreement. While a modest amount of work now performed by ATDA employees will accrue to TCU dispatchers, owing to the legitimate change in the Carriers' organization of its work, the determinative consideration is that the number and status of ATDA Dispatchers at Greensboro is undisturbed.

Under these circumstances, the Arbitration Committee finds that the Implementing Agreement proposed by the Carriers, as amended by the TCU in one sentence, does meet the criteria of Article I, Section 4 of New York Dock protective conditions. Further, there is little or no justification for the transfer of an employee to Crewe and, as a consequence, no requirement to specify the various conditions under which such hypothetical transfer would occur.

A W A R D

The Implementing Agreement proposed by the Carriers (as amended) meets the criteria set forth in Article I, Section 4 of New York Dock conditions in effecting the coordination of certain South Railway Company train dispatching work performed in Greensboro, North Carolina into the Norfolk and Western Railway Company facility at Crewe, Virginia.

ARBITRATION COMMITTEE



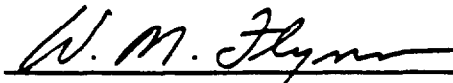
HERBERT L. MARX, JR., Neutral Referee



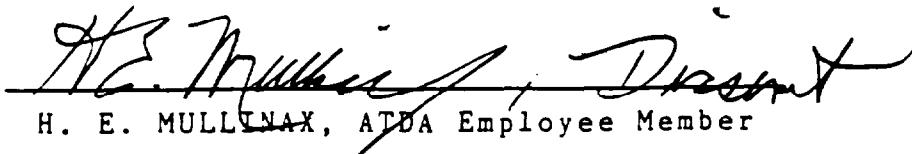
M. C. KIRCHNER, Carrier Member



M. R. MacMAHON, Carrier Member



W. M. FLYNN, TCU Employee Member



H. E. MULLINAX, ATDA Employee Member

NEW YORK, NY

DATED: 3/26/88