

ARBITRATION COMMITTEE

In the Matter of the)
Arbitration Between:)
)
TRANSPORTATION-COMMUNICATIONS)
INTERNATIONAL UNION (BRAC),)
)
Organization,)
)
and)
)
MISSOURI PACIFIC RAILROAD)
COMPANY and UNION PACIFIC)
RAILROAD COMPANY,)
)
Carriers.)
_____)

OPINION AND AWARD

Pursuant to Article I,
Section 11 of the
New York Dock Conditions

Case No. 3
Award No. 4

Hearing Date: November 11, 1987
Hearing Location: Sacramento, California
Date of Award: March 1, 1988

MEMBERS OF THE COMMITTEE

Employees' Member: F. T. Lynch
Carriers' Member: L. A. Lambert
Neutral Member: John B. LaRocco

QUESTIONS AT ISSUE

1. Is St. Louis Clerk J. L. Thackery a dismissed employee pursuant to the New York Dock Conditions as a result of the merger of the UP and MP Railroads, specifically Merger Implementing Agreement No. 22?
2. If the answer to Question at Issue No. 1 is in the affirmative, shall Carrier now provide St. Louis Clerk J. L. Thackery with a separation allowance computed in accordance with Section 7 of New York Dock?

OPINION OF THE COMMITTEE

I. INTRODUCTION

In September, 1982, the Interstate Commerce Commission (ICC) approved the merger and consolidation of the Union Pacific Railroad (UP), the Missouri Pacific Railroad (MP) and the Western Pacific Railroad (WP). [ICC Finance Docket No. 30000.] To compensate and protect employees affected by the merger, the ICC imposed the employee merger protection conditions set forth in New York Dock Railway - Control - Brooklyn Eastern District Terminal, 360 I.C.C. 60, 84-90 (1979); affirmed, New York Dock Railway v. United States, 609 F.2d 83 (2nd Cir. 1979) ("New York Dock Conditions") on the UP, MP and WP pursuant to the relevant enabling statute. 49 U.S.C. §§ 11343, 11347.

At the Neutral Member's request, the parties waived the Section 11(c) time limit for issuing this decision.¹

II. BACKGROUND AND SUMMARY OF THE FACTS

On June 1, 1984 and May 24, 1985, the UP and MP notified the Organization, pursuant to Section 4 of the New York Dock Conditions, of their intent to engage in two interrelated transactions involving the UP and MP Accounting Departments. In summary, the transactions concerned the transfer of work from Omaha, Nebraska to St. Louis, Missouri and vice versa. The overall anticipated effect at St. Louis, the MP point, would be

¹All sections pertinent to this case appear in Article I of the New York Dock Conditions. Thus, the Committee will only cite the particular section number.

the abolition of forty-six positions and the establishment of forty-six positions. In compliance with Section 4 of the New York Dock Conditions, the parties entered into Implementing Agreement No. 22 on August 19, 1985. The Carriers consummated the transaction on January 1, 1986.

Prior to implementation of the transaction, Claimant held a Valuation Accountant position in the Property Accounting Subdepartment of the MP Accounting Department. As a consequence of the transaction, the work of the entire property area was to be shifted from St. Louis to Omaha resulting in the abolishment of eighteen St. Louis positions and the creation of fourteen positions at Omaha. Before the MP abolished her position, Claimant sought to follow her work to Omaha and then immediately claim a separation allowance under the February 7, 1965 Job Stabilization Agreement. The Carrier denied her request for separation pay. Claimant has temporarily abandoned her claim for a separation allowance under the February 7, 1965 Job Stabilization Agreement. In any event, such a claim would be beyond the jurisdiction of this Committee.

On about January 1, 1986, Claimant expressed her preference for new Accounting Department positions being created at St. Louis. The Carrier awarded Claimant a Junior Division Review Analyst position (her second choice) in the Interline Accounting area. Simultaneously, Claimant elected to retain her protection under the February 7, 1965 Agreement as opposed to New York Dock protection. See Article VIII of Implementing Agreement No. 22.

On October 29, 1986, Claimant initiated a claim for separation allowance under Section 7 of the New York Dock Conditions. The Carrier rejected her claim.

III. POSITIONS OF THE PARTIES

A. The Organization's Position

The Organization vigorously argues that Claimant is entitled to separation pay because at the time of the transaction she was a dismissed employee as defined by Section 1(c) of the New York Dock Conditions. After all MP Property Accounting Department work was transferred from St. Louis to the UP office at Omaha, there were no positions remaining at St. Louis which Claimant could obtain with her seniority. Furthermore, Claimant lacked the requisite qualifications to work on other MP Accounting Department positions. The only way Claimant could perform Property Department work was to change her residence to Omaha. Therefore, Claimant was entitled to receive separation pay per Section 7 of the New York Dock Conditions.

After the effective date of the transaction, the Carrier placed Claimant in a position in the Interline Accounting Subdepartment as a subterfuge to escape from its obligation to pay Claimant a separation allowance. She could not have obtained the position through the normal exercise of her seniority. Finally, Claimant submitted persuasive documentary evidence that the Carriers eventually intend to eliminate Interline Accounting Department work at St. Louis. The winding down of the Interline Accounting subdepartment will be an integral part of the

coordination and transfer of work covered by Implementing Agreement No. 22.

B. The Carrier's Position

The Carriers raise two primary arguments. First, Claimant was not deprived of employment and thus she was ineligible for separation pay under Section 7 of the New York Dock Conditions. Second, inasmuch as Claimant elected protective benefits under the February 7, 1965 Job Stabilization Agreement, Claimant is not entitled to any benefits under the New York Dock Conditions.

With regard to the first argument, the Carriers point out that the separation pay option is only available to dismissed employees. Section 1(c) of the New York Dock Conditions defines a dismissed employee as a worker deprived of employment due to a transaction. In this case, Claimant has been continuously employed with the MP since December 2, 1963. Claimant holds seniority on MP Clerical Roster No. 1 which protects all Accounting Department jobs in St. Louis. When Claimant obtained the Junior Division Review Analyst job she crossed neither craft nor seniority lines. Because Claimant lost no time as a result of the coordination she was not a dismissed employee.

Even if Claimant is construed to be a dismissed employee, she is precluded from seeking New York Dock benefits since she expressly elected to retain protection provided by the February 7, 1965 Job Stabilization Agreement. Her election was voluntary, binding and irrevocable in accord with Implementing Agreement No. 22.

IV. DISCUSSION

Section 7 of the New York Dock Conditions provides:

"Separation allowance. -- A dismissed employee entitled to protection under this appendix, may, at his option within 7 days of his dismissal, resign and (in lieu of all other benefits and protections provided in this appendix) accept a lump sum payment computed in accordance with section 9 of the Washington Job Protection Agreement of May 1936."

Section 7 expressly states the eligibility requirements for a separation allowance. Besides submitting a timely request for separation pay, an employee must not only be "... entitled to protection under this appendix ..." but also be a dismissed employee within the meaning of Section 1(c) which reads:

"'Dismissed employee' means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of the transaction."

Pursuant to the express language of Section 7, the New York Dock Conditions extend the separation allowance option solely to dismissed employees.

Therefore, the specific question presented to this Committee is whether Claimant became a dismissed employee within seven days prior to her request for separation pay.

The record reflects that Claimant has never been deprived of employment due to the transaction implemented on January 1, 1986. Implementing Agreement No. 22 gave her preferential rights for procuring a new St. Louis position. See Section 2(c) of Article III of Implementing Agreement No. 22. Claimant bid on and was

awarded the St. Louis position in compliance with Implementing Agreement No. 22. Claimant's bid was a valid exercise of her MP clerical Accounting Department seniority. Claimant did not have to undergo any special training to obtain the position although she may have received some on the job training. Since Claimant's active employment was uninterrupted, she was never a dismissed employee as defined by Section 1(c) of the New York Dock Conditions. She failed to satisfy a mandatory eligibility criterion to receiving a Section 7 separation allowance.

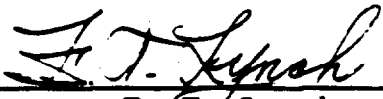
Claimant predicts that the MP will soon eliminate its Interline Accounting area. Although Claimant submitted some vague evidence to support her prognostication, any claim for separation pay based on the fallible assumption that she will soon lose her present position (and be transformed into a dismissed employee) is premature and speculative.

AWARD AND ORDER

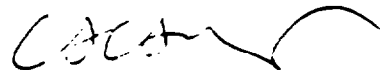
The Answer to the First Question at Issue is No.

The Answer to the Second Question at Issue is moot.

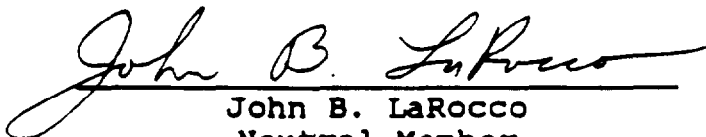
Dated: March 1, 1986



F. T. Lynch
Employees' Member



L. A. Lambert
Carriers' Member



John B. LaRocco
Neutral Member