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In the Matter of Arbitration Between  
Gerald Thomas

and

Brotherhood of Locomotive Engineers

and

Union Pacific Railroad Company

Pursuant to Article IV of the New York  
Dock Conditions Imposed by the Inter-  
state Commerce Commission in Finance  
Docket No. 30,000  
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Before Arbitration Committee

Members:

Wayne E. Naro  
Director of Labor Relations

Carrier Member

John E. Cook  
Director of Labor Relations

Carrier Member

J.L. Dayton  
Vice President

Employee Organization  
Member

Prof. Lamont E. Stallworth  
Labor Arbitrator

Neutral Member

Appointment of Neutral Arbitrator

November 4, 1987

Hearing Held

Salt Lake City, Utah  
February 17, 1988

ISSUES IN DISPUTE:

The Parties submitted the following issues to the  
Arbitration Committee:

1. Should the claim be denied because it was filed in an untimely manner?
2. Was G. Thomas, at the time of his removal from a non-agreement position, an "employee" subject to the protection of the New York Dock conditions?

3. Did G. Thomas lose his non-agreement position of Manager Labor Relations because of a merger-related transaction?

4. If so, to what level of benefits is G. Thomas entitled?

#### RELEVANT NEW YORK DOCK CONDITION PROVISIONS

##### ARTICLE IV

Employees of the railroad who are not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under these terms and conditions.

#### STATEMENT OF FACTS:

In this dispute the Claimant charges that he is entitled to benefits under the New York Dock conditions because of the elimination of his position as Manager Labor Relations (Trainee). The Carrier contests the claim, alleging that it was not filed in a timely manner, that the Claimant is not an employee covered the New York Dock conditions, and that he did not lose his position because of a merger-related transaction.

According to the Organization, the genesis of this claim lies in the merger among the Union Pacific Railroad Company (UP), the Missouri Pacific Railroad Company (MP), and the Western Pacific Railroad Company (WP). The three railroads first applied to the Interstate Commerce Commission (I.C.C.) for approval of the merger on September 15, 1980. On September 13, 1982, the I.C.C. voted to approve the merger, under the name Union Pacific Railroad (UP). Several other railroads attempted unsuccessfully to block the merger, and it became final on December 22, 1982. (Carrier's Submission, p. 3-5).

In its opinion approving the merger the I.C.C. also held that the New York Dock conditions would apply to the merger, to offer some protection to the thousands of employees who would be affected by the merger. (Carrier's Submission, p. 3). In this case the Organization contends and the Carrier contests that the Claimant is covered by these conditions.

The Claimant began working for the Carrier as a clerk in October, 1977. Through September, 1980, he held positions as a Management Trainee, a Brakeman, and a Fireman/Engineer, each for a relatively short period of time. From 1980 through June, 1985 he held the post of Division Personnel Officer in Portland, Oregon. (Organization Submission, pp. 3-4; Carrier Submission, p. 7).

In July, 1985, the Claimant obtained the position of Manager (trainee) of Labor Relations, also in Portland. According to the Carrier's official "generic" description of the position, the Claimant's duties as a Manager of Labor Relations included:

- 1) To develop and implement systems, methods and procedures for efficient administration of labor contracts;
- 2) To assist in resolving local level grievances and time claims;
- 3) To guide line officers and supervisors in appropriate discipline administration; and
- 4) To initiate and direct studies of obsolete work rules and procedures in order to provide the Assistant and Regional Directors with suggested revisions.

(Carrier's Exhibit C, p. 3).

The job description also states that the position reports to the

Assistant Director of Labor Relations. (Carrier's Exhibit C, p. 1). The Organization does not dispute that these were the duties assigned to the position, but in effect contests how much authority for these duties the Claimant had assumed as a trainee.

The Carrier sent a letter on June 9, 1986, informing the Claimant that his employment in a non-agreement position would terminate on August 30, 1986. (Carrier Exhibit D). On June 25, 1986, the Claimant informed the Carrier that he intended to participate in its Involuntary Force Reduction Program (IFRP) and return to his former position as a fireman in a bargaining unit represented by the United Transportation Union. (Carrier's Exhibit E). The Claimant did not accept the lump sum payment provided for by the IFRP and did not sign the release form given to participants in the program. On September 2, 1986, he returned to his former position as a locomotive engineer, based in Pocatello, Idaho. (Carrier's Submission, p. 8).

According to the Carrier, its first notice of a claim was an undated letter from the Claimant received by the Carrier on July 21, 1987, applying for protective benefits under the New York Dock Agreement. (Carrier's Exhibit F, p. 1). Another letter from the Claimant dated July 18, 1987, specifically linked the Claimant's job loss to the Carrier's restructuring of the three railroads as a result of the merger. (Carrier's Exhibit F, pp. 2-3).

The Carrier denied the claim on the basis that the Claimant had not filed it in a timely manner. The Carrier also contended

that the Claimant had not been affected by a merger-related transaction. (Carrier's Exhibit G, letter of August 13, 1987). Later the Carrier also denied the claim on the basis that the Claimant was an officer and not an "employee" of the Carrier, as that term is used in the New York Dock Agreement. (Carrier's Exhibit J).

The Parties could not resolve the claim and agreed to arbitrate it, with the undersigned acting as the Neutral Member of the Arbitration Committee. The hearing was held at the Carrier's Salt Lake City, Utah offices on February 17, 1988.

In their submissions the Parties also raised several other contested issues, which were also addressed at the hearing. The Organization raises the issue of certain testimony provided by the Union Pacific's then Vice President of Labor Relations and Personnel, Philip A. Jordan, before the I.C.C. when it was considering the merger. The Organization suggests that this testimony supports its position that the Carrier foresaw that the principal employees to be affected by the merger would be non-agreement personnel, and furthermore, that the Carrier intended the New York Dock conditions to apply to these employees. (Organization Submission, pp. 1-2). The Carrier disputed these contentions at the hearing. The Carrier also provided in its submission a chronology of the Company's reorganization, as it affected the Claimant's position. According to the Carrier, the reorganizations that affected the Claimant's job had nothing to do with the merger, but rather were related to the Carrier's

general desire for a more streamlined and efficient labor relations/personnel function. Any merger-related transactions affecting labor relations or personnel were completed long before the actions affecting the Claimant's position, according to the Carrier.

(Carrier's Submission, pp. 5-6).

The Organization disputes this interpretation of the facts, and asserts that the changes described by the Carrier were directly related to its original merger. The Parties could not resolve these disputes and they are part of the claim before this Committee. It is within this factual context that the instant dispute arises.

#### EMPLOYEE ORGANIZATION'S POSITION

The Organization's position is that the Claimant was affected by a merger-related transaction when he lost his non-assignment position. Furthermore, the Organization argues that the Claimant is an employee intended to be covered by the New York Dock conditions.

The Organization contends that the Claimant is a "subordinate official," entitled to protective benefits. According to the Organization, the Claimant's job was an entry-level position, subordinate to two Assistant Directors and a Director of Labor Relations. The Organization points out that the job carries approximately 478 job evaluation points, less than other jobs in which the Claimants have been held to be "

subordinate officials," subject to New York Dock protection. (Organization Submission, pp. 2-3).

At the hearing the Organization argued that the Claimant was never allowed to exercise independent management authority. The Organization contends that this factor distinguishes the instant case from the arbitration decisions relied upon by the Carrier.

In support of its position, the Organization also relies upon the Carrier's alleged promises to protect employees affected by the merger, contained in its representations before the I.C.C. before the merger was approved. According to the Organization, the Carrier specifically stated through its representative Mr. Jordan that the principal employees to be affected would be non-agreement employees, and the Carrier specifically agreed to the adoption of the New York Dock conditions to protect affected employees. Therefore, the Organization contends, the Carrier intended that the New York Dock conditions apply to non-agreement employees affected by the merger. (Organization Submission, pp. 11-12).

The Organization also points out a sequence of events involving the reorganization of the Personnel and Labor Relations Departments, which it contends resulted in the termination of the Claimant's non-agreement position. The Organization argues that these reorganizations were made as a result of the general merger which created the new Union Pacific Railroad. (Organization Submission, p. 11).

The Organization also contends that the Carrier erred when it denied the claim on the basis that it was not filed in a timely manner. According to the Organization, there is no time limit governing the filing of a claim which seeks the protective benefits of the New York Dock Agreement. There is a section requiring the filing of a claim for losses from home removal, one of the benefits sought by this Claimant, which requires filing within a year of the date the employee is required to move. According to the Organization, the Claimant met this deadline. (Organization Submission, pp. 14-15).

Therefore the Organization argues that the claim may not be denied on the basis of timeliness. In addition, the Organization contends that the Claimant was an employee protected by the New York Dock conditions and that he was affected by a merger-related transaction.

#### CARRIER'S POSITION:

The Carrier contends that the claim should be denied first on procedural grounds, i.e. because it was not filed timely and because the Claimant is not an employee intended to be covered by the Agreement. Secondly, the Carrier argues that the claim should be denied on its merits, because the Claimant was not affected by a merger-related transaction.

In support of its position on the procedural issues, the Carrier acknowledges that there are no precise time limits in the New York Dock conditions. However, according to the Carrier, there is an inherent obligation to file a claim in a timely