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In the Matter of Arbitration	
between	
Southern Railway Company	
Illinois Central Railroad Company	
and	
United Transportation Union	
-----x	

Pursuant to Article I
Section 4, N.Y. Dock II,
Conditions

DECISION AND AWARD

Appearances

For the Carriers

Jeffrey S. Berlin, Esquire
Richardson, Berlin & Morvillo

William P. Stallsmith, Jr., Esquire
Norfolk Southern Corporation

For the Organization

J. L. Batton, General Chairman (IC-E)
J. R. Barbee, General Chairman, Sou Lines East (C&E)
W. E. Biedenharn, Jr., General Chairman (IC C&T)
R. T. Wade, General Chairman (IC C&T)
J. H. Clark, General Chairman, Sou Lines East (T)
M. D. Cox, General Chairman, Sou Lines West (C&T)

Appointment

On October 30, 1987, the Southern Railway Company (Southern) and Illinois Central Railroad Company (IC), (hereinafter the Carriers), filed application with the Interstate Commerce Commission (I.C.C.) for approval of a transaction by which Southern will purchase from IC a line of railroad extending from Haleyville, Alabama to Fulton, Kentucky and acquire trackage rights over IC's line from Fulton, Kentucky to Centralia, Illinois. Included in the application is the requirement that New York Dock II Conditions apply.

The parties engaged in negotiations on November 19, 1987, and on February 3 and 4, 1988. They failed in their attempt to agree upon an implementing agreement. Thereafter, in accordance with New York Dock they chose Robert O. Harris as the neutral referee. The Carriers named R. G. Richter Vice President, Labor Relations, for the IC and D. N. Ray, Director, Labor Relations, for the Norfolk Southern jointly as their representative on the panel, and the Organization designated C. L. Little, Vice President, as its member.

The parties submitted pre-hearing briefs, a hearing was held on March 17, 1988, in Washington, DC. The matter was fully argued at that time and is now ready for decision.

Facts

On June 8, 1987, IC Industries Company, the parent of IC, issued a press release announcing that an agreement in principle had been made with Norfolk Southern to sell 200 route miles of its trackage for \$38

million. Thereafter, on October 30, 1987, the Carriers filed an application with the I.C.C. seeking approval and authorization for Southern's acquisition of IC's line from Fulton, Kentucky, to Haleyville, Alabama, a distance of approximately 199 miles (plus certain branch lines near Jackson, Tennessee, totalling approximately 23 miles of line) and for Southern's acquisition of trackage rights over an additional portion of IC's line from Fulton, Kentucky, to Centralia, Illinois, a distance of approximately 154 miles. In their application, the Carriers indicated that they would comply with New York Dock Railway -- Control -- Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979) (hereinafter referred to as New York Dock) labor protective provisions which would be applied to the transactions.

On July 29, 1987, Southern entered into an agreement with two General Chairmen of the United Transportation Union, the United Transportation Union having been certified as the bargaining representative for these employees, as follows:

WHEREAS, Illinois Central Gulf Railroad Company "ICG" and Southern Railway Company "Southern" intend to enter into and seek approval from the Interstate Commerce Commission for a series of transactions involving purchase from ICG and operation by Southern of ICG's line of railroad between Fulton, Kentucky and Centralia, Illinois; and

WHEREAS, it is recognized that collective bargaining agreements between the parties to this Agreement will apply to the operation by Southern on the line of railroad and trackage rights acquired from ICG, (hereinafter collectively "ICG lines"); and

WHEREAS, the parties to this Agreement wish to modify such collective bargaining agreements to the extent set forth herein;

IT IS AGREED:

All trains operated on the ICG lines, including trains operated between St. Louis and Birmingham and Sheffield via the ICG lines, will be operated as follows:

- A. The territory between Centralia and Cairo will become part of the Western Division St. Louis district, and the territory between Cairo and Haleyville will become part of the Tennessee Division Memphis District. Terminals for such trains will be designated as follows: St. Louis and Sheffield will be home terminals with Cairo being the away from home terminal.
- B. Equity for all employees involved in the transaction will be determined in negotiations held pursuant to Section 4 of the protective conditions.
- C. Trains (other than RoadRailer trains) may be operated with not less than one conductor and one brakeman for a period of six (6) years following the effective date of this Agreement. Upon conclusion of such six-year period, trains may be operated with not less than one conductor unless otherwise agreed to by the parties.

RoadRailer trains may be operated with not less than one conductor.

The foregoing crew consist will apply in all classes of road service (i.e., terminal to terminal, interdivisional, road switcher, locals, etc.) without regard to train length.

The Carrier may elect to operate a job with a crew consist in excess of that specified above.

- D. In addition to being paid the actual miles/hours run, conductors and trainmen on such trains will receive the Special Allowance as defined by Article 17 of the July 30, 1984 Crew Consist Agreement, and a payment will be made to the appropriate Productivity Fund as defined by Article 18 of the July 30, 1984 Crew Consist Agreement.
- E. Southern schedule agreements will apply to operation over ICG lines, and the Agreement changes such agreements only to the extent set forth herein.

- F. This agreement will take effect upon the granting of all necessary regulatory approvals and consummation by ICG and Southern of the purchase and trackage rights transactions described herein.

Southern indicated before this Board that it expects to retain the IC's local traffic and most interline traffic over the line to be purchased. It also expects to extend the length of haul of interline traffic and plans to establish and extend interdivisional runs that, in part, will travel over the acquired line. Southern, as part of the transaction, has agreed to offer employment to sixty-five IC employees holding seniority in train and engine service on the IC seniority district encompassing the rail line between Birmingham, Alabama and Fulton, Kentucky on condition that (1) a satisfactory implementing agreement is imposed in arbitration, (2) Southern need not hire any IC employee who is unwilling to accept employment under terms and conditions satisfactory to Southern, and (3) Southern need not hire any IC employee whose employment is not permissible under an applicable implementing agreement. Southern indicated that for there to be a satisfactory implementing agreement, it must provide that former IC employees accepting an offer of employment from Southern will work under the applicable collective bargaining agreements governing employment of the respective classes or crafts on Southern.

Southern indicated that it will incorporate the IC line into three of its existing operating divisions. The northernmost portion (trackage rights extending from Centralia to Cairo, Illinois) will be operated as part of the St. Louis Seniority District of Southern's Kentucky Division. The middle portion (trackage rights from Cairo,

Illinois to Fulton, Kentucky, and purchased line from Fulton to Hackleburg, Alabama) will become part of the Memphis Seniority District of Southern's Tennessee Division. The southernmost portion (purchased line from Hackleburg to Haleyville, Alabama) will become part of Southern's Alabama Division.

The IC separately applied to the ICC for an exemption from prior approval requirements for IC's discontinuance of trackage rights over lines of Southern and the Burlington Northern Railroad, between Haleyville and Birmingham, Alabama. IC, in its petition, acknowledged that the appropriate labor protective provisions to be imposed in this situation are those required by the Oregon Short Line conditions. (Oregon Short Line Railroad Co. -- Abandonment--Goshen, 360 I.C.C. 91 (1979)).

Positions of the Parties

It is the Carriers' position that because an existing Southern/UTU agreement specifically contemplates this acquisition and provides rules governing work over the line to be acquired from IC (including the trackage rights territory), the requirements for an implementing agreement are minimal. Such an agreement need only acknowledge that the former IC employees will acquire Southern seniority as proposed by Southern (on the date they transfer to the Southern), and grant to the former IC employees such equity in work over the former IC line as may be appropriate to the circumstances, recognizing that the former IC employees will join a substantial number of Southern employees already

working in Southern's operating divisions.

The Organization has raised two procedural questions as well as substantive questions. The procedural questions are:

(1) What is the viability and authority of the agreement entered into between Southern and its employees represented by the United Transportation Union?

(2) What is the third party interest of the employees of the Burlington Northern Railroad (BN) in this transaction and should they be represented?

On the substantive issues, the Organization contends that the type of award in New York Dock cases represented by the Interstate Railroad decision of Referee Ables, where he found that Section 4 to Appendix I of New York Dock overrode any rights which employees may have collectively bargained for in accordance with Section 2 of that appendix, should not be followed. The Organization contends that the historic line of cases is correct, in which it was found that the rights of employees were as they had been bargained and that Section 4 does not have the effective of superseding Section 2. The Organization contends that the ICC has not changed the interrelationship between Sections 2 and 4 and the authority of a referee acting under the authority contained in New York Dock.

Discussion

I

The procedural question raised by the Organization regarding the

rights of employees of another railroad (BN) which may be affected by the proposed transaction will be discussed first.

This Board has been set up by agreement of the parties in anticipation of a ruling by the I.C.C. which will impose certain labor protective conditions upon its approval of the applications of the IC and Southern for the transfer of certain trackage and the right of Southern to utilize other trackage. It is assumed that the parties to the transaction will be found by the I.C.C. to be the IC, the Southern and the UTU. While it is possible that the employees of the BN may be affected by the proposed transactions, it will be up to the I.C.C. to make a determination to that effect, presumably after notice to both the BN and the affected employees. This Board is an anticipatory creature of the I.C.C., created by agreement of the parties, and it cannot assume any more jurisdiction than that agreed to by the parties and contained in the applications of the Carriers to the I.C.C. While this panel might well wish to protect the BN employees, it will have to leave to another time and place the determination of the rights of the BN and its employees which may be changed because of the proposed transactions between the IC and the Southern. This Board will not consider what, if any, protection should be afforded to BN employees.

The second procedural question raised by the Organization goes to the heart of the continuing dispute as to how to reconcile the conflict between collectively bargained rights and rights which are acquired by implementation of a decision of the I.C.C. It is clear that the agreement entered into between Southern and the Organization was in

contemplation of obtaining the trackage; however, there is no question that the Carrier and the Organization have the right to negotiate such an agreement. One part of the Organization may believe that this is not an advantage to the members it represents while another part may believe that such an agreement grants to them job opportunities which they might otherwise not be able to obtain. Since the same organization represents all of the potential members of the craft or class, the question of an organization's ability to enter into such an agreement is not a matter before this Board. However, that does not end the problem, for as the Organization points out, it is the effect on the former IC employees of this agreement which is before this Board.

This brings into focus a central issue in this case -- the reconciliation of the conflict between Sections 2 and 4 of Appendix I to New York Dock. As noted earlier, Section 2 deals with the right of the employees to continue to enjoy the protection of the Railway Labor Act and any agreements which may have been bargained by the collective bargaining representatives of the affected employees. Section 4, on the other hand, indicates the method by which a carrier may give notice of a change in its operations and the method of resolving disputes which may arise thereafter. This proceeding results from the application of Section 4, and the Board's authority derives from that section.

Prior to 1981, the question of whether a carrier could, through a consolidation of forces, effect changes in rates of pay, rules, or working conditions had never been raised before an arbitrator in a Section 4 proceeding. Between 1981 and 1983 at least five arbitrators

ruled that the I.C.C. did not desire that changes in rates of pay, rules, or working conditions, or of representation under the Railway Labor Act occur through arbitration under Section 4 of the New York Dock conditions.^{1/} On August 23, 1985, the I.C.C. in the Maine Central Railroad Co. case (Finance Docket No. 30532) issued a decision in which it discussed the interrelationship of the I.C.C. orders in consolidation cases and the Railway Labor Act. In that decision, the I.C.C. stated:

In Southern Control, the Commission observed that section 6 of RLA "would seriously impede mergers," if it were not for the protection of WJPA that were essentially incorporated in the Commission's decision. 331 I.C.C. at 171. RLA thus had no independent effect. Southern Control was the Commission's response to a Supreme Court directive in Railway Labor Executives' Association v. U.S., 379 U.S. 199 (1964), that the Commission clarify the scope of protective conditions imposed in a certain merger. It may be noted that the Court's concern was not with the provisions of RLA or WJPA (except as reflected in the Commission's order), but with the level of employee protection decreed by the Commission in its order. It is that order, not RLA or WJPA, that is to govern employee-management relations in connection with the approved transaction.

Such a result is essential if transactions approved by us are not to be subjected to the risk of nonconsummation as a result of the inability of the parties to agree on new collective bargaining agreements effecting changes in working conditions necessary to implement those transactions. All of our labor protective conditions provide for compulsory binding arbitration to arrive at implementing agreements if the parties are unable to do so, so that approved transactions can ultimately be consummated. Under RLA, however, changes in working conditions are generally classified as

^{1/} N&W, Illinois Terminal RR. Co. and Railroad Yardmasters of America and UTU (Sickles, 12/10/81); N&W, Ill. Term. RR. Co. and BLE and UTU (Zumas, 2/1/82); N&W, Ill. Term. RR. Co. and UTU (Edwards, 2/11/82); B&O, Newburgh & So. Sh. Ry. Co. and BMWE, USW (Seidenberg, 8/31/83); B&O, Newb. & S. Sh. Ry. Co. and UTU, BLE (Fredenberger, 9/15/83).

major disputes with the results that there is no requirement of binding arbitration. See REA Express, Inc. v. B.R.A.C., 459 F.2d 226, 230 (5th Cir. 1972). Since there is no mechanism for insuring that the parties will arrive at agreement, there can be no assurance that the approved transaction will ever be effected. Such a result we believe is unacceptable and inconsistent with section 11341 of our act and with Section 7 of the RLA which provides that arbitration awards thereunder may not diminish or extinguish any of our powers under the Interstate Commerce Act. */

*/ For the same reason we reject the argument that the provision of our conditions requiring that working conditions not be changed except pursuant to renegotiated collective bargaining agreements reinvigorates the RLA and causes its provisions to supersede the mechanism for resolving disputes associated with negotiating implementing agreements contained in the labor protective conditions we impose on approved transactions.

Prior to, at the time of, and subsequent to this I.C.C. decision, various arbitrators ruled that Section 4 effectively superceded the Section 2 protection contained in New York Dock and that new conditions could be imposed pursuant to such a Section 4 arbitration award.^{2/} It should be noted that in at least two cases arbitrators who had made earlier decisions regarding the interrelationship between Sections 2 and 4 have changed their positions.

The Neutral hearing the instant dispute has previously found the Maine Central decision binding upon him. His decision was appealed to the I.C.C. In that appeal, Norfolk Southern Corporation -- Control (Finance Docket No. 29430 (Sub-No. 20), the I.C.C. noted:

The Commission's authority to review arbitration awards was

^{2/} N&W, et al. and UTU (Ables, 9/25/85); Union Pacific R.R. et al. and UTU (Brown, 1/85); C&O, Seaboard System RR. and Brotherhood of Railway Carmen (Marx, 12/15/84); Union Pacific et al. and American Train Dispatchers Association (Fredenberger, 5/27/84); BLE and Union Pacific et al. (Seidenberg, 1/17/85)

recently asserted in Chicago and North Western Transportation Company--Abandonment--Near Dubuque and Oelwein, IA, ___ I.C.C. 2d ___ (1987) (Oelwein) */ Pending our review of the arbitration award, we have been asked to stay the award's effectiveness. Assuming we have the authority to stay an arbitration award pending our review, although we are not so deciding that issue here, we conclude that a stay would not be justified.

*/ ATDA contends that arbitration awards under the New York Dock conditions are reviewable in the courts and that the Commission can participate in such disputes solely through court referral. In the light of Oelwein, ATDA submitted its petition for stay to the Commission, but it states that it does so without prejudicing its right to judicial review.

The Interstate Railroad case (N&W and UTU, Ables) was appealed to the Court of Appeals for the District of Columbia, which found in United Transportation Union v. Norfolk and Western Railway Co., 822 F. 2d 1114, 1120 (D.C. Cir. 1987) that:

Review of the statutory scheme leaves us with no doubt that the arbitral award must be treated as an order of the Commission.

It continued (at page 1122) in discussing the nature of the court review of an award issued pursuant to New York Dock conditions:

For present purposes, we need only note that the Ables award is directly traceable to labor protective conditions imposed by the Commission in carrying out its responsibilities under the Interstate Commerce Act. It does not derive its vitality in any part from the RLA and there is no particular reason to suggest that it should be reviewed like a decision of a special board constituted pursuant to the RLA.

Whatever may have been the earlier view, it is clear that the I.C.C. and the Circuit Court for the District of Columbia believe that the I.C.C order is controlling. While the I.C.C. did not state specifically that the inconsistencies between Sections 2 and 4 of New York Dock conditions are to be resolved in favor of Section 4, that

conclusion is inescapable. Furthermore, as a creature of the I.C.C., this panel is bound to the I.C.C. view. If that view is incorrect, it is to the courts, not this panel, that the Organization must turn for relief from this newly-evolved reconciliation of the conflict between the two sections.

It is the conclusion of this panel that, assuming the I.C.C. imposes its usual New York Dock type labor protective conditions, it will not be possible for the newly-assumed IC employees to carry with them the protection they may have gained from collective bargaining with the IC.

II

Turning now to the proposed implementing agreement, it is necessary to review each of the proposals made by the Organization for inclusion in that agreement in order to determine which may be included in accordance with the directions given by the I.C.C. in New York Dock.

Article I describes the territory covered by the agreement and is identical in both the Carrier and Organization proposals.

Article II of the Carrier proposal and the Organization proposal basically addresses the way the work is allocated to "prior rights" assignments. It is the panel's view that the division of work included herein will reflect an equitable distribution of work in accordance with what will provide an interegration of the two work forces and will likely allow for a speedy integration of the IC employees into the Southern work force.

Article III of the Carrier proposal contains a recitation of the

rights of employees under New York Dock, NW-BN and Oregon Short Line
III. Article IV of the Organization proposal contains similar language
and in addition contains several proposals which were contained in the
Interstate agreement under the Ables award. As pointed out by the
Carriers this agreement was the result of collective bargaining and it
is not possible for this panel to go beyond the guidelines set forth by
the I.C.C. in New York Dock as to the protection which may be granted
by the implementing agreement. This panel will adopt the first four of
the Organization proposals and they are incorporated in the implement-
ing agreement. The others are deemed to be beyond the power of this
panel to award.

Article III of the Organization proposal contains a number of
provisions which are beyond the power of this panel to award; however,
it also contains several provisions which will be included in the
proposed implementing agreement. The provisions to be included relate
to crediting of prior service for vacations, no loss of time for
qualifying on physical characteristics within the expanded seniority
district, suitable transportation for relief at other than normal on
and off-duty points, and rights as to promotion to conductor.

Article V of the Organization proposal contains two provisions
regarding the method dismissed employees should submit claims. They
are customary provisions and will be included.

Article VI of the Organization proposals contains provisions
regarding employees whose jobs are abolished or who are displaced and
are similar to language contained in other implementing agreements

which have been adopted. They will be included in the implementing agreement.

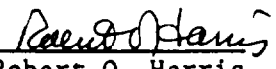
Article VII of the Organization proposals involves inadvertent errors or omissions in an agreed upon implementing agreement. It is not applicable to an arbitrated agreement and will not be included.

Article VIII of the Organization proposals involves the resolution of conflicts between the implementing agreement and schedule agreements. Article IV of the Carrier proposed agreement is similar. These provisions will be included in the implementing agreement.

Article V of the Carrier proposed agreement states that the implementing agreement will only become effective upon I.C.C. approval of the transaction and 15 days written notice to the appropriate General Chairmen of the Organization. That suggested provision will also be included in the implementing agreement.

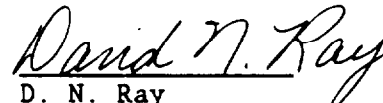
Award

The attached Implementing Agreement shall govern the transactions involved in the instant proceeding.


Robert O. Harris
Chairman and Neutral Member


C. L. Little
United Transportation Union

DISSENTING


D. N. Ray
Norfolk Southern


R. G. Richter
Illinois Central

AGREEMENT

between

SOUTHERN RAILWAY COMPANY
ILLINOIS CENTRAL GULF RAILROAD COMPANY

and their employees

represented by

UNITED TRANSPORTATION UNION

Whereas, Southern Railway Company (Southern) and Illinois Central Railroad Company (IC) have filed applications for approval of a series of transactions involving:

1. Southern's purchase of the IC's 199.98 mile line of railroad from Fulton Junction, Kentucky (IC MP C-406.12) through Conalco (near Jackson), Tennessee (IC MP 468.98/IC MP MM-387.46) and Ruslor Junction (near Corinth), Mississippi (IC MP MM-330.50/MP O-0.00), to Haleyville, Alabama (IC MP O-80.16).
2. Southern's purchase of IC's three branch lines, totaling 23.67 miles, in the Jackson, Tennessee area from:
 - a. Iselin Junction (IC MP MM-383.46/MP GH-22) to Bemis (IC MP C-473.97/MP GH-0.00/MP GG-404.40).
 - b. Bemis to Poplar Corner (IC MP GW-10.62), by way of Jackson (IC MP GG-408.65/MP GW-0.46).
 - c. Lawrence to Carroll (IC MP MM-394.50).
3. IC granting to Southern trackage rights over the IC line from Centralia, Illinois (IC MP C-252.45) to Fulton Junction, Kentucky (IC MP C-406.12), a distance of 153.67 miles, with the junction of the line at Centralia being the joint main lines of Southern and Burlington Northern Railroad Company (BN) at IC Milepost C-252.45, BN Milepost 121.30, and Southern Milepost 65.20-W; and
4. IC terminating its trackage rights over Southern between Haleyville and Jasper, Alabama; and IC terminating its

trackage rights over BN between Jasper and Birmingham, Alabama.

Whereas, it is anticipated that the ICC Order will impose the employee protective conditions set forth in New York Dock Railway Control - Brooklyn Eastern District Terminal, 360 ICC 60 (1979) to purchase and sale, and Norfolk and Western Railway Company - Trackage Rights - Burlington Northern Inc., 354 ICC 605 (1978) as modified by Mendocino Coast Railway, Inc. - Lease and Operate - California Western Railroad, 360 ICC 653 (1980) to the trackage rights; and Oregon Short Line Railroad Company - Abandonment - Goshen, 360 ICC 91 (1979) to the discontinuance of trackage rights; and

Whereas, pursuant to Article I, Section 4 of the applicable conditions, the Carriers have notified the employees of their intent to consummate these transactions and the parties signatory hereto desire to provide a method of implementing the transactions which will be fair and acceptable to all parties;

THEREFORE, it is mutually agreed as follows:

Article I

- A. The territory between Centralia and Cairo, Illinois (MP C-361.45) covered by trackage rights will become part of Southern's Kentucky Division, St. Louis Seniority District for conductors, trainmen, yardmen and firemen.
- B. The territory from Cairo to Hackleburg, Alabama (IC MP O-68.00), including the branch lines and yards in the Jackson area, and the trackage rights and lines to be purchased, will become part of Southern's Tennessee Division, Memphis Seniority District for conductors, trainmen, yardmen and firemen.
- C. The lines to be purchased south and east of Hackleburg will become part of Southern's Alabama Division, Northern Alabama (N/A) Seniority District for conductors, trainmen, yardmen and firemen.

Article II

- A. Southern will offer employment in seniority order to IC employees working on the lines to be purchased on the date of this agreement as necessary to meet operating needs over such lines.
- B. IC employees accepting employment with Southern will establish seniority on the Memphis District and the St. Louis District and will be governed by

the provisions of the Agreements between Southern and the UTU. Such employees will surrender all seniority rights on the IC.

1. IC employees accepting employment with Southern will be given a seniority date as of the date of this agreement and placed on the bottom of the appropriate Southern seniority roster in the order of their IC seniority.

2. The symbol "IC" following the name of a former IC employee accepting employment with Southern on the consolidated roster shall indicate "prior rights" to assignments operated on the former IC lines.

3. Crews of road assignments operating on the St. Louis District between St. Louis, Missouri and Fulton, Kentucky (Cairo, Illinois) shall be allocated between former IC employees and Southern employees on the following basis:

Crew 1	Southern
Crew 2	IC
Crew 3	Southern
Crew 4	IC
Crew 5	Southern

All crews thereafter shall be allocated on a 50/50 basis.

4. Crews of road assignments operating on the Memphis District between Fulton, Kentucky (Cairo, Illinois) and Sheffield, Alabama, excluding Sheffield Yard, shall be allocated sixty-six and two-thirds ($66 \frac{2}{3}$) per cent former IC employees and thirty-three and one-third ($33 \frac{1}{3}$) per cent Southern employees as follows:

Crew 1	IC
Crew 2	IC
Crew 3	Southern
Crew 4	IC
Crew 5	IC
Crew 6	Southern

All crews thereafter shall be allocated as provided for above.

5. Former IC employees shall establish prior rights to all assignments and positions originating and operating predominately on trackage formerly operated by IC.

6. Former IC employees will not establish nor retain

prior rights on any assignments or crews of the St. Louis District or Memphis District except for those crews allocated to former IC employees as provided for herein.

7. No employee will be permitted to exercise a general displacement right as a result of the employment of former IC employees.

8. A senior employee cannot displace a junior employee if the junior employee has prior rights to the job in question and the senior employee does not.

Article III

- A. The New York Dock II protective conditions, supra, will be applied for the protection of all employees of the signatory Carriers who are adversely affected by the purchase described herein.
- B. NW-BN protective conditions, supra, will be applied for the protection of all employees of the signatory Carriers adversely affected by IC granting Southern trackage rights between Centralia and Fulton.
- C. Oregon Short Line III protective conditions, supra, will be applied for the protection of all employees of the signatory carriers adversely affected by IC discontinuing trackage rights between Haleyville and Birmingham.
- D. The potential earnings of all assignments operating at or out of the home terminals of the crews protecting service within a thirty (30) mile radius therefrom, will be posted in \$50.00 increments by the Carriers to be used as a guide for employees to evaluate seniority and compensation. Such information will be only for the guidance of protected employees and will not be construed as a guarantee that any assignment will earn the amounts specified.
- E. In order that the provisions of the stipulated protective conditions may be properly administered, as a result of this agreement each employee determined to be a "displaced employee" or a "dismissed employee" who also is otherwise eligible for protective benefits and conditions under some other job security or other protective conditions or arrangements shall, within ten (10) days after having established "displaced" or "dismissed"

status under the protective conditions, elect between the benefits under such other arrangements and this agreement. This election shall not serve to alter or affect any application of the substantive provisions of this agreement.

- F. In the event an employee fails to make such election within the said ten (10) day period, he shall continue to be entitled to the protective benefits under the provisions of such other protective conditions or arrangement, and will not be subject to the protective benefits of this agreement.
- G. There shall be no duplication of protective benefits receivable by any employee under this agreement and any other agreement or protective arrangement.

Article IV

- A. Former IC employees accepting employment under this agreement shall be credited with prior service for qualifying for vacation. They shall also be credited with prior service for the purpose of being considered protected under crew consist agreements when working on prior rights IC assignments.
- B. Any employee having an employment relationship on the effective date of this agreement will not be required to lose time or utilize off-duty time for the purpose of qualifying on physical characteristics within the expanded seniority district.
- C. Where employees are required to report for duty or are relieved from duty at a point other than the on- and off-duty points established for any service in the territory, the Carrier shall authorize and provide suitable transportation for such employees.

Note: Suitable transportation includes Carrier-owned or provided passenger-carrying motor vehicles or taxi, but excludes other forms of public transportation.

- D. IC employees without conductor rights transferring to the Southern, under the provisions of this agreement, will be offered an opportunity to accept promotion to conductor and will be ranked behind the most junior promoted conductor on their

district.

Article V

- A. Each "dismissed employee" shall submit to the Carrier a claim with the following information for the month in which he is claiming benefits on a form (sample to be attached to the notice of dismissal) provided by the Carrier and in accordance with the applicable claim or grievance procedures for handling protective conditions:
1. The day(s) claimed by such employee under any unemployment insurance act.
 2. The day(s) each such employee worked in other employment, the name and address of the employer and the gross earnings made by the "dismissed employee" in such other employment.
- B. If the employee referred to in this Article has nothing to report under this Article account not having claimed any benefits under any unemployment insurance law and having no earnings from any other employment, such employee shall submit, within the time period provided for in Section A of this Article the appropriate form stating "Nothing to Report."

Article VI

An employee whose job is abolished as a result of the transaction or who is displaced by such an employee and becomes unable to secure a position through the exercise of seniority under existing agreements and is eligible to receive a dismissal allowance, may be offered a position by the Carriers in their craft (every effort to be made to limit such offers to adjacent seniority districts). Such employee shall be given thirty (30) days' notice of such offer and must elect one of the following options prior to the expiration of the notice:

1. Accept the offer;
2. Resign from all service and accept a lump sum payment computed in accordance with Section 9 of the Washington Job Protection Agreement of May 1936; or
3. Be furloughed without protection during the furlough.

In the event that an employee fails to make such an election, he shall be considered to have exercised Option 3.

Employees accepting a job offer pursuant to this Article, who require a change of residence will be subject to the moving and real estate expenses provided in Sections 9 and 12 of the protective conditions. Employees who accept the offer will be ranked on the appropriate roster as of the date of acceptance.

Employees transferred to other rosters pursuant to this Section will retain seniority rights and recall rights on their previous rosters. If recalled, they shall accept such recall in accordance with the appropriate Agreement or forfeit all seniority on their previous roster. If they accept such recall, they shall forfeit all seniority on the roster to which they have previously accepted transfer. The application of this paragraph shall not involve any expense to the Carrier for moving or real estate costs, or otherwise, unless the employee is furloughed within three years after changing his point of employment, in which case the provisions of Section 9 of the conditions will apply.

Note: This Article has no application to an employee who is eligible to exercise seniority in any other craft or class in which he holds seniority.

Article VII

Where the rules of the respective schedule agreements conflict herewith, the provisions of this agreement will apply. Rules or portions thereof, that are not in conflict with this agreement are preserved.

Article VIII

This agreement shall be effective only upon ICC approval of the transactions and upon 15 days written notice to the respective General Chairmen and will fulfill the

requirements stipulated in Article I, Section 4 of the applicable conditions.

This agreement is signed in Atlanta, Georgia, on the ____ day of _____, 1988.

FOR THE EMPLOYEES:

FOR THE CARRIERS:

General Chairman, UTU

Assistant Vice President
Labor Relations
Southern Railway Company

General Chairman, UTU

Vice President Labor Relations
Illinois Central Gulf
Railroad Company

General Chairman, UTU

APPROVED:

General Chairman, UTU

Vice President, UTU

General Chairman, UTU