

RE:

ARBITRATION PROCEEDINGS

UNDER

NEW YORK DOCK LABOR PROTECTIVE
CONDITIONS (IMPOSED BY INTERSTATE
COMMERCE COMMISSION IN FINANCE
DOCKET NO. 29455 (SUB NOS. 1-5)
AND RELATED PROCEEDINGS)

PARTIES TO DISPUTE:

NORFOLK & WESTERN RAILWAY COMPANY
ILLINOIS TERMINAL RAILROAD COMPANY
AND
UNITED TRANSPORTATION UNION

APPEARANCES:

FOR NORFOLK & WESTERN RAILWAY

R. D. Kidwell
H. D. Amick
W. E. Goggin
J. W. Horan

FOR UNITED TRANSPORTATION UNION

C. L. Caldwell

GENERAL AND VICE GENERAL CHAIRMEN, UTU-CET

J. J. Hults
R. S. Metz
A. E. Heim

LOCAL CHAIRMEN

C. W. Smick
D. L. Leonard
L. R. Grunert
George S. Mims
C. R. Moore, Jr.
Jim L. Bundy
C. C. Chronister
Bill Martin
K. N. Thompson

SUPPLEMENTAL AWARD NO. 1

STATEMENT OF FACTS: The Interstate Commerce Commission (ICC) approved the coordination of operations of the Norfolk and Western Railway Company (NW) and Illinois Terminal Railroad Company (IT) in its decision in Finance Docket No. 29455 (Sub Nos. 1-5) and related proceedings, service date June 22, 1981.

Article 1, Section 4 of the New York Dock Conditions requires that subsequent to Carriers' serving a ninety (90) day notice of the intended transaction, the parties endeavor to negotiate an implementing agreement under which the employees will work upon implementation of the consolidation.

Pursuant to the ICC order and the New York Dock Conditions, the Carriers served the required notice on the United Transportation Union (UTU) on July 29, 1981, of their intent to unify, coordinate and/or consolidate their respective operations on or after November 1, 1981. The parties met on several occasions for the purpose of reaching agreement as follows:

The parties met on five days during August, 1981, being August 10, 11, 19, 20 and 21; and upon eleven days in September 1981, being September 2, 3, 4, 14, 15, 16, 17, 18, 28, 29 and 30; and on three days in October 1981, being October 1, 2 and 18; and endeavored to reach an implementing agreement under which the employees would work upon consummation of the consolidation.

The parties, however, despite such sustained meetings and efforts, did not succeed in reaching a complete implementing agreement.

The Carrier proceeded by invoking arbitration as provided for in Article 1, Section 4 of the New York Dock Conditions.

The initial arbitration hearing was held in St. Louis, Missouri, on November 9, 1981.

Arbitration Award was rendered on December 29, 1981, copy attached.

The arbitrator in his award was of the opinion from reading the record that negotiations for a new and proper implementing agreement had not been carried out to the extent required for success. The arbitrator was of the further opinion that such negotiations, if resumed, would result in a full and complete resolution by agreement of all issues, both major and minor, necessary to secure a complete implementing agreement, satisfactory and fair to all.

Further negotiations were resumed on January 25, 26, 27, 28 and 29 and continued February 16, 17 and 18, 1982.

The parties reached an accord on what they considered a fair and equitable agreement. A proposed Implementing Agreement was signed on February 22, 1982, by two (2) General Chairmen.

Under date of March 10, 1982, Mr. J. J. Hults, General Chairman, United Transportation Union, CT&E, Norfolk & Western Railway Company (Wabash District), directed a letter to Mr. R. D. Kidwell, System Director Labor Relations, Norfolk & Western Railway Company, Roanoke, Virginia, as follows:

"Dear Sir:

"This letter is in reference to your letter dated March 1, 1982, concerning coordination agreement of N&W's acquisition of the Illinois Terminal Railroad.

"Due to Yard Local Chairmen Carl Smick and C. R. Moore not agreeing to the proposed agreement, I am unable to sign.

"Under Article 85 of the UTU Constitution, the General Chairman must have the concurrence of the Local Chairmen before he can sign a local agreement.

"The vote taken was as follows:

"Yard Local Chairmen: C. W. Smick - Against
C. R. Moore - Against

"Road Local Chairmen: B. B. Pritchett - For
J. L. Bundy - For
K. N. Thompson - For

"Firemen Local Chairmen: L. R. Grunert - For
D. L. Leonard - Against

Yours very truly,

J. J. Hults
General Chairman

cc: C. L. Caldwell, Vice President UTU"

This present matter comes on for hearing in St. Louis, Missouri, pursuant to a communication set forth as follows:

"March 6, 1982

"Mr. Leverett Edwards, Esq.
2704 Scott Ave.
Ft. Worth, Texas 76103

"Re: N&W Acquisition of Illinois Terminal R.R.

"Dear Mr. Edwards:

"Impasse has developed in connection with efforts to implement your decision of December 29, 1981, as related to the integration of seniority rosters.

"Your award provided that you would reserve 'arbitral jurisdiction to resolve by further or supplemental Arbitration Award or Awards, any deadlocks that may remain following the expiration of twenty (20) days ***.'

"Therefore, the signatory parties respectfully request that you meet with us in St. Louis, Missouri, at the earliest date possible for the purpose of presenting this dispute to you for decision.

Very truly yours,

"/s/ R. D. Kidwell, System Director Labor Relations
Norfolk and Western Railway Company
8 North Jefferson Street
Roanoke, Virginia 24042

"/s/ C. L. Caldwell, Vice President
United Transportation Union
8311 Webster Drive, N. W.
Roanoke, Virginia 24019"

DISCUSSION: The negotiations conducted in January and February, 1982 made good progress. However, they were not unanimously 100 percent acceptable to the entire group of local chairmen who, under the UTU Constitution, appear to have a voice in the matter.

The Arbitrator notes that the employee position in this case was presented by a Vice President of the National Organization of the UTU, a representative who had spent most of his adult life in the handling of Union negotiations and who has attained an outstanding reputation of ability, knowledge and fairness and has long held a position as Vice President of his Organization. His counterpart on the Carrier side has attained a similar

record and reputation and a very high position with a major railroad, System Director of Labor Relations. Neither representative has any reason or ability, for that matter, to be arbitrary or to take unfair advantages. Each was assisted by an interested participating committee. Each has realized that in a coordination, such as herein, there may not be a satisfactory solution for everyone or every problem. The Arbitrator is firmly convinced that no effort has been spared by these committees to reach an agreement as fair as possible to all concerned, recognizing it would be impossible to bring forth a solution that would satisfy every interested party.

A closely similar precedent upon an almost identical issue was considered in an Arbitration Award in a dispute between Consolidated Rail Corporation and United Transportation Union, Robert E. Peterson, Neutral Referee, Award dated August 24, 1981. A tentative agreement had been reached between the parties on June 25, 1981. Final agreement was subject to ratification by the Local Union under Article 85, just as here.

By letter dated July 29, 1981, the General Chairman for the Union advised Carrier's Senior Director of Labor Relations as follows:

"Please be advised that I have not been able to get Local Chairman J. A. Holt to agree that the proposed agreement, which would include the Detroit Terminal Railroad Company into Conrail's Consolidated Detroit Terminal, is acceptable.

"Under Article 85 of the UTU Constitution the General Chairman must have the concurrence of the Local Chairman before he can sign a Local Agreement."

The Arbitrator further stated:

"As concerns the dispute, it is obvious from a reading of the record that the designated representatives of both parties were satisfied with the agreement they had reached on June 25, 1981. It is an agreement which appears to provide a fair and equitable arrangement to protect employee interests in the transaction. It is evident that all concerned were ably represented by persons experienced in the art of negotiations and familiar with a transaction of the type involved in this dispute.

"Accordingly, on the basis of the record, written submissions, and oral presentations by representatives of the parties at the arbitration hearing, it will be the neutral referee's determination that the terms and conditions of agreement between the parties be as set forth in Attachment I to this Award."

"In making a decision as above in this dispute, the neutral referee is guided by what he believes to be a reasonable

interpretation of the mandates contained in the I.C.C.'s Order, particularly as concerns representatives of the parties having the principal responsibility for reaching terms and conditions of an agreement *** it should be recognized that regardless of the amount of time one could spend in negotiating an agreement, no amount of effort will solve or cure all individual worker or management needs or desires. The purpose of collective representation is to entrust individual rights with accredited representatives so as to avoid the pitfalls of bargaining on an individual basis. Thus, the neutral referee has placed great weight upon the fact that the representatives for the Union had indicated acceptance of the agreement, and that for the neutral referee to attempt to arbitrarily change that which had been agreed to would no doubt only lead to further controversy."

The Arbitrator believes this is sound reasoning and is as applicable to the dispute now before us as it was in said Consolidated Rail Corporation-UTU case from which quoted.

AWARD: The Arbitrator hereby finds and accordingly decides and awards that the terms and conditions of the tentative implementing agreement reached in negotiation by the respective representatives and setting forth terms and conditions pursuant to Interstate Commerce Commission decision on Finance Docket No. 29455 (Subs Nos. 1-5) service date June 22, 1981, shall be as set forth in Attachment 1 to this Award.


Leverett Edwards, Arbitrator

Fort Worth, Texas
March 16, 1982