

ARBITRATION COMMITTEE

In the Matter of the)	Pursuant to Article I,
Arbitration Between)	Section 11 of the New
)	York Dock Conditions
INTERNATIONAL ASSOCIATION)	
OF MACHINISTS AND AEROSPACE)	
WORKERS,)	
)	I.C.C. Finance Docket 30000
Organization,)	
)	
and)	OPINION AND AWARD
)	
MISSOURI PACIFIC RAILROAD)	
COMPANY and UNION PACIFIC)	
RAILROAD COMPANY,)	Case No. 1
)	Award No. 1
Carriers.)	

Hearing Date: May 8, 1987
Hearing Location: Roseville, California
Date of Award: July 10, 1987

MEMBERS OF THE COMMITTEE

Employees' Member: J. R. Smothers
Carrier Member: Dan Moresette
Neutral Member: John B. LaRocco

APPEARANCES

For The Organization:

Mr. J. R. Smothers
General Chairman
District No. 19
International Association of
Machinists and Aerospace Workers
729 Sunrise Avenue, Suite 502
Roseville, California 95661

For The Carrier:

Mr. Dan Moresette
Director - Labor Relations
Union Pacific Railroad
1416 Dodge Street
Omaha, Nebraska 68179

I.A.M. File No.: 58-87
Carrier File No.: 360-5679

OPINION OF THE COMMITTEE

I. INTRODUCTION

In a formal decision dated October 20, 1982, the Interstate Commerce Commission (ICC) approved the merger of the Union Pacific Railroad (UP), the Missouri Pacific Railroad (MP) and Western Pacific Railroad (WP). [I.C.C. Finance Docket No. 30000.] To compensate and protect employees adversely 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 merged Carrier pursuant to the relevant enabling statute. 49 U.S.C. §§ 11343, 11347.

The Organization and Carrier submitted this dispute to final and binding arbitration under Section 11 of the New York Dock Conditions.¹ At the Neutral Member's request, the parties waived the Section 11(c) forty-five day limitation period for issuing this decision.

II. BACKGROUND AND SUMMARY OF THE FACTS

Rule F of the MP Uniform Code of Safety Rules effective January 1, 1971 provides:

"F. Employes must report promptly to their immediate supervisor all injuries, no matter how

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

trivial. In every case of personal injury in any branch of the service, a full and complete report must be made at once on prescribed form. They must obtain immediate first aid and medical attention for all injuries, when necessary."

Sometime after the merger, the MP supplanted Rule F with Rules 4004 and 4004(a) of the UP's "Safety, Radio and General Rules for All Employees" from Form 7908. On or about October 9, 1985, the Shop Superintendents at North Little Rock, Arkansas (an MP point) read Rule 4004 and Rule 4004(a) during a Mechanical Department safety meeting. These rules state:

"4004 - All injuries, while on duty, regardless of extent must be reported immediately to foreman or supervisor and proper written form completed. Necessary first aid or medical attention must be obtained as soon as possible.

"4004 (a) - Off duty injuries must be reported to proper authority as soon as possible and proper written form completed upon return to service."

The above quoted rules were unilaterally promulgated by the Carriers.

The Organization's Local Chairman at North Little Rock immediately objected to both the imposition and enforcement of Rule 4004(a). He charged that the new safety rule infringed on Rule 40(a) of the MP schedule Agreement which remains in full force and effect on the former MP property. Rule 40(a) reads:

"PERSONAL INJURIES: Rule 40. (a) Employees injured while at work will not be required to make accident reports before they are given medical attention, but will make them as soon as practicable thereafter."

The Organization urges this Committee to order the Carrier to rescind Rule 4004(a).

III. THE POSITIONS OF THE PARTIES

A. The Organization's Position

When it instituted Rule 4004(a), the Carrier unilaterally and substantially changed Rule 40 in the bilateral agreement between the Organization and the MP in violation of not only Section 6 of the Railway Labor Act but also Section 2 of the New York Dock Conditions.

Rule 40 expressly provides that employees are only obligated to report on duty injuries. By implication, the rule excludes any duty to report off duty injuries. After the imposition of Rule 4004(a), employees were forced, under threat of discipline, to report all injuries regardless of where the injury occurred. A careful reading of MP Rule F reveals that it applied solely to injuries "...in any branch of service..." but was silent concerning injuries incurred outside of service. MP Machinists were never required to report off duty and off property injuries. The Carrier enforced Rule 4004(a). It discharged a North Little Rock Boilermaker because he allegedly accumulated a bad safety record at home. The Carrier has no legitimate purpose or authorization to police off duty employee conduct. Nonetheless, if the Carrier wishes to amend Rule 40, it should accomplish the change through the collective bargaining process.

Compelling employees to report off duty injuries also denigrated schedule Rule 40 contrary to the prohibition in Section 2 of the New York Dock Conditions. Section 2 provides:

"The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes."

The Carrier improvidently imposed a UP safety rule at an MP point where the existing rule in a duly negotiated collective bargaining agreement remains paramount.

B. The Carrier's Position

The Carrier raises several defenses. First, this claim is outside the purview of the New York Dock Conditions since Rule 4004(a) did not emanate from a Section 1(a) transaction. The Organization has not demonstrated the requisite causal nexus between the merger and the imposition of Rule 4004(a).

Second, the Organization has failed to prove that any North Little Rock Machinist was adversely affected by the enforcement of Rule 4004(a). The Organization vaguely alluded to a Boilermaker who was purportedly dismissed because he suffered an off duty injury but the Organization neither identified the employee nor substantiated the reasons for his dismissal.² In any event, the Organization has not been able to show that enforcing Rule 4004(a) has resulted in the displacement or dismissal of any Machinist within the meaning of Sections 5 and 6 of the New York Dock Conditions.

²Contrary to the Carrier's assertion, the Local Chairman identified the discharged Boilermaker in his December 10, 1985 correspondence.

Third, the Carrier retains the prerogative to promulgate rules to promote efficient railroad operations and worker safety. The Organization has not objected to other safety rules in Form 7908 and indeed only objects to one portion of Rule 4004. Section 2 of the New York Dock Conditions does not apply to unilaterally imposed safety and operating rules.

Fourth, Rule 4004(a) is consistent with schedule Rule 40. Rule 40 relates exclusively to on duty injuries and contains neither an express nor an implied restriction on the Carrier's discretion to require the reporting of off duty injuries. Simply put, Rule 4004(a) does not impair Rule 40.

Fifth, the first sentence of former MP Safety Rule F required MP employees to report all injuries. Thus, the new safety rule is not materially different from the rule in effect for many years on the former MP.

Finally, imposition of Rule 4004(a) serves a laudatory purpose. The Carrier needs information concerning off duty employee injuries so it can properly evaluate the employee's ability or inability to safely perform service. A worker who has been incapacitated due to an off duty injury constitutes a hazard to himself as well as his fellow workers.

IV. DISCUSSION

The Organization correctly contends that Section 2 of the New York Dock Conditions provides for the plenary preservation of not only existing collective bargaining agreements but also the collective bargaining process. However, Section 2 (and all New York Dock Conditions) applies only if the Carrier has engaged in

a Section 1(a) transaction. Thus, before this Committee can determine if Carrier Safety Rule 4004(a) conflicts with or otherwise impairs MP schedule Rule 40, the Organization must identify a transaction and "...specify the pertinent facts of that transaction relied upon." See Section 11(e) of the New York Dock Conditions.

In this case, the record is void of any evidence demonstrating that the Carrier implemented a New York Dock transaction at North Little Rock. The only transaction which the Organization mentioned on the property or before this Committee was the basic merger. The Organization apparently misconstrued the imposition of Rule 4004(a) to be a transaction within the definition of Section 1(a) of the New York Dock Conditions. However, the MP could promulgate reasonable safety rules even in the absence of a merger. The MP could amend such rules without ICC approval. Indeed, Machinists at North Little Rock worked for many years under former MP Safety Rule F. In addition, the Organization has failed to state specific facts connecting the merger to the imposition of Rule 4004(a). The record does not contain any relevant facts showing that the change in safety rules arose from the merger.

Since the Organization has not satisfied its burden of going forward per Section 11(e) of the New York Dock Conditions, this Committee need not decide if Rule 4004(a) modified Schedule Rule 40. Also, because the New York Dock Conditions are inapplicable, this Committee is not empowered to decide if the Carrier imposed Rule 4004(a) in violation of Section 6 of the

Railway Labor Act. These issues are best resolved in another forum.

AWARD AND ORDER

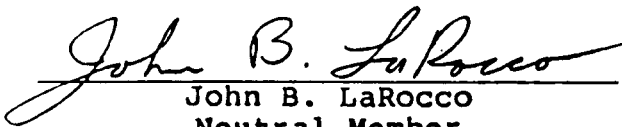
The Organization's petition that the Committee order the Carrier to rescind Rule 4004(a) of Form 7908 is denied.

DATE: July 10, 1987

J. R. Smothers
Employees' Member



Dan Moresette
Carrier Member



John B. LaRocco
Neutral Member