NEW YORK DOCK CONDITIONS
IMPLEMENTING AGREEMENT ARBITRATION
ARBITRATION OPINION AND AWARD
CHARD R. KASHER, ARBITRATOR
VEMBER 13, 1989

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In the Matter of a New York Dock Implementing Agreement Arbitration Between

INDIANA HI-RAIL CORPORATION

and

BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

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Introduction

Indiana Hi-Rail Corporation (hereinafter the "Carrier" or the "IHR") and the Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers Express and Station Employes (hereinafter the "Organization" or "BRAC") were unable to agree upon terms of an implementing arrangement regarding the manner in which employees represented by the Organization, who might be adversely affected as the result of the Carrier's acquisition of a six-mile line of track, would be protected under the conditions imposed by the Interstate Commerce Commission (hereinafter the "ICC") in Finance Docket No. 29601.

The parties agreed to have the below-signed Neutral Referee conduct a hearing and receive written submissions regarding their respective positions concerning the appropriate implementing agreement. An arbitration hearing was conducted in Washington, D.C. at which the Carrier and the Organization were represented by counsel. The parties were afforded a full opportunity to present relevant evidence and to raise points and contentions in support of their respective positions in written submissions.

The Carrier raised a question regarding the participation of the United Transportation Union (hereinafter the "UTU") in the ptioned proceeding, in view of the fact that the UTU was the only labor organization representing rail employees on the Carrier's property. As a result, the Neutral Referee wrote to the UTU and afforded the UTU the opportunity to express its interest and position concerning the matter in dispute. The UTU filed a statement with the Neutral Referee, copies of which were provided to counsel for the IHR and the Organization.

Background Facts

The Carrier, a short-line railroad company, operates two rail lines in Eastern Indiana. One of those lines, the so-called "Beesons Line", is a six-mile length of track which runs between Beesons and Connersville, Indiana.

The Beesons Line was acquired by the Carrier on December 11, 1981 from the Consolidated Rail Corporation (hereinafter "Conrail") as the result of Conrail's determination to abandon that line of track. The acquisition of the Beesons Line was approved by the ICC as the result of the Carrier's application to acquire that line under the Feeder Line Development Program, 49 U.S.C. 10910. The ICC directed Conrail to negotiate the sale of the line, and as part of its administrative proceedings, the ICC determined that the Northeast Rail Services Act precluded it from imposing labor protective conditions upon Conrail. The ICC concluded that the labor protective conditions applicable under New York Dock Railway-Control-Brooklyn Eastern Terminal, 360 I.C.C. 60 (1979) (hereinafter the "New York Dock" conditions) would be the obligation of IHR as the purchaser of the line from Conrail.

On December 14, 1981 the Carrier and the UTU entered into a collective bargaining agreement which established, inter alia, that "All employees of the Indiana Hi-Rail Corporation employed on an hourly basis and not considered in a managerial position with the corporation, except yardmasters, shall be represented by the United Transportation Union and covered by the terms of this agreement".

On April 17, 1982, in response to an April 1, 1982 letter from the General Chairman of the Organization, Conrail's Senior Director of Labor Relations advised the Organization that, as a result of the sale of the Beesons Line to the IHR, Conrail had abolished "one

TC-BRAC Traveling Representative Position at Connersville, Indiana".

On June 16, 1982 the Organization filed a complaint in the United States District Court for the District of Columbia, BRAC v. IHR, Civil Action No. 82-1677, in which the Organization sought an order requiring the Carrier to comply with certain notice provisions of the New York Dock conditions. The District Court issued an order requiring the Carrier to serve notice upon the Organization.

On May 29, 1984 the Carrier served said notice upon the Organization and implementing agreement negotiations ensued.

The parties were unsuccessful in negotiating an implementing agreement, and thus the question of what shall constitute an appropriate implementing agreement has been presented to arbitration for resolution.

Position of the Organization

The Organization contends that employees who are improperly affected by a transaction consummated in violation of Article 1, Section 4 of the New York Dock conditions should be made whole. The Organization argues that the Carrier violated the New York Dock conditions when it purchased the Beesons line from Conrail without first giving BRAC advance notice of the employee protective provisions, which notice is required by Article I, Section 4 of the conditions. The Organization submits that the Carrier's failure to

enter into an implementing agreement with the Organization prior to the Beesons Line purchase entitles any employee who suffered harm during the period when no implementing agreement was in place to be made whole, and further requires that employees' protective periods not begin to run until after the implementing agreement is effective.

In support of this argument, the Organization cites a decision of the ICC in F.D. No. 29096, Durango & S.N.G.R.R.-Acquisition (1981), a case involving Oregon Short Line protective conditions, in which the ICC held, inter alia, that employees should be considered to be affected at a time that "an implementing agreement is either negotiated or established through arbitration". The Organization then refers to the arbitration decision in the Durango case in which retroactive protection was afforded, which protection was not subtracted from standard protective periods which began to run as of the effective date of the implementing agreement arrangement.

The Organization argues that the above-described method of applying protection is consistent with the manner in which New York Dock conditions have been applied in "Appendix C-1" cases, and cites an arbitration decision in support of this contention. The Organization submits that adopting the Carrier's position regarding the beginning of the protective period "would reward an employer for ignoring the clear command of that section [Article 1, Section 4(b)] and would not restore to the employees the bargaining power which Section 4(b) gives them in devising a fair and mutually acceptable

implementing agreement".

The Organization argues that, contrary to the Carrier's contentions, an affected Conrail employee need not be willing to accept comparable employment with the Carrier in order to be eligible for protection and for benefits under the New York Dock Conditions. The Organization acknowledges that an employee is not eligible for protective benefits unless that employee was displaced, dismissed or required to relocate "as a result of a transaction"; however, the Organization argues that it is entirely improper for an implementing agreement to require affected employees to be willing to accept employment with IHR as a condition precedent for New York Dock protections. The Organization submits that such a requirement substantially abrogates the protections mandated by the ICC. The Organization asserts that to accept the Carrier's argument would require a displaced employee to resign from Conrail and apply for employment with IHR in order to be eligible for a displacement allowance. The Organization argues that Article 1, Section 5 of the New York Dock Conditions does not impose such an obligation upon employees. The Organization points out that Article 1, Section 6(d), the section upon which the Carrier relies in its suggestion that employees be obligated to accept comparable employment, applies only after an employee is dismissed, and it cannot be used as a justification for depriving a dismissed employee from exercising his/her right to elect a separation allowance under Article 1,

Section 7. Finally, in discussing the question of comparable employment, the Organization contends that comparable employment is an issue which must be decided on a case-by-case basis, and, if necessary, arbitrated under Article 1, Section 11, and not before an Article 1, Section 4 Referee.

As a final argument, the Organization contends that, contrary to the Carrier's assertions, the implementing agreement need not be made contingent upon the consent of the UTU, since the implementing agreement must preserve collective bargaining rights of all employees affected by the transaction. The Organization contends that the UTU not a necessary party to the implementing agreement arbitration, and points out that the UTU was given notice of the arbitration proceeding and given an opportunity to express its view regarding its interests in the matter. The Organization points out that the instant arbitration proceeding was convened to devise an implementing agreement which, in the event IHR now or hereinafter performs clerical work, would provide for the selection of clerical forces from all affected employees on a fair and equitable basis and which would apportion the adverse impact among all affected clerical employees. The Organization submits that the UTU's non-participation does not deprive the Referee of the jurisdiction to devise such a selection of forces arrangement.

Based upon the foregoing arguments, the Organization submits that the Referee should adopt the implementing agreement which it has proposed.

Position of the Carrier

The Carrier points out that there are significant differences between the implementing agreement it has proposed and the one proposed by the Organization; specifically, in terms of (1) the issue of selection of forces, (2) employment under the BRAC-Conrail collective bargaining agreement and the need for UTU consent, (3) the issue of eligible claimants and (4) the protective period and retroactive pay.

In discussing the question of selection of forces, the Carrier contends that the provisions in the Organization's implementing agreement are inappropriate since they purport to give BRAC members a right to be employed in specific positions which may become available while the New York Dock Conditions do not establish such employee rights. The Carrier contends that New York Dock does not force a carrier to employ particular individuals. The Carrier recognizes that New York Dock protects employees from adverse affects of a consolidation by guaranteeing that such employees will be made whole if they are displaced or dismissed as a result of the transaction; however, the Carrier contends that New York Dock does not abolish the Carrier's basic right to choose its own forces. The Carrier points out that Article 1, Section 5 guarantees a displacement allowance only to an employee who is "unable ... to obtain a position producing compensation equal to or exceeding" his/her previous Compensation, and that Article 1, Section 6(d) provides that

dismissal allowances shall cease when an employee "fails without good cause to accept a comparable position which does not require a change in his place of residence for which he is qualified and eligible after appropriate notification, if his return does not infringe upon the rights of other employees under a working agreement". The Carrier contends that these provisions of New York Dock do not guarantee a person specific employment and do not permit an employee to decline a reasonable offer of employment from the Carrier and then to claim monetary benefits such as displacement or dismissal allowances. Accordingly, the Carrier suggests that the implementing agreement should require employees who believe that they have been adversely affected by the Beesons Line acquisition to notify the Carrier of their desire and willingness to work for the Carrier either in positions they previously held or in comparable positions; and that the agreement should permit, but not compel, the Carrier to employ such persons if the Carrier agrees or it is ultimately determined that these employees were adversely affected by the transaction. The Carrier points out that it is not now performing any of the clerical jobs performed previously by Conrail employees in connection with traffic moving over the Beesons Line; but that it is willing to consider hiring and providing necessary retraining of any BRAC members in positions which it does have; such as engineer, conductor, brakeman, machine operator, maintenance of way trackmen, laborer, track foreman, shop foreman, assistant shop foreman, skilled

shop laborer and yard master. The Carrier submits that these are comparable positions to the positions previously held by BRAC members.

In addressing the question of employment under the BRAC-Conrail agreement and the need for the UTU's consent, the Carrier points out that it has been party, since 1981, to a collective bargaining agreement with the UTU which, by its terms, governs the employment of all of the Carrier's hourly employees and designates the UTU as those employees' exclusive representative. The Carrier submits that the implementing agreement proposed by the Organization which would quire the Carrier to adopt the BRAC-Conrail agreement would conflict with the agreement the Carrier has with the UTU and with the UTU's interests.

In addressing the question of eligible claimants, the Carrier submits that New York Dock fairly permits a carrier to mitigate its monetary liability, in terms of dismissal, displacement or relocation allowances, by making appropriate job offers to adversely affected employees. The Carrier submits that the provision in the implementing agreement suggested by the Organization, which would allow adversely affected Conrail employees to remain unemployed despite the availability of jobs with the IHR or to remain employed in lower-paying jobs with Conrail despite the availability of higher-paying jobs with the IHR and to collect dismissal or displacement allowances is both unfair to the Carrier and contrary to

the principles of the New York Dock Conditions. The Carrier suggests that its proposal, which would require claimants to first indicate their wish to work for the IHR and to have not been offered jobs by the IHR before they would be entitled to protective benefits, should be adopted by the Referee.

In addressing the questions of the protective period and retroactive pay, the Carrier contends that the Organization's proposals are completely contrary to the New York Dock Conditions. The Carrier points out that under Article 1, Section 7, an eligible employee may elect to take a lump sum separation allowance "in lieu of" receiving monthly dismissal allowances for the remainder of his protective period. The Carrier argues that there is no justification for giving the employee both, as the Organization proposes, since this would represent a windfall for the employee and a penalty for the Carrier, in view of the fact that the question of compliance with the protective conditions has been a matter of litigation between the parties for several years. The Carrier points out that the New York Dock Conditions permit allowances for protective periods up to a maximum of six (6) years; and, the Carrier argues, extending the protective period and/or incorporating the Organization's retroactive pay proposal would be unfair and unjustly enrich adversely affected employees. The Carrier submits that it should not be subjected to such a penalty provision. In any event, the Carrier contends that if retroactive dismissal or displacement allowances are granted the

protective period for which those and future allowances are allowed must begin as of the date of the dismissal or the displacement for which the allowances are compensating.

Based upon the foregoing arguments, the Carrier submits that the Referee should adopt the implementing agreement it has proposed.

Position of the UTU

The UTU has taken the position that it has no interest in the protection which may be afforded to BRAC employees of Conrail; except to the extent that BRAC may seek to apply the existing BRAC-Conrail llective bargaining agreement to clerical employees who subsequently may be hired by IHR.

The UTU submits that it is the designated and recognized bargaining representative for all contract employees of IHR; and thus the Referee lacks authority to alter the agreement that the UTU holds on the IHR property.

Findings and Opinion

The issues joined before this New York Dock Referee do not vary significantly from those that are ordinarily presented in cases in which the ICC has approved merger, consolidation, acquisition or trackage rights transactions involving large numbers of employees, track miles and facilities.

While the underlying principles of New York Dock protective

provisions will be respected by the Referee, nevertheless, it is the opinion of this Referee that in light of the relatively, limited nature of the Beesons Line transaction, and in view of the fact that there is, apparently, no dispute that only "one TC-BRAC Traveling Representative position at Connersville, Indiana, [was] abolished as a result of the sale", the implementing agreement in this case will be tailored to the specifics of this particular transaction.

The first issue joined, an interrelated one, concerns the Organization's request that employees be made whole over a retroactive period from the date they first may have been adversely affected, and that they then have their protective periods run, which can be for a maximum of six (6) years under the New York Dock Conditions, from the effective date of the implementing agreement.

While there is some precedent for the Organization's proposal for what is, essentially, an extended protective period, that precedent has not been uniformly accepted by protective conditions arbitrators. Protective periods ordinarily begin to run from the date an implementing agreement is negotiated or arbitrated, and that principle, will be followed in the instant case. The implementing agreement which will be attached to this Opinion and Award will have an effective date of November 13, 1989, and that will be the date when protective periods will begin to run for Conrail employees represented by the Organization who have been or may be adversely affected by the Beesons Line purchase.

It is true that the Carrier did not give the Organization and the employees it represents notice as required by the provisions of the New York Dock Conditions, until required to do so by direction of the United States District Court for the District of Columbia in Civil Action No. 82-1677. However, it is this Referee's opinion that the Carrier's failure to give notice has not been shown to have been motivated by bad faith.

This Referee concludes that the Carrier's failure to give notice was based, in part at least, upon its belief that notifying and negotiating with the BRAC might conflict with its obligations to The UTU, the sole and exclusive bargaining representative for all of the Carrier's contract employees on the property. Additionally, this Referee takes arbitral notice of the fact that the acquisition of the Beesons Line occurred shortly after the enactment of the Feeder Line Development Program, 49 U.S.C. 10910 and the interface of the amendments to the Northeast Rail Services Act which insulated Conrail from protective benefits obligations in purchases of the type involved in the instant case. Accordingly, it is understandable why the Carrier in this case may have been of the belief that it was not obligated to file the standard notice required by New York Dock. For these reasons and because only one BRAC-represented employee was identified as being directly affected by the purchase, this Referee finds that it would be inappropriate, in the peculiar circumstances of the instant case to incorporate a retroactive, make-whole

provision in the attached implementing agreement.

The second significant issue to be addressed by the Referee concerns the question of whether employees represented by the Organization, who have been or may be adversely affected by the Beesons Line transaction, are required to accept "comparable employment" with IHR in order to preserve their status as protected employees.

This issue is complicated because of the nature of the transaction. "Comparable employment", as the Organization correctly points out, is usually an obligation imposed upon employees who are "dismissed", or unable in the normal exercise of their seniority to retain a position with the newly-structured carrier. There may be some dispute as to what positions constitute comparable employment. Typically, however, a railroad employee who is entitled to protective provisions is permitted to continue to exercise his/her seniority within his/her craft or class, and if he/she obtains a position within that craft or class which does not generate monthly compensation equal to or greater than his/her displacement allowance entitlement then he/she would be entitled to a displacement allowance, provided there was no position available which provided monthly compensation equal to or greater than his/her monthly "guarantee". Employees who are not deprived of employment or "dismissed" as the result of a transaction, but who suffer a reduction in compensation and are considered "displaced", are not,

ordinarily, required to accept comparable employment outside of their craft or class in order to preserve their protected status.

In the instant case, employees represented by the Organization on Conrail who have been or may be adversely affected by being "displaced" by the Beesons Line purchase should not, in this Referee's opinion, be required to leave the employment of Conrail and to accept comparable employment with IHR. They should be entitled to displacement allowances; and IHR should expect to receive earnings data from Conrail which would establish whether an employee claiming a displacement allowance exercised his/her seniority to mitigate or eliminate any displacement allowance entitlement.

On the other hand, an employee who is represented by BRAC on Conrail and who is deprived of employment as a result of the Beesons Line purchase, and is therefore considered to be "dismissed", should be obligated, if comparable employment exists on IHR, to accept a position with IHR or he/she may elect to receive separation pay if accepting the IHR position would require a change in residence.

The question of whether the present contract positions on IHR represent "comparable employment" for BRAC-represented clerical employees is not a question which this Referee can definitively resolve; since (1) our authority has not been extended to make such determinations and (2) the record before the Referee does not contain sufficient job description/qualifications data which would be necessary to determine whether one position was "comparable" to

another.

A third question presented to the Referee for consideration is whether, as the Carrier contends, the UTU must be considered to be an "indispensable party" to this implementing agreement. This Referee concludes that the UTU should not be considered as an indispensable party to this implementing agreement, since this is an agreement which establishes the benefits and rights to which non-UTU Conrail employees, represented by BRAC, may be entitled. Additionally, the UTU was given the opportunity to comment regarding its interests in this matter, and the UTU did not seek to be joined as a party to the proceedings. The UTU has expressed its interest in this proceeding as one which would protect the integrity of its collective bargaining agreement with IHR. This Referee does not intend to disturb that bargaining agreement or the UTU-IHR relationship.

The last major issue joined by the parties concerns the question of which collective bargaining agreement will govern BRAC-represented employees who accept employment with IHR. That is, will the BRAC-Conrail agreement be applicable, as the Organization proposes, or will the UTU-IHR collective bargaining agreement be applicable, as the Carrier proposes.

This issue too is complicated by the uncommon nature of the transaction. Typically, employees in a merger, consolidation, acquisition or trackage rights/leasing arrangement, who are transferred from one property or to another or who are consolidated

with another group of employees occupying similar classifications, are not faced with the question of coming under the aegis of a different brotherhood's bargaining agreement. Such employees may be faced with the possibility of falling within the parameters of a different local committee's agreement, but the agreement is ordinarily applicable to the same craft or class of employees.

In the instant case there is no dispute that the IHR has not, does not and does not intend to perform any of the standard clerical and related jobs which BRAC-represented employees on Conrail performed. In these circumstances, the Referee finds that if any ployees of Conrail represented by BRAC decide to accept comparable employment with IHR and that non-clerical comparable employment falls within the job classifications presently represented by the UTU under its agreement with IHR, then those employees would properly be governed by the IHR-UTU collective bargaining agreement. If at some time in the future, as unforeseeable as it may presently be, IHR changes its Beesons Line operations and begins to employ individuals to perform the standard and typical clerical, office, station and storehouse employees' functions in the clerical craft or class generally recognized in the railroad industry, then it would seem appropriate that the Organization, if it wishes to represent these employees and extend the Conrail collective bargaining agreement to these employees, should do so through the Section 2, Ninth representation procedures of the Railway Labor Act. At the present

time, however, it appears practical and appropriate to only require the Carrier to continue to maintain the collective bargaining agreement it has with the UTU for the representation of all non-managerial employees.

In accordance with the foregoing findings, the Referee attaches hereto a document entitled "Implementing Agreement Between Indiana Hi-Rail Corporation and the Brotherhood of Railway & Airline Clerks Applicable to the Beesons Line Purchase ".

These Findings and Opinion and the attached Implementing Agreement were signed and issued this 13th day of November 1989 in Bryn Mawr, Pennsylvania.

Richard R. Kasher

Richard R. Kasher, Referee

IMPLEMENTING AGREEMENT
BETWEEN
INDIANA HI-RAIL CORPORATION
-AND-
THE BROTHERHOOD OF RAILWAY AND AIRLINE CLERKS
APPLICABLE TO THE
BEESONS LINE TRANSACTION

WHEREAS, the Interstate Commerce Commission (hereinafter the "ICC) by a decision served November 18, 1981, directed the Consolidated Rail Corporation (hereinafter "Conrail") to negotiate with either Indiana Hi-Rail Corporation (hereinafter the "Carrier" or "IHR") or Indiana & Ohio Railroad Company for the sale of a line of railroad from Beesons, Indiana to Connersville, Indiana (hereinafter the "Beesons Line"), and, in that decision, the ICC provided that the eventual purchaser of the Beesons Line "shall be responsible for labor protection as developed in New York Dock Ry. Control--Brooklyn Eastern District., 360 I.C.C. 60 (1979) (hereinafter the "New York Dock" Conditions, and;

WHEREAS, effective 12:01 a.m. on December 11, 1981, IHR acquired the Beesons Line from Conrail pursuant to the ICC's decision served November 18, 1981, and;

WHEREAS, the Brotherhood of Railway and Airline Clerks (hereinafter "BRAC" or the Organization") represents employees of Conrail whom BRAC asserts have been or may be adversely affected by the sale of the Beesons Line, and to whom IHR is responsible for the provision of New York Dock Conditions protective benefits, and;

WHEREAS, BRAC and IHR were unsuccessful in directly negotiating an implementing agreement pursuant to the provisions of the New York Dock Conditions, which implementing agreement would establish the rights and obligations of employees who may be adversely affected by the transaction and the rights and obligations of the Carrier, and;

WHEREAS, the matter was submitted to arbitration in accordance with Article I, Section 4 of the New York Dock Conditions, and;

WHEREAS, BRAC, IHR and the United Transportation Union (hereinafter the "UTU") were afforded a full opportunity to provide the Neutral Referee with all facts and arguments they deemed to be relevant to the proper establishment of a New York Dock implementing agreement, now, therefore, the following shall constitute the implementing agreement between the parties:

Section 1. Eligible Employees and Protective Periods

Eligible or "protected" employees shall be those employees who were in the active employ of Conrail as of December 11, 1981, who were represented by the BRAC and who have established that they were adversely affected as a result of the Beesons Line purchase.

Eligible employees will be entitled to protective periods under the New York Dock formula based upon their years and months of service with Conrail as of December 11, 1981.

Protective periods for eligible employees shall begin to run as of November 13, 1989.

Section 2. Selection of Forces

Within thirty (30) days of the effective date of this agreement, BRAC shall provide IHR with a written list of the names and addresses of all BRAC members employed by Conrail on December 11, 1981 who may have been adversely affected by IHR's acquisition of the Beesons Line.

Within fifteen (15) days of the receipt of such list, IHR shall send a copy of this Agreement by registered mail to all persons on the list, together with a description of available positions on IHR and a form and return envelope which such persons may use to request an employment relationship with IHR.

In the event IHR establishes standard, recognized clerical positions associated with the Beesons Line, those positions shall be first made available to BRAC-represented Conrail employees who were deprived of employment and are considered "dismissed" as a result of the Beesons Line purchase.

Such dismissed employees must accept such offers of employment in order to retain their protected status, unless the acceptance of such offer would constitute a "change of residence", in which case the dismissed employee would be afforded the option of accepting a separation payment pursuant to Article 1, Section 7 of the New York Dock Conditions.

In the event IHR does not establish standard, recognized clerical positions associated with the Beesons Line, it may offer BRAC-represented Conrail employees "dismissed" as a result of the Beesons Line purchase "comparable employment".

In the event the dismissed employee challenges IHR's designation of a position as comparable to a position he/she holds or could hold in the clerical craft or class, then the question of whether the position is comparable and whether the employee is obligated to accept that position or forfeit his/her protected status may be immediately submitted to arbitration, by either IHR or the employee, in accordance with Article 1, Section 11 of the New York Dock Conditions.

Section 3. Displaced Employees

Protected employees who have suffered reductions of compensation as a result of the Beesons Line purchase shall be entitled to displacement allowances in accordance with the provisions of the New York Dock Conditions and this Implementing Agreement.

A displaced protected employee may continue to work within the clerical craft or class on Conrail, and shall be entitled to a displacement allowance if he/she is unable, in the normal exercise of his/her seniority, to obtain a position producing compensation equal to or greater than his/her monthly displacement allowance guarantee.

Protected employees' displacement allowances shall be computed by determining the average monthly compensation for the twelve (12) full calendar months prior to December 11, 1981, provided such months include at least ten (10) full work days, and then upgrading that average monthly compensation by subsequent general wage increases such employees received and may continue to receive.

In processing claims for employees who were displaced as a result of the Beesons Line purchase, the IHR and the BRAC may call upon Conrail to provide accurate earnings data which will be used to support or deny the claims.

Section 4. Impact Upon the UTU-IHR Collective Bargaining Agreement

No provision in this Implementing Agreement shall be construed as limiting or expanding the rights or obligations which either the UTU or IHR have under the terms of the collective bargaining agreement which governs IHR employees represented by the UTU.