In the Matter of:	
DELAWARE AND HUDSON RAILWAY COMPANY	
and	INTERIM OPINION AND AWARD
BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND CANADA	

Before: BOARD OF ARBITRATION

MEMBERS:

M. F. MELIUS — Carrier Member
Director - Labor Relations
and Human Resources
Delaware and Hudson Railway Company

WILLIAM G. FAIRCHILD — Employee Member
General Vice President
Brotherhood Railway Carmen
of the United States and Canada

H. STEPHAN GORDON — Neutral Member
Arbitrator

Place and Date of Hearing: Watervliet, New York
November 9, 1982

PRELIMINARY STATEMENT

At all times material herein, the Delaware and Hudson Railway Company (hereinafter referred to as "D&H") was the employer of certain employees working at its facilities located at Oneanta, New York and Green Ridge, Pennsylvania.

At all times material herein, the Brotherhood Railway Carmen of the United States and Canada (hereinafter referred to as the "Organization") was the representative of these employees.

As more fully discussed below, on or about November 1980, D&H, with the approval of the Interstate Commerce Commission (hereinafter referred to as "ICC"), changed some operations from the segment of a line of railroad it operated between Lanesboro and Scranton, Pennsylvania (hereinafter referred to as the D&H Line) to a parallel line owned by the Consolidated Rail Corporation (hereinafter referred to as "Conrail"), and which operated between Binghamton, New York and Scranton, Pennsylvania (hereinafter referred to as the Conrail Line).

Pursuant to this change in operations, a dispute arose between D&H and the Organization regarding the applicability of the employee protective provisions developed in New York Dock Railway-Control-Brooklyn Eastern District, 360, ICC 60 (1979), (hereinafter referred to as "New York Dock II") with respect to certain of D&H's employees who may have been affected by the change in operations.

Not being able to settle the matter, the dispute, under the provisions of New York Dock II, was referred to an Arbitration Board. Mr. William G. Fairchild was duly designated as the employee member and Mr. M. F. Melius was duly designated as the carrier member of this Arbitration Board, and on September 9, 1982, Mr. H. Stephan Gordon was duly nominated by the National Mediation Board to serve as the third and neutral member of the Arbitration Board (hereinafter referred to as the "Board").

The Board met on November 9, 1982, at Watervliet, New York and agreed to the following procedures:

1. That after full consideration of all the facts submitted by the parties to the dispute, the neutral member would prepare a decision which is to be submitted to the other two members of the Board who may concur, dissent or, if they so wish, append their own decisions to the neutral member's decision.

2. That a majority decision shall be the binding decision of the Board.

3. That the Board, at this stage of the proceedings, shall limit its findings to the question whether or not the aforementioned change in operations by D&H which are more fully discussed below, did in fact affect the employees of D&H, and, if so, as of what date.

4. That, in the interest of conserving time as well as the parties' economic resources, the questions of which employees, if any, were affected by the change of operations and the compensation, if any, due them will be deferred and made contingent on the findings in the instant opinion and award.

5. That in the event the Board determined that the change in operation by D&H had no effect on the employees involved, the Board will issue a final opinion and award to that effect.

6. That in the event the Board determined that the change in operations by D&H did have an effect on the employees involved, the Board would also determine as of which date such employees may have been affected by the change in operations and issue an Interim Award to that effect.

7. That in the event of the issuance of an Interim Award, as described in paragraph 6, above, the parties to the dispute would be given the opportunity to settle on a voluntary and amicable basis the questions of which employees, if any, were affected by the change in operations and to what, if any, benefits such employees may be entitled.

8. That during the period of negotiations described in paragraph 7, above, the Board will retain jurisdiction over the subject matter.

9. That, upon being notified that the parties have reached an amicable agreement on all outstanding issues, the Board will issue a final decision closing the case.

10. That if the parties within a reasonable period of time (60 days which may be extended by agreement of the parties and the approval of the Board) are not able to resolve any remaining issues, the Board will reconvene to consider all outstanding issues and thereafter, the Board will issue a final decision and award.

THE FACTS

At the hearing conducted at Watervliet, New York on November 9, 1982, the parties, being in essential agreement on the basic facts underlying the dispute, did not call any additional witnesses. The Company and the Organization essentially reiterated the facts and arguments outlined to the neutral member in their pre-hearing submissions. The parties also agreed that they neither needed nor desired a stenographic transcript of the hearing.

No jurisdictional issues were raised by either party nor did any party question the procedural steps culminating in the instant hearing.

The procedural steps outlined in the paragraphs 1 through 10, above, were adopted with the full concurrence of all parties.

On the basis of the entire record, including the pre-hearing submissions of the parties, the Board makes the following findings of fact:

Prior to November 1980, D&H owned and operated a line of railroad extending between Nineveh, New York and Scranton, Pennsylvania, including a portion approximately forty (40) miles in length lying between Lanesboro and Scranton, Pennsylvania, (the D&H Line). This line between Lanesboro and Scranton, Pennsylvania, constituted a segment of D&H's main line for through freight service between points in New England and Canada and points lying generally in the Eastern, Southern and Southeastern United States.

During the same period of time, Consolidated Rail Corporation (Conrail) owned and operated a line of railroad extending from Binghamton, New York to Scranton, Pennsylvania and from Scranton, Pennsylvania to Taylor, Pennsylvania. This line owned and operated by Conrail ran roughly parallel to the D&H Line and for approximately two (2) years, Conrail and D&H had been negotiating for the acquisition of Conrail's Scranton-Binghamton Line by D&H.

On September 8, 1980, D&H and Conrail entered into an agreement of sale of the Scranton-Binghamton Line to D&H for the sum of Two Million, Three Hundred Thousand Dollars ($2,300,000.00). The agreement of sale provided that pending permanent approval of the transaction by the ICC, arrangement of financing by D&H, and the fulfillment of certain other conditions not pertinent hereto, D&H would have the right to use the Scranton-Binghamton Line upon a payment of a fee of Twenty-Three Thousand Dollars ($23,000.00) per month.

On the same date, September 8, 1980, D&H filed an application with the ICC pursuant to 49 USC 11123 for authority to perform temporary emergency operations over Conrail's Scranton-Binghamton Line which extended from a point in the City of Binghamton, Broome County, New York to a point in the City of Scranton, Pennsylvania, Lackawana County, Pennsylvania, including Conrail's facilities at the East Binghamton Yard located in the Town of Conklin, New York and all of Conrail's facilities with certain minor exceptions, at the Taylor Yard located in the Borough of Taylor, Lackawana County, Pennsylvania, a distance of 56.16 miles.

D&H's application to the ICC for temporary emergency operation authorization stated that if such authority were granted by the ICC, D&H would begin a phased transition from the D&H Line to the Scranton-Binghamton Line over a period of approximately three (3) weeks after the grant of authority and would begin actual operation of the Scranton-Binghamton Line thereafter.

D&H's application to the ICC also stated that D&H had signed a sales agreement with Conrail for the acquisition of the Scranton-Binghamton Line and intended to file an application under 49 USC 10901 for necessary authority from the ICC to acquire and operate the Scranton-Binghamton Line. In the penultimate paragraph of D&H's application to the ICC for the grant of temporary emergency operational authority, D&H, in recognition and anticipation that such change in operation may, indeed, affect the working conditions of its employees, specifically informed the ICC that the parties, i.e., D&H and Conrail, agreed that, if any employees of either party were affected by the requested grant of authority, each party would bear the cost of protecting its own employees in accordance with the conditions customarily imposed by the Commission in transactions of this kind.

On September 22, 1980, D&H filed an application with the ICC for authority to acquire and operate Conrail's Scranton-Binghamton Line, and reiterated its request for temporary emergency authority to operate the line during the pendency of the Commission's deliberations.

On September 26, 1980, the ICC by Service Order No. 1486 and pursuant to its authority under 49 USC 10304-10305 and 11121-11126, authorized D&H to operate temporarily over the tracks of Conrail between Binghamton, New York and Scranton, Pennsylvania "as described in their sales agreement entered into September 8, 1980." Such authorization was made effective from 12:01 A.M. on September 27, 1980 until 11:59 P.M. on January 31, 1981. The application for permanent acquisition and operation of the Scranton-Binghamton Line by D&H remained under consideration by the ICC. It should be noted that while the ICC Order of September 26, 1980, granting D&H temporary authority to operate over Conrail's tracks makes no specific reference to any labor protection with respect to the interests any employees, the authority, as noted above, was granted in accordance with the sales agreement of September 8, 1980 between D&H and Conrail, which, as D&H had informed the Commission, also specifically contemplated such labor protection.

During the succeeding weeks, D&H, having been granted permission by the ICC to operate temporarily over Conrail's Scranton-Binghamton Line and in anticipation of the permanent acquisition of that line, instituted certain changes in its D&H Line operation. These changes were anticipated and constituted a major factor in D&H's acquisition of the Conrail line. Thus in its September 8, 1980 application to the ICC for temporary emergency authority to operate over the Conrail Line, D&H noted that upon issuance of

such authority, it would operate only local service over the D&H Line and thereby reduce the number of trains from eight (8) to one (1) per day. Moreover, it is quite apparent from an examination of the various locations involved, that the acquisition of the Conrail Line obviated the necessity of D&H's Oneanta facility. Oneanta is a D&H facility located approximately sixty (60) miles northeast of Binghamton. Prior to the acquisition of the Conrail Line, part of the function of Oneanta was the classification and break up of trains going south to Scranton via Nineveh, New York, which lies between Oneanta and Binghamton. With the acquisition of the Conrail Line which runs south to Scranton out of Binghamton and with the acquisition of Conrail's Binghamton facilities, the classification and break-up of cars at Oneanta obviously became unnecessary. Indeed, while the parties are in disagreement as to the immediate cause, the records shows that after the acquisition of the Conrail Line the complement of car inspectors at D&H's Oneanta facility was substantially reduced while at the same time a number of new positions were established at the Binghamton Yard. Some positions at Oneanta were abolished and some employees were furloughed and subsequently hired at Binghamton. D&H contends that the reduction in staffing at Oneanta was due to the obsolescence of the facilities and a drastic decline in business. Indeed, according to the testimony by the parties, some furlough notices cited economic conditions as the reason for the furloughs, although others attributed the furloughs to a rearrangement of forces.

The simultaneous increase in positions at Binghamton, according to D&H, was due to the fact that although Binghamton was a mechanical facility coordinated between Conrail and D&H, Conrail had for some time desired to effectuate a de-coordination, a move which had been resisted by D&H. After the acquisition of the Conrail Line by D&H, Conrail did effectuate a disestablishment of the coordinated mechanical facility at Binghamton and, in so doing, took several supervisors with it. D&H, then operating alone at Binghamton, allegedly had to fill the supervisory positions by upgrading from its rank and file employee complement and subsequently had to restaff the vacant rank and file positions. D&H contends that the de-coordination and its concomitant effect on staffing would have happened in any event and that it bore no relationship to D&H's acquisition of the Conrail Line.

By November 25, 1980, D&H also transferred its operations at its Green Ridge Yard near Scranton, Pennsylvania to the Taylor Yard which it had acquired from Conrail, causing a displacement of several employees at Green Ridge. Although the parties are in agreement that without the acquisition of the Conrail Line, D&H could not have operated out of the Taylor Yard and that at least some of the work previously performed at Green Ridge is now being done at the Taylor Yard, the Company contends that the Green Ridge operation had become obsolete; that this operation was no longer needed and that a few employees had been kept at the Green Ridge Yard for compassionate reasons; and that the

employees at Green Ridge would have had to be transferred regardless of the acquisition of the Conrail Line.

On December 4, 1980, D&H filed an application with the ICC for authority to purchase and operate the Conrail Line in accordance with 49 USC 11343 and Section 228 of the Staggers Rail Act of 1980, P.L. 96-448, October 14, 1980, which application was duly published in the Federal Register on January 7, 1981 and February 19, 1981.

On January 9, 1981, D&H, in accordance with 49 USC 10505, filed a petition with the ICC for an exemption from the provisions of 49 USC 11343 to permit continuation of its operations over the Conrail Line until the ICC could consider its request for permanent authority to operate that line.

On January 27, 1981, the ICC's Railroad Service Board, in accordance with 49 USC 10505, granted this petition and exempted D&H from the requirement that it receive approval under 49 USC 11343 prior to performing operations over Conrail's Scranton-Binghamton Line. The exemption was made effective February 1, 1981 (upon expiration of the temporary authorization granted September 26, 1980, which had a termination date of 11:59 P.M. on January 31, 1981). The exemption from the requirements of 49 USC 11343 was to remain in effect until such time as the Commission would issue its final decision on D&H's application for permanent authority to purchase and operate the Conrail Line. In granting this exemption, the ICC noted that D&H had also requested an exemption from 49 USC 11347 relating to labor protections. However, the ICC determined that in granting

an exemption under Section 10505, it may not relieve a carrier of its obligation to protect the interests of employees as otherwise required by 49 USC, Subtitled IV (See 49 USC 10505 (g)(2)). The ICC, therefore, determined that the employee protective provisions developed in New York Dock Railway-Control-Brooklyn Eastern District 360 ICC 60 (1979) would apply to employees involved in purchase transactions under 49 USC 11343 and, accordingly, the ICC imposed these protective provisions to the instant situation. The ICC noted that "our policy in approving exemptions in the future will be to impose that level of employee protection required for the type of transaction." In its findings, the Commission noted that its decision will not operate to relieve any rail carrier from any obligation either "(a) to provide contractual terms for liability and claims which are consistent with 49 USC 11707 or (b) protect the interests of employees as required by 49 USC 11347."

At approximately the same time, i.e., January 26, 1981, the Organization submitted to D&H a letter wherein it listed the employees who it claimed were affected by D&H's operational changes. This letter specifically referred to the transfer of operations from the Green Ridge Yard to the Taylor Yard on November 25, 1980, and listed certain named employees who allegedly were adversely affected by this move; it further listed a number of employees whose positions were allegedly abolished at Oneanta, New York as a result of D&H's moving its operation of switching and classification to Binghamton, New York; and it listed a further number of employees

who were allegedly furloughed at Oneanta, New York as a result of D&H's transfer of its switching and classification operations from Oneanta, New York to Binghamton, New York. The Organization requested that the protective benefits of New York Dock Railway, supra, or of any other agreements that may be defined as the protective agreement by the ICC be afforded to these employees and to any other employees who may have been inadvertently omitted from these lists.

On March 16, 1981, the Organization supplemented the above described lists, renewed its request that the protective benefits of New York Railway be applied to all affected employees, and requested a conference to discuss "the Protective Benifits (sic) as they apply to Carmen displaced or dismissed at Oneanta, New York and Green Ridge, Pennsylvania and any other employees represented by this Organization that have been, or may in the future be affected by this transaction." Pursuant to this request, the parties met on April 14, 1981 without resolving the issue.

On May 27, 1981, the ICC approved the acquisition by D&H of the Conrail Scranton-Binghamton Line upon the terms and conditions of the sales agreement and subject to the employee protective conditions discussed in New York Dock Railway-Control-Booklyn Eastern District, supra.

The parties met and conferred again on June 15, 1981 and July 27, 1981. During these conferences, D&H contended that the protective provisions imposed by the ICC are effective subsequent

to February 1, 1981, the effective date of the exemption from the provisions of 49 USC 11343 granted by the ICC for D&H to continue operation over the Conrail Line pending its final decision on D&H's application for authority to purchase and permanently operate the Scranton-Binghamton Line; that the Organization's claim submitted in the aforementioned January 26, 1981 and March 16, 1981 letters were too vague and did not contain sufficient information to make a determination; and that seven (7) of the claimants named in the above referred to letters were furloughed on June 25, 1980 and therefore were not affected by the transaction.

The Organization contended that the protective arrangements imposed by the ICC are effective while D&H was seeking approval of the transaction; that, in any event, the protective arrangments became effective when D&H commenced operation over the Scranton-Binghamton Line and/or transferred the switching operations from Oneanta, New York to Binghamton, New York; that employees who were required to change their point of employment as a result of the change in operations are entitled to appropriate moving expenses; and that the Organization would furnish additional information regarding these claims and designate the affected employees.

On October 1, 1981, the Organization submitted a proposed Memorandum of Agreement to D&H in order to resolve the matter, and on January 7, 1982, D&H rejected the agreement on the ground that the effective date of the protective provisions imposed by the ICC is February 1, 1981.

The parties met again on February 25, 1982, but no agreement could be reached, and the Organization's proposed Memorandum of Agreement of October 1, 1981 was then withdrawn by the Organization.

ISSUES

1. Whether the acquistion and operation by D&H of Conrail's Scranton-Binghamton Line affected the interests of D&H's employees at its Green Ridge, Pennsylvania and Oneanta, New York facilities, thereby entitling the employees to the protective benefits set forth in New York Dock Railway-Control-Brooklyn Eastern District, supra.
2. If Issue No. 1, above, is answered in the affirmative, what is the operative date with respect to the application of the aforementioned protective benefits?

OPINION

It should be noted from the outset that the essential and relevant facts are well documented and not in dispute. Thus, the acquisition by D&H of the Conrail Line the benefits to be derived from such acquisition, and the relevant times pertaining to the transactions between D&H and Conrail and the change in operations, are all contained in official ICC documents and are not contested by the parties. Moreover, it is undisputed that coincidental with

D&H's acquisition of Conrail's Scranton-Binghamton Line, operational and personnel changes occurred at D&H's Oneanta and Green Ridge facilities which changes did adversely affect D&H's employees at these facilities. What is in dispute is whether these operational and personnel changes were made solely because of D&H's then prevailing and deteriorating business conditions, as D&H alleges, or whether they were also occasioned by the acquisition and operation of Conrail's Scranton-Binghamton Line.

While, on the basis of the present record, this question can not be wholly resolved, the available facts and testimony amply demonstrate the change in operations occasioned by D&H's acquisition of the Conrail Scranton-Binghamton Line had a substantial impact and adverse effect on the employees employed by D&H at its Oneanta, New York and Green Ridge, Pennsylvania facilities.

That some changes which could adversely affect employees were contemplated and anticipated is borne out by the fact that as early as September 8, 1980, D&H and Conrail in conjunction with the proposed sale of the Scranton-Binghamton Line made provisions for this contingency. Thus, on that date the parties to the transaction agreed, and D&H in its application of the same date for authority to perform temporary emergency operations over the Scranton-Binghamton Line, so informed the ICC, that D&H and Conrail had agreed that "...if any employees of either party are affected by the grant of authority here requested, each party will bear the cost of protecting its own employees in accordance with

the conditions customarily imposed by the Commission in transactions of this kind." Moreover, the application also stated that if the temporary authority were granted by the ICC, D&H would substantially change its operation over the D&H Line. Indeed, these operational changes from the D&H Line to Conrail's Scranton-Binghamton Line and the concomitant increase in efficiency and reduction in costs were the very reasons for the application to the ICC for temporary emergency authorization and the impending acquisition of the Conrail Line.

It is equally clear from the record that these operational changes by D&H would not have been feasible without the acquisition of Conrail's Scranton-Binghamton Line. Thus, the elimination of the classification and switching operation would not have been possible without the utilization of the Binghamton facility and the transfer from Green Ridge could not have been accomplished without the acquisition of the Taylor Yard. Moreover, even a most cursory examination of the geography involved makes it clear that with the elimination of the D&H Line from Nineveh, New York to Scranton, Pennsylvania, the classification and switching operation at Oneanta, New York became obsolete and was logically performed at Binghamton, a northern terminal point of the Conrail Line.

With respect to the inter-relationship of the change in operations to the adverse effect on D&H's employees at Oneanta, it must also be noted that at the time that Oneanta positions

were abolished and Oneanta employees were being furloughed or transferred, at least nine (9) additional employees were being hired by D&H at Binghamton. Although, according to D&H, this additional hiring at Binghamton was occasioned by Conrail's de-coordination of the Binghamton mechanical facility with a concomitant loss of supervisors, the evidence offered by D&H would account for at most four (4) of the nine (9) new hires at Binghamton.

With respect to the contention that the personnel changes at Oneanta and Green Ridge were soley occasioned by adverse economic conditions and were unrelated to the acquisition of the Conrail Line, it must also be noted that throughout the rather lengthy negotiations between D&H and the Organization, this contention was never made and the issue was raised for the first time at the hearing. This is not to say that economic considerations and the decline in business did not play a significant part in D&H's managerial and personnel decisions. It is noteworthy for example that some of the furlough notices to employees stated that the action was due to economic conditions, while other notices stated that they were occasioned by a re-arrangement of forces. Under these circumstances, it would stretch credulity too far to resolve any remaining ambiguity in favor of a finding that the furloughs and abolishment of positions, the transfer of employees, and the simultaneous hiring of new employees at Binghamton, were all occasioned by extraneous conditions and considerations and bore no relationship to the change in operations occasioned by the acquisition of

the Conrail Scranton-Binghamton Line. To the contrary, the available evidence clearly indicates that the personnel actions at Oneanta and Green Ridge did not occur in isolation or merely coincidentally with the acquisition of the Conrail Line. While, as noted above, the economic necessity for these personnel actions and the extent to which they may have occurred even without the change in operations occasioned by the acquisition of the Conrail Line cannot be resolved on the present record, and, as outlined above, has been reserved for future negotiations between the parties and if necessary, a possible further hearing, the present record amply demonstrates that the change in D&H's operations occasioned by the acquisition of the Conrail Line had a substantial and adverse effect on the employees at D&H's Oneanta and Green Ridge facilities and that such employees are entitled to the protective provisions imposed by the ICC.

As also already noted, on the basis of the present record it is impossible to determine which specific positions, if any, were eliminated due to purely economic considerations and which were affected by the change in operations; nor can it be determined which specific employees were affected or to what specific benefits such employees may be entitled. Indeed, it is these very questions on which the parties were not prepared to present evidence at the hearing and which the Board, by agreement of the parties, reserved for future negotiations between the parties themselves and, if necessary, for future determination by the Board on the basis of evidentiary record.

The parties hereto are also in disagreement regarding the effective date of the applicability of the protective provisions of New York Dock II, supra.

D&H contends that the protective provisions, if applicable at all, are operative as of February 1, 1981 the effective date of the ICC's January 27, 1981 Order granting D&H an exemption from the requirement that it receive approval under 49 USC 11343 prior to performing operations over Conrail's Scranton-Binghamton Line.

The Organization contends that the protective provisions of New York Dock II, supra, are applicable to all operational changes made by D&H which adversely affected employees, including those changes which may have been made in contemplation of D&H's acquisition of the Conrail Line.

It would appear that these contentions are, respectively, too narrow and too broad in scope. Thus, D&H's contention that February 1, 1981 should be the controlling date fails to take into consideration that D&H had obtained ICC approval to operate over the Conrail Line effective September 27, 1981 and, pursuant to such authorization from the ICC, instituted the very operational changes herein in dispute. In fact all the changes which may have adversely affected D&H's employees were accomplished and completed by November 1980. An application of the protective provisions with an effective date of February 1, 1981 would, indeed, be an exercise in futility and defeat the very purpose of the Act's protective provisions. Moreover, as noted above, the ICC's Order

of January 27, 1981, with an effective date of February 1, 1981, is not the first instance of the ICC's imposition of the protective provisions. Thus on September 26, 1980, the ICC by Service Order 1486 authorized D&H to operate temporarily on an emergency basis over Conrail's Scranton-Binghamton Line. Nor was this authorization granted in isolation. The ICC was fully informed and cognizant of the fact that D&H had filed an application for permanent acquisition and operation of the Scranton-Binghamton Line. Indeed, the ICC made specific reference to the agreement between D&H and Conrail, which agreement, in turn, specifically contemplated that the parties to the sales agreement would apply the applicable protective provisions to their respective employees. It must therefore be inferred, that the September 26, 1980 ICC Order, pursuant to which the very changes here in question were effectuated, contemplated that the parties to the transaction intended, as indeed they informed the Commission that they would, apply protective provisions to their respective employees who may be adversely affected by their transaction. Moreover, the various transactions, applications and petitions herein did not occur in isolation. To the contrary, the sales agreement of September 8, 1980 between D&H and Conrail, D&H's petition of the same date for temporary emergency operational authority to the ICC, D&H's application of September 22, 1980 for permanent authorization to acquire and operate over the Conrail Line, D&H's application of December 4, 1980 to purchase the Conrail Line, and D&H's petition of January 9, 1981 to the ICC for an exemption from the provisions of 49 USC 11343,

were, indeed, a single enterprise and the operational changes contemplated and effectuated in October and November 1980 were part and parcel thereof. To hold that the protective provisions came into effect after all the events had actually occurred would not only be a futility and totally unrealistic, but would border on the cynical.

Conversely, the Organization's contention that all actions taken in contemplation of the prospective acquisition of the Conrail Line should also be covered by the protective provisions is too vague and broad in scope. It would be impossible to probe the executive calculations and motivations on an open-ended basis which may have influenced D&H during the past two years, during which the acquisition of the Conrail Line was contemplated and negotiated. Moreover, it is clear from the record that all contested operational changes and almost all personnel changes which may have adversely affected D&H's employees occurred during the late Autumn of 1980, subsequent to D&H's operating the Conrail Line.

Under these circumstances, and based on the above, we find that the protective provisions became effective on September 27, 1980, the effective date of ICC's Service Order 1486. While it is true that Service Order 1486 did not make specific reference to New York Dock II, supra, the parties to the transaction were at that time fully apprised and, indeed, fully anticipated, and so informed the Commission, that some operational changes would

occur, that some employees may be adversely affected by these changes, and that the parties intended to abide by such protective provisions which the ICC may thereafter find applicable.

INTERIM AWARD

For the reasons stated herein, it is found that:

1. As of September 27, 1980, and thereafter the operation and acquisition by D&H of the Conrail's Scranton-Binghamton Line adversely affected the employment conditions of D&H employees at the Oneanta and Green Ridge facilities and that as of the aforementioned date and thereafter the relevant protective provisions of New York Dock Railway-Control-Brooklyn Eastern District, 360 ICC 60 (1979) are applicable to such employees.

2. On the basis of the present record, it cannot be determined to what extent the various furloughs, abolishment of positions, transfers and/or any other personnel changes which adversely affected D&H's employees may have been due to economic conditions and to what extent they are attributable to the change in operations brought about by the operation and acquisition of Conrail's Scranton-Binghamton Line by D&H.

3. On the basis of the present record, it cannot be determined which specifically named employees were affected by D&H's aforementioned changes in operations or to what specific benefits such employees may be entitled.

4. By agreement of the parties, the questions posed in paragraphs 3 and 4, above, were deliberately deferred pending a disposition of the issues decided in paragraph 1, above. The parties further agreed that if the Board were to determine that D&H's employees were indeed adversely affected by D&H's acquisition of Conrail's Scranton-Binghamton Line and as of a specific date were subject to the protective provisions of New York Dock II, supra, the parties would attempt, on a voluntary basis, to resolve as many of the issues outlined in paragraphs 2 and 3, above, as possible. Any unresolved matters pertaining to the issues outlined in paragraphs 2 and 3, above, would be resubmitted to the Board.

5. Based on the agreement of the parties as outlined in paragraph 4, above, and in conformance with its determination that D&H's employees were as of September 27, 1980 and thereafter adversely affected by D&H's operation and acquisition of the Conrail Line, the Board retains jurisdiction over the subject matter and shall decide such issues as outlined in paragraphs 2 and 3, above, as cannot be resolved by the parties to the dispute on a voluntary and mutually satisfactory basis.

6. D&H and the Organization shall, within forty-five (45) days from the effective date of this Interim Award report to the Board what progress they have made in resolving the issues outlined in paragraphs 2 and 3 above.

7. If the parties to the dispute have reached agreement on all outstanding issues, they shall so notify the Board and the Board will issue a Final Award in accordance with the agreement of the parties.

8. If within sixty (60) days from the date of the instant Interim Award there remain any unresolved issues upon which the parties are unable to reach agreement, the parties shall so notify the Board and specify the issues on which no agreement has been reached .

9. Upon the notification to the Board regarding any outstanding issues as outlined in paragraph 9, above, the Board will promptly schedule a hearing and issue an award pertaining to such unresolved issues.

10. The time periods mentioned in paragraphs 6 and 8, above, may be extended by agreement of the parties and with the consent of the Board.

M. F. MELIUS,
Carrier Member

WILLIAM G. FAIRCHILD,
Employee Member

Dissenting

H. STEPHAN GORDON,
Neutral Member

Issued at Silver Spring, Maryland
December [illegible]