

ARBITRATION AWARD

(NEW YORK DOCK II LABOR PROTECTIVE CONDITIONS)

(Interstate Commerce Commission Finance Docket 29720 (Sub. No. 1))

In the Matter of Arbitration

Between

BROTHERHOOD OF RAILWAY CARMEN OF THE
UNITED STATES AND CANADA

And

MAINE CENTRAL RAILROAD
PORTLAND TERMINAL COMPANY

FINDINGS & AWARD

QUESTION AT ISSUE

"Were claimants M. L. Jewett, et al, as identified in the Organization's letter of October 10, 1984, affected by a 'transaction' as identified in Section 1(a) of the 'New York Dock' Conditions?"

BACKGROUND

The dispute here at issue arises from claims submitted by certain employees represented by the Brotherhood of Railway Carmen of the United States and Canada (BRC) for labor protective benefits, it being alleged that the Claimants were adversely affected by operational changes made by the Guilford Transportation Industries, Inc. (GTI), The Boston and Maine Corporation (B&M), The Maine Central Railroad (MeC), and The Portland Terminal Company (PT).

On June 16, 1981, GTI acquired the MeC and the PT by purchase from the U. S. Filter Corporation. The PT is a wholly-owned subsidiary of MeC, and both properties are said to have operated under "common control." Reportedly, the approval of the Interstate Commerce Commission (ICC) was not required for this acquisition of the carriers by GTI.

Under date of April 23, 1982, the ICC, in a Decision and Order in Finance Docket 29720 (Sub. No. 1), approved GTI's further acquisition of B&M. As a condition of its approval of such acquisition, the ICC imposed labor protective conditions commonly known as the New York Dock Conditions, or those labor protective conditions imposed initially by the ICC in its Finance Docket 28250 (New York Dock Ry.-Control-Brooklyn Eastern District, 360 I.C.C. 60 (1979)). GTI's acquisition of B&M became final on June 23, 1983, when such action was approved by

the Reorganization Court, and since this latter date the B&M, MeC and PT have been under common control.

In pursuance of the ICC Decision and Order, the MeC and PT posted notice under date of May 5, 1982 that read as follows with respect to certain aspects of the instant dispute:

"To ALL CONCERNED

The Interstate Commerce Commission ruled favorably April 23, 1982, on Guilford Transportation Industries, Inc., (GTI), application for control of the Boston and Maine Corporation (B&M). It is anticipated that after control proceedings are finalized that GTI will commence consolidating operations of B&M and Maine Central (MeC) by means of run-through trains, equipment, and pre-blocking of traffic and other activities which will result in a reduction, or the elimination, of switching, inspection, and servicing requirements of traffic and equipment moving between the two Railroads within the Portland Terminal Company (PT).

It is estimated that approximately sixty positions may be abolished and four created as described below Department, Class and Location.

PORTLAND TERMINAL COMPANY

<u>CLASS</u>	<u>NUMBER OF EMPLOYEES AFFECTED</u>
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Mechanical Department:

Engine House Foreman	1
Electrician	1
Machinists	2
Carmen	25
Hostler and Hostler Helpers	5
Laborer	1

Transportation Department:

* * * * *

MAINE CENTRAL RAILROAD COMPANY

Mechanical Department:

Waterville - Carman	1*
Bangor - Carmen	2*

*indicates added positions"

Under date of June 1, 1982, the MeC and PT entered into an Implementing Agreement with BRC pursuant to Article 1, Section 4 of the New York Dock Conditions. Essentially, Section 4 provides:

"4. Notice and Agreement or Decision- (a) Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representatives of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes to be affected by such transaction, including an estimate of the number of employees of each class affected by the intended changes. Prior to consummation the parties shall negotiate in the following manner.

Within five (5) days from the date of receipt of notice, at the request of either the railroad or representatives of such interested employees, a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotiations shall commence immediately thereafter and continue for at least thirty (30) days. Each transaction or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this section 4. If at the end of thirty (30) days there is a failure to agree, either party * * * *."

The June 1, 1982 Implementing Agreement stipulates that the labor protective conditions set forth in the New York Dock Conditions and imposed by the ICC in approval of GTI's acquisition of B&M "shall be applicable to Carmen of the Maine Central Railroad Company and/or the Portland Terminal Company who are determined to be 'displaced employees' or 'dismissed employees' resulting from the coordination as set forth in the control application."

During the period June 23, 1982 through April 25, 1983, the PT made work force reductions that affected the Claimants in this

dispute, and the B&M and MeC, on or about August 11, 1982, initiated run-through trains and run-through power from departure yards on the B&M and MeC. These trains were pre-blocked and did not thereafter require there be a classification of cars, inspection, and repair of such cars at Rigby Yard, a major classification yard and interchange point located on the PT, and the point at which Claimants were previously employed before being furloughed in work force reductions.

The parties to dispute have selected the undersigned persons to be members of an Arbitration Committee to resolve the dispute pursuant to Article I, Section 11 of the New York Dock Conditions.

POSITION OF THE PARTIES

Position of the Employees (BRC):

It is the position of the BRC that the Claimants were adversely affected by a "transaction" as contemplated under the ICC imposed protective conditions. In this regard, the BRC states:

"It is respectfully submitted that the Maine Central Railroad Company, the Portland Terminal Company, and Guilford Transportation Industries, Inc., violated the protective arrangements imposed by the Interstate Commerce Commission when they failed to afford the affected Employees the protective provisions of the New York II Agreement as they pertain to 'displaced' and/or 'dismissed' employees resulting from the abolishment of positions and rearrangement and/or adjustment of forces in conjunction with the acquisition and control of the Boston and Maine Corp., by Guilford Transportation Industries, Inc.

Under dates of June 23, 1982, July 19, 1982, September 8, 9, and 28, 1982, October 5, 1982, November 18, and 29, 1982, April 21, 22, and 25, 1983, claims were filed by or in behalf of the following Carmen employees who were adversely affected by the aforementioned transaction and Finance Docket No. 29720:

M. L. Jewett	R. E. Gagnon, Jr.
J. G. Darnielle	D. C. Doane
L. M. Albert	J. C. Kemna
J. M. Joyce	B. L. Corkrey
T. J. Meehan	T. A. Seader
J. E. Regan	A. G. Buzzell
D. C. Luce	A. M. Desimon

It is the Organization's position that the foregoing named Employees, whose positions were abolished or who

were affected by the rearrangement of such forces, are entitled to and should receive the protective benefits of the New York Dock II Agreement for the following reasons:

1. In letter dated May 4, 1982, Mr. A. N. Tupper, Manager-Personnel, Labor Relations and Safety, of the Maine Central Railroad and Portland Terminal Company, notified the Labor Organizations of the contemplated changes in the operations at Portland Terminal Company and the rearrangement of forces as a result of the consolidation of the Maine Central Railroad, Portland Terminal Company, and the Boston and Maine Corp., as described in I.C.C. Finance Docket No. 29720.

2. Prior to and subsequent to the consumation of the Implementing Agreement dated June 1, 1982, the above referred to Carriers made the operational changes which were so obviously contained and outlined in their Notice to the Organizations on May 5, 1982.

3. That the Maine Central Railroad, Portland Terminal Co., and the Boston and Maine Corp. rearranged it's (sic) forces at Rigby Yard of the Portland Terminal Company in anticipation of the Control of the Boston and Maine Corp., with the purpose or effect of depriving the Claimants of their benefits to which they otherwise would have become entitled to under the New York Dock II Agreement, which is covered in Appendix 10 of that Agreement.

In conferences held on September 30, and November 2, 1982, the Organization set forth their position that those employes listed as Claimants should be afforded the protective benefits under the provisions of New York Dock II Agreement. Further, that the protective arrangements imposed by the Interstate Commerce Commission were effective while the Carriers and Guilford Transportation Industries, Inc., were seeking approval of the Control case with the Boston and Maine, which was being held up for final approval by the Federal District Court of Massachusetts under Honorable Frank Murray which finally reached with his approval on July 1, 1983. Therefore, it is the Organization's strong position that the Carrier's contention that the protective benefits imposed by the I.C.C. on April 26, 1982 and became effective on May 26, 1982, are not effective prior to July 1, 1983, is incorrect and in any event, the protective arrangements became effective on

the date the I.C.C. granted authority under Finance Docket No. 29720 for Guilford Transportation Industries, Inc., to take Control of the Boston and Maine Corp. on April 26, 1982, after which the three (3) Carriers listed in this dispute began to do exactly what they stated that they intended to do in their Notice dated May 5, 1982. They made the operational changes and furloughed many of their Employees because of these changes, however, the Carriers contend that all of the changes were made due to a decline in business, which this Organization contends is very misleading."

As concerns a Carrier argument that the carriers had handled cars in preblocked train movement prior to August 1982, the BRC says that Carmen still inspected, set out bad order cars, and shopped cars at Rigby Yard, but that with run-through power this is no longer the work of Carmen at Rigby Yard.

In regard to certain awards cited by the Carrier, the BRC maintains that those awards are not "on all fours" with the instant dispute; the circumstances in this dispute differ from those related to the impact operational changes have had on train service employees or maintenance of way forces on the MeC and PT.

Position of the Carrier (MeC and PT):

It is the Carrier's position that the instant claims for allowances under the terms of the New York Dock Conditions are without merit and must be rejected for the following reasons:

"1. There is no direct link between the adverse effect on the individual BRC employees identified by the Organization and a specific Carrier action that can be described as a 'transaction.'

2. The claimants identified by the Organization were furloughed as result of a lengthy period of business decline."

As concerns its first contention, the Carrier submits that the BRC has not been able to show that any adverse effect upon the Claimants in their working relationship with the Carrier is directly attributable to a "transaction" as defined or contemplated in Article I, Section 1, of the New York Dock Conditions.

Section 1(a) defines a transaction to be as follows:

"1. Definitions. - (a) 'Transaction' means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed."

Contrary to the BRC contention, the Carrier maintains that its actions were not undertaken pursuant to the ICC Decision and Order approving acquisition of the B&M. Rather, the Carrier says, the force reductions were a direct result of financial difficulties caused by what the Carrier terms "precipitous declines in traffic in mid-1982."

In support of its position that declines in business had "produced financial exigencies" that forced it to significantly reduce employment across the board and with all crafts of employees, the Carrier offers statistics which show the number of cars handled at Rigby Yard in June, July and August 1981 as compared with 1982. These figures reflect a decline of 3,653 cars handled, or an overall decline of 8.7%, with weekly declines ranging from 3% to 17.8%

The Carrier also introduces statistics to show that there was and has continued to be a system-wide decline in net ton miles, gross ton miles, and total revenue cars handled, the latter having dropped from 10,413 revenue cars handled in April 1982 to 8,582 cars in May 1983, or from that month in 1982 when the ICC approved GTI's acquisition of B&M to that month in 1983 following the last reduction in force which is here at issue.

In regard to its position that a "transaction" cannot properly be extended to include the abolition of jobs caused by a decline in business or other causes, the Carrier directs attention to numerous arbitral decisions whereby it has been held that there must be a cause and effect relationship between a transaction and the "adverse effect" for an employee to achieve entitlement to the protective benefit features of the New York Dock Conditions.

In response to the BRC contention that it was imposition of run-through trains and run-through power by the B&M and MeC which affected the PT Carmen, the Carrier states, notwithstanding it having been the subject of its May 5, 1982 notice, that the preblocking and running through of trains is a common or standard industry practice that never has required and does not now require prior ICC approval and the imposition of the attendant ICC imposed labor protective conditions.

In this latter respect, the Carrier directs special attention to a 1977 report to the Rail Services Planning Office of the ICC as produced by R. L. Banks and Associates. This study, the Carrier points out, listed 239 individual run-through trains operating over 34 different railroads and further, the Carrier says, in none of these instances was ICC approval or attendant labor protective conditions required. In this same connection, the Carrier states that in the New England region, run-through operations were implemented and under study prior to GTI's acquisition of the MeC, PT and B&M, pointing again to the ICC study to cite various run-through trains which had been in operation between various carriers in the New England region.