

ARBITRATION COMMITTEE

In the Matter of the)	
Arbitration Between)	Pursuant to Article I,
)	Section 11 of the
BROTHERHOOD RAILWAY CARMEN)	New York Dock Conditions
OF THE UNITED STATES AND)	
CANADA,)	
)	I.C.C. Finance Docket
Organization,)	No. 28583
)	
and)	Case No. 2
)	Award No. 2
BURLINGTON NORTHERN)	
RAILROAD COMPANY,)	
)	OPINION AND AWARD
Carrier.)	

Hearing Date: January 20, 1987
Hearing Location: St. Paul, Minnesota
Date of Award: May 20, 1987

MEMBERS OF THE COMMITTEE

Employees' Member: R. P. Wojtowicz
Carrier Member: J. N. Locklin
Neutral Member: John B. LaRocco

ORGANIZATION'S STATEMENT OF THE CLAIM

1. That the Burlington Northern Railroad Company, in defiance of the terms imposed upon same by an agency of the United States Government, the Interstate Commerce Commission, has arbitrarily and capriciously denied protective benefits to Claimants named herein, in accordance to the terms and provisions of the New York Dock Agreement, or as it is otherwise recognized as Finance Docket No. 28250, Appendix III. The Burlington Northern Railroad Company has grossly and flagrantly violated the terms and provisions of the New York Dock Agreement and continues to do so due to its transaction of transferring a "Cat Pak" (wrecking equipment) from the former St. Louis-San Francisco Railway Company (Frisco) property to Burlington Northern property, without providing the protective provisions of the New York Dock Agreement to the eleven (11) adversely affected wrecking crew carmen. The transfer of this equipment drastically reduced the wages of the eleven (11) Claimants.

2. That the following adversely affected employees be compensated in such a manner that they be made whole for lost earnings beginning on the date of transfer of the equipment until the employees' protective conditions are fully obtained. Further, that Claimants be afforded all the protective conditions provided by the terms of the New York Dock Agreement. The Burlington Northern Railroad Company has deprived the following employees of protective benefits.

BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND CANADA
and
BURLINGTON NORTHERN RAILROAD COMPANY

ORGANIZATION'S STATEMENT OF THE CLAIM, continued

- | | |
|-------------------|------------------|
| 1. O. A. Vaughn | 6. B. Locke |
| 2. O. C. Hardison | 7. G. McCurdy |
| 3. G. D. Walker | 8. C. Leverton |
| 4. R. Wolf | 9. J. Wilkerson |
| 5. G. Ball | 10. G. Brigance |
| | 11. C. Hildbrand |

3. The evidence produced in writing as well as in discussion with the Burlington Northern Railroad Company clearly demonstrates that the transaction (transfer of equipment) resulted in loss of earnings by the above named Claimants. The Burlington Northern Railroad Company has failed to negotiate with Claimants' representative regarding the transfer of equipment and the loss of wages. The Burlington Northern Railroad Company has failed to provide protective conditions to any of the aforementioned Claimants so justly entitled to same, as provided by the order served on April 17, 1980, by the Interstate Commerce Commission in Finance Docket No. 28583, 360 ICC 783.

CARRIER'S STATEMENT OF THE CLAIM

The following claim is submitted in accordance with the "New York Dock Conditions," on behalf of the Springfield, Missouri Carmen listed in Exhibit "A," attached hereto, hereinafter shall be referred to as the Claimants.

(Exhibit A) - Off Track Wrecking Crew

Operators

O. A. Vaughan
O. C. Hardison
G. D. Walker

Relief Operators

R. Wolf
G. Ball
B. Locke

Ground Men

G. McCurdy
C. Leverton
J. Wilkerson
G. Brigance
C. Hindbrand

OPINION OF THE COMMITTEE

I. INTRODUCTION

In 1980, the Interstate Commerce Commission (ICC) approved the merger of the St. Louis-San Francisco Railway (Frisco) into the Burlington Northern Railroad Company. [ICC Finance Docket No. 28583; 360 I.C.C. 784] To compensate and protect employees adversely affected by the merger, the ICC imposed the employee merger protective 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 merger was consummated on November 21, 1980.

At the Arbitrator's request, the parties waived the Section 11(c) limitation period for issuing this decision.¹

II. BACKGROUND AND SUMMARY OF THE FACTS

In 1985, the Carrier maintained three regularly assigned wrecking crews and one supplemental emergency wrecking crew on its Springfield Region. Claimants herein are carmen employed at the Car Shop, Train Yard or Repair Track at Springfield, Missouri. Claimants were also regularly assigned members of an off-track supplemental emergency wrecking crew commonly known as

¹All the sections relevant to this case are found in Article I of the New York Dock Conditions. Thus, the Committee will only cite the appropriate section number.

the "Cat Pak." The crew handled derailments within a 350 mile radius of Springfield.

The Carrier rented the Cat Pak equipment under a long-term lease (dated July 17, 1974) between the Frisco and the Ford Motor Credit Company. The ten-year lease was due to expire on April 1, 1985. To determine whether to renew the lease or to return the equipment to the lessor, the Carrier conducted a study which disclosed that the Cat Pak and the attendant wrecking crew were called for only 12 derailments during 1984. The equipment had been utilized at approximately three derailments per month during 1981, 1982 and 1983. In contrast, the Carrier presented evidence showing that there had been approximately 125 derailments on the Denver Region during 1984. It concluded that the equipment would be utilized more frequently at Alliance, Nebraska, a point on the Denver Region.

On February 19, 1985, the Carrier notified Claimants that they would no longer hold positions on the supplemental emergency wrecking crew and that the Cat Pak equipment was being moved to Alliance. Presumably, the Carrier extended the lease with the Ford Motor Credit Company. As a result of the transfer of the equipment and the consequential elimination of Claimants' wrecking crew assignments, the Organization seeks Section 5 displacement allowances for the former wrecking crew members. In addition, the Organization alleged that the Carrier intended to retain only 9 of the 11 crew members in their regular assignments subsequent to the transfer of the Cat Pak equipment. According to the Organization, the Carrier held off furloughing two workers

only because it knew that two Springfield Carmen were going to retire in June, 1985. The Carrier did not fill the two positions vacated by the retirees. The Organization intimated that the two most senior furloughed workers are entitled to a New York Dock dismissal allowance because absent the transfer of Cat Pak equipment, the Carrier would have maintained two additional carman jobs at Springfield. The record is unclear if the two most senior furloughed workers are among the 11 Claimants herein.

III. THE POSITIONS OF THE PARTIES

A. The Organization's Position

The Organization alleges that the Carrier is using a single year (1984), when it fortunately incurred fewer derailments, as a subterfuge for relocating the Cat Pak at Alliance and to farm out work reserved to the carmen's craft. The equipment had been stationed at Springfield for almost six years prior to the merger. It is better to look at equipment utilization over the entire ten year lease as opposed to merely the final year. The Carrier could not have transferred the equipment from Springfield (a Frisco point) to Alliance (a pre-merger Burlington Northern point) but for the 1980 Frisco merger. Therefore, the transfer of the Cat Pak equipment to Alliance constituted a New York Dock transaction within the meaning of Section 1(a) of the New York Dock Conditions. Moreover, the Carrier did not furnish a notice in compliance with Section 4 of the New York Dock Conditions. Also, it did not first negotiate or arbitrate an implementing agreement before implementing the transaction. According to the Organization, subsequent to the transfer, the Carrier did not