

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. 3
)	Award No. 3
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 with 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 in anticipation of the merger between the St. Louis-San Francisco Railway Company and Burlington Northern Railroad Company, and by the Carrier's actions since the merger of the two Carriers on November 21, 1980.

2. That the following named Claimants be immediately provided with the protective benefits set forth under the New York Dock, Finance Docket #28250, Section 4, 6, 7 and 8, commencing on the appropriate dates so affected and continuing through the protective periods set forth.

J. E. Travis	D. E. Burton	J. H. Cornett
D. G. Hopkins	G. J. Steele	C. E. Eaton
L. Jefferson	E. S. Toth	D. E. Opalka
D. A. Sprague		

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

ORGANIZATION'S STATEMENT OF THE CLAIM, continued

3. That the Burlington Northern Railroad Company violated and breached the letter and intent of the provisions of I.C.C. Finance Docket No. 28250, (commonly known as New York Dock Conditions), particularly Sections 6 and 7 thereof, when the aforesaid Carrier made a reduction in forces affecting above Claimants. That the reduction in forces affecting above Claimants resulted from the merger related transaction to the change in operations, at the two common points, and the abolishment of all junior redundant personnel protected by the New York Dock Conditions. That the Burlington Northern Railroad Company violated and breached the letter and intent of the provisions of Section 4 of the New York Dock Conditions by failing to furnish appropriate notice of the aforesaid merger related transaction, to change operations at Kansas City and St. Louis. That the Burlington Northern Railroad Company be required to award Claimants the protective benefits set forth in Section 6 and 7 of the New York Dock and all fringe benefits provided for in Section 8 of New York Dock.

4. The evidence produced in writing as well as in discussion with the Burlington Northern Railroad Company, clearly and unequivocally demonstrated that by transactions in anticipation of and after the control and merger between the Burlington Northern Railroad and the St. Louis-San Francisco Railway Company, resulted in the loss of employment and/or placed the employees in a worse position. The Burlington Northern Railroad Company has failed to negotiate with Claimants' representatives regarding transactions, dismissals, displacements, rearrangement of forces, separation allowances, etc. The Burlington Northern Railroad Company has denied its own facts regarding transactions in anticipation of and after the consummation of the merger which were submitted before the Interstate Commerce Commission in Finance Docket No. 28583. However, said information was the basis for approval of said merger by the Interstate Commerce Commission. The Burlington Northern Railroad Company has failed to provide any protective conditions to any of the aforementioned Claimants so justly entitled to same, as provided by the order served on April 27, 1980, by the Interstate Commerce Commission in Finance Docket No. 28583, 360 I.C.C. 783.

CARRIER'S STATEMENT OF THE CLAIM

1. That the following named claimants be immediately provided with the protective benefits set forth under New York Dock, Finance Docket #28250, Section 4, 6, 7 and 8, beginning on the date so affected and continuing through the protective period set forth.

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

CARRIER'S STATEMENT OF THE CLAIM, continued

J. E. Travis	D. E. Burton	J. H. Cornett
D. G. Hopkins	G. J. Steele	C. E. Eaton
L. Jefferson	E. S. Toth	D. E. Opalka
D. A. Sprague		

2. That the Burlington Northern Railroad Company violated and breached the letter and intent of the provisions of ICC Finance Docket No. 28250 (commonly known as New York Dock Conditions), particularly Sections 6 and 7 thereof, when the aforesaid Carrier made a reduction in forces affecting above claimants. That the reduction in forces affecting above claimants resulted from the merger related transaction to the change in operations, at the two common points, and the abolishment of all junior redundant personnel protected by the New York Dock Conditions.

3. That the Burlington Northern Railroad Company violated and breached the letter and intent of the provisions of Section 4 of the New York Dock Conditions by failing to furnish appropriate notice of the aforesaid merger related transaction, to change operations at Kansas City and St. Louis.

4. That the Burlington Northern Railroad Company be required to award claimant the protective benefits set forth in Section 6 and 7 of the New York Dock and all fringe benefits provided for in Section 8 of the New York Dock.

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

Shortly after consummation of the merger, the Organization and Carrier entered into a January 29, 1981 Implementing Agreement governing separate consolidations of car repair facilities at Kansas City and St. Louis. Car repair work at the Burlington Northern's North St. Louis facility was coordinated into the former Frisco's Lindenwood Yard at St. Louis.

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.

Simultaneously, the Frisco's Rosedale facility at Kansas City was consolidated into the Burlington Northern's North Kansas City repair shop and yard. Carmen adversely affected by these two transactions were afforded protection under the New York Dock Conditions.

Before the merger, Burlington Northern carmen held seniority on the Hannibal Seniority District which embraces North Kansas City and St. Louis as well as several other points in Missouri, Southern Illinois and Southern Iowa while Frisco carmen held point seniority. The St. Louis points were Lindenwood Yard and Valley Park Yard. The Frisco carmen at St. Louis (and Kansas City) had their seniority dovetailed into the Burlington Northern Hannibal Seniority District in accord with the pertinent portion of paragraph 2 of the Implementing Agreement which provides:

"...all Carmen Craft employees of the Frisco at Kansas City and St. Louis terminals will be coordinated into the BN Hannibal Seniority District No. 7. Frisco employees holding seniority rights at St. Louis and Kansas City will have their seniority dovetailed in the appropriate consolidated seniority rosters for BN Hannibal Seniority District No. 7."

In 1983, the Carrier expanded its Lindenwood Intermodal Facility due to an increase in intermodal traffic. The expansion absorbed the space occupied by the Lindenwood repair track. As a result, the Carrier layed off all Lindenwood carmen on or about January 13, 1984. Although all Lindenwood positions in the carmen's craft had been abolished, the Carrier asserts that carmen assigned to a truck stationed at nearby Valley Park continued to perform repair work at Lindenwood. The incumbents of the Lindenwood positions exercised their seniority at various

locations throughout the Hannibal District. Ten of the Lindenwood carmen placed themselves on positions at North Kansas City. The ten Claimants herein are North Kansas City carmen who, as a consequence of the chain of displacements triggered by the Lindenwood job abolishments, were unable to hold a position on the Hannibal Seniority District.

Originally, the Organization filed a claim on behalf of 30 carmen on May 11, 1984. Thereafter, both parties deviated from the normal on the property procedures for progressing claims under the New York Dock Conditions. The claim was substantially amended on August 7, 1985. Also, the Carrier failed to promptly respond to the claim. Despite the extraordinary handling of the claim on the property, the Committee concludes that the grievance concerning the ten Claimants herein is properly before us for a decision on the merits.

III. THE POSITIONS OF THE PARTIES

A. The Organization's Position

The abolition of Lindenwood carmen positions was one simple but significant step in the Carrier's premeditated plan to transfer all St. Louis car repair work to the North Kansas City facility. The Carrier is using a purported decline in business as a pretext for eliminating duplicate car repair operations at St. Louis and Kansas City. Absent the merger, the Carrier could not have possibly consolidated St. Louis car repair work into North Kansas City Car Shops. The January 29, 1981 Implementing Agreement did not contemplate the transfer of work from St. Louis to Kansas City. Since the merger, the Lindenwood/Valley Park car

forces have been reduced from 59 to 9 with the last remaining positions at Valley Park. Thus, the Carrier engaged in a New York Dock transaction as opposed to an ordinary force reduction caused by an actual decline in business.

The Carrier has effectively abandoned Lindenwood Yard and Repair Track, although some Lindenwood repair work is now being performed by members of other crafts. Also, the Carrier is currently contracting out flat car repairs. Farming out the little remaining work also manifests the Carrier's intent to coordinate operations at Kansas City.

B. The Carrier's Position

This case merely concerns the normal exercise of seniority rights on a single seniority district. Senior carmen, whose positions had been abolished at Lindenwood, displaced junior North Kansas City carmen on the Hannibal District. The abolition of carmen positions at St. Louis was not a transaction within the definition of Section 1(a) of the New York Dock Conditions.

The Carrier specifically denies that there was a consolidation of facilities at Kansas City. There was no movement of cars or car repair work from St. Louis to Kansas City.

The Carrier also refutes the Organization's allegation that it abandoned Lindenwood Yard. Carmen headquartered at Valley Park still perform car repairs at Lindenwood. The Carrier also retains a sizable work force in other crafts. The Organization has failed to meet its burden of proving that the abolition of

the Lindenwood positions was associated with the merger. Instead, the Organization relies on the faulty "but for" premise.

Finally, the Organization has progressed a claim on behalf of ten St. Louis carmen to Special Board of Adjustment No. 570. It is fatally inconsistent for the Organization to pursue a claim for some carmen under the September 25, 1984 Agreement while it simultaneously pursues this claim for New York Dock benefits.

IV. DISCUSSION

Another arbitration tribunal established pursuant to Section 11 of the New York Dock Conditions has recently adjudicated a similar claim filed by a carman painter whose Lindenwood position was abolished on January 13, 1984. See BRC v. BN, NYD § 11 Arb., Award No. 4 (Vernon, 1/3/86). The carman painter was a former Frisco employee who subsequent to the abolition of his position was unable to claim any position on the Hannibal Seniority District. Both the Organization and the Carrier raised the same arguments in Award No. 4 as they have in this case. Specifically, the Organization alleged that the carman painter was adversely affected by the Carrier's consolidation of St. Louis car repair functions into the Kansas City Shop. In Award No. 4, Arbitrator Vernon concluded that, "...the closing of the particular repair facilities at this particular time was an operational change which could have been accomplished in the absence of the merger." Since it was unnecessary for the Carrier to obtain the ICC's approval to abolish carman positions at Lindenwood Yard, the Committee rejected the carman painter's claim. Award No. 4 controls the

outcome of this case. Like the carman painter, Claimants herein did not hold sufficient seniority on the Hannibal District to place on a position after the Carrier abolished the Lindenwood Yard jobs. This Committee is obligated to follow precedents on this property to foster stability and predictability in the labor-management relationship. Thus, this case presents a situation where senior workers exercised their seniority to displace junior workers independent of any New York Dock transaction.

In addition, the Organization failed to specify pertinent facts demonstrating that any car repair work was transferred from Lindenwood to North Kansas City or otherwise coordinated with the shop at North Kansas City. Aside from its bare assertions, the Organization did not identify what work flowed to Kansas City. Apparently, the Carrier did not create any new positions at Kansas City which would be necessary if there had been an influx of car repair work. From the record before us, this Committee finds that the Carrier did not engage in a coordination of work between St. Louis and Kansas City when it reduced Lindenwood car forces in January, 1984.

In summary, the Organization has not fulfilled its burden of identifying a transaction as required by Section 11(e) of the New York Dock Conditions.

AWARD AND ORDER

Claim denied.

Dated: May 20, 1987

Disseminating
R.P. Wojtowicz

R. P. Wojtowicz
Employees' Member

J. N. Locklin
Carrier Member

John B. LaRocco

John B. LaRocco
Neutral Member