

ARBITRATION COMMITTEE

In the Matter of the	)	OPINION AND AWARD
Arbitration Between:	)	
	)	Pursuant to Article I,
BROTHERHOOD OF MAINTENANCE OF	)	Section 11 of the
WAY EMPLOYES,	)	New York Dock Conditions
	)	
Organization,	)	
	)	
and	)	ICC Finance Docket
	)	No. 30249
	)	
THE ATCHISON, TOPEKA AND	)	
SANTA FE RAILWAY COMPANY,	)	
	)	
Carrier.	)	Case No. 1
	)	Award No. 1
	)	

Hearing Date: May 17, 1988  
Hearing Location: Scottsdale, Arizona  
Date of Award: November 8, 1988

MEMBERS OF THE COMMITTEE

Employes' Member: C. F. Foose  
Carrier Member: G. M. Garmon  
Neutral Member: John B. LaRocco

STATEMENT OF THE CLAIM

Claim on behalf of Illinois Division Bridge and Building Carpenters, R. J. Smith, H. E. Bryant, J. Pietz, and R. J. Ewingman, and Bridge and Building Helper, R. Gonzales, for all wages lost by claimants from January 2, 1987, and continuing forward, account claimants who hold prior rights on the Santa Fe property, were improperly displaced by former TP&W Bridge and Building employes who do not hold prior rights on the Santa Fe property.

OPINION OF THE COMMITTEE

I. INTRODUCTION

On or about December 17, 1980, the Interstate Commerce Commission (ICC) approved the Atchison, Topeka and Santa Fe Railway Company's petition to control and acquire the Toledo, Peoria and Western Railroad (TP&W). [Finance Docket No. 30249.] On August 17, 1983, the ICC approved the merger of the TP&W into the Atchison, Topeka and Santa Fe Railway Company ("Carrier" or "Santa Fe"). The merger was consummated on January 1, 1984. As a result of the merger, the former TP&W became the Peoria District on the Carrier's Illinois Division. To compensate and protect employees affected by the acquisition and the subsequent merger, the ICC imposed the employee merger protection 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 Carrier pursuant to the relevant enabling statute. 49 U.S.C. Sections 11343, 11347.

This Board is duly constituted by a letter dated January 11, 1988. Hearing on this dispute was held on May 17, 1988. At the Neutral Member's request, the parties

waived the Section 11(c) forty-five day limitation period for issuing this decision.<sup>1</sup>

## II. BACKGROUND AND SUMMARY OF THE FACTS

In anticipation of the merger, the Organization and Carrier entered into a July 12, 1983 Memorandum of Agreement providing that employees adversely affected by the merger would be covered by the benefits set forth in the New York Dock Conditions. Sections 1 and 2 of the July 12, 1983 Memorandum of Agreement read:

1. Effective with the merger of the two Carriers party to this Agreement, employes of the Toledo, Peoria and Western Railroad, represented by the Brotherhood of Maintenance of Way Employes shall be transferred to and become employes of The Atchison, Topeka and Santa Fe Railway Company, and will thereafter be covered by the Maintenance of Way Agreement(s) in effect on The Atchison, Topeka and Santa Fe Railway Company. Seniority dates previously established by employes on the Toledo, Peoria and Western Railroad will be dovetailed into the appropriate seniority roster of the applicable seniority Group(s) and Class(es) on the Illinois Division and/or Eastern Lines.

2. Following the dovetailing procedures outlined in 1 above, employes in each Group and Class on the consolidated roster(s) will be designated so as to provide prior rights to service on their former seniority district. Prior rights to former Toledo, Peoria and Western service will not apply to employes holding system seniority [occupants of

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<sup>1</sup>All sections pertinent to this case are set forth in Article 1 of the New York Dock Conditions. Thus, the Committee will only cite the particular section number.

positions in gangs requiring seniority in Group 8 (System Steel Bridge Gang) and Group 11 (System Rail Laying and Plow Gangs)] performing work in former Toledo, Peoria and Western Railroad territory, nor will the use of such employes serve to replace employes having prior rights on the former Toledo, Peoria and Western Railroad. Failure to protect service in the prior rights territory will result in forfeiture of said prior right.

In essence, Sections 1 and 2 of the Memorandum of Agreement called for the seniority of the former TP&W employes, who would now be working under the Santa Fe's scheduled Agreement, to be dovetailed into the appropriate roster (for each Maintenance of Way Class) on the Illinois division. However, as expressly enunciated in Section 2 of the Agreement, workers retained prior rights to service on their original territory. Former TP&W employes held prior rights to service on the new Peoria District while former Illinois Division workers had prior rights on the old Illinois Division (that is, before the Division was expanded to encompass the former TP&W).

During the months following the January 1, 1984 merger, the parties encountered difficulties with applying the prior rights principle to floating or non-headquartered gangs. Due to the prior rights provisions in the July 12, 1983 Memorandum of Agreement, positions on floating gangs had to be bulletined whenever the gang moved from the former TP&W

territory to the former Illinois Division or vice versa. It was cumbersome to constantly abolish and readvertise gang jobs whenever the gang moved into a prior rights territory.

To alleviate the problems associated with applying prior rights to positions on floating gangs, the parties amended the July 12, 1983 Memorandum of Agreement. The parties memorialized the revision in the second paragraph of an August 27, 1984 Letter of Understanding which reads:

This will confirm that in the aforementioned discussion it was agreed that, effective September 15, 1984, the Carrier may organize non-headquartered gangs and establish non-headquartered machine operator positions on the Illinois Division to work on both prior rights territories (the former TP&W - now Peoria District - and the Illinois Division), which non-headquartered gangs and machine operator positions will be filled without regard to prior rights. The advertisement bulletin will indicate that prior rights will not be applicable to such positions and that the employes assigned to said positions will have the right to exercise their seniority whenever the gang or machine moves off their prior rights territory. It is also understood that any Maintenance of Way employe of the class who is entitled to a seniority displacement may displace on such a gang or position so established.

On February 27, 1987, the Organization initiated this claim on behalf of Bridge and Building Carpenters who were purportedly displaced from positions on floating gangs when the gangs were working in a prior rights territory by employes who did not hold any prior rights to perform

service in the territory. The Organization argues that the August 27, 1984 letter amendment was not intended to cover Bridge and Building non-headquartered gangs, but was restricted to floating track gangs. On the other hand, the Carrier contends that the revision applied to all non-headquartered gangs.

### III. DISCUSSION

The parties concur that the prior rights principle applied to positions on floating gangs prior to the effective date of the August 27, 1984 Letter of Understanding. The issue is whether the amendment eliminated the prior rights principle for all floating gangs or was the revision limited to abolishing prior rights for only non-headquartered track gangs.

When construing contract language, this Committee must begin with the ordinary meaning of the words chosen by the parties. The first sentence of the second paragraph of the August 27, 1984 Letter of Understanding states that the Carrier could organize non-headquartered gangs on both the former TP&W and the old Illinois Division without regard to the prior rights. The clear language of this sentence is not susceptible to more than one meaning. More importantly,

the amendment did not exempt Bridge and Building gangs. If the parties had wished to restrict the elimination of prior rights to floating track gangs, they could have easily inserted such terminology in the revision. Furthermore, the record reflects that after the effective date of the August 27, 1984 Letter of Understanding, bulletins advertising positions on floating gangs, including Bridge and Building gangs, announced that the positions were not subject to prior rights. Thus, Claimants were aware that prior rights were inapplicable to their jobs.

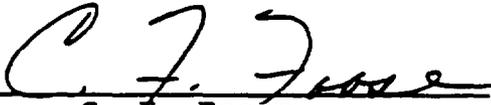
The parties had experienced difficulties applying prior rights to floating gangs and, thus, the August 27, 1984 revision was an equitable method of eradicating the administrative complexities associated with applying prior rights to non-headquartered gangs. Under the application of the prior rights principle, incumbents on the Bridge and Building gangs held insecure positions. They could be easily displaced (whenever the gang moved into a prior rights territory) with the hope of reclaiming their jobs when the gang moved back. The high incidence of turnover was unhealthy for both the Carrier and its workers. The August 27, 1984 Letter of Understanding placed all Bridge and Building carpenters in equal status, since it did not favor former Illinois Division carpenters over former TP&W

carpenters. The parties recognized the problem, they confronted the problem, and they properly solved the problem through the collective bargaining process.

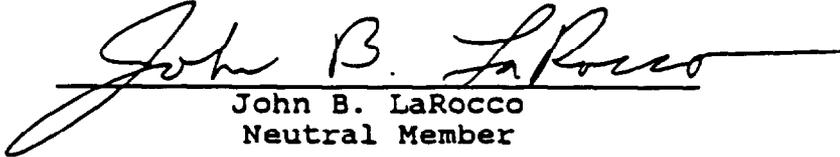
AWARD AND ORDER

Claim denied.

DATED: November 8, 1988

  
C. F. Foose  
Employes' Member

  
G. M. Garmon  
Carrier Member

  
John B. LaRocco  
Neutral Member

[BMWE.AWD]