ARBITRTATION PURSUANT TO ARTICLE I, SECTION 11
OF THE NEW YORK DOCK AND OREGON SHORT LINE
EMPLOYE PROTECTIVE CONDITIONS
AS PROVIDED IN ICC FINANCE DOCKET NO. 30,800

PARTIES	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)	
TO	AND	)	DECISION
DISPUTE	UNION PACIFIC RAILROAD COMPANY	)	

QUESTION AT ISSUE:

Is Mr. D. E. Coleman entitled to protection under New York Dock Conditions or Oregon Short Line Conditions as a result of his furlough from service in September 1988?

HISTORY OF DISPUTE:

On May 16, 1988 the Interstate Commerce Commission (ICC) issued its Decision in Finance Docket No. 30,800 approving the application of the Union Pacific Railroad Company (UP) to acquire the Missouri-Kansas-Texas Railroad (MKT). The ICC imposed conditions for the protection of employees set forth in New York Dock Ry.-Control-Brooklyn Eastern District, 350 I.C.C. 60 (1979)(New York Dock Conditions). In the same Decision the ICC also approved abandonment by the MKT of its 43.3 mile line of railroad between Griffin and Parsons, Kansas. The ICC further approved abandonment by the MKT of a 33.6 mile portion of its line between Sedalia and Clinton, Missouri. Authority to effectuate the abandonments was made subject to the conditions for protection of employees set forth in Oregon Short Line RR Co.-Abandonment-Goshen, 360 I.C.C. 91 (1979)(Oregon Short Line

Conditions).

On September 30, 1988 Claimant was furloughed from his position as a track machine operator on extra gang 164 on Seniority District No. 1 in which Claimant held seniority as a section foreman, machine operator and track laborer. However, Claimant was unable to secure a position in Seniority District No. 1.

On October 1, 1988 Claimant filed for protective benefits under the New York Dock Conditions and the Oregon Short Line Conditions alleging that his furlough was due to the UP's acquisition of the MKT. The Carrier responded on November 23, 1988 denying Claimant's request on the ground that Claimant had provided no information to establish that his furlough was the result of a transaction.

The Organization appealed the Carrier's denial. The Carrier denied the appeal.

In February 1989 the Carrier recalled maintenance of way employees in Seniority District No. 1. However, Claimant was not recalled. An employee junior in seniority to Claimant was called.

On November 1, 1989 the Carrier abandoned those positions of trackage the ICC had given it authority to abandon in its Decision in Finance Docket No. 30,800. The Carrier afforded protective benefits to employees whose positions were abolished as a result of those abandonments.

The Organization continued to appeal the Carrier's denial of Claimant's request for protective benefits. The Carrier continued to

deny the Organization's appeals. Eventually, the Organization appealed the matter to the highest officer of the Carrier designated to handle such disputes. However, the dispute remained unresolved.

The parties created this Arbitration Committee and selected the undersigned as its Neutral Member pursuant to Article I, Section 11 of the New York Dock and Oregon Short Line Conditions. Hearing in this matter was held in Reno, Nevada on November 15, 1990. All parties, including Claimant, were given an opportunity to present oral testimony as well as written submissions. The parties waived the time limit for Decision provided in Article I, Section 4(c).

FINDINGS:

On the entire record in this case this Committee finds that the parties have complied with the requisite procedures of Article I, Section 11 of the New York Dock and Oregon Short Line Conditions, that the dispute in this case is ripe for determination by this Committee and that this Committee has jurisdiction to do so.

The answer to the question at issue in this case depends upon whether Claimant's September 30, 1988 furlough was the result of a transaction. That question in turn is governed by Article I, Section 11(e) of the New York Dock and Oregon Short Line Protective Conditions which provides:

> In the event of any dispute as to whether or not a particular employee was affected by a

> transaction it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

As the Organization correctly points out the burden of proof required of an employee under Section 11(e) is considerably less than what formerly was required under ICC labor protective conditions which predated the New York Dock and Oregon Short Line Conditions. See Burlington Northern RR. & Bro. of Maintenance of Way Employees, June 9, 1987 (Kasher, Neutral). Nevertheless, it is well established that the burden of proof required of an employee under Section 11(e) mandates that the employee establish a causal nexus between the adverse effect experienced by the employee and a transaction. See Missouri Pacific RR. Co. & American Train Dispatchers Assn., July 31, 1981 (Zumas, Neutral); Missouri Pacific RR. Co. & Bro. of Ry. Carmen, July 30, 1982 (Sickles, Neutral); American Ry. Supervisors Assn. & Chicago Northwestern Transp. Co., March 15, 1980 (Kasher, Neutral) and Intl. Bro. of Electrical Workers & Union Pacific RR. Co., Jan 5, 1989 (Peterson, Neutral).

Analysis of the record in this case forces us to agree with the Carrier that neither Claimant nor the Organization has demonstrated that Claimant's furlough was the result of a transaction. Although Claimant and the Organization allege that Claimant's furlough was the result of UP's acquisition of MKT, the allegation is

unsupported by the record in this case. While the record demonstrates that Claimant was furloughed a few months after the ICC's Decision approving the acquisition, that fact alone is insufficient to establish the requisite causal nexus. Claimant and the Organization would have this Board draw the inference that Claimant's furlough was due to the UP's acquisition of the MKT. However, the foregoing authorities make it clear that we are not free to draw such an inference.

Moreover, even if Claimant has sustained his burden of proof under Section 11(e) we believe the Carrier has met its burden under that section. The record demonstrates that for some time prior to his furlough Claimant was not able to hold a position in Seniority District No. 1 except the one from which he was furloughed which related to a special project. When the project was completed Claimant and other employees working on the project were furloughed. Thus, Claimant's furlough was the result of the termination of the special project and not UP's acquisition of MKT.

Apparently Claimant could have worked a position on Seniority District No. 1 beginning approximately January 1989, and if he had done so may have been afforded protective benefits when all positions were abolished as a result of the abandonment of part of the MKT line which occurred in November 1989. However, Claimant in fact did not work such position. Whether that was due to some improper action or omission by the Carrier or Claimant is in dispute. We believe the Carrier's point is well taken that such dispute is not within the

jurisdiction of this Committee and must be handled under the appropriate procedures of the Railway Labor Act, 45 U.S.C. §§151, et seq. We understand Claimant's frustration at the fact that a junior employee was recalled and may have been afforded protective benefits as a result of the line abandonment. However, that matter simply is not within our jurisdiction.

In the final analysis we must conclude that there is no basis upon which to award Claimant the benefits of the New York Dock Conditions or the Oregon Short Line Conditions.

DECISION

The question at issue is answered in the negative.

William E. Fredenberger, Jr.
Chairman and Neutral Member

D. J. Smith
Carrier Member

S. A. Hammons, Jr.
Employee Member 6-28-91

DATED: June 24, 1991