

ARBITRATION BOARD
ESTABLISHED PURSUANT TO ARTICLE I, SECTION 11
NEW YORK DOCK CONDITIONS IMPOSED BY ICC IN FD NO. 30,000

In the Matter of an Arbitration between

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

and

UNION PACIFIC RAILROAD COMPANY

FINDINGS
AND
AWARD

CLAIM OF THE ORGANIZATION:

"1. That the Union Pacific Railroad Company violated the provisions of the Agreement signed October 26, 1988, when they arbitrarily refused to recall senior furloughed Electrician W. L. Springborg from the Electricians' seniority roster after closing the power plant on December 15, 1989, which bulletin had restrictions which while power plant was in operation, prevented claimant from holding or bidding.

2. That accordingly, the Union Pacific Railroad Company be ordered to comply with the terms of the Implementing Agreement effective October 26, 1988. That Electrician W. L. Springborg be compensated for all lost time including overtime beginning December 15, 1989, and benefits until claimant was recalled to service.

3. That the Carrier be ordered to compensate Claimant beginning December 16, 1989, continuing until recalled to service under the controlling agreement."

BACKGROUND:

On October 20, 1982 the Interstate Commerce Commission (the ICC or Commission), in Finance Docket No. 30,000, formally approved the joint applications of the Union Pacific Railroad Company (the Carrier or the UP), the Missouri Pacific Railroad (MP), and the Western Pacific Railroad (WP) to consolidate. In authorizing the

merger of these carriers, the ICC imposed those labor protective conditions which are commonly known as the NY Dock Conditions (New York Dock Ry. - Control - Brooklyn Eastern Dist., 360 I.C.C. 60 (1979)).

Pursuant to the merger authorization and the NY Dock Conditions, the Carrier and the International Brotherhood of Electrical Workers (the IBEW or Organization) entered into an Implementing Agreement under date of October 26, 1988. In a preamble to the Implementing Agreement, the parties stated that its purpose was:

"[To] establish procedures for the transfer of work and employees whose positions will be abolished at Omaha and transferred to DeSoto, Missouri, North Little Rock, Arkansas, North Platte, Nebraska, Salt Lake City, Utah, and Pocatello, Idaho, pursuant to notice dated June 30, 1988, served upon the General Chairmen involved and Letter of Agreement dated October 26, 1988."

In part here pertinent, the Implementing Agreement reads:

"Section 1. On or after the date this Agreement is signed, UPRR may commence the transfer and consolidation of work as provided by this Implementing Agreement from Omaha to DeSoto, North Little Rock, North Platte, Salt Lake City and Pocatello. . . .

Section 2. (a) On or after October 26, 1988, notice will be posted on bulletin boards at Omaha establishing a total of eighty-two (82) Electrician . . . positions at North Little Rock . . . Six (6) Electrician positions at Omaha will be bulletined for electrical work in connection with business and coach cars and power house. The positions will become effective on or before November 14, 1988, unless otherwise notified as provided in Section 1.

(b) Employees desiring to apply for the above positions must submit their application in writing to Director of Shops at Omaha, with copy to Local Chairman, within ten (10) days from date of notice. Assignment will be made in accordance with the provisions of the existing UPRR Collective Bargaining Agreement, as amended. Copy of bulletins establishing jobs and the assignment bulletins will be furnished to Local Chairman at the points identified in paragraph (a) of this Section.

(c) In the event sufficient bids are not received on the Electrician . . . positions referred to in Section 2(a) hereof, then Electricians, Groundmen and Helper will be assigned to the positions by assigning the junior, regular-assigned Electricians, Groundmen and Helpers working at Omaha as of the last day of the bulletin

posted at Omaha . . . In assigning junior employees to vacancies covered by this paragraph (c), assignment will be made in reverse seniority order to the furthest point to be transferred from Omaha. Employees assigned to positions that elect not to transfer . . . will be furloughed from service at Omaha and the employee's name will remain on the applicable seniority roster subject to recall under the current Collective Bargaining Agreement in effect at Omaha. However, such employees will not be eligible for any New York Dock Conditions benefits.

* * * * *

Section 10. (a) This Agreement shall constitute the required Agreement as stipulated in Article I, Section 4, New York Dock Conditions.

(b) Any dispute arising out of this Implementing Agreement and Letters of Agreement and/or Understandings will be handled by the appropriate General Chairman with the highest Labor Relations Officer designated to receive such claims and grievances for UPRR.

Section 11. The provisions of this Implementing Agreement have been designed to address a particular situation. Except for the provisions of the New York Dock Conditions, the provisions of this Implementing Agreement and the attached Letters of Agreement and/or Understandings are without precedent or prejudice to the position of either party and will not be referred to in any other case." (Above underscoring by the Board.)

One of several Side Letters of Agreement to the Implementing Agreement, or, namely, Side Letter No. 10, reads in part as follows:

"[It] is intended that six (6) positions will remain at Omaha for approximately eighteen (18) months to perform necessary electrical work involved in the business and coach cars and power house. As for the individual assigned to the power house Electrician position, it is my understanding that a license is required and, accordingly, the only employee allowed to occupy this position would be one that is a qualified, licensed Electrician for the power house.

Even though the six (6) positions were not mentioned in our June 30, 1988 notices, as a result of our several discussions, you were advised that in view of the circumstances, I have no objection to allowing the six (6) individuals assigned to these positions the protective benefits of the New York Dock Conditions commencing

with the date they are assigned. For those employees assigned at Omaha, it is understood that they will not be eligible for any relocation expenses based on the following change of residence definition under New York Dock Conditions: . . ."

The Implementing Agreement and Side Letter No. 10, among other things, thus provided that six electrician positions would remain at Omaha and that the individual assigned to the Electrician's position at the Power House would be "a qualified, licensed Electrician."

When the parties entered into the Implementing Agreement the Claimant (Mr. W. L. Springborg) was employed as an Electrician at Omaha. His seniority standing on the Omaha Seniority Roster shows a date of October 8, 1970.

At the time the transaction out of which the Question at Issue arises was implemented, the Claimant did not have sufficient seniority and qualifications to continue to hold a position at Omaha. However, he could have bid and been assigned one of the several jobs at locations to which positions were established pursuant to Section 2, supra, of the Implementing Agreement. The Claimant instead elected to take furlough and remain as an Electrician on the Omaha Seniority Roster under the terms of Section 1(c), supra, of the Implementing Agreement.

Another Electrician, i.e., Mr. T. F. Pote, was assigned to one of the six electrician positions at Omaha. Mr. Pote was junior in seniority (September 11, 1972) to Claimant Springborg. However, unlike the Claimant, Mr. Pote possessed the requisite qualifications and license to operate the Power House, or those requirements set forth in Side Letter No. 10, supra, to the Implementing Agreement.

On December 15, 1989 the Carrier closed the Power House at Omaha. Mr. Pote continued working as an Electrician and as a temporary Foreman at Omaha until his assignment as a Foreman on June 29, 1990.

On May 18, 1990 the Organization filed a claim that the Carrier violated the terms of the Implementing Agreement when it closed the Power House and failed to recall the senior Electrician to service, or, namely, Claimant Springborg, and allowed a junior employee (Mr. Pote) to remain on an Electrician's job at Omaha. The organization said the claim is "for all lost time including overtime and benefits beginning December 15, 1989, until the violation is stopped."

Claimant Springborg returned to service on February 19, 1991. He took an Electrician position at the Omaha Shops.

In a letter dated April 4, 1991 the Claimant requested a 60-day

leave of absence, offering that it was a personal hardship for him to be away from his family, who was living in Bennington, Kansas, some 200 miles distant from Omaha. While the letter of request referred to a 60-day leave, the formal application which the Claimant submitted and which was approved by the Carrier was for a 30-day leave of absence, i.e., from April 18, 1991 through May 17, 1991. In any event, when the Claimant did not return to service after 30-days, an investigation was held and the Claimant was assessed a 90-day deferred suspension on a Carrier determination that he had been absent from his assignment without proper authority.

Following an additional citation for being absent from his assignment without proper authority beginning July 19, 1991, and continuing until the date of hearing on such matter, the Claimant was dismissed from all service effective August 23, 1991.

Basically, the Organization contends the Claimant was directly affected and placed in a worse position when he was unable to hold a position account the licensing requirements at the Power House. It says that in taking furlough, the Claimant only exercised "his option in accord with the New York Dock Conditions." It also says the Carrier violated the Implementing Agreement of October 26, 1988 in not recalling the Claimant to service when the Power House was closed on December 15, 1989. In support of its position and claim under the NY Dock Conditions, the Organization cites Section 10(b) and Side Letter No. 10, supra, of the Implementing Agreement. The Organization also says the Carrier violated the collective bargaining agreement, and in particular those rules related to the posting of job bulletins, the abolishment of assignments, and the recall of employees.

The Carrier maintains that the Claimant forfeited any protection pursuant to the NY Dock Conditions when he elected to take furlough and that the claim essentially involves the interpretation of seniority and recall issues under the collective bargaining agreement, or matters over which this Board has no jurisdiction.

FINDINGS AND OPINION OF THE BOARD:

In order for an employee to become eligible for the protective benefits under Article 1, Section 5 (Displacement Allowances) and Section 6 (Dismissal Allowances) of the NY Dock Conditions, the grievant must, under the precise language of Article 1, Section 11(e), show that he or she was affected by a "transaction." In this respect, Article 1, Section 11(e), reads:

"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."

Here, the evidence of record does not show the Claimant to have become a "displaced" or "dismissed" employee as a direct result of a "transaction," and thereby entitled to a "protective period" or protective allowance as those terms are defined in the NY Dock Conditions, or, specifically, as follows:

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

(b) 'Displaced employee' means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

(c) 'Dismissed employee' means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.

(d) 'Protective period' means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, . . ."

The Claimant was not deprived of employment and did not suffer a loss of earnings as a direct result of a transaction. He had opportunity of an exercise of seniority to available positions, but elected to take a furlough at the time of the transaction.

In voluntarily electing not to transfer to available work, the Claimant, pursuant to Section 2(c) of the Implementing Agreement, supra, forfeited any right he may have had to benefit of the NY Dock Conditions. This section clearly prescribes that employees who elect not to transfer to available positions and instead elect to take furlough will "not" be eligible for "any" NY Dock Conditions benefits.

That the Carrier subsequently closed a facility mentioned in the Implementing Agreement of October 26, 1988, namely, the Power House at Omaha, without having posted a notice, or failed to recall the Claimant from furlough to replace an employee junior in seniority, even if held to be a violation of the Schedule of Rules Agreement, as urged by the Organization, could not be said to have reestablished eligibility for the Claimant to the labor protective benefits of the NY Dock Conditions. The Claimant, as indicated above, forfeited NY Dock Conditions protection when he

elected to take furlough and forego employment available to him in the exercise of seniority rights at the time of the covered transaction.

If there was a violation of the Rules Agreement, then that is a matter to be properly pursued under the grievance procedures of the collective bargaining agreement. It is not a dispute which the Board finds to be envisioned by Section 10(b), supra of the Implementing Agreement.

In the circumstances, the Board finds the several arguments advanced in support of the Claimant do not involve application of the NY Dock Conditions. They are rather matters related to application and interpretation of the Schedule of Rules Agreement, and thereby a different disputes forum. In electing not to exercise seniority to available work and instead take furlough, the Claimant removed himself from the protective umbrella of the NY Dock Conditions. Accordingly, the compensation which is being sought on behalf of the Claimant under the guise of the NY Dock Conditions must be denied.

AWARD:

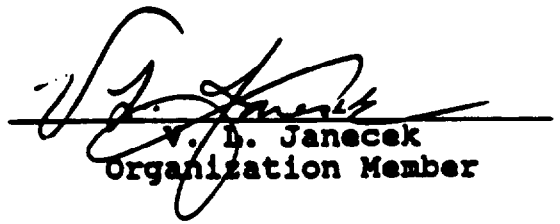
The Claim of the Organization that the actions of the Carrier constitute violation of the October 26, 1988 Implementing Agreement and that the Claimant is covered by or subject to benefit of recovery under the NY Dock Conditions is denied.



Robert E. Peterson, Chairman
and Neutral Member



D. A. Moresette
Carrier Member



V. J. Janacek
Organization Member

Omaha, NB
March 26, 1994