ARBITRATION COMMITTEE
ESTABLISHED PURSUANT TO SECTION 11 OF
THE NEW YORK DOCK LABOR PROTECTIVE CONDITIONS

International Association of Machinists and Aerospace Workers	)	
	)	Parties to the Dispute
CSX Transportation, Inc.	)	

EMPLOYEES QUESTION AT ISSUE:

1. Do the labor protective conditions imposed in railroad transactions pursuant to 49 U.S.C. 11343 by the Interstate Commerce Act commonly referred to as "New York Dock" permit CSX-T to transfer dismissed New York protected Mobile, Alabama, Machinists John Henry Jones and Carl Wilson to New Orleans, Louisiana, and change their respective residence when no transaction (transfer of work) has accrued between the two locations.

2. If the answer to Question No.1 is in the negative, what remedy shall be applied to make CSX-T New York Dock protected dismissed Machinist John Henry Jones and Carl Wilson whole as a result of the Company forcing them to change their residence and transfer from Mobile, Alabama to New Orleans, Louisiana?

BACKGROUND:

On May 24, 1993 the parties to this dispute completed an Implementing Agreement under Section 4 of the New York Dock Protective Conditions. The Agreement provided for the transfer of machinist's work from the Nashville and Mobile Locomotive Shops to the Cumberland and Waycross Locomotive Shops. While the Agreement provided for the transfer of work, no employees were transferred. The transfer affected 8 machinists at Mobile. The machinists at Mobile were furloughed on June 4, 1993 as a result of the transfer of work. Because they were deprived of employment they became dismissed employees as defined by New York Dock. A

dismissed employee is defined as follows:

> (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.

As such the employees were entitled to a dismissal allowance.

In early July Mr. Jones and Mr. Wilson were ordered to report to New Orleans to fill machinist's vacancies or forfeit their dismissal allowance. Both Mobile and New Orleans are points on the former L&N Railroad and are covered by the same Collective Bargaining Agreement. The Carrier cited Rule 27 of that Agreement as requiring the employees to move to New Orleans. Rule 27 reads as follows:

> "27(a) While forces are reduced, if men are needed at other points, furloughed men will be given preference to transfer, with privilege of returning to home station when force is increased, such transfer to be made without expense to the Company, seniority to govern.
>
> "27(b) An employee laid off in force reduction desiring to secure employment under this rule shall notify his foreman in writing and furnish his craft General Chairman copy of the letter."

The employees made the move under protest and were provided Moving Expense of Section 9. The Organization filed a dispute under Section 11 of New York Dock leading to the establishment of this Board. The Board met on October 12, 1994.

FINDINGS:

Both parties made excellent presentations at the hearing citing

awards to support their positions.

The Organization argues that "Dismissed Employees" are not required to accept employment at a location where they hold no seniority and are not required by the Collective Bargaining Agreement to obtain such employment or lose their dismissal allowance. Section 6 of New York Dock reads as follows:

> "6. Dismissal allowances - (a) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the transaction. Such allowance shall also be adjusted to reflect subsequent general wage increases.
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> "(b) The dismissal allowance of any dismissed employee who returns to service with the railroad shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of Section 5.
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> "(c) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the railroad shall agree upon a procedure by which the railroad shall be currently informed of the earnings of such employee in employment other than with the railroad, and the benefits received.
>
> "(d) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure to return to service after being notified in accordance with the working agreement, failure without good cause to accept a comparable position which does not require a change in his place of residence for which he is qualified and eligible after appropriate notification, if his return does not infringe upon the employment rights of other employees under a working agreement."

The Organization argues further that New Orleans was not involved in the transfer of work from Mobile, and for the Carrier to require the employees to move it must serve a new notice under Section 4 requesting an implementing agreement. To further buttress its position the Organization argues that employees who are entitled to moving expenses are only entitled to such if they move as a result of a transaction. Section 9 reads as follows:

> "9. Moving expenses - Any employee retained in the service of the railroad or who is later restored to service after bring entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the transaction, and who within his protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects for the traveling expenses of himself and members of his family, including living expenses for himself and his family and for his own actual wage loss, not to exceed 3 working days, the exact extent of the responsibility of the railroad during the time necessary for such transfer and for reasonable time thereafter and the ways and means of transportation to be agreed upon in advance by the railroad and the affected employee or his representative; provided, however, that changes in place of residence which are not a result of the transaction, shall not be considered to be within the purview of this section; provided further, that the railroad shall, to the same extent provided above, assume the expenses, et cetera, for any employee furloughed within three (3) years after changing his employment back to his original point of employment. No claim for reimbursement shall be paid under the provisions of this section unless such claim is presented to railroad within 90 days after the date on which the expenses were incurred."

The Carrier does not dispute that the employees were dismissed employees entitled to a dismissal allowance as a result of the transfer of work out of Mobile. It argues that dismissed employees must seek employment that's available to them under the

terms and conditions of the Collective Bargaining Agreement. Its position is that Rule 27, albeit a permissive provision, provides employment opportunities for the dismissed employees, and failure to obtain such employment causes the dismissal allowance to cease in accordance with Section 6(d).

In general the basic tenets of Protective Conditions are that the Carrier is required to maintain the salary level of those employees adversely affected by a transaction. The employees are obligated to seek employment in their craft even if it requires an employee to move his residence. When that occurs the Carrier is obligated to pay the moving expenses. Dismissed employees are also required to accept comparable employment in another occupation for the Carrier so long as it does not require the employee to move.

The Carrier has cited two Awards, one a Section 11 decision under the Oregon Short Line Protective Conditions, and the other a Section 11 decision of the New York Protective Conditions. In both cases the Boards determined that employees who fail to obtain employment available under the terms of the Collective Bargaining Agreement, even if it is a permissive provision, are not entitled to a dismissal allowance. In both cases the employment opportunities would have caused a change in residence.

The Organization has cited an Award involving the Guilford Railroads where the Board's decision under Section 11 of New York

Dock said machinist did not have to accept machinist positions at a location more than 30 miles beyond the point where they were furloughed.

A careful review of all three decisions finds the Carrier's Awards to be more persuasive. The decision cited by the Organization does not indicate whether both locations were covered by the same Collective Bargaining Agreement. The decision also indicates that the Carrier argued it was comparable employment. Employment in the same craft is not comparable employment under the terms of the New York Dock Protective Conditions.

As to the Organization's position that a new implementing agreement is necessary to move the employees to New Orleans it is without foundation. Both parties agree that work was not transferred from Mobile to New Orleans. Therefore, there is no basis to seek an implementing agreement under Section 4. The same conclusion is reached when the Organization's position on Section 9 is analyzed. Section 9 provides for moving expenses. It does not define a dismissal allowance, and has no bearing on when such allowance ceases.

We agree with the Organization that Rule 27 does not require that a furloughed employee has to request employment at other locations. However, we also agree with the Carrier that failure to accept machinist work available under the provisions of the Collective Bargaining Agreement meets the criteria to cease

paying a dismissal allowance.

The definition of a Dismissed Employee is one who is deprived of employment. An employee offered employment in his craft ceases to be such an employee. If the employee refuses to take advantage of the work opportunity, the dismissal allowance would cease.

The Employees Questions at Issue do not get to the heart of the matter. The crux of this case is whether the Carrier may cease paying a dismissal allowance if an employee does not take advantage of employment opportunities under Rule 27. For the reasons cited above, the answer to that question is, "Yes". Ergo, the answer to the Employees Question at Issue No. 1 is,"Yes".

AWARD

1. The answer to Question No.1 is, "Yes".

2. Because the answer to Question No. 1 is yes, no response is required to Question No.2.

Robert Richter, Neutral Member

N.B. Grissom
Carrier Member

I DISSENT
R.L. Elmore
Employee Member

Dated January 31, 1995