Arbitration Committee Pursuant to Article 1, Section 11 of New York Dock Conditions	:	
Parties to Dispute	:	Transportation Communications International Union and CSX Transportation, Inc.
Arbitration Committee	:	Jacob Seidenberg, Esquire, Neutral Member C.H. Brockett - Organization Member N.B. Grissom - Carrier Member
Appearances	:	P.L. Foster - Organization W.C. Comiskey - Carrier
Hearing	:	July 14, 1995
Organization's Post Hearing Reply Received	:	July 31, 1995
Statements of Issue	:	The parties were unable to agree

on a joint Statement of Issue. Consequently, the respective Statements of Issue are herein set forth:

Organization

"1. Did Clerk R. H. Lampe become a 'displaced employee' as defined in Article I, Section 1 of the New York Dock Conditions as a result of Article I, Section 4, Implementing Agreement between CSX (C&O) and TCU (March 4, 1993) providing for the transfer, consolidation and rearrangement of forces of the Terminal Service Center on the former C&O Railway to Jacksonville, Florida, when his position was abolished on April 19, 1993?

2. Is Clerk Lampe now entitled to an election of benefits as specified in Article I, Section 3 of NYD?

3. If the answers to 1 and 2 are in the affirmative, shall the Carrier now be required

to furnish Clerk Lampe a test period average "commencing twelve (12) months prior to April 19, 1993?"

4. Shall Carrier now further be required to make Clerk Lampe whole for any benefits under NYD which may have accrued to him commencing April 19, 1993?"

Carrier

"Is SCL clerical employee R.H. Lampe a 'displaced employee' as defined in Article 1, Section 1 of the New York Dock, as the result of C&O work being transferred to SCL in the implementation of the C&O Customer Service Center transaction March 3, 1993, thereby placing him in a worse position with respect to compensation?"

Background:

The present Carrier, the CSX Transportation, Inc., was established as a result of a merger over several years, inter alia, of the Seaboard Coast Line Railroad (SCL), the Louisville & Nashville Railroad (L&N), the Baltimore & Ohio (B&O) and the Chesapeake & Ohio Railroad (C&O). The merger was achieved under the aegis of the Interstate Commerce Commission which prescribed New York Dock protective benefits for eligible employees adversely affected by a merger transaction.

The dispute arose as a result of the Carrier's efforts to progressively transfer to, and centralize in, Jacksonville, Florida, customer service work from the several component companies that constituted the merged Carrier. Because effecting the consolidation of this work was a task of considerable magnitude, the Carrier extended its efforts to achieve this consolidation over a period of years.

The instant dispute resulted from the efforts of implementing a March 4, 1993 Agreement transferring C&O Customer Service positions from several C&O locations to the Jacksonville Service Center.

To fully understand the dispute, it is necessary to set forth certain relevant antecedent facts. In order to effectuate the transfer and consolidation of forces, the New York Dock Conditions, in Article 1, Section 4, required the parties to negotiate implementing agreements. Accordingly, the parties negotiated an agreement on January 29, 1991 to enable the Carrier to transfer and consolidate the Customer Service positions from the properties of the former SCL, L&N and B&O to a centralized Customer Service Center at Jacksonville.

This 1991 Agreement established 20 Customer Service Specialist positions in Jacksonville. The purpose and function of these positions were to relieve the successful applicants on the various properties from their local duties while they were being trained at Jacksonville. The objective of this program was in due course to have the entire function performed only at Jacksonville. However, this work was accomplished incrementally and the Carrier furnished a chart (Carrier Ex. S) showing a 36 month Consolidation Schedule covering a period from April 1991 to March 6, 1994 on the various properties of the Carrier where consolidation had been effected and where it still had to be done.

By March 1993, the Carrier determined that, since the consolidation of the work had been virtually accomplished at the

major locations of the SCL, L&N and B&O, it should now seek to consolidate the former C&O locations. Accordingly, it served the requisite notices on the Organization and the parties negotiated the March 4, 1993 Implementing agreement covering the transfer of the former C&O employees to Jacksonville for Customer Service duties.

The Carrier advertised 17 Customer Service jobs throughout the C&O territory but only six (6) C&O employees indicated they were interested in bidding for the jobs. Since the Carrier needed 17 positions to effect the C&O consolidation, it decided to utilize 11 of the 20 employees who had initially been working under the terms of the 1991 implementing agreement. The six employees added for the C&O work were accorded the New York Dock protection as had the 20 employees utilized under the terms of the 1991 implementing agreement.

Claimant was one of the 20 employees used under the 1991 Agreement and was accorded the protection of the New York Dock to which he was contractually entitled. However, when the Carrier added six C&O employees to the 11 employees for the C&O consolidation work, for its complement of 17, it released six of the 20 employees initially used from the 1991 Agreement.

The Claimant, Mr. Lampe, was one of the six employees released. He had enjoyed New York Dock protection while working pursuant to the terms of the 1991 implementing agreement. When Mr. Lampe was released on April 19, 1993, he filed for a second New York Dock test period coverage claiming he was adversely affected

by the C&O Customer Service Transaction. The Carrier rejected his request, asserting he was not entitled to this second New York Dock protection.

The Organization premised the claim on the basis that the Claimant's position was abolished as a result of the transfer of the six C&O employees to the 11 employees retained to effect the C&O consolidation. The Carrier denied that this was the reason for the Claimant's April 1993 release. It contended the work subsumed under the 1991 Implementing Agreement had been completed and this was reason for the Claimant's release.

The day following his April 19, 1993 job abolishment, Claimant Lampe exercised his seniority to another specialist position, paying the same rate of pay.

In January 1994, the Claimant submitted time claims for the difference between his estimated guarantee from April 20, 1992 and April 20, 1993 and the amount he was already paid on May, June, July, September, October and November 1993. The Carrier denied the claim contending that the Claimant was not a displaced employee within the meaning of Article I, Section 1 of the New York Dock. The parties exchanged correspondence between January 17, 1994 and November 22, 1994 advancing their respective positions, and when they were unable to resolve the dispute, they agreed to submit to an arbitration committee under Article I, Section 11 of New York Dock.

Organization's Position

The Organization notes that Claimant Lampe received a New York Dock monthly allowance as a result of a transaction that occurred under the 1991 Implementing Agreement wherein Mr. Lampe held one of the 20 positions transferred to Jacksonville from SCL, L&N and B&O properties.

The Organization asserts that the Claimant was again adversely affected by the March 1993 Implementing Agreement. It stresses that when the Carrier only received bids from six C&O employees for its needed complement of 17 positions, it abolished six of the existing specialist jobs to make room for the six C&O employees recruited for the Customer Service Specialist positions. When the six C&O employees arrived in Jacksonville to assume their new positions, the Carrier promptly proceeded to abolish six existing Customer Service Specialist positions but refused to grant these six employees, including Clerk Lampe, their New York Dock protection. Specifically, when TCU District Chairman requested the New York Dock test period earnings for the affected employees, the Carrier refused to furnish this data. The Organization states that Claimant Lampe was adversely affected by the transaction created by the 1993 Implementing Agreement.

The Organization relies on a May 14, 1993 letter written by Director of Labor Relations Patterson which stated in part:

> "...Please handle first with Neil Grissom to determine whether or not occupants of the Trav Spec positions we abolished to make room for the new C&O Trav Spec Group are entitled to a New York Dock election as a result of that

> action. If so, then coordinate with Director (the one now handling the Traveling Specialist Group) and ask him to have appropriate Manager complete displacement chain form for submission to Neil Grissom to request TPA's. The chains would begin with abolishment of the Traveling Spec Position."

The Organization states the Carrier advanced the argument that since Claimant Lampe was already receiving New York Dock benefits he was not entitled to any further election even though the Claimant was adversely affected by another New York Dock transaction. The Carrier submitted to the theory of "one strike and you're out". The Organization states this theory is wrong because New York Dock was intended to protect the employee from all "transactions" taking place pursuant to the authorization of the ICC, not just one to the exclusion of all other.

The Organization asserts that Mr. Lampe received New York Dock protection because he was adversely affected by the transaction created by the 1991 Implementing Agreement. It adds that Mr. lampe has again been disadvantaged by the 1993 Agreement which established six new positions from the C&O property. The Organization states New York Dock does not discriminate between employees affected by a transaction that presently have pre-existing protection and those who do not. The Organization contends that the Carrier's position, if accepted, will render the New York Dock protection benefits negatory.

The Organization stresses that the record shows the Carrier advertised in 1993 for 17 Traveling Specialists. After the Carrier received six bids, it still desired to maintain a complement of 17

Specialists. So when six new Specialist positions were established, six Specialist jobs were abolished. The Organization adds proof that six Specialist jobs were abolished in direct concert with the establishment of the six new specialist positions can be gleaned from Director Patterson's May 14, 1993 letter.

The Organization stressed the Claimant became a displaced employee as a result of the 1991 Implementing Agreement. Two years later the Carrier established six positions as a result of another New York Dock situation, and used these six new positions to partially replace the original twenty positions. It adds Director Patterson's letter explained that the positions were abolished to make room for the new six C&O specialist group.

The Organization requests the Committee to ignore the Carrier's argument regarding the Claimant's alleged refusal to work overtime from May 1993 through October 1994. The Organization states the matter of overtime is a matter of choice and has no bearing on the Claimant's entitlement to protection. It is totally irrelevant to this case.

The Organization also states whether the Claimant displaced to a position paying a rate equal to his former position, does not in and of itself relieve the Carrier of its responsibility under the Agreement. In the first place, even if the Claimant was not adversely affected monetarily, he would still be entitled to a new protective period commencing in April 1993.

The Organization also states the fact that the Claimant displaced another Specialist with the same rate of pay, is also

irrelevant because New York Dock protection for displaced employees is premised on "compensation" rather than "rate of pay" or "comparable earnings" to determine whether the affected employee was placed in a worse position.

In short, the Organization states the Claimant was directly affected when his assignment was abolished due to the transfer of C&O employees to Jacksonville which was the result of singular coordination and consolidation involving work transferred to the Customer Service Center from C&O locations under a separate and distinct New York Dock Article I, Section 4 Implementing Agreement. The Organization requests the Committee to answer in the affirmative the Employee's Questions at Issue.

Carrier's Position

The Carrier states that Claimant lampe was denied New York Dock protection under the 1993 C&O Implementing Agreement because he was not adversely affected by any transaction arising under this Agreement. The Carrier asserts that his job was abolished in April 19, 1993 at the Jacksonville Center because the work involved in transferring the customer service positions from the SCL, L&N and B&O properties to Jacksonville under the 1991 Implementing Agreement had been virtually completed and there was no longer any need for his services under the 1991 Agreement.

The Carrier stressed that the Claimant's position was not abolished because of the establishment of the six C&O positions under the 1993 Agreement. The work of the Customer Service

Specialist under the 1991 Agreement had been accomplished and there was no need to continue the 1991 jobs.

The Carrier determined that it needed 17 Customer Service Specialists to accomplish its C&O mission under the 1993 Implementing Agreement. It learned that there were only six C&O candidates interested in the work. After advertising the job throughout the C&O property and only getting six bidders, it determined that it would use 11 of the Customer Service Specialists established pursuant to the 1991 Agreement to accomplish the goal and objective of the 1993 Agreement. The Carrier added that if it had been successful in obtaining 17 candidates from its C&O advertised bulletin, it would have abolished the entire group of Specialists working at Jacksonville under the 1991 Agreement. Since it got only six C&O bidders, it only released or terminated six jobs from the group working at Jacksonville, because these six employees were Customer Service Specialists whose work had been finished. The Carrier stressed that the six jobs which were abolished in April 1993 were not abolished just to make room for the C&O Specialists.

The Carrier stated the Organization was in error if it believed the Specialists under the 1991 Agreement had the duty not only to assist in effecting the transfer of customer service work from the SCL, the L&N and the B&O, but also from the C&O. The Carrier added an analysis of the 1991 Implementing Agreement reveals that its terms were confined to the SCL, the L&N and the B&O. It did not include the C&O. The duties and responsibilities

for the work on the C&O arose contractually from the separate 1993 Agreement.

The Carrier explained that because the mission of transferring Customer Service positions from the many component properties of the merged CSX was expected to take a considerable length of time, it prepared a schedule (Carrier Ex. S) showing when the transfers were accomplished or expected to be accomplished on the component properties. The Carrier adds the Exhibit S will disclose that by the time the March 1993 Implementing Agreement was negotiated, virtually all of the work of the SCL, the L&N and B&O had been accomplished. The Carrier states further that it would not have negotiated separate Customer Service Agreements, if it had intended that one Agreement would encompass the consolidation work of all local properties herein involved.

The Carrier states, arguendo, that even if the Claimant was affected by the "transaction", which he was not, he was not adversely affected by the job abolishment because the very next day, he displaced another specialist at the Service Center, at his same rate of pay. The Carrier also states that the monthly test period average cited by Claimant is not accurate because it does not reflect the overtime work he refused. If he had worked the overtime offered him, he would have exceeded his estimated guarantee.

The Carrier further states the Organization mistakenly relies on a letter written by Director Patterson. It adds the comments were taken out of context and given a meaning not present or

intended. The Carrier asserts Mr. Patterson was inquiring whether the involved employees were entitled to a second New York Dock protective benefits. He was alluding to the fact that only 17 specialist positions had been authorized to assist in the C&O transfer work. Mr. Patterson was also observing that specialist positions were abolished because they had completed their assignment. The Carrier maintains that the Organization is seeking to use the Patterson letter as a "red herring" to confuse the basic issue, i.e., the Claimant was not entitled to New York Dock protection under the 1993 Agreement because his position was abolished when the project to which it was assigned was completed.

The Carrier maintains that in order for the New York Dock protective benefits to be applicable, the affected employee has to show a causal relationship between the "transaction" and the incident upon which the claim for protection is based. The record in this case reveals no causal relationship between the abolishment of the Claimant's position and the C&O Service Center transaction. It adds the Claimant was not placed in a worse position with respect to compensation as a result of a transaction and the Claimant did not meet the definition of a "displaced employee." The Carrier urges the Committee to deny the claim in its entirety.

Findings:

Preliminarily a comment should be made about the two Statements of Issue in this case. They present the same issue. The Organization has chosen to dilate upon the several facets of the problem, while the Carrier has telescoped the problem by just

seeking a determination of a key aspect of the New York Dock protection benefits, i.e., was the Claimant a displaced employee under the transaction and thereby placed in a worse position with respect to compensation.

The Committee believes that its analysis of the record will cause it to arrive at the same answer for either Statement.

Initially and superficially a review of the Organization's position gives it a patina of plausibility, i.e., the Carrier established six new Customer Service positions pursuant to an 1993 Implementing Agreement under New York Dock and concurrently abolished six customer service positions also established under a prior New York Dock Implementing Agreement. At first blush it would reasonably appear that the occupants of the six abolished positions were displaced by the new six positions and became employees disadvantaged by a New York Dock transaction and contractually entitled to the concomitant protection benefits.

However, a closer analysis reveals a flaw in the Organization's position. There were two Implementing Agreements providing New York Dock benefits and the benefits of one agreement did not automatically transfer or shift to the other agreement. In this dispute, the Claimant was a displaced employee entitled to the protection derived from the 1991 Implementing Agreement. However, when the Claimant's position was abolished in April 1993, he was no longer working under, and his privileges and rights were circumscribed by the metes and bounds of the 1991 Agreement, which rights were not transferred him by virtue of the 1993 Agreement.

The Claimant derived his protection as long as there was work to be done under the 1991 Agreement in consolidating Customer Service Department work on the SCL, L&N and B&O locations to the Customer Service Center in Jacksonville. The 1993 Implementing Agreement pertained to the same kind of work but only on C&O locations. The Claimant could derive his rights only from the 1991 Agreement. He obtained nothing from the 1993 Agreement. Coverage under one Agreement was not automatically transferred to the other.

The factual situation was that the parties negotiated the 1991 Implementing Agreement establishing 20 new positions covering localities of the SCL, L&N and B&O properties to consolidate the Customer Service Representative jobs from these locations into a Centralized Customer Service Center in Jacksonville. When that mission was accomplished, their work was over. By 1993, the Carrier stated this task was virtually achieved, and this fact is evidenced by the chart on Carrier's Exhibit S.

The Carrier proceeded to negotiate a new Implementing Agreement to consolidate the work of Customer Service Representatives at the several localities of the C&O property. This was the genesis of the March 1993 Agreement. The Carrier determined it needed 17 new positions to accomplish this task. However, when the Carrier advertised these new jobs on the C&O property, it was only able to secure six qualified bidders for these positions. The Carrier then made a decision that it would use 11 of the employees who had been working on the now virtually completed SCL, L&N and B&O project. The Carrier was contractually

free to terminate or abolish all the 20 positions created by the 1991 Agreement. It made a management decision to use 11 of these positions and with the six successful bidders under the 1993 Agreement, it had the necessary complement of employees to accomplish the work required for the C&O localities. Since it only needed 11 of the 20 positions established by the 1991 Agreement, it abolished six positions, not because the six positions were added by the 1993 C&O bidders, but because the work that had to be done under the 1991 Agreement had been virtually completed and there was not need for six of the remaining 20 positions.

The evidence reveals that the Claimant, one of the 20 employees hired under the 1991 Agreement, had his position abolished because the work he was hired to do was completed, but not because he was replaced by one of the six added C&O employees under the 1993 Agreement. The Claimant was not a displaced employee, adversely affected by the operations of the 1993 Agreement, but rather an employee whose position had been abolished because the mission prescribed by the 1991 Agreement had been virtually achieved. The Claimant was not an employee retained to accomplish the task prescribed by the 1993 Agreement and therefore enjoyed no New York Dock protective benefits in April 1993.

The Committee finds that the Claimant was not adversely affected by any transaction created by the 1993 Agreement and there was no causal nexus between the abolition of his position in April 1993 and any transaction related cause. In short, there was no evidence that the parties to the 1991 Agreement intended that the

positions created under that Agreement were to be used in effecting the transfer of Customer Service work from C&O localities to Jacksonville.

The Organization and its members had to realize this transfer and centralization work was transitory and not permanent. Sooner or later the Traveling Specialists selected for this Customer Service work would be no longer needed to man the different localities of the CSX properties while the local employees were in training at Jacksonville.

The employees who bid for these Traveling Specialist positions had to know sooner or later their jobs would end. It is worthy of note that the Carrier reported that in October 1994, when the C&O transfer was completed, it abolished all C&O Specialist positions, just as it had abolished in April 1993, the six unneeded positions on the SCL, the L&N and the B&O when the transfer project was completed.

When the Committee reviews the terms of the 1991 Agreement, it is clear that is was confined to the localities of the SCL, the L&N and the B&O, and when the work was finished on these properties, the Carrier was ready to start to work on the C&O property as a discrete and separate project that was subsumed under the 1993 Implementing Agreement. Since the Claimant was not adversely affected by any action taken under the 1993 Agreement he was, therefore, not entitled to New York Dock protection pursuant to it.

The Committee, on the record before it, finds the abolition of the Claimant's job was not causally related to the establishment of

the C&O specialist jobs, and the abolition of the Claimant's job could in no way properly invoke the protection benefits of New York Dock for a second time for the Claimant.

The Committee notes the Organization's reliance on Director Patterson's letter. It is understandable, but a close reading of this letter reveals that he was raising a question rather than making any declaratory statement of policy. What is more significant is that Mr. Patterson was not a Carrier's officer who was vested with the authority to determine policy as to which employees were entitled to receive New York Dock benefits.

The Committee understands why the Carrier negotiated two separate and distinct Implementing Agreements. It believed, quite correctly, that it would take an extended period of time to effect the entire consolidation of all the Customer Service positions into a centralized center in Jacksonville from all the localities of the far flung properties that made up the merged CSX. In Exhibit S the Carrier spelled out the time table that the Carrier concluded would be needed to accomplish the task. It therefore negotiated both the 1991 and 1993 Agreement to allow it the appropriate time intervals to achieve this goal. The Carrier negotiated separate and distinct agreements, each of which covenant clearly delineated properties and localities to be covered, but each of these separate Agreements granted separate contractual rights and privileges and one does not invade the other's territory. In short, it was the making of these separate and discrete contractual agreements that caused the Claimant to believe that his rights under the 1991 Agreement

carried over to the 1993 Agreement. He was in error and therefore he was not entitled to the benefits claimed.

Answers to Questions at Issue:

ORGANIZATION

1. Clerk R.H. Lampe did not become a "displaced employee" as defined in Article I, Section 1 of the New York Dock Conditions as a result of the Article I, Section 4, Implementing Agreement between CSX (C&O) and TCU (March 4, 1993) providing for the transfer, consolidation and rearrangement of forces of the Terminal Service Center on the former C&O Railway to Jacksonville, Florida, when his position was abolished in April 19, 1993.

2. Clerk Lampe is not entitled to an election of benefits as specified in Article I, Section 3 of the New York Dock.

3. Since the answer to 1 and 2 above is in the negative, the Carrier is not required to furnish Clerk Lampe a test period average commencing twelve (12) months prior to April 19, 1993.

4. The Carrier is not required further to make Clerk Lampe whole for any benefits under New York Dock because none have accrued to him commencing April 19, 1993.

Answers to Questions at Issue:

CARRIER

SCL Clerical Employee R.M. Lampe was not a "displaced employee" as defined in Article I, Section 1 of the New York Dock, as a result of C&O work being transferred to SCL in the implementation of the C&O Customer Service Center March 3, 1993, thereby not placing him

in a worse position with respect to compensation.

Jacob Seidenberg, Chairman
and Neutral Member

C.H. Brockett
Employee Member

N.B. Grissom
Carrier Member

August 15, 1995