ARBITRATION PURSUANT TO
ARTICLE I, SECTION 11 OF THE
NEW YORK DOCK CONDITIONS

PARTIES	TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION	)
TO	AND	) DECISION
DISPUTE	CSX TRANSPORTATION, INC. (CSXT)	)

ORGANIZATION'S QUESTIONS AT ISSUE:

Question No. 1

Did Carrier violate the terms of Clerical Agreement No. 10 and thereby the New York Dock Labor Protective Conditions when it posted the November 17, 1995 NOTICE to all clerical employees on C&O Seniority Districts requiring them to place applications for clerical positions on other districts for which they do not stand for recall or assignment under the working agreement or forfeit existing protection?

Question No. 2

If Question at Issue No. 1 is answered in the affirmative, is Carrier now required to return Claimant C. L. Ebrens to his former status under the New York Dock Labor Protective Conditions and reimburse him for all expenses accrued for return to his home on C&O Seniority District No. 7?

CARRIER'S QUESTION AT ISSUE:

Was 'dismissed employee' C. L. Ebrens obligated under New York Dock Conditions to accept employment at another location in order to retain his protected status?

HISTORY OF DISPUTE:

On November 17, 1995 the Carrier posted a notice to all furloughed, former Chesapeake & Ohio Railroad (C&O) clerical

employees that the Carrier anticipated shortages in clerical personnel at a number of locations on the former C&O property, that under Rule 6 of the C&O clerical agreement furloughed employees receiving benefits under the New York Dock Conditions were obligated to apply for vacancies on positions bulletined on seniority districts other than their own, that any such employee whose return to service necessitated a change in residence would receive New York Dock moving benefits and that furloughed employees receiving New York Dock benefits who failed to make application for available positions on other seniority districts would have their New York Dock protective benefits terminated. By letters of the same date the Carrier notified specific furloughed C&O employees receiving New York Dock benefits, including a dismissal allowance under Article I, Section 6(d), of its announced position with respect to the application of Rule 6 of the C&O clerical agreement and the effect of that application upon their New York Dock protection.

By letter of November 30, 1995 the Organization's General Chairman challenged the Carrier's position. By letter of December 7, 1995 the Carrier responded to the Organization maintaining its position.

By letter of December 13, 1995 the Carrier notified furloughed New York Dock Clerical Employee C. L. Ebrens, who lived in Ludlow, Kentucky, that a permanent vacancy existed on the guaranteed extra board at Russell, Kentucky which was available to Ebrens under Rule

6 of the clerical agreement. At the time Ebrens held no clerical seniority at Russell, Kentucky and was receiving a dismissal allowance under Article I, Section 6 of the New York Dock Conditions. The letter stated that Ebren's failure to take the position would result in the forfeiture of his New York Dock protection and that he would receive moving benefits under the New York Dock Conditions. The same letter was sent to a number of furloughed New York Dock clerical employees none of whom held seniority at Russell, Kentucky. Ebrens and each notified clerical employee bid the position under protest. It was awarded to Ebrens who was senior to all other furloughed New York Dock clerical employees notified by the Carrier of the vacancy.

The parties could not resolve their dispute, and they submitted it to an Arbitration Committee as provided in Article I, Section 11 of the New York Dock Conditions. The parties selected the undersigned as Neutral Member of the Committee. A hearing was held in this matter by the Committee in Richmond, Virginia on February 27, 1996. All parties appeared at the hearing and engaged in oral argument. The parties also made written submissions to the Committee.

FINDINGS:

Upon review of the record and all the evidence this Committee finds that the parties have complied with all procedural requirements of the New York Dock Conditions to bring the Questions

at Issue and the underlying dispute in this case before this Committee and that this Committee has jurisdiction to answer the questions presented and to render a final and binding determination with respect to the underlying dispute. The Committee also finds that the parties to the underlying dispute in this case were given due notice of the hearing and afforded the opportunity to participate fully therein.

Both the Carrier and the Organization have advanced numerous arguments in support of their respective positions in this case. However, distilled to their essence, these arguments center upon Rule 6(d) of the clerical agreement and Article I, Section 6(d) of the New York Dock Conditions.

Rule 6(d) of the clerical agreement provides:

> Employes filing applications for permanent vacancies on positions bulletined on other districts will, if they possess sufficient fitness and ability, be entitled to them in preference to non-employes and/or employes not covered by these rules, and in awarding such positions will be given preference in the order of their seniority date. Seniority of employees transferring from one seniority district to another by filing application for and being awarded a bulletined position pursuant to this rule will be transferred to the new seniority district and shall be removed from the roster from which transferred. If the employee fails to qualify after transferred, he will exercise seniority on the district to which transferred as provided in Rule 18(b). When two or more employes hold the same seniority date on the same district under the application of this Section (d), the employee longest in continuous service will be considered the senior employe.

Article I, Section 6(d) of the New York Dock Conditions provides in pertinent part that "[T]he dismissal allowance shall

cease prior to the expiration of the protective period in the event of the employee's . . . failure to return to service after being notified in accordance with the working agreement. . . ."

Basically, the Organization maintains that because Rule 6(d) imposes no obligation or duty upon a clerical employee to bid a vacant position on a seniority district other than his or her own the Carrier may not invoke Article I, Section 6(d) to recall a furloughed employee receiving a dismissal allowance thereunder and force that employee to accept a position on a seniority district where he or she does not hold seniority or forfeit New York Dock protection. The Carrier, on the other hand, argues that inasmuch as Rule 6(d) affords furloughed clerical employees receiving New York Dock benefits the right to apply for vacancies on seniority districts other than their own, their failure to exercise that right constitutes a failure to return to service when notified under the working agreement as provided in Article I, Section 6(d) and as further provided therein mandates the termination of those employees' dismissal allowances.

The Organization places principle reliance upon the Decision of an Arbitration Committee under Article I, Section 11 of the New York Dock Conditions involving the same parties, Aug. 2, 1993 (Dennis, Neutral), and the Decision of the Interstate Commerce Commission (ICC) in Finance Docket No. 28905 (Sub-No 25), Jan. 4, 1994, declining to review the Decision of that Committee. The

Carrier relies primarily upon the Decision of an Arbitration Committee under the Oregon Short Line III (OSL III) Conditions, Sept. 27, 1992 (Kasher, Neutral), on another property and involving another craft as well as two New York Dock Article I, Section 11 Arbitration Committee awards on this property involving different crafts, one March 6, 1981 (Lieberman, Neutral) and one July 12, 1993 (Scheinman, Neutral). The Carrier also relies heavily upon ICC Decisions in Finance Docket Nos. 21810 (Sub-No 4), July 14, 1993, and Finance Docket No. 28905 (Sub-No 27), Nov. 22, 1995.

It is a proposition too well established to require citation to authority that an arbitrator functioning as a Neutral Member of an Arbitration Committee under Article I, Section 11 of the New York Dock Conditions is a functionary of the ICC. The arbitrator is bound to adhere to applicable rulings of the ICC in any case before the Committee.

Within the framework of the foregoing we must find the ICC's Decision in Finance Docket No. 28905 (Sub-No 25) refusing to review the Dennis Decision more persuasive than the arbitral authority and ICC decisions relied upon by the Carrier. The arbitral authority cited by the Carrier was rejected by the Dennis Decision. The ICC decisions cited by the Carrier do not address the issue in this case as closely as the ICC's Decision declining to review the Dennis Decision.

The ICC's Decision in Finance Docket No. 28905 (Sub-No 25) specifically rejected the Carrier's argument that the Dennis

Decision misinterpreted Article I, Section 6(d) of the New York Dock Conditions when it held that the Carrier could not force furloughed New York Dock employees to accept positions on seniority districts where they held no seniority under peril of losing their dismissal allowances where the agreement relied upon by the Carrier afforded such employees the opportunity but did not impose the obligation to accept such positions. The ICC went on to say:

> Even if CSXT is correct, it is apparent that the 5-Party Agreement was a voluntary agreement designed to benefit both CSXT in relocating its work force across seniority districts and also clerical employees who elected to move from their present positions to jobs available on other roads. That it was not intended to require them to move is evidenced by the opening words of the agreement, which state that it intended' to give Clerical employees * * * an opportunity to fill new positions and vacancies * * *.' No mention is made there of a corresponding duty to do so. Moreover, to induce employees to make that election, it offered substantial financial incentives to successful applicants, and it was entirely separate from the implementing agreement under which claimants receive their New York Dock benefits.[9] New York Dock requires the exercise of seniority rights under the terms of a protected employee's working agreement. As required by Article I, section 5 of New York Dock, claimants have fully exercised their seniority under the applicable working agreement. CSXT may not construct an additional barrier by turning the strictly voluntary 5-Party Agreement into a mandatory working agreement governed by New York Dock terms and conditions. (Text of footnote 9 omitted)

From the foregoing it is clear to this arbitrator that the nature of the agreement upon which the Carrier relies to force employees to accept positions on seniority districts where they do not hold seniority is determinative. As this arbitrator reads the ICC's pronouncements, if the agreement is mandatory the carrier

possesses such right. If the agreement is voluntary it does not.

In the instant case Rule 6(d) of the clerical agreement is voluntary in that it provides furloughed employees the opportunity to secure positions on other seniority districts but does not require them to do so. Inasmuch as this Committee is bound to follow the pronouncements of the ICC, it must reject the Carrier's position in this case that under Article I, Section 6(d) it may terminate the New York Dock benefits of employees who decline to do so.

Moreover, this Committee questions whether what has occurred in this case is a true exercise of seniority as contemplated by the New York Dock Conditions. Rule 6(d) of the clerical agreement gives preference to furloughed employees to jobs on seniority districts other than their own only with respect to new hires and/or employees not covered by the agreement. Furloughed employees taking jobs in other seniority districts establish seniority only after they transfer to the other districts. Thus, an employee taking such a position does not engage in the traditional exercise of bidding and bumping, a factor noted by the ICC in its Decision in Finance Docket No. 28905 (Sub-No 25).

The Carrier argues that the Dennis Decision and the ICC's Decision refusing review are distinguishable from the instant case. To be sure, there are distinctions. However, we believe the Carrier misses the point. Both the Dennis Decision and the ICC Decision stress the voluntary rather than mandatory nature of the

agreement governing transfers to seniority districts other than the one on which a New York Dock furloughed employee holds seniority. We believe that is the decisionally significant factor in the view of the ICC. Since that factor is present in the instant case we believe it is governed by the Dennis Decision and the ICC's Decision in Finance Docket No. 28905 (Sub-No 25).

The Carrier also attacks the Dennis Decision as palpably erroneous. We find that argument hard to accept in light of the fact that the ICC, despite the fact that it refused to review the Decision, found its interpretation of Article I, Section 6(d) of the New York Dock Conditions correct.

AWARD

The Carrier's Question at Issue is answered in the negative.

The Organization's Questions at Issue are answered in the affirmative.

Wm. E. Fredenberger

William E. Fredenberger, Jr.
Neutral Member

C. H. Brockett

W. C. Comiskey
Carrier Member

C. H. Brockett
Employee Member

DATED: July 11, 1996