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SYSTEM BOARD #706
OMAHA, NEBRASKA

In the Matter of Arbitration

Pursuant to Article I, Section 11,

New York Dock Conditions

-- Between --

American Train Dispatchers Department
Brotherhood of Locomotive Engineers

-- And --

Southern Pacific Transportation Company

David P. Twomey
Arbitrator

Appearances:

For the Union: G.D. Bennett, Vice President BLE-ATDD
David W. Volz, General Chairman

For the Carrier: Ray M. Winkenbach, Senior Manager-Labor Relations
Bruce Feld, Senior Manager-Labor Relations

The above entitled matter came to be heard before the Section 11
arbitrator at the Carrier's offices in San Francisco on
September 11, 1995.

I.

ISSUES, BACKGROUND, CONTENTIONS

A. ISSUE:

The Carrier sets forth the issue as follows:

Are train dispatchers in the consolidated Denver Train Dispatching Center entitled to company paid parking under the provisions of New York Dock?

The Organization presents a Statement of Claim as follows:

This dispute arises as a result of the Southern Pacific Lines (Carrier's) failure and/or refusal to provide cost-free parking for its train dispatchers upon relocating its forces into a new centralized facility located at 1901 Lincoln, Denver, Colorado, in violation of letters of understanding (D&RGW) and binding agreements (SP Eastern Lines and SP Western Lines) obtained through collective bargaining to provide cost-free parking to dispatchers as a right and privilege protected under the provisions of **NEW YORK DOCK CONDITIONS**, Section 2 thereof in particular, imposed by the ICC in Finance Docket 32000, in such transaction.

(Properties to be identified in the history of this dispute, Southern Pacific Transportation Company (SPTCo), St. Louis Southwestern Railroad (SSW or Cotton Belt) and Denver and Rio Grande Western Railroad (D&RGW). After the sale of SPTCo and SSW to the D&RGW (ICC Finance Docket 32000), the entire system became Southern Pacific Lines, a single system carrier.)

I find that the issue is:

Does the Carrier have an obligation under Article I, Section 2 of the New York Dock Conditions to provide cost-free parking to dispatchers at its new centralized dispatching facility in Denver, Colorado?

B. BACKGROUND

Following Arbitrator Edward L. Suntrup's May 25, 1994 award and implementing agreement pursuant to Article I, Section 4, New York Dock Conditions, cost-free parking at the new Denver dispatching facility remained an issue. In the parties Memorandum of Agreement effective July 23, 1994, the parties dealt with the parking issue in Article 6F as follows:

F. To defray some of the cost of parking during the initial move, all employees in the new office will receive fifty dollars (\$50.00) per month for the months of August, September, October, November and December, 1994. This is without prejudice to the position of either party including the right of ATDD/ELE to pursue this issue pursuant to Article 11 of New York Dock Conditions.

By letter dated January 20, 1995, the Carrier set forth an offer relating in part to the resolution of the cost-free parking issue as follows:

As for the parking issue, I verbally advised the Company had come to the conclusion that offering all train dispatchers free parking at the Denver consolidated center was not warranted. The Company's position is that such privilege is: a) not provided in existing ATDD/ELE Agreement(s) insofar as Denver is concerned; b) not provided to any craft employee covered by any Collective Bargaining Agreement working at 1860 Lincoln; c) not mandated or even contemplated by any provision of New York Dock Conditions.

ATDD/ELE's stated position on the parking issue is that a) The existing ATDD/ELE Agreements were put in place in Denver per the Arbitrated Implementing Agreement, therefore parking privileges previously enjoyed in Houston/Roseville must be applied in Denver; b) ATDD/ELE views parking privileges as "working conditions" which are protected by New York Dock Conditions.

Without prejudice to the foregoing Company position, but taking into account Article 6, Section F. of the July 15, 1994 Memorandum of Agreement, ATDD/ELE was advised that the Company was willing to adjudicate the parking issue pursuant to Article I, Section 11 of New York Dock Conditions, but on an expedited basis.

The Company suggested that exchanged correspondence on the parking issue (the entire written record which the Arbitrator would review) be limited to one (1) "position paper" (including Statement of Facts and arguments) and one (1) rebuttal by each party. Following this exchange of correspondence, the record would be closed, and no submissions presented to the Arbitrator by either party; however, both parties would be present to orally argue their respective positions before the Arbitrator....

C. CONTENTIONS:

1. Summary of the Union's Position: It is the position of the Organization that Southern Pacific Lines (SPTCo, SSW & D&RGW) train dispatchers have, by more than twenty years of record, been provided parking privileges at their work location, at no cost to the train dispatchers, a precedent setting in itself and a benefit and privilege protected by the Employee Protection of New York Dock Conditions imposed by the ICC in Finance Docket 32000 in authorizing the sale of the SPTCo to the Rio Grande. The Organization quotes pertinent language from Article I, Section 2, as follows: "The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits shall be preserved unless changed by future collective bargaining agreements or applicable statutes." The Organization contends that the Carrier violated the requirements of Article I (2) when it failed to continue providing cost-free parking to train dispatcher employees, a right, privilege and benefit applicable by agreement and/or practice for many years prior to this transaction and in effect at the time of this transaction.

The Organization refers to the Suntrup Award and Implementing Agreement and argues that Arbitrator Suntrup clearly acknowledged the parking issue as being within the purview of New York Dock but not subject to the Article I (4) Arbitral proceedings before him.

Also, the Organization contends that Arbitrator Suntrup's adverse ruling relating to non-referrable agreements relating to parking did not relieve the Carrier of its obligation to meet the requirements of Article I (2) of the New York Dock Conditions, for the Arbitrator in his findings so ruled. It contends that its claim must be sustained.

2. Summary of the Carrier's Contentions: The Company states that it has consistently advised ATDD/ELE, that their request that the Company provide parking privileges at no cost to the individual train dispatcher, at 1860 Lincoln St., Denver, Colorado is a matter which the parties must negotiate pursuant to the Railway Labor Act, and that Section 11 arbitration is not a proper forum.

The Carrier refers to the Organization's attempt to obtain the requested parking privileges as part of the arbitrated implementing agreement and it states that this request was rejected by Arbitrator Suntrup.

The Carrier refers to Arbitrator Suntrup's ruling that "... (t)he issues of parking privileges;... in the SPL's new Denver Dispatching center are not Article I (4.) issues and must more properly be dealt with by the parties in some other forum." The Carrier then argues that Arbitrator Suntrup correctly recognized that this request was beyond the jurisdiction of a NYD arbitrator to grant, and must be sought under the procedures of the Railway Labor Act. The Carrier contends that a Section 11 Arbitrator cannot properly accord what the Section 4 Arbitrator has already refused to allow.

The Carrier points out that the Organization argued in its Post Hearing Reply Brief that Article 1, Section 2 of New York Dock Conditions should provide cost-free parking in Denver and having all of the Organization's arguments before him; the arbitrator rejected the Union's request. The Carrier contends that Article 18, Section 2 of the Eastern Lines Agreement according to the plain language of the parties only applies to Houston, Texas. It contends that the Organization's claim must be dismissed or denied.

II.

FINDINGS

A. The record clearly establishes that the Organization had full opportunity to present and argue its position before Arbitrator Suntrup that cost-free parking should be provided to dispatchers at the new centralized dispatching facility in Denver under New York Dock Conditions. The non-referrable nature of the four prior implementing agreements signed between ATDA and railroads merged into the SPL caused the Arbitrator to properly reject these writings as precedents. And by their very own terms it was improper to cite them to Arbitrator Suntrup and to me. In a Pre-hearing submission before Arbitrator Suntrup the Organization argued the applicability of Article I, Section 8 of New York Dock Conditions as follows:

A. Parking

Employee parking at the new facility is an issue which falls within this penumbra. By agreement, the employees at Houston and Roseville have enjoyed carrier-paid parking. (Exhibit M, Side Letter #6, (Western Line); Ex. Q. p.24 (Eastern Lines); Exhibit P). Plainly, this is a valuable fringe benefit afforded the Houston and Roseville dispatchers. SP has declined to agree to continue this benefit at Denver for first shift workers on weekdays. See SP proposal Section 9 (Exhibit J). This proposal unfairly discriminates against first shift workers who have previously enjoyed this benefit along with their cohorts on other shifts, SP should be required to offer it to all affected employees. Therefore, ATDD proposes that the Implementing Agreement should provide:

The Company will provide train dispatchers parking privileges at no cost to the dispatchers.

In a Post-hearing Reply Brief, the Organization argued that Article I, Section 2 of New York Dock Conditions should require the Carrier to provide cost-free parking at the new Denver facility as follows:

As for employee parking, SP concedes that it is a "privilege". SP brief at 23. As such, Article I, Section 2 requires that it be preserved for the dispatchers moving from Houston and Roseville. SP will provide it to all but first shift dispatchers on weekdays. Whether SP is denying this privilege to other employees in other crafts is irrelevant. This important fringe benefit which is memorialized in the Eastern and Western Lines agreements, the absence of which reduces the monthly compensation check considerably, should be continued at the new dispatching center. Even if the ICA allowed for this benefit not to be preserved, the carrier plainly has not shown that eliminating it is necessary to the effectuation of the transaction.

In Arbitrator Suntrup's findings, set forth on pages 31 and 32 of his award, he concluded in part as follows:

Findings

Arbitral findings here will address the following.

- (1) Those issues raised by the parties which are New York Dock issues but not subject to Article I (4.). Detailed exceptions applicable to the Implementing Agreement are noted per proposals by the parties.
- (2) Those issues raised by the parties which are not subject to an arbitrated Implementing Agreement.
- (3) Those issues raised by the parties which may properly belong in an arbitrated Implementing Agreement to cover the coordination of Train Dispatchers to SPL's new, Denver, Colorado dispatching center.

Issues Raised by the Parties Which Are New York Dock Issues Not Subject to Article I (4.)

For all SPL Train Dispatchers displacing to the SPL's new, dispatching center in Denver, Colorado: the issue of displacement allowances shall be covered by Article I (5.) of New York Dock Conditions; the issue of separation allowances shall be covered by Article I (7.) of New York Dock Conditions; the issue of moving expenses shall be covered by Article I (9.) of New York Dock Conditions with exceptions/amendments as contained in the Implementing Agreement; and the issue of loss for home removal shall be covered by Article I (12.) of New York Dock Conditions with exceptions/amendments as contained in the Implementing Agreement. The first three issues cited above are subject, in individual cases, to arbitration procedures as outlined in Article I (11.) of those same New York Dock Conditions.

Issues Raised by the Parties Which Are Not Subject to An Arbitrated Implementing Agreement

The issues of parking privileges; the realignment of train dispatching territories per action of an Action Council; a thirty day training/qualification period; and a one year ban on displacement or bumping after first assignment of a Dispatcher in The SPL's new, Denver dispatching center are not Article I (4.) issues and must more properly be dealt with by the parties in some other forum.(Suntrup Award pages 31 and 32).

Clearly Arbitrator Suntrup was aware that the Organization was seeking cost-free parking under Article I, Section 2 of New York Dock as set forth in the Post-hearing Reply Brief. Mr. Suntrup identified "those issues raised by the parties which are New York Dock issues but not subject to Article I (4.). Mr. Suntrup did not classify cost-free parking as a New York Dock issue not subject to Article I (4.) which could be pursued based on Article I Section 2 under the arbitration procedures outlined in Article I, Section 11. Rather he classified it as an issue raised by the parties not subject to an arbitrated Implementing Agreement and must more properly be dealt with by the parties" in some other forum".

The Organization misreads the above quoted findings of Arbitrator Suntrup when it argues that Mr. Suntrup acknowledged the parking issue as being within the purview of New York Dock but not subject to the Article I (4) arbitral proceedings before him. As stated above, the Arbitrator listed a number of issues raised by the parties which were New York Dock issues but not subject to Article I (4), and cost-free parking was not one of them.

B. Contrary to the Carrier's position before Arbitrator Suntrup that it did not propose any changes to existing agreements-- with the factual consequences of such being that the BLE-ATDD Agreements on the SP-W and the SP-E, while continuing to exist, would have no dispatchers to cover once the dispatching operations at Roseville and Houston were closed, and the two agreements would be agreements with no employees to cover -- and despite the Carrier's arguments on portability, Arbitrator Suntrup determined that:

All three agreements shall, therefore, be applicable to the new dispatching center in Denver. All three agreements shall continue to cover the dispatchers that they have in the past...(Suntrup Award, page 23.)

To the extent that any or all of the three applicable agreements provide for cost-free parking, the Organization can pursue the merits of such a position or positions in a forum for contract interpretation under the Railway Labor Act, commonly, either the Third Division of the National Railroad Adjustment Board or the Public Law Board. Such is the intent of the Arbitrator's language dealing with the issues of "parking privileges" by the parties "in some other forum", as directed by Arbitrator Suntrup in the portion of the findings set forth previously.

In the instant case, where the Organization had full opportunity to argue its case about cost-free parking and in fact so argued this position before an Article I (4.) arbitrator, including arguing the position that cost-free parking is a privilege under Article I, Section 2 of New York Dock, and the Article I (4.) arbitrator classified the issue as one for some other forum, rather than a New York Dock issue not subject to Article I (4.), then the Organization is stopped from again asserting before an Arbitrator under Article I, Section 11 that cost-free parking is required under Article I, Section 2 of New York Dock.

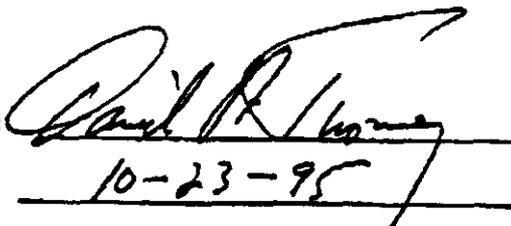
In the interest of fairness, efficiency and economy, the parties must be bound by the disposition of the Article I (4.) arbitrator.

The Organization shall have the right to pursue the issue of cost-free parking in a forum under the RLA to the extent that such is supported by one or more of the three agreements in effect at the new dispatching facility in Denver.

AWARD

The Carrier does not have an obligation under Article I, Section 2 of the New York Dock Conditions to provide cost-free parking to dispatchers at the new centralized dispatching facility in Denver, Colorado.

Signed:



Dated:

10-23-95