In the Matter of the Arbitration Between	
RAILROAD YARDMASTERS OF AMERICA	
and	OPINION AND AWARD
THE CHESAPEAKE AND OHIO RAILWAY COMPANY AND SEABOARD COAST LINE RAILROAD COMPANY	

The hearing in the above matter, upon due notice, was held on February 2, 1981, at the offices of the National Railway Conference in Washington, D.C. before Irwin M. Lieberman, serving as sole Impartial Arbitrator by selection of the parties and agreement reached on January 21, 1981 and in accordance with the Interstate Commerce Commission Decision in Finance Docket No. 28905(sub-No.1) and related proceedings.

The case for the two companies, hereinafter referred to as the Carriers, was presented by Warren Comiskey, Manager of Labor Relations of the Chesapeake and Ohio Railway Company. The case for the Union was presented by A.T. Otto, Jr., President, Railroad Yardmasters of America. At the hearing, the parties were afforded full opportunity to offer evidence and argument. The Carriers submitted a written submission embodying their evidence and position. Both parties filed post hearing briefs.

ISSUE

The dispute herein arose out of a notice served by Carriers on the Union dated November 3, 1980 of the Carriers intent to coordinate Yardmaster functions at Richmond, Virginia on or after February 2, 1981. From the entire record the issues presented for arbitration may be posed as follows:

1. What provisions shall be contained in an implementing agreement as required by Article I, Section 4(a) of the New York Dock Labor Protective Conditions in order to consummate the transaction approved by the Interstate Commerce Commission in Finance Docket No. 28905(sub-1) and related proceedings?

2. Under New York Dock Conditions must a Yardmaster who's regular assignment is abolished and who does not stand for another regular assignment as a Yardmaster exercise his seniority in his basic craft in order to retain his protected status?

BACKGROUND

On September 25, 1980 the Interstate Commerce Commission issued its order (referred to above) approving the application by CSX Industries, Inc., Chessie System, Inc., and Seaboard Coast Line Industries, Inc. for the merger of both Chessie and SCLI into CSX. In its decision the ICC imposed conditions for the protection of employees provided for in New York Dock Ry.-Control-Brooklyn Eastern District, 360, I.C.C, 60 (1979) hereinafter referred to as New York Dock Conditions.

Pursuant to the notice served on the Union by Carriers on November 3, 1980 the parties met on November 10 and December 3, 1980 for the purpose of reaching an implementing agreement with respect to the proposed coordination under New York Dock Conditions. Carriers submitted a proposed implementing agreement to the Union at those meetings. The Union did not make a proposal of its own. Since the parties were not able to reach agreement the dispute was submitted to this arbitration process pursuant to Article I, Section 4(a) of the New York Dock Conditions.

Both parties agree that the protective benefits prescribed by the New York Dock are applicable to the coordination involved herein. Further, at this arbitration hearing on February 2, 1981, the Union agreed that it had no objection to the Carriers implementing agreement with the exception of the disagreement on the point of contention with respect to a Yardmaster exercising seniority in another craft as represented in the second issue above. It is noted that under Carriers proposal four Yardmaster positions on the SCL would be abolished at Richmond, Virginia and three positions would be established on the C&O at that location.

DISCUSSION

At the hearing in Washington, the Union took the position that there are no present rules governing Yardmasters on either Carrier which requires a Yardmaster to exercise seniority in any other craft. The rules in the schedule agreement provide, accord-

ing to the Union, only that Yardmasters displace junior Yardmaster employees and protect extra Yardmaster service.

The Union points out that the Carriers indicate that there would be a reduction in the present Yardmaster force. Further the Union states that the Carriers make it clear that they expect the adversely affected Yardmasters to exercise seniority displacement rights under other agreements in order to qualify for protection afforded by the New York Dock Conditions. The Union argues that present rules governing Yardmasters do not require such exercise of seniority. Furthermore, the Union contends that if no coordination took place and a force reduction did occur no Yardmaster would or could be forced to exercise seniority in any other craft. The Union agrees that the employee might choose to do so but for the panel and the implementing agreement to force him to do so is, in effect, inserting a rule not present in the scheduled rules governing Yardmasters' employment. The Union argues that if such conditions are imposed by the Arbitrator, then the Arbitrator is unjustly requiring a Yardmaster to mitigate the Carriers' prescribed costs of the coordination under New York Dock Conditions and is also inserting a new rule governing employment into the Yardmasters schedule of agreements.

The Carriers agree that the can be no provision in the schedule Yardmasters' agreement requiring protection of seniority in any other craft by a Yardmaster. Carriers contend, however, that Yardmasters routinely, since they are a promoted craft, return to their basic crafts when they do not stand to work as a Yardmaster. Further, Carriers point out that the Organization attempted in the proceedings before the Interstate Commerce Commission to modify the New York Dock Conditions in order to limit the required exercise of seniority to employees in the same class or craft. However, the ICC rejected this proposal by the Union.

Carriers cite Section 5(a) of Article I of New York Dock Conditions which provides in relevant part as follows:

"5. Displacement allowances (a) So long after a displaced employees's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced."

Carriers rely on the language above which indicates that the normal exercise of seniority rights under all existing agreements, rules and practices is a condition to obtaining a displacement allowance. Carriers state that the language of Section 5(a) does not limit the exercise of seniority to a particular craft or class.

Carriers rely in part on prior disputes relating to similar protective conditions under ICC orders. For example, under Arbitration Committee Award No. 5 under South Central Georgia Control Conditions (similar to those contained in New York Dock) the Arbitrator held that a displaced employee is under obligation to exercise his seniority rights to the fullest extent possible in order to offset money deficits following the time his employment has been affected adversely.

Carriers also state that not only is the Union's position at odds with the requirements of Section 5(a) of the New York Dock Conditions and earlier interpretations of similar protective conditions, but is also at variance with past practice on the properties of the Carriers. Carriers argue that the past practice has been to require a Yardmaster to exercise his seniority in his basic craft to protect a guarantee if there has been no negotiated agreement to the contrary. Carriers note that in the Master Agreement involving a certain coordination in the Chessie system, the Agreement specifically provides that a Yardmaster who loses his regular position in the coordination will not have to displace back into his basic craft. That understanding however, according to Carriers, is obviously not applicable to the current transaction. Further, Carriers note that the C&O Master Agreement was a negotiated agreement which the current protective benefits are not.

As the Arbitrator views it, the provisions of Section 5(a) of the New York Dock Conditions (Article I) must be construed literally and carefully as written. That language indicates that an employee must exercise his seniority rights under "....existing agreements,rules and practices to obtain a position ....". That language does not restrict the exercise of seniority to a particular agreement and specifically also includes practices which in this instance clearly indicate return to the original craft. It is noted that Yardmasters continue to accrue seniority in their basic crafts even while serving as Yardmasters. Furthermore, there is no dispute but that the practice has been (with the C&O exception noted above) that Yardmasters return to their basic crafts when they are displaced. Thus, the Arbitrator views the Carriers position as persuasive on this issue.

The Arbitrator's conclusion is bolstered by two other items. It is noted that the intent of New York Dock is further amplified by the provisions of Section 1 of Article II which provides in pertinent part as follows:

> "Any employee who is terminated or furloughed as a result of a transaction shall, if he so requests, be granted priority of employment or reemployment to fill a position comparable to that he held when his employment was terminated or he was furloughed even though in a different craft or class...."

Further, the Arbitrator notes that the Organization's attempt to modify the language contained in New York Dock before the ICC in the hearings on this matter (CSX) was rejected by the ICC.

It is also noted that an Arbitrator under Arbitration Committee, ICC Finance Docket No. 23011 in Award No. 18 held in a related dispute in part as follows:

> "It is our opinion that the protective features of the controlling order of ICC Finance Docket 23011 refer to seniority rights which the employee held before and at the time of the merger. Clearly, the order contemplated the full exercise of such existing seniority rights in an effort to equal or exceed the compensation the employee received prior to being placed in a worse position with respect to his compensation. Such order

> contemplates that in an instance where a displaced employee has seniority rights in more than one craft or class (at the time of the transaction), if the full exercise of seniority in one of the classes will equal or exceed his prior compensation, while the full exercise of seniority in another craft or class of service will not bring his compensation up to the pre-transaction test period average, he must exercise seniority in the craft or class that will do so. In such an instance, failure to do so removes him from protective benefits for as long as he so fails to fully exercise all of his seniority rights."

The Arbitrator herein concurs in the reasoning expressed in the Award above. It is noted that the language contained in Section 5(a) had its genesis in the Washington Job Protection Agreement in 1936 and has been interpreted consistently (as the above Arbitrator did) since that time under other circumstances. It is this Arbitrator's view that a continuation of current practices does not, as the Union argues, modify the schedule agreement in any sense.

In its post hearing brief, the Union raises certain issues which had not been discussed earlier which are deserving of comment. The Union makes the point first that there is no provision in the implementing agreement with respect to extra work throughout the combined terminal. It must be noted that the implementing agreement does not have to deal with such a circumstance. The question of extra work to be performed in a terminal certainly would fall under the provisions of the schedule agreement if such work is required. It is not a matter which must be dealt with herein.

The Union points out that the implementing agreement proposed by Carriers does not provide a section to allow for settlement of disputes which will occur under that proposed agreement. The Arbitrator notes that New York Dock Conditions provide clearly and unequivocally in Article I, Section 11 for the Arbitration and settlement of disputes which might arise under such implementing agreements. Thus, a mechanism is established to provide for an orderly settlement of any possible future disputes.

The Union maintains that the New York Dock Conditions do not make a proposed implement-

ing agreement mandatory. The Union states that the coordination could take place without an agreement and if no agreement is present. As a consequence, the Union states "if a proposal is forced then any disputes must be settled under a schedule agreement versus being settled under the conditions imposed by the Finance Docket." It is the view of the Arbitrator that the Union is in error on both counts. First, it is clear that an implementing agreement must be completed under Section 4 of Article of I. In fact, Section 4 (b) specifically provides that "no change in operation, services, facilities or equipment shall occur until after an agreement is reached or the decision of a Referee has been rendered." Further, the language of New York Dock provides as indicated above, for a method for resolution of any disputes arising under the implementing agreement.

As an additional point, the Union argues that its present agreements allow for the serving of Section 6 notices by the Organization concerning rates of pay in cases of mergers and/or coordination. The Union maintains that the proposed implementing agreement would foreclose any such Section 6 notices since the rates of pay for individual Yardmasters positions were specified in that agreement. The Arbitrator has examined the provisions of Article VIII, Section 2(c) of the National Agreement of October 31, 1978. It must be emphasized that New York Dock Conditions and the implementing agreement in no sense abrogates any of the provisions of the schedule agreements. The seniority and other rights of the employees covered by the National Agreement are not impaired in any fashion by the specifics of the coordination and the implementing agreement under New York Dock. Thus, it must be understood that although the coordination and implementing agreement should be go forward upon receipt of this Arbitration Award, there is nothing in the implementing agreement or under New York Dock Conditions which forecloses the Organization, should it so desire, from filing a Section 6 notice under Section 2(c) of Article VIII of the National Agreement.

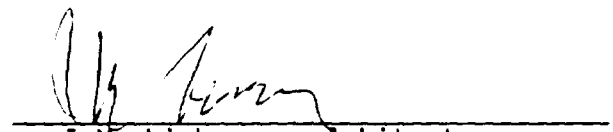
The Arbitrator notes that the various items discussed above were not raised following

the hearing and for the first time under this proceeding in the Organization's post hearing memorandum. The comments above are in an effort to avoid future disputes while recognizing that the issues were not timely proposed by the Union. Thus, Carriers had no opportunity to respond to the specific items discussed above with the exception of the two issues specified under the "Issue" above.

Since the Union raised no specific objections with the exception of Issue no. 2 to the language contained in Carriers proposed implementing agreement, that agreement will be adopted by the Arbitrator herein and made a part hereof as part of the Award.

AWARD

1. The Carriers proposed implementing agreement submitted on November 10, 1980 is hereby adopted and made a part hereof by reference.
2. Displaced Yardmasters must exercise all of their seniority rights, including those in other crafts, as has been the practice in the past, in order to retain their protected status under Article I, Section 5(a) of the New York Dock Conditions.



I.M. Lieberman, Arbitrator

Stamford, CT
March 6, 1981