IN RE:

ARBITRATION PROCEEDINGS

UNDER

NEW YORK DOCK LABOR PROTECTIVE CONDITIONS (IMPOSED BY INTERSTATE COMMERCE COMMISSION IN FINANCE DOCKET NO. 29455 ((SUB NOS. 1-5)) AND RELATED PROCEEDINGS)

PARTIES TO DISPUTE: NORFOLK & WESTERN RAILWAY COMPANY AND ILLINOIS TERMINAL RAILROAD COMPANY

AND

UNITED TRANSPORTATION UNION

APPEARANCES:

FOR NORFOLK & WESTERN RAILWAY
J. D. Gereaux

FOR ILLINOIS TERMINAL RAILROAD
J. W. Horan

FOR UNITED TRANSPORTATION UNION
W. G.Mahoney
E. DuBester
C. L. Caldwell
R. S. Metz

GENERAL CHAIRMAN, UTU-CET
W. H. Pelton

GENERAL CHAIRMAN, UTU-CET
J. J. Hultz

STATEMENT OF FACTS:

The Interstate Commerce Commission approved the co-ordination of operations by the Norfolk and Western Railway Company (hereinafter for brevity referred to as NW), and Illinois Terminal Railroad Company (hereinafter referred to as IT) in its decision in Finance Docket No. 29455 (Sub Nos. 1-5) and related proceedings, service date June 22, 1981. Conditions for the protection of employees as set forth in New York Dock Ry.--Control--Brooklyn Eastern District, 360 I.C.C. 60(1979) herein referred to as "New York Dock Conditions" were imposed in connection with this coordination of operations, and as prequisites thereof.

Article 1, Section 4 of said New York Dock Conditions requires that following such order of coordination, the Carriers serve a ninety day notice of the intended transaction; and pursuant to such order the involved parties meet and attempt to negotiate an implementing agreement under which the employees will work upon consummation of the consolidation.

Accordingly, following the I.C.C. order and the imposition of the New York Dock Conditions, the Carriers served such required notice on the United Transportation Union, representative of certain of its employees as of July 29, 1981, notifying of Carriers' intent to unify, coordinate, and/or consolidate their respective operations on or after November 1, 1981.

Pursuant to such notice, the parties on five days during August, 1981, being August 10, 11, 19, 20, and 21; and upon eleven days in September, 1981, being September 2, 3, 4, 14, 15, 16, 17, 18, 28, 29 and 30; and on three days in October, 1981, being October 1, 2 and 18; and endeavored to reach an implementing agreement under which the employees would work upon consumation of the consolidation.

The parties, however, despite such sustained meetings and efforts, did not succeed in reaching a complete implementing agreement. Many items

however, were tentatively settled. Upon such impasse being reached, the Carriers advised the employees that all proposals made during the conferences, except the original proposal, be considered withdrawn; and that the Carriers would proceed by invoking arbitration as provided for in Article 1, Section 4, of the New York Dock Conditions.

The arbitration agreement in this dispute was thereupon created. The undersigned was named as Arbitrator by the National Mediation Board. Oral arguments were held in St. Louis, Missouri and the parties filed written submissions and briefs.

SENIORITY LIST

The first and most important issue, it seems to the Arbitrator, is a decision as to the method by which the seniority rosters are to be combined.

It is the Carrier's proposal as it now stands to dovetail by seniority date and craft the active employees of IT with the corresponding active employees on the St. Louis Terminal. Thereafter the inactive (furloughed) IT employees' names would be dovetailed by craft with the inactive NW employees on St. Louis Terminal and the combined inactive group will then be placed on the bottom of the previously dovetailed active group of employees; this procedure to produce the new NW consolidated St. Louis Terminal Roster.

(This procedure also contemplated provisions under which certain employees may have their names removed from the St. Louis Terminal Roster or in some possible instances when qualified be placed on a different roster elsewhere).

The employees reject this method of constructing a combined seniority list. The employees have insisted throughout negotiations that the preferred and fairest method is an "order of selection" so-called working list; or as the employees have also characterized it, an "order of equity" in the actual assignments remaining upon consolidation. The employees, therefore, repudiate and oppose the method of dovetailing the list as proposed by Carriers.

The Carriers argue in support of their proposal that:

> a. It includes all the provisions necessary to fully comply with the provisions and obligations imposed and contained within Article 1, Section 4 of the New York Dock Conditions;
>
> b. It is equitable, and fulfills the criteria necessary to implement the consolidation of firemen, hostlers, conductors and trainmen in the Carrier's operations of the consolidation; and that
>
> c. It carries out the intent of the Interstate Commerce Commission order which authorized Norfolk and Western's purchase of the Illinois Terminal.

Other factors which Carriers assert are that their proposal has been proven by experience; that Carriers' proposed method of dovetailing "is fair and equitable and the easiest method to administer, thus eliminating a lot of confusion as well as ill will among the involved employees."

Discussion. The Arbitrator has given careful consideration to the arguments and submissions of both Carriers and Employees with reference to the method of arriving at a seniority list that would be fair and equitable, so far as is possible, to everyone concerned. No question of the Arbitrator's authority to rule on this particular point has been raised in these proceedings, and the Arbitrator rules full jurisdiction exists to proceed to make a determination that will put this particular issue to rest and may have some impact upon the solution of any remaining issue or issues.

WABASH AGREEMENT

The Carriers in their proposals during the period mentioned made a further primary proposal which was not resolved by the required negotiations and which

substantially contributed to the breaking off of such conferences. This was the Carriers' proposal to place all employees under the provisions of the Wabash schedule agreements upon final consummation of the consolidation. The Carriers make substantially the following argument:

> The St. Louis Terminal area is where the greatest impact of this transaction will fall. The NW already has a consolidated St. Louis Terminal, having taken control of the former Wabash Railroad and the former Nickel Plate Road on October 16, 1964. As a result of that transaction NW already has one group of employees working under the former Wabash schedule agreement and another group working under the former Nickel Plate agreement on the St. Louis Terminal.

The Carriers further allege that the problems such an arrangement, coupled with other arrangements throughout the merged NW chain, led to the Carriers' proposal to place all employees under the NW (formerly Wabash) schedule agreement and dovetailing the seniority rosters as explained during that portion of the negotiations.

The Carriers explain that the problems of maintaining separate schedule agreements are numerous. The Carriers further allege,

> While the basic provisions of most agreements are alike, the differences in many of the "secondary rules" present severe problems such as rules governing investigation and discipline, calling employees for work, arbitraries, and special allowances. Such a situation would be extremely burdensome and wasteful to administer. Where NW has had to apply two or more agreements to the same work forces at other places in its system, serious problems have arisen.

Discussion. Much of the argument and discussion of the Wabash agreement revolved about the jurisdiction or power of the Arbitrator to impose all or part of a negotiated schedule agreement upon part of a membership foreign to that

agreement, that being the Carriers' proposal to place all employees hereby affected under the so-called Wabash agreement.

There is no doubt the product of that "transaction," (if it can be called that), might initially result in a better working or more convenient agreement for the Carriers, and might even have benefits for the employee group involved, but there is very substantial doubt of the Arbitrator's jurisdiction to deliver such a package.

There are decisions both ways on that issue and the Arbitrator cannot say that there is no authority to revise or rearrange some provisions of a working agreement in some cases if clearly specified and required, (as is not in this case), in the order of the Interstate Commerce Commission or a superior body.

This, however, is not one of those situations. What the Carriers are asking here goes much too far. It involves the entire destruction of part of one negotiated working agreement. The answer here is further negotiations.

The Arbitrator is of the opinion, from the record, that negotiations for a new and proper implementing agreement have not been carried out to the extent required for success. The Arbitrator is of the further opinion that such negotiations, if resumed, may result in a full and complete resolution by agreement of all issues, both major and minor, necessary to secure a complete implementing agreement, satisfactory and fair to all.

No good cause or necessity has been shown for arbitrarily applying and imposing the Wabash agreement upon a group of employees who had no hand or participation in negotiating the Wabash agreement.

AWARD

Seniority List. In consideration of all the foregoing, the Arbitrator therefore hereby sustains the Carriers' proposal as to the method to be used in integrating and compiling the new seniority list as set forth and discussed previously herein.

AWARD

Wabash Agreement. The Arbitrator hereby denies the Carriers' request to place all of the employees under the Wabash Agreement and refers that portion of the dispute to the parties for further negotiations as hereinafter provided.

IT IS FURTHER ORDERED AND AWARDED that in addition to any protection benefits which may be awarded or confirmed above, all eligible employees affected by this Award shall be and are hereby awarded protective benefits not less in any event than those conferred by the Washington Job Protection Agreement; and/or of those specifically conferred or confirmed by the Interstate Commerce Commission in its order or orders (including New York Dock Conditions, Article 1, Section 4) permitting this consolidation.

The Arbitration Awards on the Seniority List and the Wabash Agreement have removed important road blocks. The remaining issues in such arbitration concern the schedule rules and that portion of the total dispute remains open in this arbitration.

The parties have tentatively agreed upon some various sections of an Implementing Agreement including certain day-to-day operating rules. It is believed that with the rulings on the Seniority List and the Wabash Agreement now accomplished, that additional effort by the parties will result in final and complete disposition of all issues.

The Arbitrator now therefore returns that remaining portion of the dispute to the parties, reserving arbitral jurisdiction to resolve by further or supplemental Arbitration Award or Awards, any deadlocks that may remain following the expiration of twenty (20) days from date of this document.

Dated at Fort Worth, Texas this 29 day of December, 198/.

Leverett Edwards, Arbitrator

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Founded in 1866 as
Williams & Thompson

February 9, 1982

Mr. Leverett Edwards
2704 Scott Avenue
Fort Worth, Texas 76103

Re: UTU and N&W/IT (New York Dock §4 Arbitration)

Dear Mr. Edwards:

We have received Mr. Mahoney's letter of February 5, 1982, to you and we wish to make a few comments on it.

First, we were most surprised to read Mr. Mahoney interpretation of your award as "inconsistent." We understand that you held that the blanket imposition on former Illinois Terminal employees of the entire NW-Wabash agreement was beyond your jurisdiction based upon the evidence presented. You left your door open, however, for the resolution of subsequent deadlocks between the parties over specific matters which might be necessary for the Illinois Terminal coordination. You did not hold, we do not think, that the parties would have to negotiate an entirely new arbitration agreement in order to resolve those deadlocks. If this were the case, the union could frustrate the coordination by simply refusing to arbitrate certain issues.

Moreover, as Mr. Mahoney concedes, neither you nor Mr. Sickles held that changes in agreements could never be made in Section 4 arbitration.

The fact is that the parties have been negotiating productively and all but a few of the substantive terms of the Illinois Terminal coordination have been agreed to.

Very truly yours,

Martin M. Lucente

MML/gk

cc: William G. Mahoney

LEVERETT EDWARDS
2704 SCOTT AVENUE
FORT WORTH, TEXAS 76103
531-2345 • 536-1225

February 11, 1981

Mr. Martin M. Lucente
Sidely & Austin
One First National Plaza
Chicago, Illinois 60603

Dear Mr. Lucente:

Following the issuance of the Decision and Award in the captioned arbitration proceeding, the Arbitrator has reviewed its contents and wishes to clarify, for the benefit of the parties, the purpose and intent of the Award.

Throughout the Decision and Award this Arbitrator emphasized his opinion and belief that the differences between the parties remaining after the removal by the Decision and Award of the primary obstacles of seniority and jurisdiction could be resolved by negotiation between the parties. The Arbitrator remains firmly convinced of the soundness of that view.

It was for that reason that the Arbitrator referred back to the parties for further negotiations those portions of the dispute not resolved by arbitration.

The Arbitrator retained jurisdiction "to resolve by further or supplemental Arbitration Award or Awards any deadlocks that may remain" after further negotiations. In the light of the holding in the Decision, the retention of that jurisdiction was, of course, limited to any changes in the schedule agreements which the parties upon further negotiation would mutually agree to submit to him for arbitral resolution.

Sincerely yours,

Leverett Edwards

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*ADMITTED IN NEW JERSEY AND FLORIDA ONLY
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February 5, 1982

Mr. Leverett Edwards
2704 Scott Avenue
Fort Worth, Texas 76103

Re: UTU and N&W/IT (New York Dock §4 Arbitration).

Dear Mr. Edwards:

Your decision in the above-designated case involving the issue of an arbitrator's authority to eliminate or modify schedule rules under Section 4 of the New York Dock II conditions and the decisions of Messrs. Sickles and Zumas on the same issue are consistent. Each holds that an arbitrator has no jurisdiction under Section 4 to do so. Your decision does sta that you do not hold that under no circumstances could such jurisdiction be present but that no such circumstances are present in this case.

In your Award, however, after stressing your conviction that further negotiations could resolve the remaining unresolved issues involving the modification of schedule rules, you retain jurisdiction "to resolve by further or supplemental Arbitration Award or Awards any deadlocks that may remain" following those further negotiations. At first reading, the Award seems to conflict with the Decision which concludes that no such jurisdiction exists.

The Decision and Award would be completely consistent, of course, if the retention of jurisdiction was intended to be limited to the arbitration of changes in the schedule agreements which the parties after further negotiations mutually agree to submit to you.

It would be most appreciated if you would clarify your Decision and Award in this respect.

Thank you for your courtesy and consideration in this matter.

Sincerely yours,

William G. Mahoney

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