

In the Matter of Arbitration Between
SOUTHERN RAILWAY COMPANY
NORFOLK AND WESTERN RAILWAY COMPANY

And

RAILROAD YARDMASTERS OF AMERICA

Pursuant to

Article I, Section 4, of the New York Dock
Employee Protective Conditions Imposed by
The Interstate Commerce Commission in
Norfolk Southern Corporation - Control -
Norfolk and Western Railway Company and
Southern Railway Company

Finance Docket No. 29430

DECISION AND AWARD

QUESTIONS AT ISSUE:

(1) Do the proposed agreements (Attachments A-1 through A-3) provide an appropriate basis for the selection of forces in the rearrangement of forces made necessary by the transaction described in FD #29430 (Sub. No. 1) pertaining to the coordination of facilities at the locations specified therein?

(2) If the answer to #1 is negative, then what would be the appropriate basis for the selection of forces?

BACKGROUND:

On December 4, 1980, NWS Enterprises, Inc., subsequently Norfolk Southern Corporation (NSC), Norfolk and Western Railway Company (NW), and Southern Railway Company (SR), filed a joint application in Finance Docket No. 29430 (Sub. No. 1), seeking authority under 49 U.S.C. §11343 for NSC to acquire control through stock ownership of NW and its subsidiary carrier companies, and SR and its consolidated system companies.

On November 2, 3 and 4, 1981, representatives of the Carriers met with representatives of all of their labor organizations to explain the merger and make arrangements to negotiate implementing agreements prior to the

Interstate Commerce Commission (ICC) issuing its order. In this connection, the Carrier submits that since it was expected that the standard labor protective conditions imposed by the ICC in such circumstances would be applicable, the parties agreed to waive the notice requirements of the New York Dock conditions 1/.

Representatives of the Carriers and the Railroad Yardmasters of America (RYA) thereafter met on December 7 and 8, 1981, January 21 and 22, and February 18 and 19, 1982, for the purpose of negotiating implementing agreements covering the coordination of operations at Lynchburg, Virginia, Winston-Salem, North Carolina, and Norfolk, Virginia. No agreements were reached during these meetings.

On March 19, 1982, the ICC approved the Carriers' application and, as concerns the interests of employees affected by the proposed transactions, provided for imposition of the New York Dock conditions as appropriate for the protection of Carriers' employees.

In commenting upon its review of common point consolidations, the ICC in its Decision noted that at 10 of the 17 points served by both NW and SR, "operations will be concentrated at one facility with terminal and local service under the supervision of one railroad 2/." As concerns the consolidations at the three points involved in this arbitration, the ICC described them to be in principal part as follows:

"2. Norfolk, VA: Within the first year after consummation, NW and Southern operations in Norfolk, VA will be consolidated at NW's Portlock Yard. Southern will retire its Carolina Yard.... The Lamberts Point complex will not be affected 3/."

1/ New York Dock Railway - Control - Brooklyn Eastern Dist., 360 ICC 60 (1979), commonly known as the New York Dock conditions.

2/ F.D. No. 29430 (Sub-No. 1), p 29

3/ Ibid, p 31

"4. Winston-Salem, NC: At Winston-Salem, NC, Southern will be admitted to the NW - Winston-Salem Southbound Railroad Company facility and Southern's operations consolidated with NW's at North Winston Yard. Southern's Salem Yard facility, including twelve tracks, the yard office and station building, and the car repair and locomotive servicing facility will be retired 4/."

"5. Lynchburg, VA: Lynchburg, VA operations will be consolidated at Southern's Montview Yard. The consolidation will permit retirement of most of NW's Kinney Yard, including car repair and locomotive servicing facilities. NW's old passenger station, the passing track adjacent to the main line at Kinney Yard, and two other yard tracks will be retained. Montview Yard has sufficient capacity without modification or expansion to handle NW's traffic, equipment, and agency work 5/."

After the ICC had issued its March 19, 1982 Certificate and Decision, the representatives of the Carriers and the RYA met again on March 29 and 30, 1982, but no implementing agreements were reached. Carriers' final proposals, which were not acceptable to RYA, were as appended hereto as Attachments A-1 through A-3.

Although no implementing agreements were reached during the final meeting, the parties agreed to have disputes concerning the selection of yardmaster forces made necessary by the coordination of facilities at the three locations above specified, resolved through arbitration as provided for in Article I, §4, of the New York Dock conditions. The parties then selected the undersigned as a neutral referee to resolve the dispute as represented by the aforementioned Questions at Issue.

A hearing was held on the issues in dispute on May 3, 1982, in Washington, DC. All parties were represented at the hearing by persons experienced in the art of negotiations and familiar with a transaction of the type involved

4/ Ibid, p 31

5/ Ibid, p 32

in this dispute 6/. The parties introduced written submissions and exhibits as well as supplemental briefs into evidence. They also presented extensive oral arguments relative to their respective positions.

CONTENTIONS OF THE PARTIES:

The Position of the Carriers:

The Carriers contend that its proposed agreements provide an appropriate basis for the selection of forces at each of the three locations. In essence, it submits that since many of its yardmaster employees are not represented by RYA or any other labor organization, that the implementing agreements it has proffered at each location were designed to treat all affected yardmasters, contract, excepted, and non-contract, in a fair and equitable manner 7/. Here, the Carriers make reference to non-contract and exempt yardmasters being equally entitled to protection under New York Dock as are RYA represented employees. In particular, Carriers make reference to Article I, §2 and §4 of the New York Dock conditions 8/.

6/ RYA: A. T. Otto, President; T. W. Goodell, General Chairman, NW; and J. L. Roy, General Chairman, SR. NW: J. D. Gereaux, System Director Labor Relations. SR: T. C. Sheller, Senior Director Labor Relations, et al.

7/ RYA holds representation rights for the class and craft of yardmaster on the SR, with certain specified positions being excepted from the scope of the SR-RYA Agreement dated January 30, 1981. Rule 1(B) recognizes that positions worked by a General Yardmaster, Terminal Trainmaster or Agent Terminal Control at certain listed locations, including the first shift at both Lynchburg, VA, and Winston-Salem, NC. RYA does not hold representation rights for the class and craft of yardmaster on NW, but does pursuant to a merger protective agreement dated June 18, 1959 with NW, hold representation rights for such employees on the former Virginian Railway Company. (ICC F.D. No. 20599, NW - Virginian, Agreement 6-18-59, §1(c))

8/ "§2. The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes."

The Carriers also cite Article IV of New York Dock in support of its position that both NW's non-contract yardmasters and SR's specifically excepted positions are entitled to equal protection with the RYA represented yardmasters under the statutory protective conditions imposed by the ICC 9/. In this respect, the Carriers contend that both they and the RYA are bound to negotiate implementing agreements that are no less fair, equitable and protective of the interests of the non-contract and excepted yardmasters as such agreements are of RYA yardmasters.

The Carriers further maintain that just as the status of the non-contract yardmasters may not be changed except under the provisions of §2, Ninth of the Railway Labor Act 10/, their non-represented, non-contract status is likewise preserved and protected under Article I, §2, of New York Dock.

It is the Carriers' contention that by its actions in this dispute RYA is seeking to expand its representation rights for yardmasters to the entire NW, an effort which it states RYA first attempted in 1967 and then abandoned in 1968 11/.

8/ "§4. [E]ach transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this section 4..."

9/ "ARTICLE IV. Employees of the railroad who are not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under these terms and conditions."

10/ "Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirement of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier."
(45 USC § 1203)

It is thus the Carriers' position that RYA's involvement in the transactions and the negotiation of implementing agreements pursuant to Article I, §4, of New York Dock is as the representative of certain SR yardmaster employees at Lynchburg, Winston-Salem, and Norfolk, and of certain NW yardmaster employees at Portlock Yard, Norfolk.

In terms of the selection of forces in the rearrangement of forces at each of the three points, the Carriers assert that the proffered agreements would retain the SR rules and the SR-RYA agreement in their entirety at the coordinated facility at Lynchburg; retain the NW working conditions in their entirety at the coordinated Winston-Salem facility; and, retain the RYA-NW (Virginian) agreement in its entirety at the coordinated Norfolk facilities, and leave undisturbed the existing situation with regard to the non-represented, non-contract yardmaster employees at the Lamberts Point complex which it submits is not involved in the coordination at Norfolk.

As concerns Lynchburg, the Carriers state that after the coordination, NW's Kinney Yard will be closed and all work will be performed at Montview Yard in an SR controlled operation. In this connection, it submits that it would abolish two NW non-contract yardmaster positions at Kinney Yard, and anticipates the need for a third shift position to be added to the yardmaster force at Montview Yard. Under the arrangements and agreement it has proposed, Carrier states RYA would retain representation rights to all yardmaster work at Lynchburg subject to the existing exclusion for an agent terminal control contained in SR-RYA Agreement Rule 1(B). The Carriers portray, in

11/ NMB Case No. R-3975. The services of the National Mediation Board were invoked by the RYA on August 4, 1967, to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section Ninth, thereof, the craft or class of Yardmasters, employees of NW. During the course of its investigation, the NMB received a letter under date of September 6, 1968 from RYA withdrawing its application for the services of NMB in this representation dispute.

summary form, the impact on yardmaster employees at Lynchburg to be as follows:

<u>Present Operations</u>		<u>Proposed After Coordination</u>
<u>NW</u>	<u>SR</u>	<u>NS (SR-Control)</u>
2 non-contract	1 excepted 1 RYA	1 excepted 2 RYA

The Carriers state that while RYA would agree to such conditions at Lynchburg, it has conditioned its proffer upon RYA's acceptance of what it terms parallel conditions in the proffered agreement at Winston-Salem, to which agreement RYA has voiced its objections.

At Winston-Salem, Carriers state that the SR's Salem Yard is supervised on the first shift by an agreement exempt general yardmaster and that an RYA represented yardmaster is assigned to the second shift. It says SR has no third shift yard operation at Salem Yard. The Carriers also state at present five NW non-contract yardmaster employees supervise operations from NW's North Winston Yard. It is the Carriers' intention that after the coordination, SR's Salem Yard be retired, the exempt general yardmaster and RYA yardmaster positions be abolished, and all work be performed at North Winston Yard as an NW controlled terminal. In summary form, the Carriers show the impact on yardmaster employees at Winston-Salem to be as follows:

<u>Present Operations</u>		<u>Proposed After Coordination</u>
<u>NW</u>	<u>SR</u>	<u>NS (NW-Control)</u>
5 non-contract	1 excepted 1 RYA	5 non-contract

It is the contention of the Carriers that the proffered agreements recognize and perpetuate the representation and contract rights on the controlling carrier.

In this connection, it points to Lynchburg as being SR controlled, with RYA yardmasters continuing to be RYA represented, with the same rules, seniority rights, etc., as at present, and with the adverse impact being borne by NW non-contract yardmasters. At the same time, the Carriers would have the non-contract yardmasters survive at Winston-Salem as NW control, proposing the adverse impact at Winston-Salem being equally shared by the abolishment of SR's excepted general yardmaster and SR's RYA yardmaster when SR's Salem Yard is retired.

The Carriers also point out that if it was to be determined that RYA yardmasters have some form of equity to yardmaster work within the consolidated Winston-Salem facility at North Winston Yard, then non-contract yardmaster employees would have a similar equity to work at the Lynchburg facility at Montview Yard.

The Carriers have further stated, and the RYA has not denied, that in rejecting the Carriers' proposal at Winston-Salem, the RYA had demanded that the RYA yardmaster presently at SR's Salem Yard be guaranteed a yardmaster position for the period of his protection, whether or not a need for such position existed. The Carriers assert the RYA demand goes beyond the requirements of New York Dock, in that when a protected employee does not stand for work, yardmaster work in this instance, such employee is required to exercise seniority to his basic (lower) craft so as to be entitled to a displacement allowance. In support of its position, Carriers direct attention to Article I, §5(a), of New York Dock 12/, and the Decision and Award of arbitrators in two prior

12/ "§5. Displacement allowances - (a) So long after a displaced employee'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

disputes involving other carriers and RYA 13/. The Carriers submit, and this arbitrator does find from a review of those Decisions and Awards, that the issue in dispute was resolved in favor of the carriers, principally, that for an employee to receive protective allowances, he must first exercise seniority under all applicable rules, agreements, and practices, including a return to an original craft in which such employee has retained seniority.

Finally, as concerns Norfolk, VA, the Carriers state that when its Norfolk area operations are consolidated as set forth in the application to the ICC, they will retire SR's Carolina Yard and abolish three RYA yardmaster positions at that Yard and consolidate operations at NW's Portlock Yard. It would be the Carriers' intention under their proposed implementing agreement covering this coordination to dovetail the seniority rights of the present SR-RYA yardmasters into the NW-RYA Portlock Yard seniority roster under the RYA-NW (former Virginian) Agreement, with any yardmasters unable to hold a position within the coordinated facility to be afforded protection under New York Dock. The Carriers direct particular attention to both its and the ICC's determination that the Lamberts Point complex with its twenty non-represented, non-contract yardmaster employees "will not be affected" by the Norfolk coordinations or transactions. In summary form, the Carriers show the impact on yardmaster employees at Norfolk to be as follows:

<u>Present Operations</u>		<u>Proposed</u> <u>After Coordination</u>
<u>NW</u>	<u>SR</u>	<u>NS (NW-Control)</u>
4 RYA	3 RYA	4 RYA

12/ §5 (cont'd) "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."

13/ RYA-C&O Ry Co & SCL RR Co, Referee Irwin M. Lieberman, 3-6-81; and RYA-Cincinnati & Ohio Ry Co & L&N RR Co, Referee George S. Roukis, 4-10-81. (ICC F.D. Nos. 28905 (Sub-No.1) and 28905 (Sub-No.1))

The Carriers maintain that its proffered agreement for Norfolk would permit RYA to retain the RYA-NW (Virginian) Agreement in its entirety at the coordinated Portlock Yard facility. The RYA's rejection of the proffered agreement, Carriers assert, was in disagreement with the coordination proposed by the Carriers and approved by the ICC in not including Lamberts Point in such a consolidation. The RYA's position, Carriers aver, is tantamount to a demand that the Carriers must seek agreement with its employees in planning and defining the extent of a coordination. Such a position, Carriers submit, is in direct conflict with the clear meaning and intent of New York Dock, particularly §1 of Article 4 14/. In further support of its position, Carriers direct attention to the determinations of the ICC in SOUTHERN RAILWAY COMPANY - PURCHASE-KENTUCKY & INDIANA TERMINAL RAILROAD COMPANY (F.D. 29690, decided February 23, 1982), particularly that portion of the ICC's Discussion and Conclusions which states: "It is recognized, however, that a carrier always has the option to elect not to consummate an authorized transaction if the labor arrangement designated in the arbitration decision is not desired by that Carrier 15/." Here, Carriers assert that if a carrier may choose not to consummate a coordination contemplated by it and approved by the ICC, it most certainly cannot be forced to consummate a coordination proposed by a labor organization and against Carriers' interest and not approved by the ICC.

14/ "4. Notice and Agreement or Decision - (a) Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representatives of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes to be affected by such transaction, including an estimate of the number of employees of each class affected by the intended changes...."

15/ Ibid, p 8

The Position of The RYA:

The RYA contends that the Carriers are not really seeking to coordinate terminals, but is rather attempting to abolish positions under the auspices of the ICC Finance Docket. Further, that while the Carriers are attempting to coordinate the entire terminal areas at Lynchburg and Winston-Salem, the Carriers improperly seek to coordinate only two points within the entire configuration of facilities at Norfolk. It is the position of the RYA: "1) Employees have the right to retain their current working agreement, 2) The coordination of a Terminal is the coordination of the entire Terminal, 3) Carrier has entered into Agreements with other classes and crafts which includes the entire Terminal, and 4) Previous mergers involving this Carrier support the Employees."

Except for stating that the Carriers have not suggested "how the coordination will be implemented concerning yardmasters from the N&W's Kinney Yard to Southern's Montview Yard at Lynchburg, Virginia," RYA has voiced no real objections to the Carriers' intentions relative to Lynchburg, since it is evident RYA would retain representation rights to all yardmaster work at Lynchburg subject to the existing exclusion for an agent terminal control as discussed heretofore.

The RYA does, however, take exception to the Carriers' proposals covering Winston-Salem as not permitting yardmaster employees which RYA represents not having the right to retain their current working agreement. It contends that neither the Carriers nor any other entity can "absolve a scheduled bargained Agreement, binding between the parties." It submits that to accept Carriers' proposal at Winston-Salem is tantamount to determining the SR-RYA Agreement null and void at that location, while permitting non-represented, non-contract yardmaster employees to supervise the remaining work at Salem Yard.

The RYA also contends that the Carriers by their actions at Norfolk are seeking to deprive and strip three yardmaster employees of their Agreement rights, submitting that at Norfolk, yardmasters on SR have division seniority which encompasses the entire Eastern Division, including Norfolk.

In support of its position that a carrier cannot eliminate an effective collective bargaining agreement except through negotiation and agreement with a certified bargaining representative, RYA directs attention to the Decision and Award of Arbitrator Joseph A. Sickles involving a dispute concerning ICC F.D. No. 29455, wherein it was stated 16/:

"It may be that an Order which placed all employees under one set of rules would be a logical step or result in a smoother operation. But, even if the record convinced me of that, said circumstances would not confer jurisdiction where none existed otherwise. Moreover, I have been asked here to eliminate an entire collective bargaining agreement without any actual evidence regarding the practical operation of that agreement. Within the framework of the limited time available to us, such a step could hardly be considered to be a true extension of 'collective bargaining' and a valid exercise of interest arbitration.

"In any event, I reject the carriers' invitation to eliminate the UTU-IT Agreement in toto, and hold that the only alterations which are proper are those necessary to effectuate the selection of forces."

As concerns its position that the coordination of a terminal is the coordination of the entire terminal, RYA contends the Carriers may not selectively determine those points which are to be included and excluded from a terminal consolidation. In this connection, it asserts that Lamberts Point "is well within the yard limits of Norfolk Terminal."

The RYA further maintains that since the Carriers have entered into agreements with other represented employees to provide for the coordination of the

16/ N&W & IT RR Co & RYA & UTU, 12-30-81, pp 12,13

entire Norfolk Terminal, the Carriers should likewise be required to coordinate the entire Terminal complex with respect to yardmaster employees.

The RYA is not unmindful that the ICC in commenting upon common points of consolidation had specifically stated with respect to Norfolk: "The Lamberts Point complex will not be affected." Rather, RYA expresses doubt that ICC by including such statement had taken into consideration "items concerning classes and crafts of employees." RYA further contends that such "language does not give Carrier a license to coordinate only half a Terminal; in fact, what they [Carriers] advocate to do at Norfolk is not coordination of a fourth of a Terminal."

And, as concerns RYA's contention that "previous mergers involving this Carrier support the Employees [RYA]," it cites numerous past consolidations whereby NW had provided for the coordination of all satellite yards into one single terminal 17/. In support of its position, RYA also points to the following excerpt from the Decision and Award of Dr. Jacob Seidenberg as the arbitrator in a dispute concerning ICC F.D. No. 29489 18/:

"(2) The territory of Conrail RYA Seniority District No. 3 will be amended to include the entire territory of the Detroit Terminal Railroad Company and the Detroit Terminal Seniority District will be abolished."

The RYA has also directed attention to what it terms "problems" RYA has had in the past with SR relative to the determination of work to which it was of the opinion and belief had initially been improperly assigned to other than RYA represented yardmaster employees. No purpose would here be served by a review of RYA 's allegations.

17/ Ft. Wayne, IN, St. Louis, MO, Cleveland, OH, Chicago, IL, Toledo, OH, and Buffalo, NY

18/ RYA & Conrail & Det Terml RR Co, 8-13-81, p 12

At the arbitration hearing, RYA proposed the appropriate basis to allocate yardmaster forces would be to distribute jobs remaining at the three locations on an equity basis as between those which are or are to be RYA-represented as compared with counterparts in an exempt/non-contract status. In anticipation of RYA's proposal, Carriers had prepared, and submitted, a supplemental brief. This brief summarized the distribution of yardmaster employees as at present compared with a distribution on both an equity basis and the manner outlined by Carriers under those agreements which it has proffered for the coordinations at the three locations. The Carriers' comparisons show that on an equity basis, RYA would retain fewer jobs than under the distribution proposed by the Carriers, which distribution provides RYA a share of positions equal to what it now represents 19/.

The Carriers, in response to further RYA representations at the hearing, submitted a supplemental brief tracing the historical origin of §2, Article I, of New York Dock, its application to merger, acquisition and control transactions, and the range of possible interpretations that may be provided such Section 20/.

The Carriers' "Conclusion" in this 16-page supplemental brief reads:

"The conclusion which can best be drawn from examination of the range of possible interpretations of Section 2 is that its application to situations involving consolidations or acquisitions is inherently limited - because of the nature of such transactions, which necessarily involve more than one carrier. Section 2 was originally developed for application under the Rail Passenger Service Act - where only one carrier was involved in a transaction. Even in its original setting, Section 2 had application in practice only to a subset of the entire universe of employees protected under the Appendix C-1 conditions. Section 2 was applicable only to those employees who continued in service (or remained furloughed, but available for service)

19/ "When the involved positions [at Norfolk] are added to those at Lynchburg and Winston-Salem, RYA presently represents 9 of 18 involved yardmasters or 50%. Under an equitable distribution, RYA would retain 5.464 of 12 jobs or 45.5%. However, under Carriers' proposals, RYA would represent 6 of the 12 retained yardmasters..." p 3

20/ Submitted by M. C. Kirchner, Labor Relations Officer, and L. F. Miller, Jr., Assistant Director Labor Relations, SR

"in their original crafts and with their original railroad employer. Thus, the historical experience with Section 2 has been that it is not a provision of general application to all employees affected by a transaction and covered by the protective conditions. Rather, the provisions of Section 2 are applicable only to certain appropriately situated employees. Viewed in this context, Section 2 could never be expected to adequately dispose of the question of agreement application and preservation in consolidation control, and acquisition transactions.

"Instead, the parties should rely on the mechanism provided in Article I, Section 4 for negotiations to determine questions relating to the rearrangement of forces and the application of the terms and conditions of the protective arrangement. Any attempt to rely on Section 2 during such negotiations to resolve questions of agreement application must necessarily be rejected, for the reasons described above."

As concerns RYA's references to past coordinations whereby NW had provided for a consolidation of all yards in a terminal area, Carriers' rebuttal argument was to the effect that at such terminals as RYA mentioned, Carriers had wanted to coordinate entire terminal operations; the transactions had nonetheless provided for a rearrangement and reduction of yardmaster forces; and, at each of the cited locations, RYA represented all yardmaster employees, a fact not present relative to the three locations here at issue in this dispute.

The Carriers also presented oral rebuttal argument concerning its position relative to RYA's contention that since agreements had been executed with representatives of other crafts or classes of employees to provide for the coordination of the entire Norfolk terminal, that Carriers should likewise do the same with respect to its yardmaster employees. Principally, these arguments concerned the proposition that the coordinations in these other agreements related to matters peculiar to that craft or class, switching limits, yard/road assignments, etc., and most particularly the fact that in each instance the labor organization involved in the coordination represented all employees of the craft or class.

DISCUSSION AND FINDINGS:

As previously referenced in this Decision and Award, the ICC, in commenting upon common point consolidations covered by Carriers' application, including those three points involved in this dispute, had given recognition to the fact that "operations will be concentrated at one facility with terminal and local service under the supervision of one railroad." At the same time, in determining the Carriers varied proposals to be consistent with the public interest, the ICC in its Decision related that it had considered the effect of the proposed transactions on the interest of Carriers' employees and found that they would be protected adequately by the minimum level of protection mandated and described in New York Dock. At page 49 of its Decision, under the section entitled, "Labor", the ICC, as is here pertinent, stated:

"We are required by 49 U.S.C. 11347 and 11344(b)(4) to consider the interests of, and provide protection for, carrier employees affected by a consolidation. We have considered the effect of the proposed transactions on the interest of carrier employees. We find that the transaction, with the conditions discussed below, is consistent with the public interest, insofar as carrier employees are concerned.

"Applicants estimate that consolidation will result in a net increase of 79 jobs on the new system (The transaction will result in the creation of 561 jobs, the abolition of 482 jobs and the transfer of one job.). Position changes arising from operating coordinations are expected to be implemented during the first six months after consolidation.....

"We find that the applicants' estimates of employee impact are reasonable. What dislocations there will be appear to be short term. It is possible that further displacement may arise as additional coordinations occur. However, no wholesale disruption of carriers' work force should occur and the overall disruption is clearly not unusual in comparison to other rail consolidation transactions.

"In [New York Dock], we described the minimum protection to be afforded those employees affected by a consolidation, absent a voluntarily negotiated agreement....."

It is apparent from the above that ICC had recognized the proposed transactions would result in a need for a rearrangement of forces which would include not only the creation of new jobs, but likewise the abolishment and transfer of present positions. Thus, there appears to be no rationale for RYA to here protest that in providing for the coordination of terminals Carriers will be abolishing positions presently occupied by yardmaster employees. It is also evident from the ICC Decision that it had recognized that the coordination of terminals was intended to concentrate terminal supervision under the control of one carrier, or what Carriers here refer to as "the controlling carrier" at each terminal point.

It is also apparent in reviewing the history and intent of New York Dock that, contrary to RYA contentions, consideration cannot be given to a supposed superiority of rights for represented employees to retain job opportunities to the detriment of non-represented, non-contract employees of the same job class or craft. There is actually no specified authority to do so. Rather, it appears that the selection of forces is to be made from all employees on a basis "accepted as appropriate" for application "in the particular case," and that employees who are not represented by a labor organization "shall be afforded substantially the same levels of protection as afforded to members of labor organizations 21/." Therefore, whether a division of work or job opportunities be accomplished by voluntary agreement or interest arbitration, it must be accomplished in a responsible manner that is fair and reasonable to all concerned.

In the dispute at issue, Carrier has proposed that this division of work between RYA-represented yardmaster employees and non-represented, non-contract yardmaster employees be accomplished in a manner that would provide for the

21/ Ibid, Article IV

creation of one RYA-represented position at Lynchburg, and the abolishment of a like position at the Salem Yard in Winston-Salem. Carriers' proposal would provide not only a fair and reasonable distribution of job opportunities in a re-arrangement of forces between all yardmaster employees, but it would likewise facilitate operations being concentrated at each of the two involved facilities (Lynchburg and Winston-Salem) under the "carrier-control" doctrine approved by ICC for Carriers common point terminal consolidations.

As stated by the RYA, this arrangement would have the effect of making its RYA-SR Agreement null and void at Winston-Salem. However, it is to be recognized that at present RYA holds representation rights only at SR's Salem Yard, a yard to be retired under the consolidation transaction. The surviving, North Winston Yard, is a location at which RYA holds no present representation rights. Thus, under the proposed rearrangement of forces, while the RYA-SR Agreement would not be extended to include a location at which it is not the present representative of yardmaster employees, the RYA-SR Agreement would continue to remain applicable for yardmaster employees at SR-control locations, including Lynchburg. At the same time, RYA-NW relationships would continue to remain applicable at NW-control locations, i.e., the non-representation of yardmasters at North Winston Yard in the Winston-Salem consolidation, and the representation of yardmasters at Norfolk in accordance with the RYA-NW (Virginian) Agreement.

This proposed rearrangement of forces and distribution of job opportunities is not found to be a circumstance similar to that which was addressed by Arbitrator Sickles in his Decision and Award in ICC F.D. No. 29455, the Award which the RYA cites in support of its contention that it has a right to retain its current working agreement. This is not a situation wherein one is being asked to eliminate an entire collective bargaining agreement. Nor is it a

circumstance where actual evidence regarding the practical operation of an agreement has not been proffered, a situation evidently found to be present in the above cited Decision and Award. Moreover, a determination to adopt the proposed selection and rearrangement of forces at Winston-Salem in the manner as set forth by the Carriers may not be considered harmful to RYA because, to the extent it desires, it can seek to become the representative of non-represented, non-contract yardmaster employees at NW-control locations under representation procedures of the Railway Labor Act.

As concerns RYA arguments relative to terminal areas at Norfolk, evidence of record is sufficient to support a finding that the Lamberts Point complex is not to be treated as affected by the common point consolidation approved by ICC for this location.

For the reasons set forth above, it will be this Arbitrator's Finding that the first Question at Issue be answered in the affirmative. No reason exists therefore to respond to the second Question at Issue.

AWARD:

The proposed Agreements (Attachments A-1 through A-3) are found to provide an appropriate basis for the selection of yardmaster forces in the rearrangement of forces made necessary by the transaction described in ICC F.D. No. 29430 (Sub. No. 1) pertaining to the coordination of facilities at the locations specified therein, namely, Lynchburg, VA, Winston-Salem, NC, and Norfolk, VA.


Robert E. Peterson, Arbitrator

Agreement NS 1 RYA
Lynchburg, VA

IMPLEMENTING AGREEMENT
BETWEEN
NORFOLK AND WESTERN RAILWAY COMPANY
SOUTHERN RAILWAY COMPANY
AND THEIR EMPLOYEES REPRESENTED BY
RAILROAD YARDMASTERS OF AMERICA

WHEREAS, Norfolk and Western Railway Company (NW) and Southern Railway Company (SR) have filed applications with the Interstate Commerce Commission (ICC) in Finance Docket No. 29430 and related sub-dockets 1 through 6, pertaining generally to the acquisition by Norfolk Southern Corporation (NSC) (formerly NWS Enterprises, Inc.) of control of, and coordination of operations between, Norfolk and Western Railway Company (NW) and its carrier subsidiaries and of Southern Railway Company (SR) and its consolidated system companies; and,

WHEREAS, the ICC has approved said acquisition by Certificate and Decision decided March 19, 1982, service date March 25, 1982; and

WHEREAS, as part of that Decision, the ICC approved consolidation of operations at SR's Montview Yard and the retirement of NW's Kinney Yard; and,

WHEREAS, the ICC has imposed the employee protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 354 ICC 399 (1978) as modified at 360 ICC 60 (1979) (New York Dock Conditions), in Finance Docket No. 29430 and related sub-dockets 1 through 6; and,

WHEREAS, the parties signatory hereto desire to reach an implementing agreement satisfying and consistent with Article 1, Section 4 of the New York Dock Conditions with respect to the approved coordination of facilities, operations, and services at Lynchburg, Virginia;

NOW, THEREFORE, IT IS AGREED, among NW, SR, and the Railroad Yardmasters of America (RYA) as follows:

ARTICLE I

Section 1

Effective upon ten days bulletin board notice at Kinney Yard (NW) and Montview Yard (SR) (copy to interested General and Local Chairmen) following ICC approval of applications filed by Norfolk and Western and Southern Railway in Finance Docket No. 29430 or as soon thereafter as practicable, selected coordinations of operations, facilities and employees shall be implemented with SR as the controlling Carrier.

Section 2

The notice provided for under Section 1 hereof will list the positions to be abolished, the names of the regular occupants, hours of assignment and rest days.

Section 3

On the effective date of the coordination, SR rules and agreements will be applicable to the coordinated facility, and the present NW facility at Lynchburg, Virginia will become part of the SR Eastern Division Seniority District.

ARTICLE II

Where rules, agreements and practices conflict herewith, the provisions of this Agreement will apply.

ARTICLE IIISection 1

This Agreement will become effective at the expiration of the notice period set forth in Article I, Section 1 hereof and constitutes an implementing agreement conforming with the requirements of Article 1, Section 4 of the New York Dock Conditions imposed by the ICC in Finance Docket 29430 and related sub-dockets.

Section 2

Anything to the contrary herein notwithstanding the preceding Articles I through II of this Agreement will not be applicable to the transactions within the scope of the above stated ICC Finance Dockets to the extent and during any period: (1) ICC authority is stayed or rescinded; or (2) NSC, NW, or SR fail or cease to exercise such ICC authority for any reason.

Signed at Chicago, Illinois this 30th day of March, 1982.

For THE RAILROAD YARDMASTERS
OF AMERICA:

For NORFOLK AND WESTERN
RAILWAY COMPANY:

General Chairman (SR)

President

For SOUTHERN RAILWAY COMPANY:

Attachments

Carrier File: LF-846-YM-Gen.
LF-846-YM-Lynb

Agreement NS 1 RYA
Winston-Salem

IMPLEMENTING AGREEMENT
BETWEEN
NORFOLK AND WESTERN RAILWAY COMPANY
SOUTHERN RAILWAY COMPANY
AND THEIR EMPLOYEES REPRESENTED BY
RAILROAD YARDMASTERS OF AMERICA

WHEREAS, Norfolk and Western Railway Company (NW) and Southern Railway Company (SR) have filed applications with the Interstate Commerce Commission (ICC) in Finance Docket No. 29430 and related sub-dockets 1 through 6, pertaining generally to the acquisition by Norfolk Southern Corporation (NSC) (formerly NWS Enterprises, Inc.) of control of, and coordination of operations between, Norfolk and Western Railway Company (NW) and its carrier subsidiaries and of Southern Railway Company (SR) and its consolidated system companies; and,

WHEREAS, the ICC has approved said acquisition by Certificate and Decision decided March 19, 1982, service date March 25, 1982; and,

WHEREAS, as part of that Decision, the ICC approved SR's admission to the NW-Winston-Salem Southbound Railroad Company facility and SR's consolidation of operations with NW's at North Winston Yard; and,

WHEREAS, the ICC has imposed the employee protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 354 ICC 399 (1978) as modified at 360 ICC 60 (1979) (New York Dock Conditions), in Finance Docket No. 29430 and related sub-dockets 1 through 6; and,

WHEREAS, the parties signatory hereto desire to reach an implementing agreement satisfying and consistent with Article 1, Section 4 of the New York Dock Conditions with respect to the approved coordination of facilities, operations, and services at Winston-Salem, North Carolina;

NOW, THEREFORE, IT IS AGREED, among NW, SR, and the Railroad Yardmasters of America (RYA) as follows:

ARTICLE I

Section 1

Effective upon ten days bulletin board notice at North Winston Yard (NW) and Salem Yard (SR) (copy to interested General and Local Chairmen) following ICC approval of applications filed by Norfolk and Western and Southern Railway in Finance Docket No. 29430 or as soon thereafter as practicable, selected coordinations of operations, facilities and employees shall be implemented with NW as the controlling Carrier.

Section 2

The notice provided for under Section 1 hereof will list the positions to be abolished, the names and yardmasters'

seniority dates of the regular occupants, hours of assignment and rest days.

Section 3

On the effective date of the coordination, the present SR facility at Winston-Salem, North Carolina will become part of the coordinated (NW) operation at Winston-Salem, subject to the working conditions in effect at Winston-Salem on the NW.

Section 4

An employee whose position is abolished as a result of a coordination or an employee displaced as a result thereof will exercise seniority rights in accordance with applicable rules and agreements.

ARTICLE II

Where rules, agreements and practices conflict herewith, the provisions of this Agreement will apply.

ARTICLE III

Section 1

It is understood and agreed that the affected employees are entitled to the protective conditions and benefits of the New York Dock Conditions in accordance with its terms which are

attached hereto as Attachment "A" and made a part hereof and nothing in this Agreement is intended to deny affected employees the protection conditions or benefits found therein.

Section 2

Each "dismissed employee" shall provide the Carrier with the following information for the preceding month in which he is entitled to benefits no later than the tenth day of each month on a form provided by the Carrier:

- (a) The day(s) claimed by such employee under any unemployment insurance act.
- (b) The day(s) each such employee worked in other employment, the name and address of the employer and the gross earnings made by the "dismissed employee" in such other employment.

Section 3

In the event a "dismissed employee" is entitled to unemployment benefits under applicable law but forfeits such unemployment benefits under any unemployment insurance law because of failure to file for such unemployment benefits (unless prevented from doing so by sickness or other valid causes) for purposes of the application of Subsection (c) of Section 6 of Attachment "A," he shall be considered the same as if he had filed for, and received, such unemployment benefits.

Section 4

If the "dismissed employee" referred to herein has nothing to report under this Article account not being entitled to benefits under any unemployment insurance law and having no earnings from any other employment, such employee shall submit, within the time period provided for in Section 2 of this Article III the appropriate form stating "Nothing to Report."

Section 5

The failure of any employee referred to in this Article III to provide the information required in this Article III shall result in the withholding of all protective benefits during the month covered by such information pending Carrier's receipt of such information from the employee.

Section 6

The dismissal allowance shall cease prior to expiration of the employee's protective period in event of the employee's resignation, death, retirement, termination for justifiable cause, failure to return to service upon recall or failure to accept a position pursuant to Article I, Section 6(d) of Attachment "A."

ARTICLE VSection 1

This Agreement will become effective at the expiration of the notice period set forth in Article I, Section 1 hereof and

constitutes an implementing agreement conforming with the requirements of Article 1, Section 4 of the New York Dock Conditions imposed by the ICC in Finance Docket 29430 and related sub-dockets.

Section 2

Anything to the contrary herein notwithstanding the preceding Articles I through IV of this Agreement will not be applicable to the transactions within the scope of the above stated ICC Finance Dockets to the extent and during any period: (1) ICC authority is stayed or rescinded; or (2) NSC, NW, or SR fail or cease to exercise such ICC authority for any reason.

Signed at Chicago, Illinois this 30th day of March, 1982.

For THE RAILROAD YARDMASTERS
OF AMERICA:

For NORFOLK AND WESTERN
RAILWAY COMPANY:

General Chairman (SR)

President

For SOUTHERN RAILWAY COMPANY:

Attachments

Carrier Files: LF-846-YM-Gen.
LF-846-YM-WSa1

Agreement NS 1 RYA
Norfolk, VA

IMPLEMENTING AGREEMENT
BETWEEN
NORFOLK AND WESTERN RAILWAY COMPANY
SOUTHERN RAILWAY COMPANY
AND THEIR EMPLOYEES REPRESENTED BY
RAILROAD YARDMASTERS OF AMERICA

WHEREAS, Norfolk and Western Railway Company (NW) and Southern Railway Company (SR) have filed applications with the Interstate Commerce Commission (ICC) in Finance Docket No. 29430 and related sub-dockets 1 through 6, pertaining generally to the acquisition by Norfolk Southern Corporation (NSC) (formerly NWS Enterprises, Inc.) of control of, and coordination of operations between, Norfolk and Western Railway Company (NW) and its carrier subsidiaries and of Southern Railway Company (SR) and its consolidated system companies; and,

WHEREAS, the ICC has approved said acquisition by Certificate and Decision decided March 19, 1982, service date March 25, 1982; and,

WHEREAS, as part of that Decision, the ICC approved the consolidation of SR and NW operations at NW's Portlock Yard and the retirement of SR's Carolina Yard; and

WHEREAS, the ICC has imposed the employee protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 354 ICC 399 (1978) as modified at 360 ICC 60

(1979) (New York Dock Conditions), in Finance Docket No. 29430 and related sub-dockets 1 through 6; and,

WHEREAS, the parties signatory hereto desire to reach an implementing agreement satisfying and consistent with Article 1, Section 4 of the New York Dock Conditions with respect to the approved coordination of facilities, operations, and services at Norfolk, Virginia;

NOW, THEREFORE, IT IS AGREED, among NW, SR, and the Railroad Yardmasters of America (RYA) as follows:

ARTICLE I

Section 1

Effective upon ten days bulletin board notice at Carolina Yard (SR) and Portlock Yard (NW) (copy to interested General and Local Chairmen) following ICC approval of applications filed by Norfolk and Western and Southern Railway in Finance Docket No. 29430 or as soon thereafter as practicable, selected coordinations of operations, facilities and employees shall be implemented with NW the controlling carrier.

Section 2

The notice provided for under Section 1 hereof will list the positions to be abolished, the names and yardmasters' seniority dates of the regular occupants, hours of assignment

and rest days. A copy of the dovetailed roster provided for in Section 5 hereof will be attached to said notice.

Section 3

On the effective date of the coordination, NW rules and agreements, save protective agreements, will be applicable to the coordinated facility, and the present SR facility at Norfolk, Virginia will become part of the NW (Portlock Yard) Seniority District.

Section 4

An employee whose position is abolished as a result of a coordination or an employee displaced as a result thereof and who is unable to secure a position in the exercise of seniority rights within the coordinated facility will be governed by applicable rules and agreements.

Section 5

The seniority dates of SR employees on rosters for the coordinated Norfolk terminal will be dovetailed into the seniority roster for the NW (Portlock Yard) Seniority District and be removed from the SR Eastern Division seniority roster.

Section 6

(a) It is agreed that the seniority dates on the NW and SR seniority rosters in effect on the date of the Order are accepted as correct.

(b) In the process of dovetailing, if two or more employees have the same seniority date their names will rank on the new roster as follows:

(i) If such employees came from the same seniority roster, their relative standing as between each other shall remain the same on the roster to which transferred.

(ii) If such employees came from different seniority rosters, the employee having the longest continuous service shall be given preferred rank.

ARTICLE II

Where rules, agreements and practices conflict herewith, the provisions of this Agreement will apply.

ARTICLE III

SR employees placed under the coverage of NW rules and agreements pursuant to Article I, Section 3 of this agreement, will be covered by all notices served on NW under Section 6 of the Railway Labor Act, as amended, the same as if they were NW employees when said notices were served.

ARTICLE IV

Section 1

It is understood and agreed that the affected employees are entitled to the protective conditions and benefits of the New York Dock Conditions in accordance with its terms which are

attached hereto as Attachment "A" and made a part hereof and nothing in this Agreement is intended to deny affected employees the protection conditions or benefits found therein.

Section 2

Each "dismissed employee" shall provide the Carrier with the following information for the preceding month in which he is entitled to benefits no later than the tenth day of each month on a form provided by the Carrier:

- (a) The day(s) claimed by such employee under any unemployment insurance act.
- (b) The day(s) each such employee worked in other employment, the name and address of the employer and the gross earnings made by the "dismissed employee" in such other employment.

Section 3

In the event a "dismissed employee" is entitled to unemployment benefits under applicable law but forfeits such unemployment benefits under any unemployment insurance law because of failure to file for such unemployment benefits (unless prevented from doing so by sickness or other valid causes) for purposes of the application of Subsection (c) of Section 6 of Attachment "A," he shall be considered the same as if he had filed for, and received, such unemployment benefits.

Section 4

If the "dismissed employee" referred to herein has nothing to report under this Article account not being entitled to benefits under any unemployment insurance law and having no earnings from any other employment, such employee shall submit, within the time period provided for in Section 2 of this Article IV the appropriate form stating "Nothing to Report."

Section 5

The failure of any employee referred to in this Article IV to provide the information required in this Article IV shall result in the withholding of all protective benefits during the month covered by such information pending Carrier's receipt of such information from the employee.

Section 6

The dismissal allowance shall cease prior to expiration of the employee's protective period in event of the employee's resignation, death, retirement, termination for justifiable cause, failure to return to service upon recall or failure to accept a position pursuant to Article I, Section 6(d) of Attachment "A."

ARTICLE VSection 1

This Agreement will become effective at the expiration of the notice period set forth in Article I, Section 1 hereof and

constitutes an implementing agreement conforming with the requirements of Article 1, Section 4 of the New York Dock Conditions imposed by the ICC in Finance Docket 29430 and related sub-dockets.

Section 2

Anything to the contrary herein notwithstanding the preceding Articles I through IV of this Agreement will not be applicable to the transactions within the scope of the above stated ICC Finance Dockets to the extent and during any period:

(1) ICC authority is stayed or rescinded; or (2) NSC, NW, or SR fail or cease to exercise such ICC authority for any reason.

Signed at Chicago, Illinois this 30th day of March, 1982.

For THE RAILROAD YARDMASTERS
OF AMERICA:

For NORFOLK AND WESTERN
RAILWAY COMPANY:

General Chairman (NW)

General Chairman (SR)

President

Attachments

Carrier File: LF-846-YM-Gen.
LF-846-YM-Norf.

For SOUTHERN RAILWAY COMPANY: