ARBITRATION UNDER SECTION 4
NEW YORK DOCK II, APPENDIX III

In the matter of MISSOURI PACIFIC RAILROAD COMPANY and BROTHERHOOD OF RAILWAY CARMEN OF THE UNITED STATES AND CANADA	ICC FINANCE DOCKET 29455

DECISION AND AWARD

JOSEPH A. SICKLES, ARBITRATOR

APPEARANCES: For the Carrier — O. B. Sayers

For the Organization — Randall K. Reynolds

STATEMENT OF THE CASE

On April 8, 1982, the undersigned Arbitrator was nominated by the National Mediation Board as a Neutral Referee in a dispute between the Missouri Pacific and the Brotherhood of Railway Carmen. The case concerns the question of whether or not New York Dock II protective conditions apply under the facts of record in this case.

A hearing on the matter was held on May 24, 1982, in St. Louis, Missouri. All parties were represented at the hearing, and were given an opportunity to present arguments and offer written documents into evidence.

QUESTION AT ISSUE

"Whether New York Dock II employee protective conditions imposed in Missouri Pacific Railroad Company - Merger - The Texas and Pacific Railway Company, Etc., (ICC Finance Docket No. 27773) are applicable to the proposed closing of the freight car repair shop at Marshall, Texas, and transfer of work performed at Marshall to St. Louis, Missouri, and Palestine, Texas?"

DISCUSSION

On March 16, 1981 the Carrier notified its employees that it was abandoning its repair facility at Marshall, Texas and that it intended to transfer certain of the work to its shop in St. Louis, Missouri and some of the work to its freight car shop at Palestine, Texas.

In addition certain other information was disseminated indicating that the wrecking crane at Marshall was being retired (and the crew being discontinued) and that wheel chains truck at Marshall was being relocated to Longview, Texas.

A September 25, 1964 mediation agreement provides for protective benefits applicable to Shop Craft employees who are adversely affected by changes in the Carrier's operations; but the Organization has taken the position that protective provisions to be applied to this "transaction" are those contained in the New York Dock II protective agreement which was imposed upon this Carrier in Finance Docket No. 27773.

Initially, the ICC did not impose New York Dock II conditions upon the Carriers involved, however, after a number of attempts, the Railway Employees' Department was able to convince that governmental agency to impose those conditions.

In this dispute, the Organization contends that the employees employed on the Texas and Pacific and the Chicago and Eastern Illinois Railroads have always maintained separate agreements and have maintained their own individual identities

rather than having been engulfed into the work force of the Missouri Pacific and thus, there is no similarity between this dispute and the arbitration award issued by Referee Zumas on July 31 of 1981; where it was found that all transfers or coordinations had been accomplished prior to the Carriers' filing an ICC merger application in 1974.

The Organization points out that within the definitions contained in the New York Dock II protective provisions, "transaction" means any action which is taken pursuant to the authorizations of the ICC on which the provisions were imposed and that the action taken concerning the personnel rearrangement in this case was obviously directly related to the merger of the railroads and thus falls within the prohibitions of Section 4, Subsection (4), Paragraph (b) which precludes changes in operations, etc. until after an agreement is reached or a decision of a referee has been rendered.

The Carrier has traced certain of the history of the interrelationship between the Missouri Pacific and the other carriers such as the Texas and Pacific Railway Company and it has indicated that common control existed prior to 1924 and that all interchange points had been coordinated. It shows that in 1924 the surviving carrier acquired the controlling interest in the T&P. Further it showed subsequent events through the years to the point that by 1974 there was a total coordination of all departments operating as a single cohesive unit in the system and the 1974 action was merely one to achieve a corporate simplification but which really did not change any concepts of operation, policies, power, equipment, etc. The ICC order which approved the merger (348ICC414) seems to confirm that allegation.

While the Carrier does not disagree with the obvious fact that at a point in time New York Dock II protective benefits were applied to the employees; nonetheless the Carrier points out that in order for those provisions to be applicable to the factual circumstances here, it is necessary to determine

that the intended closure of the Marshall freight shop was authorized by the ICC or undertaken pursuant to the order approving the merger when in fact - according to the Carrier - the proposed closing bears absolutely no conceivable connection with the merger but rather, was the result of several remote and unrelated factors.

The Carrier is also very quick to point out that the ICC did not refer to all events that happened "subsequent" to its approval but rather limited applicability of certain conditions to items that occurred "pursuant to" the approval.

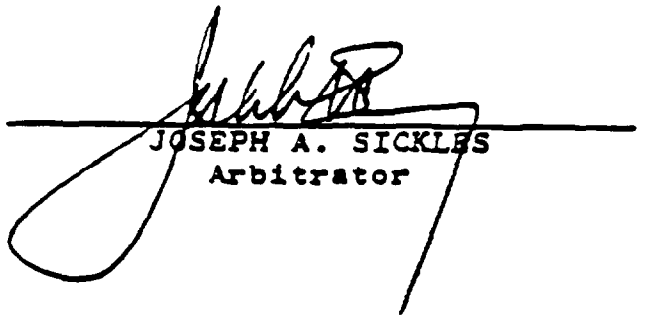
The undersigned has considered the factual items of record as well as the various arguments, contentions, and cited authority and I continue to return to the conflicting contentions regarding the "transaction." Without minimizing the fact that the ICC did ultimately impose the New York Dock II protective provisions; the fact remains that those provisions contained the definition of a "transaction" and if (as cited in the July 31, 1981 arbitration award between this Carrier and the ATDA) there is a lack of a causal nexus between the merger and the action, the New York Dock II provisions simply would not apply. Rather the individual provisions which the Carrier sought to impose would be the appropriate protection to be afforded to the employees.

As a factual matter, in order to bring the activity within the purview of the New York Dock II provisions it is necessary that the Organization show a "transaction" and it must convince the undersigned that the proposed action was one made pursuant to the merger of the Carrier.

I have searched the record in vain to find any such showing in this case and accordingly the claim will be denied.

AWARD

Claim denied.



JOSEPH A. SICKLES
Arbitrator

JULY 30, 1982