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| In the Matter of Arbitration Between | ) | |
| SEABOARD SYSTEM RAILROAD | ) | |
| and | ) | Finance Docket 33053 |
| BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS | ) | |

# OPINION AND AWARD

## Background

This is an arbitration proceeding pursuant to the provisions of the "New York Dock" Labor Protective Conditions (under Article I, Section 4), imposed by the Interstate Commerce Commission in Finance Docket Number 33053.

Hearing was held at Jacksonville, Florida on May 2, 1983, at which time oral argument was heard and exhibits offered and made part of the record.

The Carrier was represented by R. I. Christian, Senior Manager of Labor Relations. The Organization (BRAC) was represented by L. Earl Bosher, General Chairman.

## Statement of the Case

On November 8, 1982, the Interstate Commerce Commission (ICC) granted an exemption to the proposed merger of the Seaboard Coast Line Railroad Company (SCL) and the Louisville and Nashville Railroad Company (L&N). The

ICC conditioned any merger upon the Carrier's application of the protective conditions of "New York Dock" II (New York Dock Railway - Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979)).

Article I, Section 4 of the "New York Dock" Conditions requires that the Carriers provide 90 days written notice of any "transaction" which may cause the dismissal or displacement of any employees, or rearrangement of forces. Transaction is defined, in Section 1(a), to refer to any action taken pursuant to authorizations of the ICC.

On January 13, 1983, the merged Carrier served notice on the Organization of its intent to transfer the employees in two Clerk Steno positions from a L&N seniority District in Louisville to a SCL seniority district in Jacksonville, effective April 5, 1983. Pursuant to Article I, Section 4, the parties conducted negotiations on several occasions but no agreement was reached on the application of employee benefits. On April 4, 1983, the Carrier invoked the arbitration provisions set forth in Article I, Section 4 of the New York Conditions.

During the parties' negotiations the Carrier proposed an agreement, which read in part:

> 1. Effective _____, 1983, the two (2) clerk-steno positions in Seniority District 24, Real Estate, Louisville, Kentucky, presently occupied by Clerks Neeld and Knight, will be transferred to Text Processing Center, Seniority District 15, Jacksonville, Florida.
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> 2. Employees adversely affected as a result of the implementation of this agreement will be entitled to the protective benefits of the "New York Dock" conditions as specified in Finance Docket No. 30053.

> 3. Adversely affected employees entitled to benefits as set out in Item 2 above and who are also entitled to other protective benefits under other agreements will be advised within sixty (60) days from date affected of his monetary entitlement under this agreement. Within thirty (30) days of notice, the employee must advise the Company as to his election as to the protective benefits, "New York Dock" or the protective benefits under such other agreement. An employee failing to make such an election of benefits will be considered as electing the protective benefits and conditions as set out in Finance Docket No. 30053, the "New York Dock" Conditions.

The Organization then proposed a revision of Paragraph 2 and Paragraph 3, as follows:

> 2. Employees adversely affected as a result of the implementation of this agreement will be entitled to the protective benefits of the "New York Dock" conditions or option to elect benefits existing under other job security or protective conditions as more specifically set out in Section 3 of the "New York Dock" conditions.
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> 3. Employees transferring to Jacksonville, Florida, as a result of this agreement will have their seniority on the District on which working, transferred to and dovetailed in Seniority District 15, Jacksonville, Florida, and shall be their seniority unless otherwise agreed between Management and the General Chairman. Where relative standing of two or more employees cannot be determined the order of one over the other for placement purposes on the roster will be determined by the date of birth.

The Carrier agreed, in its submission, that Section 3, as proposed by BRAC, would be acceptable but has contended that Section 2 is unacceptable.

Both the Organization and the Carrier acknowledge that the intent of the Organization's revision of Section 2 is to modify the Carrier's proposal to the effect that the employees in question would be allowed to claim the 30-mile restriction in the existing property protection agreement, and would be able to decline to move with the positions.

Positions of the Parties

The Organization concedes that the ""New York Dock"" conditions do not entitle an employee to refuse to move with a position. It does argue, however, that nothing in "New York Dock" takes away benefits that are contained in the local Job Stabilization Agreement of 1965, as amended. For authority, the Organization relies on Article I, Sections 2 and 3 of "New York Dock", which provide:

> 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.
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> 3. Nothing in this Appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under any existing job security or other protective conditions or arrangements; provided, that if an employee otherwise is eligible for protection under both this Appendix and some other job security or other protective conditions or arrangements, he shall elect between the benefits under this Appendix and similar benefits under such other arrangement and, for so long as he continues to receive such benefits under the provisions which he so elects, he shall not be entitled to the same type of benefit under the provisions which he does not so elect; provided further, that the benefits under this Appendix, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits; and, provided further, that after expiration of the period for which such employee is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of this protective period under that arrangement. (Underscoring added)

The Organization claims that under the applicable rules of the Clerks' Agreement between L&N and BRAC, the employees in question are not required

to transfer to another location; rather, the employees may exercise their seniority at their current location or, if there is no position available, may elect to place themselves in an unassigned status without forfeiting protective rights under their existing property protective agreement. BRAC claims that the Carrier is attempting to negate this provision by claiming that "New York Dock" takes precedence over the local agreement.

The Carrier, on the other hand, contends that under either "New York Dock" or the Job Stabilization Agreement of 1965, an employee must be adversely affected before he can made an election of benefits. Since a change of residence has never been interpreted as an adverse effect, there is no election to be made here. Specifically, the Carrier asserts that:

> No election of benefits can be made until an agreement is made to cover the transaction and obligations of employees under the "New York Dock" conditions are fulfilled, and then only when an employee is placed in a dismissed or displaced status, or can show that he has suffered loss of compensation.

Findings and Conclusions

The Carrier's position is based on its view that an "election of benefits", as described in Section 3 of "New York Dock", can arise only out of a circumstance in which an employee has lost compensation. The most obvious is a circumstance which results in the dismissal or displacement of an employee. A careful reading of Section 3, however, does not disclose such a narrow interpretation. Rather, Section 3 begins, "Nothing in this Appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under any existing job security or

other protective conditions or arrangements." Thus, to the extent that the Job Stabilization Agreement provides certain benefits to the employees, those benefits cannot be eliminated by the operation of the "New York Dock" Conditions.

Reading Section 3 further, it states "that if an employee otherwise is eligible for protection under both this Appendix and some other job security or other protective conditions or arrangements, he shall elect between the benefits under this Appendix and similar benefits under such other arrangements...". There is no dispute that the employees at issue here are entitled to the benefits provided in the "New York Dock" Conditions, Article I, Section 12 (losses from home removal), since the contemplated action of the Carrier is admittedly a "transaction". Thus, they must elect, to paraphrase Section 3, above, "between the benefits of Article 12 and similar benefits other than arrangements."

Since an arbitration proceeding under Article I, Section 4 of "New York Dock" is not intended, nor authorized, to interpret local agreements, this award cannot describe what benefits may be available to the employees under the Job Stabilization Agreement. Nevertheless, the implementing agreement must recognize the employees' rights to elect whatever benefits may exist.

Finally, this Arbitrator has considered the Carrier's argument that the ICC specifically rejected a proposed amendment to the "New York Dock" Conditions which would, if adopted, have protected employees against any transfer requiring a change in residence. Suffice it to say that the Arbitrator acknowledges that the "New York Dock" Conditions do not provide employees with any such protection, but that Section 3 protects employees from the elimination of such benefits contained in local agreements.

AWARD

The Memorandum of Agreement between Seaboard System Railraod and its employees represented by BRAC, enacted pursuant to the notice served on January 13, 1983, shall not prevent employees adversely affected from electing benefits of the "New York Dock" or benefits existing under other job security or protective conditions.

Nicholas H. Zumas, Arbitrator

Date: June 10, 1983