ARBITRATION UNDER NEW YORK DOCK,

APPENDIX III, ARTICLE 1, SECTION 4

SEABOARD SYSTEM RAILROAD and AMERICAN TRAIN DISPATCHERS ASSOCIATION Re: Birmingham Train Dispatchers	)	ICC FINANCE DOCKET No. 30053

FINDINGS AND AWARD

HERBERT L. MARX, JR., REFEREE

APPEARANCES

For the Organization:

R. W. Johnson, President

R. J. Irwin, Vice President

L. B. Oster, Office Chairman, Jacksonville

H. E. Mullinax, General Chairman, Florence

Gordon P. MacDougall, Esq.

For the Carrier:

R. I. Christian, Senior Director, Labor Relations

L. W. Evans, Senior Manager, Labor Relations

L. Womble, Manager, Labor Relations

H. J. Matheny, Assistant Manager, Labor Relations

F I N D I N G S

This is an arbitration proceeding pursuant to the provisions of the New York Dock Labor Protective Conditions (under Appendix III, Article I, Section 4) imposed by the Interstate Commerce Commission in Finance Docket Number 30053.

The dispute involves the announced intention of the Seaboard System Railroad (the "Carrier") to coordinate, transfer and/or reassign certain train dispatching functions performed by employees represented by the American Train Dispatchers Association (the "Organization") from offices in Birmingham, Alabama, to offices in Atlanta, Georgia; Bruceton, Tennessee; Jacksonville, Florida; and Mobile, Alabama.

Written notice of such proposed changes was sent to appropriate Organization officials by letter dated October 22, 1984. Under date of November 10, 1984, the Organization responded, requesting resolution of a number of questions raised by the proposed move. The parties met to discuss the matter on November 13, 1984, at which time the Carrier presented a proposed Implementing Agreement to the

Organization. Discussions continued on November 14 and 29, 1984. When no accord was reached, the Carrier served notice by letter dated December 20, 1984, of its intention to invoke the arbitration provisions set forth in Appendix III, Article I, Section 4 of New York Dock. As a result, the Referee was selected by the parties to hear and resolve the dispute. Hearing was held in Jacksonville, Florida on January 17, 1985. The parties were given full opportunity to present oral and written argument.

As arranged at the hearing, the parties filed post-hearing summaries, which were received by the Arbitrator on January 29, 1985. The Arbitrator also received on February 11, 1985 a letter from the Carrier "taking exception" to portions of the Organization's post-hearing summary.

The parties agreed to extend the time limit for submission of the Referee's Award to 30 days beyond receipt of the final document.

The Carrier's proposal for the "coordination, transfer and realignment of train dispatching territory" involves the abolishment of seven Train Dispatcher positions and the positions of Chief,Assistant Chief, Night Chief, and Relief Chief Dispatchers at Birmingham, as well as one dispatching position at Jacksonville. The Carrier proposes no addition to forces at the locations to which dispatching duties would be transferred from Birmingham. The proposed changes would assign various subdivisions to Train Dispatchers at other

locations; the Main Line Train Dispatchers would continue at present, with the Nashville Division Superintendent having jurisdiction of the line north of Birmingham and the Mobile Division Superintendent having jurisdiction over Birmingham and the line south of Birmingham.

Adequacy of the Notice

The Organization's initial position is that the Carrier's notice of October 22, 1984 should be dismissed, because it fails in several respects to meet the requirements mandated by Article I, Section 4 of New York Dock.

First, the Organization notes that the notice seeks to eliminate the position of Chief, Assistant Chief and Night Chief Dispatchers, "but does not provide for the transfer or other disposition of work presently performed by these positions". Second, the notice, according to the Organization, does not provide for the transfer or other disposition of work on the Sylacauga Subdivision. Third, the Organization alludes to an overall "restructuring program" of the CSX Corporation, of which Seaboard System Railroad is a part. The Organization argues that it is entitled to receive protection now for Train Dispatchers from the effects of further consolidations of which the Birmingham move is reported to be a part.

Article I, Section 4 of New York Dock reads in pertinent part as follows:

> 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. . . .

The Referee does not find that these allegations on the Organization's part are of sufficient weight for a finding that the Carrier has failed to make a "full and adequate statement of the proposed changes". As to the work of the Chief Dispatcher and others performing such work, the Carrier's notice spells out in four or five numbered paragraphs how train dispatching work will be assigned to other points. Another numbered paragraph (No. 6) indicates jurisdictional responsibility for Main Line Train Dispatchers remaining at Birmingham as being assigned to Superintendents of the Nashville and Mobile Superintendents. The work of a Chief Dispatcher can logically only have substance insofar as it relates to the amount of dispatching work at a location requiring a "Chief" function. The notice is clear on its face that the functions of the positions referred to by the Organization are to be disbursed as outlined by the Carrier to various other points, with no "Chief" function remaining at the much reduced Birmingham office.

As to reference to the trackage in the Sylacauga Subdivision, this appears to have been subject to recent reorganization. The parties have exchanged sufficient information as to which Division this Subdivision is a part. Clearly, any confusion about this does not affect the rearrangement of forces proposed by the Carrier.

The Organization, quite understandably, is concerned not only with each transaction affecting the employees it represents; it also wishes to know how such moves fit into longer range consolidation plans which the Carrier may have. Nevertheless, Section 4 (a) refers to contemplation of "a transaction" and requires a "full and adequate statement" about "such transaction" (emphasis added). The Carrier has met its obligation as to the Birmingham train dispatching move, even if information is not included about future transactions which may or may not now be in the planning stage and about which precise information may or may not now be known to the Carrier. The Organization is protected, of course, by the New York Dock requirement of further notice, discussion and, if necessary, arbitration of any further moves.

The Referee thus finds that the Carrier's notice of October 22, 1984 meets the requirement of Article I, Section 4. This leads to the determination of the terms of a resulting Implementing Agreement.

The Implementing Agreement

The Carrier and the Organization have provided each other and the Referee with proposed Implementing Agreements to cover this transaction.

Before selecting from among the terms proposed by the parties, the Referee notes both the extent and limitations of his authority as provided in Article I, Section 4. The operative second paragraph of this section reads as follows:

> Within five (5) days from the date of receipt of notice, at the request of either the railroad or representatives of such interested employees, a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotiations shall commence immediately thereafter and continue for at least thirty (30) days. Each 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. . . .

This provision refers to an agreement with respect to "application of the terms and conditions of this appendix". The cited "appendix" includes displacement, dismissal and separation allowances (Section 5, 6 and 7); maintenance of fringe benefits (Section 8); and moving expenses and loss from home removal (Sections 9 and 12). Separate from these is the requirement of an "agreement or decision" as to "the selection of forces from all employees involved on a basis

accepted as appropriate for application in the particular case". It will be these criteria which will guide the Referee in his formulation of an Implementing Agreement.

An analysis of the Carrier's proposed Agreement reveals the following: Paragraph 1 states that the New York Dock labor protective conditions "shall be applicable". In stating the obvious (see New York Dock Article I, Section 4), the Carrier also argues that the conditions should be as stated in New York Dock, without amendment or embellishment. Paragraphs 2 through 7 describe the revised assignment of dispatching work, concerning which there appears to be no reason to dispute the Carrier's determinations. Paragraph 8 describes the classifications and, to some degree, the responsibility of Train Dispatchers remaining at Birmingham. Paragraph 9 refers to "former SCL Train Dispatchers" who transferred to Birmingham and states that they "will be required" to exercise Clerk seniority if they do not stand for a Train Dispatch position. Paragraphs 10-13 are general provisions, on which comment will be made below.

The Organization's proposed Implementing Agreement consists of two Articles. Article I concerns "Changes To Be Effected" and duplicates provisions of the Carrier's proposed Agreement. Article II concerns "Terms and Conditions" which, for the purposes of the Referee's findings, may be analyzed in the following manner (numbers referring to the Sections of Article II):

General Definitions:

1. Definition of displaced and dismissed employees
2. Definition of change of residence
23. Selection of choice of protective benefits and conditions
24. Test period information and filing of claims

Seniority Rights:

3. Exercise of seniority
19. Duration of seniority rights
20. Displacement rights in other crafts

Benefits and Conditions of Employment

4. Vacation and sick leave benefits
5. Qualifying time
6 through 10. Transfer and relocation costs and conditions
17. Extension of sick leave benefits
18. Improvement of expense allowance
21. Separation allowances

Establishment of New Positions

11. through 16. Creation of additional positions
22. Guaranteed Assigned Train Dispatcher positions

Consideration now turns to which of these proposed provisions should be included in the Implementing Agreement. These will be addressed under the categories adopted above by the Referee.

Establishment of New Positions

The Carrier's formal notice to the Organization on October 22, 1984 specified the abolishment of 11 positions at Birmingham and one at Jacksonville. In detailing the transfer of responsibilities to other locations, the Carrier gave no indication of the establishment of comparable new positions. Sections 11-16 of the Organization's proposal would establish new positions in Birmingham and at other locations. Under these Section 4 New York Dock proceedings, there is no mandate provided to permit the Referee to direct the Carrier to maintain or establish a work force of particular size or description. While the "selection of forces" is at the heart of the Referee's jurisdiction, this must necessarily be accomplished after determination by the Carrier as to the size of the work force it deems necessary. Thus, the Referee has no grounds to consider the Organization's suggestion as to the addition of positions. The Carrier posits a coordination of work which it believes can be accomplished by abolishing 12 positions. Should it be found that the realignment requires additional positions to accomplish the work as rearranged by the Carrier, the

Organization then indeed has a vital concern in reference to the rights to such positions of employees whose postions were abolished in the transaction. This, however, is a separate matter, to be reviewed below.

Benefits and Conditions of Employment

As cited above, a number of the Organization's proposals would expand on conditions specifically set by New York Dock. This is particularly true of the Organization's proposed Sections 6 through 10, which would set conditions for employees who may transfer to a new point of employment. Conditions for such transfers are covered in Article I, Sections 9 and 12 of New York Dock. The Carrier may do no less than is provided in Sections 9 and 12. The jurisdiction of the Referee does not extend, however, to providing for the expansion of such relocation benefits as are sought by the Organization. This position is supported by other similar recent arbitration proceedings. In an Oregon Short Line III proceedings (comparable to New York Dock proceedings), Referee Richard Kasher stated as follows (in Illinois Central Gulf-United Transportation Union, December 19, 1980):

> The levels of benefits have been established by the Appendix. The implementing agreement properly deals with the means by which such levels are to be afforded, but may not raise or lower them unless the parties have so agreed.

Section 17 seeks added sick leave and supplemental sickness benefits for certain Train Dispatchers, and Section 18 seeks a substantially increased allowance for Extra Train Dispatcher expenses. Based on the reasoning outlined above, such changes are beyond the jurisdiction of the Referee to consider. Similarly, Section 21 seeks formulas for separation allowances which subject is covered in New York Dock Article I, Section 7, and requires no embellishment here.

There are, however, two Organization proposals in this general category which the Referee finds fully appropriate for the Implementing Agreement. The first is Section 4, which seeks to clarify the retention (not expansion) of vacation and sick leave benefits for displaced Train Dispatchers. This is entirely consonant with New York Dock Article I, Section 8, which protects employees affected by a transaction from being deprived of "benefits attached to his previous employment".

Likewise, Section 5 proposes a means of providing conditions for qualifying on unfamiliar territory, which may be necessary as a result of the transaction. The Organization states without contradiction that these proposed conditions are identical to those in a previous similar agreement. As part of the "selection of forces", the Referee finds this proposal appropriate for inclusion in the Implementing Agreement.

General Definitions

Sections 1, 12, 23, and 24 of the Organization's proposals do not seem to be at serious variance with the somewhat briefer references to the same subjects in the Carrier's proposal. An exception appears to be the Organization's specification that "change in residence" means a new work location more than 30 miles from the employees current work location. Another may be the Organization's proposal, in Section 24 (b) of the precise means for settling disputes in reference to claims for displacement or dismissal allowances. The Award will direct the parties to coordinate these Sections of the Organization's proposals with those of the Carrier's proposal, provided, however, that if such agreement is not promptly achieved, the reference to 30 miles will not be included and the claim adjustment procedure recommended by the Organization will be included.

Seniority Rights

Since the Carrier starts with the assumption of abolishment of positions without the creation of new positions elsewhere, the Carrier's Implementing Agreement makes no provisions of "selection of forces". The Organization understandably challenges such assumption. As stated above, the Referee has no basis on which to impose new positions on the Carrier. In pursuance of the purposes of Article I, Section 4, however, it is entirely

proper to provide for the protection of seniority rights of Birmingham Train Dispatchers in the event that the rearrangement of work does lead to new Train Dispatcher work opportunities in the locations where the work is assigned. Thus, the Referee finds that the proposed provision in Section 3 (b) of the Organization's proposal to be appropriate, with the limitation that it shall apply only during the protective period for the Train Dispatchers.

Support for this view is found in Referee Jacob Seidenberg's Award in Baltimore & Ohio, etc. and Brotherhood of Maintenance of Way Employees, etc. (ICC Finance Docket No. 30095, August 31, 1983), in which it is stated:

> While it is unquestioned that the B&O has the sole discretion to determine the size of the work force it wants to use from N&SS forces, no Neutral can prescribe the size of the work force that must be utilized. However, this does not mean that the B&O can, or should be permitted, unilaterally to extinguish the vested seniority and pension rights of inactive N&SS employees. The B&O intends to operate on N&SS property and it is inappropriate for the B&O to take action that would cause the N&SS to lose permanently their recall rights to work on N&SS territory, if the exigencies of operations should warrant such a happy state. We find the B&O's amended proposal to hire inactive N&SS employees as new B&O employees, is not a satisfactory resolution of this problem.

Section 3 (a) and (c) are not required, since they involve conditions already adequately covered in New York Dock itself.

Section 19 of the Organization's proposal seeks protection of the "duration of . . . employment" goes well beyond the protective period prescribed by New York Dock

and is thus inappropriate. Likewise, displacement rights in another craft, covered in the Organization's Section 20, is not required, since wage protection rights are fully covered in New York Dock itself.

Carrier's Proposed Agreement

Section 13 of the Carrier's proposal refers to possible "conflict" in the Implementing Agreement and "currently effective working agreements". Without knowledge as to what such "conflict" might be, the Referee finds it inappropriate to include this provision within the jurisdictional limit of New York Dock Article I, Section 4.

* * * * *

The Referee places great emphasis on the desirability of Implementing Agreements such as this to be arrived at insofar as possible by negotiations between the parties rather than by the ultimate binding authority of an arbitration award. The Referee also is aware of the Carrier's understandable need to move forward with the transaction as expeditiously as possible. The Referee will therefore prescribe a further period limited to 15 days during which the parties may make any further adjustments in the Agreement by mutual accommodation. Should such opportunity prove unnecessary or lead to no accommodation, then the Implementing Award will, of course, become effective as stated by the Referee.

A W A R D

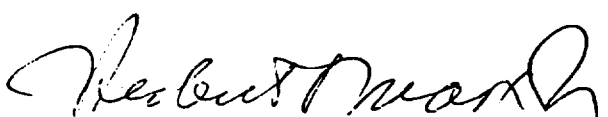
The Implementing Award between the Carrier and the Organization in reference to the Train Dispatcher functions at Birmingham shall be as follows:

1. The "Memorandum of Agreement" proposed by the Carrier (Carrier Exhibit D) shall be adopted, except for Section 13.

2. Sections 1, 2, 23, 24 of Article II of the Organization's proposed "arbitrated Implementing Agreement" shall be coordinated with the appropriate sections of the Carrier's proposal, in the manner prescribed in the Findings.

3. Section 3 (b) (limited to the protection period) and Sections 4 and 5 of Article II of the Organization's proposed agreement shall be appropriately numbered and adopted as part of the Implementing Agreement.

4. Within 15 days of the receipt of this Award, or upon a mutually agreed later date, the parties shall meet for the purposes of carrying out Paragraph 2 of the Award and to make any other adjustments in the terms of the Implementing Agreement which may be reached at such meeting. Failure to agree at such meeting on any adjustments will make the Award final as specified in Paragraphs 1 through 3 above.



HERBERT L. MARX, JR., Referee

New York, N. Y.

Dated: March 7, 1985