

Before ARBITRATION COMMITTEE appointed pursuant to  
Article I, Section II of Appendix III, I.C.C. Finance  
Docket No. 28250

In the Matter of	)	
	)	
UNITED TRANSPORTATION UNION (T)	)	O P I N I O N
	)	
and	)	A N D
	)	
CONSOLIDATED RAIL CORPORATION	)	A W A R D
	)	
Docket No. CRT-1002	)	
	)	

#### SUBMITTED ISSUE

Is fireman S. T. Vona entitled to the benefits described in the "New York Dock Conditions" as requested on January 7th and supplemented on January 21, 1983, due to the abolishment of his position on January 5, 1983?

#### BACKGROUND FACTS

On January 11, 1980, the U. S. Interstate Commerce Commission issued as Finance Docket 29805 a Notice of, Exemption from the requirements of 49 U.S.C. 11343-11347 to the proposed merger of Consolidated Rail Corporation (CONRAIL) with the Raritan River Railroad Company (Raritan), the latter wholly owned by Conrail at the time. This grant was made "subject to the conditions imposed for the protection of employees imposed in New York Dock Ry-Control-Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), affirmed by slip opinion of U. S. Court of Appeals for 2nd Circuit, November 7, 1979." The latter document

provides certain payments to individuals caused to be displaced or dismissed because of merger. It bears the designation of Finance Docket No. 28250 and will be referred to herein as New York Dock Conditions or NYDC. Provisions of this document which are material and pertinent to the instant controversy have been quoted in our Award for Docket CRT-906.

The Raritan-Conrail merger became effective April 24, 1980.

#### CIRCUMSTANCES

Claimant entered the service of Raritan on 12/21/70 in the Maintenance of Way Department. He acquired Fireman seniority on 9/7/76 and Engineer seniority on 9/17/76. He was employed as a Fireman when the merger of Raritan and Conrail became effective, April 24, 1980.

On 1/6/83, claimant's job as a Fireman (on YJRR10) was abolished. By letter dated 1/7/83, supplemented by letter dated 1/21/83, claimant requested the protective benefits of the NYDC "due to the abolishment of the Fireman's job on YJRR10, Parlin, N. J." Carrier denied this request.

#### POSITIONS OF THE PARTIES

Claimant and Organization contend that Claimant's termination was a consequence of the Raritan-Conrail

merger, that is, the "transaction" identified by NYDC. It is further contended that the termination of claimant's position prevented him from exercising seniority in other crafts where he held seniority - another "direct result" of the transaction of April 24, 1980.

In Organization's view, "claimant was placed in a worse position with respect to his compensation when Conrail personnel performed service on the former Raritan River Railroad which had previously been performed by Raritan River employees". Claimant lists sixteen dates in January and February 1983 on which one to five named individuals are alleged to have been doing work which would ordinarily have been assigned to claimant.

Carrier denies that the abolishment of claimant's Fireman position was caused by the merger "transaction" of April 24, 1980. Carrier contends that the position was, in fact, lost by reason of Carrier's implementation of a federal statute, i.e. Section 702 of the Northeast Rail Service Act of 1981 (NERSA) dealing with reductions of crews in engine service. NERSA provides for certain termination allowances for each month of active service (up to a limit of \$25,000) for employees whose positions have been abolished in conformance with NERSA's crew contraction provisions.

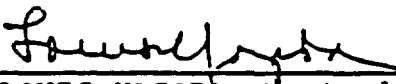
(In a letter dated February 28, 1983, claimant acknowledges his having been subjected to NERSA surplussing from his fireman's position but points to the alleged carrying on of other work by others to which he also has seniority preference entitlement).


OPINION

Claimant has not satisfied his burden of proof under NYDC of showing that the "transaction" as defined (i.e. the Raritan-Conrail merger) was responsible for abolishment of claimant's position. In fact, by citing the alleged continuation of work by others which he has done and is entitled to do, claimant appears to be arguing that the merger did not make necessary the termination of his employment. On that basis he may have or may have had a cause for action on other grounds. But there is absent proof that the merger caused his displacement, within the meaning of NYDC.

AWARD

Fireman S. T. Vona is not entitled to the benefits described in the "New York Dock Conditions" as requested on January 7th and supplemented on January 21, 1983, due to the abolishment of his position on January 5, 1983.

  
LOUIS YAGODA, Neutral Member

  
C. W. BRYANT, Organization Member

  
ROBERT O'NEILL, Carrier Member

Dated JUN 18 1985