In the Matter of:	
DELAWARE AND HUDSON RAILWAY COMPANY	
and	OPINION AND AWARD
BROTHERHODD RAILWAY CARMEN OF THE UNITED STATES AND CANADA	

Before: BOARD OF ARBITRATION

Members:

M. F. MELIUS — Carrier Member
Director - Labor Relations
and Human Resources
Delaware and Hudson Railway Company

WILLIAM G. FAIRCHILD — Employee Member
General Vice President
Brotherhood Railway Carmen
of the United States and Canada

H. STEPHAN GORDON — Neutral Member
Arbitrator

Place and Date of Hearing: Watervliet, New York
July 20, 21, 1983

In an Interim Award issued in February 1983, this Board of Arbitration found by majority opinion that as of September 27, 1980, and thereafter, the acquisition and operation by the Delaware and Hudson Railway Company (hereinafter referred to as D&H) of the Scranton-Binghamton line (hereinafter referred to as the Conrail Line) which it had purchased from the Consolidated Rail Corporation (hereinafter referred to as Conrail), adversely affected the employment conditions of D&H employees at the latters Oneonta and Green Ridge facilities and that as of September 27, 1980, such adversely affected employees were entitled to the protective provisions and benefits of New York Dock Railway-Control-Brooklyn Eastern District, 360 ICC 60 (1979).

In view of the fact that the originial record in this case neither permitted specific findings regarding the individual identity of such adversely affected employees nor the extent of such adverse effects, the parties to the proceeding mutually agreed that upon the issuance of the Interim Award, they would attempt to settle on a voluntary and amicable basis the questions of identity of any employees adversely affected and the benefits, if any, to which such employees may be entitled.

After the issuance of the Interim Award, which is incorporated herein and made a part hereof, the parties engaged in prolonged negotiations. In July 1983, the parties, not having been able to reach agreement on the questions posed above, requested that the Board be reconvened for the purpose of settling these outstanding issues. Accordingly, additional hearings were conducted by the Board on July 20th and 21st, 1983, at Watervliet, New York.

During the course of these hearings, the Company reiterated many of the arguments advanced at the original hearings. Thus, the Company maintained its position that the operational and personnel changes instituted at its Oneonta and Green Ridge facilities were due solely to its precarious and then deteriorating economic conditions and were not related to D&H's acquisition of the Conrail Line and certain Conrail facilities.

While the Company attributed its personnel changes to such factors as the Russian grain embargo, the age and deterioration of its equipment, the loss of certain accounts such as Bethlehem Steel, and the reduction of the number of trains coming from Canada, it failed, despite repeated attempts to elicit such information, to introduce any evidence which would have connected these alleged economic factors at least in point of time to the operational and

personnel changes which occurred at Oneonta and Green Ridge in late 1980. Nor did the Company, despite numerous requests, introduce any documentary or statistical evidence upon which this Board could base any findings that these changes were, indeed, related to economic conditions prevailing in late 1980. Indeed, while the Company offered undisputed allegations regarding the decrease of work load at Oneonta and Green Ridge at the present time, it consistently failed to respond to questions how its allegations related to the situation at the aforementioned work sites on or about the time the changes were actually instituted.

The Union introduced into evidence voluminous records showing the drastic decline in the number of trains serviced at Oneonta immediately after the classification and switching operation was transferred from Oneonta to the newly acquired Binghamton facility. These records, Car Inspector Reports 4314, which are legally required to be kept and which are in the Company's possession, show quite clearly that substantially the same number of cars arriving with a train at Oneonta would leave Oneonta for Binghamton. The implication is quite clear that the classification and switching operations previously accomplished at Oneonta were no longer performed there, since the acquisition of the Binghamton facility rendered such an operation obsolete.

The Company disputed the accuracy of the documents referred to above and also questioned their probative value because the mere number of cars would not necessarily show that no switching and classification functions were performed. The fact that a train would leave Oneonta with essentially the number of cars it arrived with does not necessarily indicate that cars were not switched and other cars added. The fact that the number of cars remained essentially the same, the Company argues, could be quite co-incidental. The Company undertook at the hearing to supply the Board with contrary evidence and the record was left open for that purpose. However, to date no such evidence has been submitted.

On the basis of the entire record, we are constrained to reiterate our original finding that the operational and personnel changes instituted by D&H at its Oneonta and Green Ridge facilities were due to the acquisition and operation of the Conrail Line and that such acquisition and operation did have an adverse impact on the employees listed below.

As already noted in the Interim Award, which is incorporated herein, the elimination of the switching and classification operations at Oneonta would have not been feasible without the utilization of the Binghamton facility. Similarly, the transfer

from Green Ridge could not have been accomplished without the acquisition of the Taylor Yard. It is equally clear from the evidence that with the acquisition of the Conrail Line, the classification and switching operations at Oneonta, New York became obsolete and were logically performed at Binghamton.

When these findings are coupled with the fact that the operational and personnel changes in issue completely coincided in time with the acquisition of the Conrail Line and, indeed, were anticipated both in the purchase agreement and the Company's representations to the Interstate Commerce Commission, the conclusion is inescapable that these changes were occasioned by D&H's acquisition of the Conrail Line.

In the absence of any probative evidence that other events or other economic factors caused the operational and personnel changes herein litigated, we are also constrained to find that the employees enumerated below were adversely affected by the change in operations occasioned by the acquisition of the Conrail Line and are entitled to the benefits of the protective provisions developed in New York Dock, supra.

Essentially for the same reasons, we find that D&H's transfer of its operation from its Green Ridge Yard to the newly acquired Taylor Yard was occasioned by its acquisition of the Conrail Line and that the concomitant displacement of the below listed Green Ridge employees was due to such acquisition. It must folow, therefore, that these employees are also entitled to the protective benefits of New York Dock, supra.

The fact that the affected employees at Green Ridge, Pennsylvania bid in positions at D&H's Hudson, Pennsylvania facility under a spiked senority roster and subsequently transferred to the Taylor Yard, does not detract from the fact that the abolishment of the operation at Green Ridge and the transfer of such operation to the Taylor Yard occasioned the abolishment of their jobs at Green Ridge and adversely affected their employment. Having found, in the absence of probative evidence to the contrary, that such change was due to the purchase of the Conrail Line and the concomitant acquisition of the Taylor Yard, we must also find that these employees were entitled to the benefits of the protective provisions of New York Dock, supra, as of the time their jobs were effectively abolished at Green Ridge, Pennsylvania.

Nor does the fact that about almost two years later, in June 1982, the seniority rosters of Hudson and Taylor were dove-tailed, thus restoring these employees' original seniority standing, alter the protective benefits of New York Dock, supra, which accrued to these employees effective with the abolishment of their jobs at Green Ridge. A contrary holding, as urged by the Company, would not be consistent with either the spirit, objectives, or, indeed, the unambigious language of New York Dock, supra.

During the hearing conducted on July 20th and 21st, 1983, the parties introduced evidence regarding the employment history of the employees allegedly adversely affected by the acquisition of the Conrail Line. However, the parties were not prepard to submit evidence with respect to actual earnings, hours worked, wage raises, or interim earnings. In view of the fact that the parties on the record desired that the Board not only determine which employees, if any, were adversely affected and entitled to the protective benefits of New York Dock, but that the Board also determine the monetary amounts, if any, due such employees, the record was left open for the submission of relevant evidence pertaining to these questions. Although it was pointed out during the hearing that the Board, at best, could only determine any monetary benefits as of a given date and would not be able to make

specific awards in futuro, the parties desired that such determination be made by the Board at least to the date for which appropriate data would be furnished. The parties further agreed that the Employer would supply relevant data concerning hours worked, wage raises, and actual earnings, while the Union would obtain from the employees information regarding their earnings either with D&H or through other interim employment. The parties agreed to exchange such information and submit the data to the neutral member.

By late October 1983, such data was, indeed, submitted in rather voluminous, albeit, raw format. After a comprehensive and rather prolonged analysis of the employment and earnings data submitted by the parties, it becomes apparent that on the basis of the submitted evidence, the Board is unable to accommodate the request of the parties to allocate specific amounts which may be due the adversely affected employees from the time of their displacement to the time encompassed by the proffered information. A careful evaluation discloses that the available employment records are incomplete and a careful cross-check of these records discloses inexplicable voids, overlapping and inconsistencies. These ambiguities in the employment records were particularly significant, because the periods of employment as well as the

actual earnings of individual employees which were suggested by the Company and were to be the basis upon which the necessary computations could be premised, substantially differed in most cases from similar information suggested by the employees. Moreover, in some cases, employees had failed to submit any informatin either with respect to regular or interim earnings. In the absence of any explanation or reconciliation of these variances by the parties we must regretfully conclude that, despite serious and prolonged efforts, we are not able to make the computations necessary for the specific findings the parties requested. A reconciliation of the variances and voluminous discrepancies disclosed by the proffered evidence would require an additional hearing and possibly additional testimony. Since the length and complexity of such a hearing cannot be predicted with any certainty and could subject the parties to considerable additional expense, the Board is reluctant to order such a hearing without the express consent or request of the parties concerned. This is especially so, because the requested findings of specific amounts due are not an integral or indispensible part of this award and could not, as already noted above, include the entire periods of entitlement.

Under the circumstances, the Board will limit its findings herein to the names of the individual employees entitled to the benefits of the protective provisions of New York Dock, supra, and the periods of their individual entitlement. The more detailed findings requested by the parties are compliance matters which, under the circumstances described above, must be left to the parties. The applicable provisions of New York Dock are clear and unambiguous and need no further explication by this Board. It is anticipated that the parties will be able to reconcile the above referred to discrepancies regarding periods of employment, wages, and interim earnings and effectuate full compliance with this award. In the absence of such agreement, these compliance matters must, at the option of the parties, be left to future proceedings either before this or a different Board of Arbitration.

The following employees were adversely affected by D&H's acquisition and operation of the Conrail Line and are entitled to the benefits of the protective provisions of New York Dock, supra, for the periods of time shown after their respective names.

ONEONTA

NAME	ENTRANCE DATE	DISPLACEMENT DATE	PERIOD OF ENTITLEMENT
AMES, Robert W., Jr.	7/9/74	12/23/80	12/23/80 - 12/23/86
AVERY, Richard C.	2/10/64	12/23/80	12/23/80 - 12/23/86
BLASETTI, John V.	12/14/76	12/23/80	12/23/80 - 1/7/85
BRADLEY, John D.	10/14/76	12/23/80	12/23/80 - 3/4/85
BRATCHER, Galvester A.	4/4/77	12/23/80	12/23/80 - 9/11/84
BROWN, Bruce A.	12/1/76	12/30/80	12/30/80 - 1/28/85
BUSH, Wayne K.	10/5/67	12/23/80	12/23/80 - 12/23/86
CLEMONS, William C.	9/11/74	12/23/80	12/23/80 - 4/4/85
COLONE, David S.	12/1/76	12/23/80	12/23/80 - 1/15/85
GRAVES, Terry L.	7/26/74	2/10/81	2/10/81 - 2/10/87
HALSTEAD, Thomas E.	8/1/73	12/30/80	12/30/80 - 12/30/86
HAMMOND, John J.	6/17/68	12/30/80	12/30/80 - 12/30/86
HARKENRAEDER, Frank	3/26/45	12/23/80	12/23/80 - 12/23/86
HOFFMAN, Jakob	10/1/74	12/23/80	12/23/80 - 12/23/86
INGALLS, Paul L.	4/4/77	12/23/80	12/23/80 - 9/18/84
LLOYD, John T.	7/1/68	12/23/80	12/23/80 - 12/23/86
LOGAN, Gary J.	5/11/77	12/23/80	12/23/80 - 6/4/84
McMULLIN, M.	3/6/64	12/30/80	12/30/80 - 12/30/86
MOTT, James R.	9/6/67	2/10/81	2/10/81 - 2/10/87
MURPHY, Michael	11/17/76	12/23/80	12/23/80 - 1/29/85
O'CONNOR, James A.	7/9/74	2/10/81	2/10/81 - 2/10/87
O'CONNOR, Joseph P.	1/19/74	12/23/80	12/23/80 - 12/23/86

ONEONTA

NAME	ENTRANCE DATE	DISPLACEMENT DATE	PERIOD OF ENTITLEMENT
OSTERHOUDT, Carl M.	8/28/47	12/30/80	12/30/80 - 12/30/86
SIEMS, Fred	5/20/64	12/23/80	12/23/80 - 12/23/86
SPARACO, Patrick L.	9/11/74	12/23/80	12/23/80 - 12/23/86
THOMAS, Richard	2/24/70	12/30/80	12/23/80 - 12/30/86
TYRON, Donald A.	10/13/76	12/23/80	12/23/80 - 3/5/85
WISLOUS, Alexander	3/13/42	12/30/80	12/30/80 - 12/30/86
YOUNG, LeGrande B.	5/10/76	12/23/80	12/23/80 - 8/5/85

GREEN RIDGE

NAME	ENTRANCE DATE	DISPLACEMENT DATE	PERIOD OF ENTITLEMENT
CARACHILO, Thomas G.	7/8/69	11/25/80	11/25/80 - 11/25/86
SCHIRANO, Peter G.	10/1/69	11/25/80	11/25/80 - 11/25/86
SWINGLE, Frederick C.	3/21/43	11/25/80	11/25/80 - 11/25/86

During the course of the hearings the parties raised the issue whether the period of entitlement under New York Dock should be based on the system-wide length of service with D&H or whether such period should be based on an employee's length of service at the affected locations, i.e. Oneonta and Green Ridge, and on the length of service in the specific job classification from which

the adversely affected employee was displaced. At the request of the parties, the record was left open for the submission of legal memoranda on this point. Such a legal memorandum was submitted by the Union. A careful reading of the applicable provisions convinces us that the periods of entitlement are to be computed on the employees total service with the Company and the above cited periods are calculated on that premise.

Moreover, while the above computations encompass gross periods of time, they must, of course, be considered in the light of Sections 5(b), (c) and 6(b), (d) of New York Dock, and are not meant to include benefits during periods when an employee is unable or unwilling to work due to such factors as voluntary absences, leave of absences, inability to work due to illness or injury, refusals to honor recalls, disciplinary suspension or discharge for cause. In the absence of specific evidence on such contingencies, such matter are left to the compliance stages of this case, and, in the absence of agreement, to future proceedings in conformance with New York Dock.

AWARD

The employment conditions of the above listed employees of the Delaware and Hudson Railway Company were adversely affected by D&H's acquisition of the Conrail Line from the Consolidated Railway Corporation, and the above listed employees are entitled to the benefits of the protective provisions of New York Dock Railway-Control-Brooklyn Division, 360 ICC 60 (1979).

M. F. MELIUS,
Carrier Member

DATE: 6/8/84

William G. Fairchild
WILLIAM G. FAIRCHILD,
Employee Member

DATE: 3/6/84

Dissenting

H. STEPHAN GORDON,
Neutral Member

DATE: 2/14/84

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February -- , 1984