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ARBITRATION ESTABLISHED UNDER ARTICLE I, SECTION 11(a)
OF THE NEW YORK DOCK CONDITIONS

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In the Matter of Arbitration Between: *

The International Organization of Masters, * OPINION AND AWARD
Mates and Pilots *
*
-and- * OF
* ARBITRATION COMMITTEE
The Chesapeake and Ohio Railway Company *
* * * * *

ARBITRATION COMMITTEE

Robert M. O'Brien - Neutral Member
 Jerry E. Edwards - Organization Member
 Earl F. Norton, Jr. - Carrier Member

APPEARANCES

For the International Organization of Masters, Mates and Pilots:

John O'B. Clarke, Jr. - Attorney
 Highsaw & Mahoney, P.C.

For the Chesapeake and Ohio Railway Company:

Earl F. Norton, Jr. - Assistant Director of
 Labor Relations

PERTINENT NEW YORK DOCK CONDITIONS

ARTICLE I

1. Definitions.-(a) "Transaction" means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed.

(b) "Displaced employee" means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensa-

tion and rules governing his working conditions.

(c) "Dismissed employee" means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.

ARTICLE 11

11. Arbitration of disputes.-(a) In the event the railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this Appendix, except Section 4 and Section 12 of this Article I, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee. . . .

(e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

STATEMENT OF THE ISSUE

As framed by the Arbitration Committee, the questions to be resolved are as follows:

Did the carfloat abandonment on March 15, 1981, and the subsequent coordination of traffic between the Chesapeake and Ohio Railway Company and the Seaboard Coast Line Railroad Company, approved by the Interstate Commerce Commission in Finance Docket No. 28905, adversely affect any employee represented by the International Organization of Masters, Mates and Pilots thereby making them eligible for the benefits provided by the New York Dock conditions?

If so, what shall be the remedy?

BACKGROUND

In Finance Docket No. 28905, service date September 25, 1980, the Interstate Commerce Commission [hereinafter referred to as the ICC] authorized acquisition of control by CSX Corporation of the Chess System, Inc. and Seaboard Coast Line Industries, Inc. The Chesapeake and Ohio Railway Company [hereinafter referred to as the Carrier] was also granted authority under Interstate Commerce Commission Docket No. AB-18 to abandon its carfloat operations between Newport News, Virginia and the Naval Operating base located across the harbor in Norfolk, Virginia. In its Decision, the ICC imposed the labor protective conditions set forth in New York Dock RY-Control-Brookline Eastern District 360 ICC 60 (1979) [hereinafter referred to as the New York Dock conditions].

In April of 1981, a dispute arose between the International Organization of Masters, Mates and Pilots [hereinafter referred to as the Organization] and the Carrier regarding the interpretation, application and enforcement of the New York Dock conditions to members of the Organization. When the parties were unable to resolve that dispute it was referred to an arbitration committee as required by Article I - Section 11 of the New York Dock conditions. As observed previously, Robert M. O'Brien was selected as the Neutral Member of the Arbitration Committee; Captain Jerry Edwards was appointed the Organization's Member of the Arbitration Committee; and Earl F. Norton, Jr. was appointed Carrier's Member of the Arbitration Committee. This

Arbitration Committee herein renders its findings of fact; conclusions; and resolution of the issues submitted to us.

STATEMENT OF THE FACTS

The facts evidence that prior to March 15, 1981, the Carrier operated a carfloat rail service between Newport News, Virginia and the United States Naval base and Sewells Point in Norfolk, Virginia. It was approximately six (6) miles across the harbor from Newport News to the United States Naval base; and approximately seven (7) miles from Newport News to Sewells Point. The Carrier utilized three (3) carfloats and three (3) tugboats to move grain and other commodities across the harbor. A carfloat was manned by one Captain-Engineer who was not represented by the Organization. A normal tugboat crew consisted of a pilot; a mate; an engineer; and two deck hands. The Carrier operated two (2) carfloats and three (3) tugboats twenty-four hours per day, seven days per week. Four (4) full crews were required for each tugboat. Each crew worked twelve (12) hour shifts with either twenty-four (24) hours or forty-eight (48) hours off between shifts. The Organization represents pilots and mates assigned to these tugboats.

The evidence also demonstrates that tugboats were used for a variety of purposes in addition to the aforementioned carfloat operation. The docking and undocking of coal ships represented the preponderance of non-carfloat duties performed by the crews assigned to Carrier's tugboats at Newport News, Virginia.

As noted heretofore, on September 25, 1980, the Interstate Commerce Commission authorized the Carrier to abandon its carfloat operations between Newport News, Virginia and the United States Naval base, and Sewells Point in Norfolk, Virginia. The ICC also authorized the Carrier to reroute its carfloat traffic over a land-based route. When it issued its decision, the ICC imposed the labor protective conditions set forth in New York Dock. On March 15, 1981, the Carrier abandoned its carfloat operation at Newport News, Virginia. No member of the Organization was immediately displaced or dismissed as a result of this abandonment, however.

On April 22, 1981, the Carrier notified its marine employees at Newport News that effective Thursday, April 23, 1981, all crews on all tugs were abolished due to the United Mine Worker's strike. However, despite this notice, one crew was immediately re-established to work five (5) days per week, eight (8) hours a day. All the remaining crews at Newport News were re-established on June 22, 1981 after the Mine Worker's strike ended.

On April 28, 1981, the Organization advised the Carrier that, in its view, at least fifty percent (50%) of the job abolishments effectuated on April 23, 1981 were related to Carrier's abandonment of its carfloat operations at Newport News. On May 4, 1981, the Carrier responded that, in its judgment, these furloughs were caused by the emergency conditions created by the United Mine Worker's strike. The Organization, however, was of the opinion that force reductions would not

have occurred in the magnitude they did during the strike but for the coordination approved by the ICC on September 25, 1980. Consequently, on June 9, 1981, the Organization invoked the arbitration procedures established by Article I, Section 11 of the New York Dock conditions.

On September 21, 1982, a hearing was held before this Arbitration Committee. The Organization and the Carrier both submitted extensive pre-hearing submissions outlining their respective positions in the dispute at hand. They also filed post-hearing Briefs in November, 1982; and rebuttal Briefs in March, 1983. Upon receipt of both rebuttal Briefs, the arbitration hearing was declared closed.

ORGANIZATION'S POSITION

It is the Organization's contention that the Carrier would not have reduced its marine forces to the extent it did in April, 1981 had it not previously abandoned its carfloat operations at Newport News; and rerouted its carfloat traffic to and from the Norfolk, Virginia area via Weldon, North Carolina. The Organization submits that although there were three (3) previous strikes by the United Mine Workers that affected coal shipments in the Norfolk, Virginia area between 1970 and 1981, the Carrier never curtailed its marine operations in Norfolk Harbor to the extent it reduced them in April of 1981. It is the Organization's view that had the Carrier not abandoned its carfloat operations, it would have reduced its service only to the level of the 1977 strike, that is, 2 tugboats and 2 carfloats fully staffed; and 1 tugboat reduced to 2 eight-hour shifts. The Organization contends that since

eight (8) hours of each twelve (12) hour shift was devoted to Carrier's carfloat operation, at least 50% of the tug force would have been retained during the 1981 strike. The Organization emphasizes that the carfloats primarily moved grain, not coal. Thus, the mine workers' strike would not have affected Carrier's carfloat operation.

The Organization insists that all of its members who were furloughed effective April 23, 1981, were affected by a "transaction" as that term is defined in the New York Dock conditions. Consequently, since they were displaced employees they were entitled to displacement allowance, and, for some, a dismissal allowance for a limited period of time. The Organization stresses that the ICC imposed a burden on the Carrier to prove that something other than the abandonment of its carfloat rail service at Newport News affected its members. In the Organization's view, the Carrier has not sustained the burden imposed on it.

The Organization asserts that all of its members who were employed by the Carrier at Newport News were adversely affected by Carrier's abandonment of its carfloat rail service. It contends that the nature of their work changed; and although their rates of pay did not change, their overtime opportunities were drastically reduced. The Organization posits that all 25 employees on the seniority roster at Newport News, Virginia were placed "in a worse position with respect to compensation" between April and June, 1981. They were, therefore, entitled to the monetary guarantees set forth in the New York Dock conditions.

The Organization insists that when the terms of the New York Dock conditions are considered in conjunction with prior interpretations of the 1936 Washington Job Protection Agreement, the correct meaning of the term "displaced employee" becomes clear. In the Organization's opinion, the construction placed on the term "displaced employee" by the Carrier in this proceeding is contrary to the provisions of the New York Dock conditions. The Organization insists that all its members on the seniority roster at Newport News were indeed "displaced employees" inasmuch as two-thirds of their previous duties were abandoned; and their work schedules were adjusted as a result of Carrier's abandonment of carfloat rail service and its subsequent rerouting of traffic destined to and from the Norfolk, Virginia area. While no employee was immediately furloughed or reduced to a lower classification following the abandonment, nevertheless the Organization avers that their total compensation was adversely affected by a diminution in their overtime opportunities, and ultimately by their furloughs effective April 23, 1981.

The Organization insists that Carrier's abandonment of its carfloat rail service, and its subsequent traffic coordination over a land-based route were the proximate cause of the Claimants' furloughs since Carrier would not have reduced its marine forces at Newport News, Virginia to the extent it did during April, May and June, 1981 were it not for these transactions. The burden rests with the Carrier, the Organization submits, to prove that its carfloat abandonment and its

concomitant traffic coordination were not factors in the furloughs effectuated on April 23, 1981. Since the Carrier has failed to demonstrate that these transactions played no part in the Claimants' loss of earnings during April, May and June, 1981, the Claimants are therefore entitled to the monetary guarantees set forth in the New York Dock conditions, in the Organization's opinion. The Organization requests this Arbitration Committee to award Claimants the benefits guaranteed them by New York Dock.

CARRIER'S POSITION

The Carrier retorts that there was simply no "transaction" as that term is defined in Article I, Section 1(a) of the New York Dock conditions. It insists that the emergency force reduction effected during April, May and June, 1981 was caused solely by the strike conducted by the United Mine Workers. In the light of this emergency, the Carrier maintains that Rule 17 of its Schedule Agreement with the Organization allowed it to temporarily furlough the Claimants which furloughs were in no way authorized by the ICC. Consequently, there was no "transaction" subject to the dispute resolution procedures of Article I, Section 11 of the New York Dock conditions, in the Carrier's opinion.

The Carrier contends that its emergency force reduction had absolutely no relation to its abandonment of carfloat rail service at Newport News, Virginia. It maintains that no member of the Organization was "displaced" or "dismissed" as the result of its carfloat abandon-

ment. Rather, they all held the same positions at Newport News; at the same rates of pay; and subject to the same working conditions subsequent to the abandonment of carfloat rail service. Moreover, when the United Mine Worker's strike ended in June, 1981, all members of the Organization were returned to active service on the same positions they held prior to April 23, 1981.

In the Carrier's view the Organization has clearly misconstrued the New York Dock conditions. For instance, it has ignored its obligation to establish a direct and proximate cause between the ICC approved transaction and the furlough of its members in April of 1981. The Carrier avers that it is not its obligation to prove that the carfloat abandonment was not the direct and proximate cause of the Claimants' furloughs. Rather, it was the Organization's burden to establish that the Claimants were placed in a worse position with respect to their compensation and rules governing their working conditions because of the ICC authorized transaction. However, the Carrier contends that the evidence clearly reveals that the force reduction which occurred on April 23, 1981 was caused entirely by the decline in business it experienced as a result of the nationwide coal strike. There was simply no causal nexus between this force reduction and its previous carfloat abandonment, the Carrier asserts. Inasmuch as no Claimant was either a "displaced employee" or a "dismissed employee" as those terms are defined in Article 1, Section 1 of the New York Dock conditions, the New York Dock conditions were clearly inapplicable to them.

The Carrier therefore respectfully urges this Arbitration Committee to deny the instant claim in its entirety.

FINDINGS AND OPINION OF THE ARBITRATION COMMITTEE

Initially, this Arbitration Committee finds that the Organization has clearly misconstrued the appropriate burden of proof in arbitration proceedings under New York Dock. The burden does not rest with the Carrier to prove that its carfloat abandonment at Newport News, Virginia; and its concomitant traffic coordination over a land-based route were not factors in the April 23, 1981 furloughs (emphasis added). Rather, Article 1, Section 11(e) specifically provides that "[I]n the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. . . ." It is only after the employee has sustained this burden that the burden then shifts to the Carrier ". . .to prove that factors other than a transaction affected the employee."

To further guide the parties, the ICC has explicitly defined the term "transaction" as "any action taken pursuant to authorizations of this [ICC] Commission on which these [New York Dock] provisions have been imposed." It is obvious from such a clear definition of the term "transaction" that the ICC intended to exclude any action taken by a railroad that was not authorized by it.

This Arbitration Committee subscribes to the reasoning pronounced by other arbitration committees established pursuant to Article 1, Sec-

tion 11(a) of New York Dock that loss of earnings, and/or abolishment of positions, by themselves, do not entitle employees to the labor protective benefits set forth in New York Dock. Rather, it must be shown that there existed a causal nexus between a "transaction" and the adverse impact experienced by employees claiming the protective benefits established by the New York Dock conditions. Absent such causal nexus, said employees are not entitled to the benefits provided by the New York Dock conditions despite the fact that they may have suffered some loss of earnings, or that their positions were abolished, subsequent to the ICC authorized "transaction."

Applying the foregoing standards to the evidence presented to us, this Arbitration Committee is compelled to conclude that the Claimants have not proven that they were adversely affected by "any action taken pursuant to authorizations of this [ICC] Commission on which these [New York Dock] provisions have been imposed." Rather, the Carrier has convinced us that the reduction in force which occurred during April, May and June, 1981 was caused solely by the effects of the nationwide strike conducted by the United Mine Workers.

This Committee is simply not persuaded that a causal relation was shown to exist between Carrier's abandonment of carfloat rail service between Newport News, Virginia and Norfolk, Virginia and the April, 1981 reduction in force. It must be observed that the Claimants manned Carrier's tugboats at Newport News, not its carfloats. While movement of carfloats was admittedly a significant aspect of the Claimants' duties prior to March 15, 1981, the Carrier has convinced this

Committee that sufficient work existed for the Claimants to perform during normal business conditions in addition to the movement of carfloats at Newport News. It is undisputed that the non-carfloat duties consisted primarily of docking and undocking coal ships. Of course, those tasks continued subsequent to abandonment of carfloat rail service at Newport News.

It must further be observed that no member of the Organization was immediately furloughed or reduced to a lower paying classification in March of 1981 when Carrier abandoned its carfloat rail service at Newport News. It is also significant to note that on June 22, 1981, following settlement of the United Mine Worker's strike, all tugboat crews were reestablished at Newport News (emphasis added). All crew members held the same positions; at the same rates of pay; and were subject to the same working conditions that prevailed prior to the carfloat abandonment. They were simply not placed in a worse position with respect to their compensation or rules governing their working conditions as a result of the ICC authorized "transaction," in our considered judgment. Nor was any member of the Organization deprived of employment with the Carrier as a result of the ICC authorized "transaction." Consequently, no member of the Organization was either a "displaced employee," or a "dismissed employee," as those terms are used in Article I, Section 1 of the New York Dock conditions.

The Organization argues that there have been other United Mine Worker's strikes prior to the one that occurred in April of 1981, yet

the Carrier never reduced its marine operations in Norfolk Harbor to the extent that it did during the 1981 strike. However, it is mere speculation on the Organization's part that Carrier would have reduced its marine forces to the same level it did during the 1977 United Mine Worker's strike were it not for the carfloat abandonment. It is simply unreasonable to assume that the business conditions extant in 1977 were comparable to those that prevailed in 1981. More probative and substantial evidence is required before this Arbitration Committee could reasonably infer that the 1977 tugboat complement would have been retained by the Carrier during the 1981 United Mine Worker's strike were it not for the abandonment of carfloat rail service at Newport News.

This Arbitration Committee further concludes that the Organization's reliance on interpretations under the Washington Job Protection Agreement of 1936 is misplaced. It must be stressed that it is the specific terms and requirements of the New York Dock conditions that govern this proceeding, not those of the Washington Job Protection Agreement. As noted previously, the ICC has placed the initial burden on the employees who claim that they were affected by any action taken pursuant to its authorization to identify the transaction that affected them. Inasmuch as the Claimants have failed to establish a causal relation between their furloughs effective April 23, 1981 and the September 25, 1980 ICC decision which allowed the Carrier to abandon its carfloat rail service between Newport News, Virginia and Norfolk, Virginia, we are constrained to conclude that they have not met the burden

imposed on them by the New York Dock conditions. Consequently, their reliance on interpretations of the Washington Job Protection Agreement lend no support to their claim.

Based on all the foregoing, the instant claim must be denied.

AWARD

The carfloat abandonment on March 15, 1981, and the subsequent coordination of traffic between the Chesapeake and Ohio Railway Company and the Seaboard Coast Line Railroad Company, approved by the Interstate Commerce Commission in Finance Docket No. 28905, did not adversely affect the working conditions of those Chesapeake and Ohio employees represented by the Organization. Consequently, those employees are not eligible for the monetary guarantees provided by the New York Dock conditions.

Robert M. O'Brien

Robert M. O'Brien, Neutral Member

Dated:

Jerry E. Edwards, Organization Member
Dated:

Earl F. Norton, Jr., Carrier Member
Dated: