Arbitration pursuant to Article I - Section 4 of the employee protective conditions developed in New York Dock Ry.-Control-Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) as provided in ICC Finance Docket No. 30,000

PARTIES TO DISPUTE	Union Pacific Railroad Company) Missouri Pacific Railroad Company))	
	and)	DECISION
	Brotherhood Railway Carmen of the) United States and Canada)	

QUESTIONS AT ISSUE:

1. The manner in which Union Pacific and Missouri Pacific journeyman Carmen's seniority rosters are to be consolidated.

2. The question of whether or not the furloughing of Union Pacific Carmen at Kansas City and Council Bluffs on or about April 11, 1983 and any subsequent furloughs were a result of a "transaction" authorized by Finance Docket No. 30,000.

3. Whether one MP position formerly at Omaha can be transferred to Atchison, Kansas.

BACKGROUND:

On October 20, 1982, the Interstate Commerce Commission (ICC) served its Decision in Finance Docket No. 30,000 approving the merger of the Union Pacific Railroad (UP), the Missouri Pacific Railroad (MP) and the Western Pacific Railroad (WP). The ICC in its Decision imposed conditions for the protection of employees set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 350 I.C.C. 60 (1979) (New York Dock Conditions).

On February 14, 1983, the UP and MP served notice upon the UP and MP General Chairmen of the Brotherhood Railway Carmen of the United

States and Canada (BRC or Organization) pursuant to Article I, Section 4 of the New York Dock Conditions. The notice stated that the Carriers desired to coordinate certain MP Mechanical Department forces at Omaha, Nebraska with UP Mechanical Department forces at Council Bluffs, Iowa and thereafter to perform such operations on a consolidated basis under the UP schedule agreement. The Carriers proposed to transfer 10 Carmen positions from Omaha to Council Bluffs. The notice also stated that the Carriers proposed to transfer the work of two MP positions headquartered at Omaha and performing emergency road service to Atchison, Kansas, and to transfer two Carmen positions from Omaha to Atchison, Kansas.

On March 23, 1983, the UP and MP served another notice pursuant to Article I, Section 4 of the New York Dock Conditions upon the same BRC General Chairmen stating that the Carriers desired to coordinate UP Mechanical Department forces at Kansas City, Kansas, with MP Mechanical Department forces at Kansas City, Missouri, and thereafter to perform such operations on a consolidated basis under the MP schedule agreement. The notice also stated that ten Carmen positions would be abolished as a result of the coordination.

A hearing was held in this matter pursuant to Article I, Section 4(a)(1) on October 6, 1983. At that hearing the parties entered into a letter agreement specifying three issues to be arbitrated which are set out above as the Questions at Issue. The letter agreement also provided that the UP schedule agreement would govern in the coordination of forces at Omaha/Council Bluffs and the MP schedule agreement would govern in the consolidation of forces at Kansas City. The agreement

further stated that the Carriers would place UP employees at Kansas City on MP payrolls and MP employees at Omaha on UP payrolls. Finally, the letter agreement provided that the hearing would be rescheduled for October 21, 1983, in Reno, Nevada.

Hearing was held as provided in the letter agreement. The parties presented prehearing submissions and oral argument, and at the conclusion of the hearing the parties requested and were granted the opportunity to file post hearing briefs. The parties agreed to extend the time for a Decision in this case beyond that specified in Article I, Section 4(a)(3). All parties filed post hearing briefs.

FINDINGS:

The parties have complied with the procedural requirements of Article I, Section 4 of the New York Dock Conditions, and the Questions at Issue noted above are properly before this Neutral for determination.

1. Consolidation of Journeyman Carmen's Seniority Rosters

The first issue to be resolved in this proceeding is the manner in which the UP and MP journeyman Carmen's seniority rosters are to be consolidated.

a. Background

This dispute was precipitated by the different provisions of the MP and UP schedule agreements governing the establishment of journeyman Carmen's seniority. An employee who is a journeyman Carman when hired on either Carrier receives a Carman's seniority date as of the employee's date of hire. Under either schedule agreement an employee who is not a

journeyman when hired is required to work a specified number of days in the craft, either as an apprentice or in upgraded status, before establishing seniority as a journeyman.

Prior to October 1, 1977, the UP agreement provided that all employees who were not journeymen when hired were required to serve 1040 days in the Carmen's craft. Thereafter, the period of service in the craft was reduced to 732 days and retroactive seniority was granted for days lost attributable to vacation and paid jury duty. Subsequently, retroactive seniority was broadened to include bereavement leave and personal leave. These rules applied equally to employees working in the apprenticeship program as well as those working in an upgraded status. The latter group of employees are known as Rule 154 Carmen after the number of the agreement rule pursuant to which they attain journeyman status by working the requisite number of days in the craft in upgraded status.

For many years the MP agreement required a period of 732 days of working in the craft, either as an apprentice or an upgraded helper (similar to a Rule 154 Carman on the UP), for employees who were not journeymen when hired. Neither group received retroactive seniority upon establishing a journeyman seniority date. However, by amendments to the agreement which were in effect from April 1, 1973, to September 17, 1980, apprentices received retroactive seniority for up to 732 days of apprenticeship served. Retroactive seniority could not extend farther than April 1, 1973, the effective date of the amendments. The agreement was amended further, effective September 17, 1980, to eliminate retroactive seniority for employees beginning apprenticeships after that date. These amendments

also extended the apprenticeship training period to 757 days. Carmen helpers who were utilized by the Carrier as mechanics in periods of manpower shortage, always have been required under the MP agreement to serve 732 days in upgraded status before becoming a journeyman. Furthermore, MP upgraded helpers never received retroactive seniority for the 732 days served in upgraded status.

b. Parties' Positions

The Carriers and the MP Carmen argue that the journeyman rosters should be consolidated on the basis of journeyman seniority dates established under the applicable UP and MP schedule agreements. The UP Carmen would agree to dovetailing the seniority rosters only if the seniority date for all Carmen is the date of hire or entry into the craft or if the seniority dates for certain MP Carmen are modified. As an alternative to dovetailing on the basis of altered seniority dates, the UP Carmen propose that the seniority rosters of UP and MP Carmen remain separate and unchanged but that Carmen's work at the consolidated operations be allocated on a ratio of two UP Carmen to every one MP Carman.

The UP Carmen contend that dovetailing seniority rosters on the basis of existing seniority dates will result in an unfair advantage for MP Carmen due to the retroactive seniority established by MP Carmen which was unavailable to UP Carmen. MP Carmen could "leapfrog" UP Carmen on the consolidated rosters resulting in a situation whereby MP Carmen would have earlier seniority dates than UP Carmen who actually have been journeymen longer than the MP Carmen. Further inequities would result

from the fact that some UP Carmen may have served a longer apprenticeship than MP Carmen.

The UP Carmen vigorously argue that fairness and equity demand a uniformly defined seniority date for all UP and MP Carmen. The UP Carmen argue the seniority dates for all Carmen on the UP and MP could be changed to the date of entry into the craft. Alternatively, the UP Carmen argue that the journeyman seniority dates of MP Carmen who were granted retroactive seniority must be adjusted to eliminate any retroactivity. Recognizing that this modification of MP Carmen seniority would cause MP Carmen who became journeymen through the upgraded helper process to "leapfrog" ahead of MP Carmen who attained journeyman status as a result of apprenticeship, the UP Carmen urge that these employees be treated as "blockers" and placed directly behind the MP Carmen who attained journeyman status as a result of apprenticeship.

The UP Carmen support these arguments with a number of arbitration decisions consolidating seniority rosters in the context of airline mergers. For the most part these decisions illustrate modifications similar to the ones suggested by the UP Carmen in this case and implement such modifications as a fair and equitable basis for consolidation of seniority rosters.

The UP Carmen urge that what should be preserved on a consolidated roster is the relative seniority standing of employees rather than an artificially established seniority date. As an alternative to modification of any Carmen seniority dates, the UP Carmen advocate allocating work in the consolidated facilities on a two to one ratio in favor of UP Carmen. This approach would not change MP Carmen seniority in relation to other MP Carmen on their seniority roster and it preserves

the reasonable expectations of both Carmen's groups. Inasmuch as it is the MP operations which will diminish as a result of the merger and subsequent transactions, one of which is at issue in this case, the MP Carmen should have less expectation of work at the consolidated facilities. The UP Carmen support this alternative with arbitration decisions in both the railroad and airline industries illustrating utilization of a ratio formula.

The Carriers take the position that the journeyman Carmen seniority rosters should be consolidated on the basis of existing seniority dates without modification as proposed by the UP Carmen.

The Carriers claim that consolidation on the basis of existing seniority dates is fair and equitable because such dates were established pursuant to collectively bargained rules which all Carmen involved know and understand. The Carriers assert that the modification of seniority proposed by the UP Carmen would result in the very inequities, at least to some Carmen, that the UP Carmen claim they would suffer by virtue of consolidation of lists on the basis of existing seniority dates.

The Carriers allege that consolidation of seniority lists on the basis of existing seniority dates is well established. The Carriers point to agreements with other shop craft organizations on these and other carriers which contain such provisions. Furthermore, the Organization's General President has endorsed the Carrier's position.

The Carriers contend that a Neutral acting pursuant to Article I, Section 4 of the New York Dock Conditions has no authority to modify existing seniority dates in the manner urged by the UP Carmen. The

Carriers argue that such action is beyond the Neutral's jurisdiction because it would alter or modify the rules and benefits of existing collective bargaining arrangements which are preserved by Section 2 of the New York Dock Conditions.

The MP Carmen take substantially the same position as the Carriers and advance similar arguments in support of it. Additionally, the MP Carmen take the position that the arbitration decisions in the airline industry relied upon by the UP Carmen are inapposite.

c. Analysis and Opinion

Each of the proposals for consolidation of rosters advanced by the parties in this case must be evaluated on the basis of whether it is within the authority of a Neutral acting pursuant to Article I, Section 4 to implement the proposal, and if so whether that proposal is appropriate for application in this particular case.

The duty of a Neutral Referee acting pursuant to Article I, Section 4 of the New York Dock Conditions is to formulate an arrangement which ". . . shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case . . . ." While it is true, as urged by the UP Carmen, that a Neutral has broad latitude in formulating a basis for selection of forces under Article I, Section 4 and basically is limited only by the general proposition that such basis must be fair and equitable, this latitude is not without bounds. A Neutral is limited by Article I, Section 2 of the New York Dock Conditions which provides:

> 2. The rates of pay, rules, working conditions and all collective bargaining benefits 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.

Neutrals have ruled consistently that in formulating an arbitrated implementing arrangement under Article I, Section 4 it is beyond their jurisdiction by virtue of Article I, Section 2 to abrogate or amend collective bargaining agreements. See Baltimore & Ohio RR. Co. - Newburgh & South Shore Ry. Co. & Bro. Maintenance of Way Employees - United Steel Workers of America, Aug. 31, 1983 (Seidenberg, Neutral) and the awards cited therein.

It is obvious to this Neutral that the proposals by the UP Carmen to modify existing journeymen seniority dates either by an across the board change to date of hire in the craft or by calculating new seniority dates to eliminate retroactive seniority received by certain MP Carmen, would abrogate or modify existing collective bargaining agreements and the rights of Carmen under those agreements. As such these proposals are beyond the jurisdiction of a Neutral to implement under Article I, Section 4.

Assuming, arguendo, such jurisdiction exists, this Neutral must conclude that the proposals are inappropriate for application in this particular case. In terms of fairness and equity, they make no provision for the adjustment of retroactive seniority, albeit limited, received by UP Carmen. Furthermore, no precedent has been cited for their use in the

railroad industry generally or in situations involving consolidations of shop craft work specifically. Significantly, the Carmen's organization, the collective bargaining representative for all employees involved in this proceeding,has endorsed another proposal. The single Article I, Section 4 arbitration decision cited in support of these proposals, the Seidenberg award noted above, is distinguishable. It did not involve either of these proposals or the shop craft work. That decision actually preserved separate seniority established under existing collective bargaining agreements and in so doing followed the principle that those agreements may not be modified or abrogated by a Neutral acting under Article I, Section 4.

The proposal by the UP Carmen that they be given a two to one ratio job preference for work at the consolidated facilities has similar deficiencies. It is not clear that such an arrangement would not alter established seniority rights under existing agreements. Assuming, arguendo, that this jurisdictional hurdle could be overcome successfully, serious doubts remain as to the appropriateness of the proposal in this particular case. The railroad precedents relied upon in support of this proposition involve consolidations of operating forces rather than shop craft forces. There is no indication the proposal has been recognized or utilized with respect to the shop crafts. Here again it must be viewed as significant that the Carmen's collective bargaining representative and the Carriers endorse another proposal.

The UP Carmen rely heavily upon arbitration decisions dealing with protective conditions in the airline industry to support their proposals as fair and equitable. This Neutral believes the decisions

are inapposite. Analysis reveals that many of them involve arbitrations pursuant to the merger policies of the pilots' and flight attendants' organizations. While some of these decisions are based upon authority derived from protective conditions imposed by the Civil Aeronautics Board, it is not clear whether restrictions apply under those conditions similar to those of Article I, Section 2 of the New York Dock Conditions. Accordingly, the airline decisions relied upon by the UP Carmen are of dubious precedential value in this proceeding.

In the final analysis the proposal advocated by the Carriers and the MP Carmen for dovetailing seniority lists on the basis of existing seniority would not abrogate or alter existing collective bargaining agreements, would preserve the rights of employees under those agreements and would be consistent with what appears to be precedent or practice with respect to consolidations involving shop craft forces. The Carmen's organization endorses that proposal. It has been the basis for several agreements between the Carriers and the organizations representing their shop craft employees. It also has been the basis of agreements between shop craft organizations and other Carriers.

It is this Neutral's conclusion that dovetailing the MP and UP journeyman's seniority list on the basis of existing seniority represents the most appropriate basis for the assignment of forces made necessary by the transaction in this case. Accordingly, the attached arbitrated implementing arrangements include such provisions.

2. Furlough of UP Carmen at Kansas City and Council Bluffs

The next issue to be decided in this proceeding is whether UP Carmen at Kansas City and Council Bluffs furloughed on April 11, 1983, and June 21, 1983, were furloughed as a result of a transaction authorized by the ICC in its Decision in Finance Docket No. 30,000.

a. Background

On April 11, 1983, UP reduced its Mechanical Department employee force by laying off 365 shop craft employees including 163 Carmen at 24 locations. Seventeen Carmen at Omaha and fourteen Carmen at Kansas City were furloughed. On June 21, 1983, the Carrier laid off another 150 Mechanical Department employees system wide.

Several Carmen furloughed filed claims for benefits under the New York Dock Conditions. The Carrier denied these claims on a variety of grounds. However, the validity of these claims is not before this Neutral. Rather, the parties agreed to have this Neutral resolve the underlying issue.

b. Parties' Positions

The Carriers contend that the furloughs were the result of a decline in business and were not the result of a transaction. The UP and MP Carmen, speaking as one on this issue, vigorously disagree.

The Carmen argue that available economic data does not establish that the furloughs were precipitated by financial difficulties incurred by UP. In 1982 the Carrier was seventh among 24 major carriers in terms of operating ratios (percentage of operating revenues consumed

by operating expenses). In fact the Carrier's 90.5 percent operating ratio was significantly better than the 96.2 average posted by Class I railroads as a group. The net operating income produced a return to equity of 8.6 percent placing UP fourth among fifteen leading carriers. During the same period the Carrier's operating income as a percentage of operating revenues remained at approximately the same level as the previous year indicating a relatively unchanged operating efficiency.

The Carmen contend that this healthy financial picture continued through mid 1983. Current assets relative to current liabilities stood at 1.2 to 1 at the second quarter of 1983 compared to a ratio of 0.95 to 1 at the same time in 1981. Retained earnings improved approximately 1 percent in the same period. The Carrier showed a profit from operations through the end of the second quarter of 1983.

The Carmen believe that the furloughs reflect the implementation of the merged Carriers' plan to "streamline and consolidate" operations at Kansas City and Omaha/Council Bluffs as stated in the Carriers' application to the ICC. The Carmen argue that even though the transaction in this case was not completed at the time of the furloughs it does not follow that the furloughs were not the direct result of the transaction at issue in this case. Article I, Section 4 covers any transaction "contemplated" by a Carrier, and UP contemplated the transaction at the time of the furloughs.

The Carmen urge that the inquiry with respect to this issue must focus upon "location specific" data rather than system-wide data. In this regard the Carmen point to testimony at the arbitration hearing

that approximately 436,000 cars passed through the Kansas City facility between January 1, 1983, and August 31, 1983, for an average of 54,510 cars per month during the period. This represents an increase of 8.9 percent over the monthly average posted in the previous year and marks the first such increase posted since at least 1979. At the same time activity at Kansas City and Council Bluffs was not diminishing as demonstrated by substantial overtime work and shifting of Carmen's work to other crafts.

The Carmen urge that in the instant case the UP has failed to sustain its burden of proof under Article I, Section 11(e) of the New York Dock Conditions providing:

> In the event of any dispute as to whether or nor 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.

The Carmen contend that while they have identified the transaction and specified the pertinent facts thereof relied upon, the Carrier has failed to provide any evidence that the furloughs at Kansas City and Council Bluffs were not initiated in anticipation of the consolidation which has been contemplated since approval of the merger by the ICC.

The Carriers contend that there has been no transaction in this case. The Carriers have taken no action pursuant to its notices concerning the Kansas City and Omaha/Council Bluffs Mechanical Department forces because no agreement has been reached or implementing arrangement arbitrated pursuant to Article I, Section 4 of the New York Dock Conditions.

The Carriers urge that under the New York Dock Conditions a transaction is defined as "any action pursuant to authorization . . . ."

The Carriers urge that in any event the furloughs were the result of a decline in business.

The Carriers cite the number of cars and locomotives in storage as an indication of the depressed business activity on the UP. On the UP and WP cars and locomotives in storage increased from 7505 cars and 332 serviceable locomotives on March 7, 1983, to 9114 cars and 378 serviceable locomotives on April 11, 1983. The Carriers point to a depressed state of business during the four month period of February through May 1983 as compared to the same months in the previous two years. The 1983 figures for revenue, car loadings, gross ton miles and freight car density showed percentage decreases during the 1983 period ranging from 4.7 percent to 28.2 percent. Furthermore, in the quarter ending March 31, 1983, UP suffered a loss of 26.3 million in profit from a year earlier.

The Carriers cite a number of arbitration awards in support of the foregoing arguments. Basically these awards demonstrate that in order for protective conditions to apply adverse effect (displacement or dismissal) must be the result of a transaction. Furthermore, the employee must meet a certain burden of proof that the adverse effect resulted from a transaction. Some hold that adverse effect which is the result of a general decline in business is not the result of a transaction within the meaning of the protective conditions.

The Carriers also contend that even though UP basically is a financially sound institution, as demonstrated even by the evidence submitted by the Carmen, that factor is irrelevant to the issue in this case. The real issue, the Carriers contend, is whether there has been a decline in business on the UP which necessitated furloughing employees. The Carriers urge that indeed there was such a decline in business on the UP and the furloughing of shop craft employees was a device used to cut costs and maintain the financial health of the Carrier.

The Carriers attack the statistical information used by the Carmen to support their case on the ground that the information is general and refers only to the overall profitability of the company. The Carriers contend that information is irrelevant to the question of whether UP suffered a decline in business. The Carriers point out from an exhibit submitted by the Carmen that from 1981 to 1982 UP's operating revenues declined from $2,100,793,000 to $1,773,337,000. In the same period net revenue from railway operations declined from $292,350,000 to $168,968,000. Net railway operating income declined from $214,407,000 in 1981 to $127,734,000 in 1982. Net revenues from railway operations declined from $33,428,000 in 1982 to $21,641,000 in 1983. Operating revenues declined from $459,970,000 to $422,204,000 in the second quarter of 1983.

Total tonnage on UP declined steadily from 1980 through mid-1983. Tonnage in 1981 was 4.5 percent less than the previous year, and in 1982 it was 18.6 percent less than 1981. March through June of 1983 when compared with the same months in 1982 showed a continuing decline in tonnage.

The Carriers' car count for the Kansas City Terminal does not agree with the car count of the UP Local Chairman who testified at the arbitration hearing. The Carriers' figures show that for the months January through April from 1981 through 1983 there was a general decline in cars through the Kansas City Terminal. Further contrary to the Local Chairman's testimony, urges the Carriers, is the fact that a comparison of overtime costs in 1982 and 1983 at Kansas City does not reveal a significant difference.

Finally, the Carriers point out that the force reduction was system-wide in the Mechanical Department and involved lay-offs in all shop craft organizations. The Carriers argue that to have insulated the shop craft employees at Kansas City and Omaha/Council Bluffs from the April and June furloughs simply because those locations were involved in the instant proceeding would have discriminated against shop craft employees working at the other 22 locations.

c. Analysis and Opinion

The Carmen are correct that their sole burden here, as defined in Article I, Section 11(e) of the New York Dock Conditions is to identify the transaction and specify the pertinent facts which resulted in the furloughs. However, as this case demonstrates, such burden is not always easily met.

The Carmen have argued consistently that the furloughs were the result of the transaction at issue in this proceeding, ie., the consolidation of Mechanical Department operations at Kansas City and

Omaha/Council Bluffs. However, that conclusion does not comport with the fact that the layoffs were system wide in all shop crafts at 24 locations. In April the Carrier laid off 365 employees, only 163 of whom were Carmen. Of these, 14 were furloughed from Kansas City and 17 from Omaha/Council Bluffs. In this Neutral's opinion that evidence forces the conclusion that without regard to whether the furloughs were the result of a decline in business they were not the result of the transaction identified by the Carmen. Accordingly, the Carmen have not met the burden of proof under Article I, Section 11(e) of the New York Dock Conditions with respect to this issue.

In any event the record contains substantial evidence of a decline in business as the Carriers contend. Evaluation of the data submitted by both the Carriers and the Carmen supports the conclusion that the UP was generally healthy at all times material to the issue in this case, but did experience a system-wide decline in business. The system-wide furlough of shop craft employees relates more reasonably to the system-wide decline in business than it does to the consolidation of Mechanical Department facilities at Kansas City and Omaha/Council Bluffs.

Accordingly, this Neutral concludes that the furloughs of shop craft employees in April and June of 1983 were the result of a decline in business and were not the result of a transaction as provided in the New York Dock Conditions.

3. Transfer of One MP Carman Position From Omaha to Atchison, Kansas

The third and final issue to be decided in this proceeding is whether the Carriers can transfer one Carman's position from Omaha to Atchison, Kansas.

a. Background

By the notice of February 14, 1983, concerning the consolidation of Mechanical Department facilities at Omaha/Council Bluffs the Carriers proposed to transfer two Carmen from Omaha to Atchison, Kansas, approximately 100 miles from Omaha. The Carrier based its decision to transfer two employees upon an evaluation of the workload of MP Carmen at Omaha who perform road service which consists in part of rerailing cars with the use of blocks and rerailing frogs. An MP truck, normally manned by two Carmen, is stationed at Omaha. Atchison is an outlying point with its home point as Kansas City. Any Carman transferred to Atchison will be dovetailed on the Kansas City seniority list. Negotiations between the Carriers and the Organization reduced the number of Carmen positions proposed to be transferred to Atchison from two to one.

b. Parties' Positions

The Carriers argue that the Carman ought to be transferred from Omaha to Atchison to follow his work. In any event, urge the Carriers, the decision to transfer the work and the Carman position is one for the Carrier and not a Neutral acting pursuant to Article I, Section 4 of the New York Dock Conditions. In support of this proposition the Carriers cite this Neutral's decision in Bro. Ry. Carmen of the United States and Canada and B&O RR. Co./Louisville & Nashville RR. Co., Jan. 12, 1983.

The Carriers point out that the Carmen's Local Chairman from Council Bluffs presented substantial data at the arbitration hearing indicating there was sufficient work to justify transferring two Carmen positions to Council Bluffs rather than to Atchison. The Carriers argue,

however, that a transfer of two Carmen to Council Bluffs was predicated erroneously upon UP Carmen performing road work on territory rightfully belonging to MP Carmen. The Carrier relies upon the Local Chairman's testimony, nevertheless, to establish the fact that there is sufficient work to justify the transfer of at least one employee to Atchison.

The MP Carmen argue that there is no evidence the Carriers have transferred any work to Atchison nor is there evidence to support the contention that the road truck at Omaha has in the past serviced Atchison. The MP Carmen also point out that transfer of a Carman from Omaha to Atchison is in effect transferring the Carman to another seniority district. Should that Carman be forced at a later time to exercise seniority to obtain a job at Kansas City the employee may not be entitled to moving benefits under the New York Dock Conditions for the necessary relocation from Atchison to Kansas City.

The MP Carmen attack the testimony of the Council Bluffs Local Chairman as self-serving and unsupported by documentation. So too, claim the MP Carmen, is the Carriers' contention that work has been transferred to Atchison. The MP Carmen contend that there is no proof of such transfer, and there is no work for Carmen to follow. Accordingly, the transfer should not be permitted.

c. Analysis and Opinion

It is true, as the MP Carmen contend, that there is little evidence the Carriers actually will transfer work to Atchison. However, the Carriers based the decision to transfer a Carman from Omaha to Atchison on the amount of emergency work performed on the road away from Omaha. A study showed that such work consumed over one half the time

of two Omaha Carmen. The transfer of a single Carman from Omaha to Atchison to perform this work seems consistent, as the Carriers contend, with the principle that employees should follow their work.

Whether a Neutral in an Article I, Section 4 proceeding has the jurisdiction to grant the relief requested by the MP Carmen is open to serious question. This Neutral's decision relied upon by the Carriers held that a Carrier's decision as to the size of the work force is not a matter for review in an Article I, Section 4 proceeding. Here the MP Carmen argue that very point. The Council Bluffs Local Chairman has attempted to show that the road work under consideration here warrants transfer of two Carmen to Council Bluffs. The MP Carmen successfully bargained with the Carrier to reduce the number of Carmen the Carrier would transfer from Omaha to Atchison for two to one.

Accordingly, this Neutral finds no basis upon which to disturb the Carrier's proposal to transfer one carman from Omaha to Atchison, and such provisions are included in the attached implementing arrangement (Exhibit 2).

The attached arbitrated implementing arrangements (Exhibit 1 - Kansas City; Exhibit 2 - Omaha/Council Bluffs) which are hereby made a part of this Decision, constitute the Neutral's determination under Article I, Section 4 of the New York Dock Conditions as to the appropriate bases for the selection and rearrangement of forces pursuant to the transaction which gave rise to this proceeding. These arbitrated implementing arrangements are to be treated as if signed and fully executed by the parties and their representatives. This Decision and

the implementing arrangements are intended to resolve all outstanding issues in this proceeding as provided in Article I, Section 4 of the New York Dock Condicions. The provisions of the arbitrated implementing arrangements shall become effective upon advance notice by MP and UP to their respective General Chairmen.

William E. Fredenberger, Jr.
Neutral Referee

DATED: December 6, 1983

MEMORANDUM OF AGREEMENT

Between

UNION PACIFIC RAILROAD COMPANY
MISSOURI PACIFIC RAILROAD COMPANY

And

BROTHERHOOD RAILWAY CARMEN OF THE
UNITED STATES AND CANADA
(Mechanical Department)

WHEREAS, the Interstate Commerce Commission (ICC) approved, in Finance Docket No. 30,000, and selected subdockets 1 through 6, the merger of Union Pacific Railroad Company (UP), Missouri Pacific Railroad Company (MP), and Western Pacific Railroad Company (WP), effective December 22, 1982, hereinafter referred to as ICC, UP, MP and WP, and

WHEREAS, the ICC, in its approval of the aforesaid Finance Docket, has imposed the employee protection conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District Terminal 354 ICC 399 (1978), as modified at 360 ICC 60 (1979) (New York Dock Conditions) in FD 28250 hereinafter referred to as the New York Dock Conditions, and

WHEREAS, the UP and MP gave notice to the Brotherhood Railway Carmen of the United States and Canada, hereinafter referred to as BRCUS&C, in accordance with Section 4 of the New York Dock Conditions of their desire to coordinate UP Mechanical Department forces at Kansas City, Kansas, with MP Mechanical Department forces at Kansas City, Missouri, and to thereafter perform such operations on a consolidated basis under the MP Schedule Agreement.

NOW, THEREFORE, IT IS AGREED:

1. The Labor Protective Conditions as set forth in the New York Dock Conditions which, by reference hereto, are incorporated herein and made a part hereof (Attachment A), shall be applicable to this transaction. However, there shall not be any duplication or compounding of benefits under this Agreement and/or any other agreement or protective arrangement.

2. As a result of this transaction, UP Schedule Agreement will cease to apply at its Kansas City, Kansas Mechanical Department facilities. Thereafter, work at that location accruing to Carman Craft under the provisions of the Collective Bargaining Agreement between MP and BRCUS&C will be performed by employees represented by BRCUS&C in accordance with rules and wage schedules of MP Schedule Agreement.

3. (a) On the effective date of this Agreement, UP Kansas City Carmen seniority roster, will be integrated with MP Kansas City Carmen seniority roster by date dovetailing seniority of all employees on the rosters. Those employees who are furloughed at Kansas City, Missouri (MP) or Kansas City, Kansas (UP), on the effective date of this Agreement will be identified as furloughed on the combined Carmen seniority roster. Employees identified as furloughed will not be able to activate their seniority to a regular assigned position until such time as a regular assigned position is bulletined due to resignation, transfer, retirement, increase in force, etc., of any of the current active employees. In the application of the seniority

rights of those employees who will be in a furloughed status as of the effective date of this Agreement and whose dovetailed seniority will be greater than junior employees who hold a regular assignment at that time, it is understood that such employees will not be subject to recall to service until such time as a permanent position becomes vacant which is not filled by an employee in service holding a regular assignment as of the effective date of this Agreement. Upon assignment to a permanent position and thereafter, such employee's exercise of seniority rights shall be governed by the applicable provisions of the Schedule Agreement between MP and BRCUS&C.

(b) Men hired by the UP pursuant to Rule 154 based on their experience in the use of tools will be dovetailed, based upon their date last hired as a Rule 154 Carman, on to the MP seniority roster for Carmen Helpers at Kansas City.

Such UP Rule 154 Carmen will be given the opportunity to transfer to the MP Apprentice Training Program at the time of the consolidation. Those employees electing to transfer to the MP Apprentice Training Program will be dovetailed on the MP Apprentice seniority roster on the basis of the number of days served as Rule 154 Carmen by such UP employees and by MP Apprentices (not on the basis of seniority). Such UP employees will be given credit for each day worked on the UP toward on-the-job apprentice training. Employees tranferring tc the Apprentice Program will be required to complete the correspondence school lessons for Carman Apprentices. If such UP employees serve 757

days prior to completing the correspondence school course, such employees will be required to complete the course and may be sent home if lessons are not turned in according to the schedule under the Apprentice Training Agreement until such lessons are submitted. Journeyman Certificates will not be issued until lessons are successfully completed.

(c) In the application of Section 3(a) and (b), it is understood that in the event two or more such employees from different rosters have identical seniority dates, the employees shall be ranked first by service dates, then if service dates are the same, by date of birth, the oldest employee to be designated the senior ranking. This will not affect the respective ranking of employees with identical seniority dates on their former seniority roster.

(d) After UP Kansas City Carmen have been placed on the MP Kansas City Carmen seniority roster in accordance with Paragraph 3(a), the UP Kansas City Carmen seniority roster will cease to exist.

(e) After the effective date of this Agreement, seniority rosters at Kansas City will be prepared and referred to respective General Chairmen and Master Mechanic for approval prior to formal posting. After posting, employees will be accorded a period of sixty (60) days to enter any protest with respect to the new seniority rosters.

4. UP employees transferred to MP shall be credited with prior UP service on MP for vacation, personal leave and other

present or future benefits which are granted on the basis of qualifying years of service in the same manner as though all such time had been spent in the service of MP. UP employees transferring to MP thereafter shall be MP employees and shall be subject to MP rules, rates of pay and working conditions, as provided for in Schedule Agreement effective September 1, 1981, as amended.

5. All pending notices and proposals served under Section 6 of the Railway Labor Act, as amended, on behalf of the employees changing agreements represented by BRCUS&C will no longer apply to such employees. These employees will be covered by the current notices pending on the controlling Carrier the same as if they were the controlling Carrier's employees when said notices were served.

MEMORANDUM OF AGREEMENT

Between

UNION PACIFIC RAILROAD COMPANY
MISSOURI PACIFIC RAILROAD COMPANY

And

BROTHERHOOD RAILWAY CARMEN OF THE
UNITED STATES AND CANADA

WHEREAS, the Interstate Commerce Commission (ICC) approved, in Finance Docket No. 30,000, and selected subdockets 1 through 6, the merger of Union Pacific Railroad Company (UP), Missouri Pacific Railroad Company (MP), and Western Pacific Railroad Company (WP), effective December 22, 1982, hereinafter referred to as ICC, UP, MP and WP, and

WHEREAS, the ICC, in its approval of the aforesaid Finance Docket, has imposed the employee protection conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District Terminal 354 ICC 399 (1978), as modified at 360 ICC 60 (1979) (New York Dock Conditions) in FD 28250, hereinafter referred to as the New York Dock Conditions, and

WHEREAS, the UP and MP gave notice to the Brotherhood Railway Carmen of the United States and Canada, hereinafter referred to as BRCUS&C, in accordance with Section 4 of the New York Dock Conditions of their desire to coordinate MP Mechanical Department forces at Omaha, Nebraska, with UP Mechanical Department forces at Council Bluffs, Iowa, and to thereafter perform such operations on a consolidated basis under the UP Schedule Agreement

and further of their desire to transfer the work of one position headquartered at Omaha, Nebraska, performing emergency road service to Atchison, Kansas.

NOW, THEREFORE, IT IS AGREED:

1. The Labor Protective Conditions as set forth in the New York Dock Conditions which, by reference hereto, are incorporated herein and made a part hereof, shall be applicable to this transaction. However, there shall not be any duplication or compounding of benefits under this Agreement and/or any other agreement or protective arrangement.

2. As a result of this transaction, MP will discontinue operation of its Omaha Mechanical Department facilities and the Carman positions at that location will be abolished. Thereafter, except as provided in Sections 3 and 4 hereof, such work will be performed at UP's Omaha/Council Bluffs Mechanical Department facilities, and work accruing to Carmen under the provisions of the Collective Bargaining Agreement between UP and BRCUS&C will be performed by employees represented by BRCUS&C at Council Bluffs in accordance with rules of UP Schedule Agreement.

3. It is understood and agreed that line of road work on MP Omaha Subdivision south of Gilmore Junction, Nebraska yard limit and on the MP Louisville Subdivision south of the UP crossing will be performed by MP Carmen under the MP Collective Bargaining Agreement.

4. (a) On the effective date of this Agreement, all Carman positions on the MP at Omaha will be abolished; one position will be bulletined on MP at Atchison, Kansas, and the remainder will be bulletined on the UP at Council Bluffs.

(b) Within ten (10) working days after the execution of this Agreement, notice will be posted for ten (10) working days on MP at Omaha advertising the positions to be established pursuant to Section 4(a). The Carmen presently working from the MP Omaha roster will be required to submit a bid on the positions at Council Bluffs and Atchison. If there are no bidders for the positions at Atchison, the junior Carman from Omaha will be assigned to Atchison.

(c) Upon expiration of the ten (10) working day bulletin, the jobs will be awarded to the senior bidders. Effective with the date of coordination, their seniority dates on the Omaha roster will be date dovetailed on the Council Bluffs Carmen seniority roster. The Carman assigned to Atchison will be given a seniority date on Carmen's roster at Atchison and Kansas City as of the first day worked at Atchison. The eligible employees who elect not to bid on the positions at Council Bluffs or Atchison will be assigned to vacancies on the Council Bluffs or Atchison Carmen seniority rosters.

(d) With the exception of the employee assigned at Atchison, MP Carmen seniority roster at Omaha will be integrated with UP Carmen seniority roster at Council Bluffs by date dovetailing seniority of all employees on the two rosters. Those

employees who are furloughed on the effective date of this agreement will also be identified as furloughed on the combined seniority roster. In the application of the seniority rights of those employees who will be in a furloughed status as of the effective date of this Agreement and whose dovetailed seniority will be greater than junior employees who hold a regular assignment at that time, it is understood that such employees will not be subject to recall to service until such time as a permanent position becomes vacant which is not filled by an employee in service holding a regular assignment as of the effective date of this Agreement. This will not, however, preclude the utilization of such employee on a temporary basis pending bulletin assignment. Upon assignment to a permanent position and thereafter, such employee's exercise of seniority rights shall be governed by the applicable provisions of the Schedule Agreement between UP and BRCUS&C. Employees identified as furloughed will not be able to activate their seniority to a regular assigned position until such time as a regular assigned position is bulletined due to resignation, transfer, retirement, increase in force, etc., of any of the current active employees.

(e) On the effective date of this Agreement, the MP Carman Apprentice seniority roster at Omaha containing the names of two employees who are now furloughed will be abolished and consolidated with UP Carman Apprentice seniority roster at Council Bluffs. The names of the two MP Carman Apprentices will also be added to the list of furloughed UP "Rule 154" Carmen at

Council Bluffs and ranked among such employees on the basis of their MP Carman Apprentice seniority date.

(f) MP Coach Cleaner seniority roster at Omaha will be integrated with UP Coach Cleaner roster at Council Bluffs by date dovetailing seniority of all employees on the two rosters. Those employees who are furloughed on the effective date of this agreement will also be identified as furloughed on the combined seniority roster. In the application of the seniority rights of those employees who will be in a furloughed status as of the effective date of this Agreement and whose dovetailed seniority will be greater than junior employees who hold a regular assignment at that time, it is understood that such employees will not be subject to recall to service until such time as a permanent position becomes vacant which is not filled by an employee in service holding a regular assignment as of the effective date of this Agreement. This will not, however, preclude the utilization of such employee on a temporary basis pending bulletin assignment. Upon assignment to a permanent position and thereafter, such employee's exercise of seniority rights shall be governed by the applicable provisions of the Schedule Agreement between UP and BRCUS&C. Employees identified as furloughed will not be able to activate their seniority to a regular assigned position until such time as a regular assigned position is bulletined due to resignation, transfer, retirement, increase in force, etc., of any of the current active employees.

(g) In the application of Section 3(d), (e) and (f), it is understood that in the event two or more such employees have identical seniority dates, the employees shall be ranked first by service dates, then if service dates are the same, by date of birth, the oldest employee to be designated the senior ranking. This will not affect the respective ranking of employees with identical seniority dates on their former seniority roster.

(h) After Omaha Carmen have been placed on either the Council Bluffs or Atchison roster in accordance with Sections 4(d), (e) and (f) above, the MP Omaha rosters covering employees represented by BRCUS&C will cease to exist.

(i) After the effective date of this Agreement, seniority rosters at Council Bluffs, Atchison, and Kansas City will be prepared and referred to respective General Chairmen and Chief Mechanical Officer for approval prior to formal posting. After posting, employees will be accorded a period of sixty (60) days to enter any protest with respect to the new seniority rosters.

(j) MP employees electing to transfer to UP shall be credited with prior MP service on UP for vacation, personal leave and other present and future benefits which are granted on the basis of qualifying years of service in the same manner as though all such time had been spent in the service of UP. MP employees transferring to UP thereafter shall be UP employees and shall be subject to UP rules, rates of pay and working conditions.

5. Employees transferring to Council Bluffs or Atchison

will be assigned positions in accordance with the bulletins advertising such positions; thereafter, changes in the coordinated operation in the filling of vacancies, abolishing or creating positions, and reduction or restoration of force will be governed by application of the appropriate Schedule Agreements.

6. Nothing in this Implementing Agreement shall be interpreted to provide protective benefits less than those provided in the New York Dock Conditions or exclude coverage to those covered by New York Dock Conditions imposed by the ICC and incorporated herein.

7. All pending notices and proposals served under Section 6 of the Railway Labor Act, as amended, on behalf of the employees changing agreements represented by BRCUS&C will no longer apply to such employees. These employees will be covered by the current notices pending on the controlling Carrier the same as if they were the controlling Carrier's employees when said notices were served.