

Arbitration Pursuant to Article I, Section 11
of New York Dock Labor Protective Conditions
Imposed by the Interstate Commerce Commission in
Its Decision in Finance Docket No. 29720 (Sub.-No.1)

[illegible]

QUESTION AT ISSUE:

Is Ms. Colleen Andrews entitled to a separation allowance in lieu of transferring with her position from Portland, Maine, to North Billerica, Massachusetts?

BACKGROUND:

In 1981 Gilford Transportation Industries (GTI) acquired the Maine Central Railroad Company (MeC). On April 22, 1982, the Interstate Commerce Commission (ICC) approved common control of the Boston & Maine Corporation (B&M) by GTI in Finance Docket No. 29720 (Sub.-No. 1). The Commission 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 June 30, 1983, GTI finalized control of the B&M.

a. History of Dispute

Claimant, Colleen Andrews, entered the service of MeC on December 4, 1967, as a stenographer/secretary. That position was within the scope of the collective bargaining agreement between MeC and the Brotherhood of Railway Airline & Steamship Clerks (BRAC).

On June 1, 1976, Claimant was promoted to the position of Cashier which is a management position in the Office of Controller and Treasurer of the MeC in Portland, Maine. The position of Cashier is beyond the scope of the MeC-BRAC agreement.

On March 12, 1984, MeC served notice pursuant to Article I, Section 4 of the New York Dock Conditions that MeC Treasury Department positions in Portland would be transferred to the B&M Finance and Accounting Department located in North Billerica, Massachusetts. Neither Claimant's name nor position was specified in the notice. However, Claimant saw the notice and understood that both she and her position would be transferred.

On May 3, 1984, Claimant wrote MeC requesting information as to options available to her concerning the transfer, ". . . including any kind of settlement should I elect not to go ." By letter of May 24, 1984, the Carrier responded to Claimant that both she and her position would be transferred to North Billerica, effective June 18, 1984. Claimant did not transfer to North Billerica on June 18 but secured the services of an attorney who took the position that Claimant was entitled to a separation allowance in lieu of transfer. MeC denied that Claimant was entitled to elect a separation allowance. The parties submitted the dispute to arbitration under Article I, Section 11 of the New York Dock Conditions, and on October 1, 1984, hearing was scheduled in the case for November 19, 1984.

On October 17, 1984, MeC and BRAC entered into a Master Implementing Agreement pursuant to Article I, Section 4 of the New York

Dock Conditions and a Stabilization Agreement further amending the BRAC National Agreement of February 7, 1965. Both agreements provided, inter alia, the option of a separation allowance to employees whose positions were transferred pursuant to a transaction within the scope of the agreements. Claimant's position of Cashier is not within the scope of either agreement.

A hearing on the dispute was held in Portland on November 19, 1984. Claimant and MeC appeared at the hearing and were given ample opportunity to present documentary and testimonial evidence and argument. The parties agreed to extend the date for a Decision beyond the forty-five days from the close of the hearing and the record specified in Article I, Section 11(c) of the New York Dock Conditions.

b. Parties Positions

In support of the claim for a separation allowance Claimant points to Article IV of the New York Dock Conditions providing in pertinent part:

Employees of the railroad who are not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under these terms and conditions.

Claimant then points to the Master Implementing Agreement, entered into pursuant to Article I, Section 4 of the New York Dock Conditions, which provides in Article III, Section 1(c) that a covered employee may "[E]lect a separation allowance pursuant to the New York Dock Conditions or according to the terms of any applicable on-property protective agreement. . . ." Claimant argues that as a non-contract employee

Article IV of the New York Dock Conditions mandates that she be afforded the same level of protection as BRAC agreement employees, including the option to choose a separation allowance rather than transfer.

Pursuing the same rationale Claimant argues that inasmuch as Article II, Section 1 of the Master Implementing Agreement provides ninety days advance written notice to any employee affected by a coordination or consolidation of offices where a change of residence is involved, Claimant should have been given ninety days' notice prior to the transfer of her position to North Billerica. Claimant contends that by virtue of Article IV of the New York Dock Conditions she is due the ninety-day notice because it is part of the level of benefits due BRAC contract employees. Claimant urges that in view of the Carrier's failure to give the required notice she is entitled to back pay.

Further pursuing her basic rationale, Claimant argues that in any event she is due one year's salary. Claimant points out that the Master Implementing Agreement specifically provides that an employee may elect a separation allowance as contained in the New York Dock Conditions. Those conditions provide that the amount of the separation allowance shall be computed in accordance with Section 9 of the Washington Job Protection Agreement of 1936 (WJPA) which provides that an employee with over fifteen years of service is entitled to a separation allowance of twelve months pay.

The Carrier raises a procedural objection to this Board ruling upon the question of whether Claimant was entitled to receive ninety days' notice. The Carrier contends that the issue was never raised by Claimant

on the property and the Carrier contends that it is not ripe for consideration by this Board.

On the merits the Carrier contends that Claimant does not qualify for a separation allowance under the New York Dock Conditions and thus has no right to elect such a benefit in lieu of transfer. The Carrier argues that under Article I, Section 7 of the New York Dock Conditions the election of a separation allowance is available only to a dismissed employee defined in Article I, Section 1(a)(c) of the conditions as one:

. . . 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.

The Carrier points out that Claimant's position was not abolished but transferred. The Carrier urges that BRAC contract employees also are not entitled to a separation allowance under the New York Dock Conditions. However, argues the Carrier, BRAC contract employees are entitled to elect a separation allowance under the Stabilization Agreement of October 17, 1984, an agreement which does not cover Claimant and thus cannot afford her the option of a separation allowance.

The Carrier argues that Article IV of the New York Dock Conditions by its terms restricts the language "level of benefits" to those "arising under these (New York Dock) conditions." Inasmuch as a separation allowance under the conditions is available only to a dismissed employee, Claimant fails to qualify for that benefit under Article IV.

Nor, urges the Carrier, does Claimant's failure to transfer with her position render her eligible for a separation allowance under the New York Dock Conditions'. The Carrier cites two arbitration decisions by the Neutral Member of this Committee holding that an employee who fails to transfer pursuant to a transaction covered by the New York Dock Conditions is not a dismissed employee under those conditions. The Carrier also cites the well established proposition that the New York Dock Conditions do not protect employees from transfer but afford those required to transfer benefits under the New York Dock Conditions or, by virtue of Article I, Section 2 thereof, the benefits of any other applicable protective agreement which such employee may elect. In this connection the Carrier points out that the BRAC contract employees are entitled to elect a separation allowance by virtue of the Stabilization Agreement of October 17, 1984, and not by virtue of the New York Dock Conditions under which they could not qualify for a separation allowance because they are not dismissed employees as defined in the conditions. The Carrier emphasizes that Claimant and the BRAC contract employees thus have equal status with respect to the level of benefits under those conditions as provided in Article IV thereof. The Carrier urges that Claimant as a noncontract employee is not covered by the Stabilization Agreement or any other protective agreement under which she may elect a separation allowance.

To summarize the Carrier's position, Claimant is not eligible for a separation allowance under the New York Dock Conditions nor is there any protective agreement applicable to her employment under which she may

elect such an allowance. Accordingly, she has no right to the option to choose a separation allowance rather than to transfer which renders her claim for one years' salary baseless.

FINDINGS:

With respect to the question concerning the ninety-day notice, it appears, as the Carrier urges, that the issue was not raised on the property. It is a well established principle of arbitration in the railroad industry that disputes not raised on the property are not ripe for arbitration. In any event, Claimant stated during the hearing that she saw the ninety-day notice to BRAC contract employees and understood that her position also would be transferred. Furthermore, Claimant sought a separation allowance which would afford her a year's pay as an option to transferring on June 18, 1984. Accordingly, if the Carrier had given her a separation allowance when requested to do so, she would not have continued in the Carrier's service. Assuming, arguendo, that the ninety-day notice requirement is part and parcel of a level of benefits afforded to BRAC contract employees, we find that Claimant had actual notice of the transfer of her position and that in any event no back pay would be due Claimant.

With respect to the question of whether Claimant is entitled to a separation allowance, we are intrigued by the Carrier's logic in support of its arguments. However, under analysis we find those arguments essentially are the product of what we believe to be too narrow a reading of the New York Dock Conditions as well as the Master Implementing Agreement.

The Master Implementing Agreement, clearly negotiated pursuant to Article I, Section 4 of the New York Dock Conditions, specifically provides that employees covered thereby have a right to elect a separation allowance under the New York Dock Conditions or under any protective agreement applicable to their employment. Accordingly, the right to elect a separation allowance, whether under the New York Dock Conditions, the Stabilization Agreement or some other protective agreement, has become an important element in the level of protection afforded to BRAC contract employees. This level of protection arises under the New York Dock Conditions as provided in Article IV thereof by virtue of the fact that it is provided for in the Master Implementing Agreement negotiated pursuant to Article I, Section 4 of those conditions.

As we read the Master Implementing Agreement, BRAC contract employees are afforded the option of a separation allowance under the New York Dock Conditions. There is no language in the agreement restricting that option to dismissed employees. We decline to infer, as invited by the Carrier, that one must be a dismissed employee as defined in the New York Dock Conditions in order to qualify for the separation allowance provided in the Master Implementing Agreement. We see no intent in that Agreement to so restrict the separation allowance.

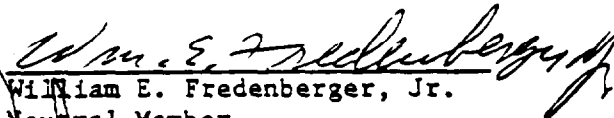
In conclusion, we find the option to elect a separation allowance under the New York Dock Conditions to be part of the level of protection afforded BRAC contract employees, and as required by Article IV of the New York Dock Conditions that benefit must be afforded to Claimant as a noncontract employee. The New York Dock Conditions provide that

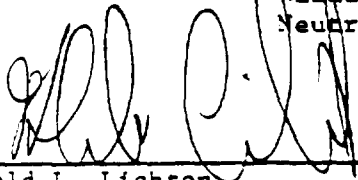
the separation allowance shall be computed in accordance with Section 9 of the WJPA pursuant to which Claimant qualifies for one year's pay.

AWARD

Claimant is entitled to a separation allowance under the New York Dock Conditions in the amount of one year's pay.

The Carrier will make this Award effective within thirty days of the date hereof.


William E. Fredenberger, Jr.
Neutral Member


Harold L. Lichten
Claimant's Member

D. J. Kozak
Carrier Member

DATED: 1/29/85