ARBITRATION COMMITTEE

BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND CANADA, Organization,	)	Pursuant to Article I, Section 11 of the New York Dock Conditions
and	)	ICC Finance Docket No. 29430
NORFOLK AND WESTERN RAILWAY COMPANY, Carrier.	)	Case No. 1 Award No. 1

Hearing Date: May 9, 1986
Hearing Location: Roanoke, Virginia
Date of Award: July 16, 1986

MEMBERS OF THE COMMITTEE

Employees' Member: R. P. Wojtowicz
Carrier Member: E. N. Jacobs, Jr.
Neutral Member: John B. LaRocco

ORGANIZATION'S QUESTION AT ISSUE

Did the coordination of operations between the Norfolk and Western Railway Company and Southern Railway Company combining certain Carmen's Work and Service at Coapman Shops and/or Yards, into Carrier's Luther Shop and/or Yards. Which resulted in Carmen G. H. Mansholt, T. G. Goodman, D. L. Gray, Jr., D. C. Garris, I. Scott, Jr., C. Mason, R. E. Vaughn and A. D. Nolden being furloughed. Were the aforementioned Carmen furloughed on January 28, 1983, as result of the Carriers change in operations in the Coapman Area, and should they now be considered as "Displaced Employees" within the meaning and intent of the New York Dock Protective Conditions, and entitled to the protective benefits as it sets forth?

CARRIER'S STATEMENT OF THE CLAIM

Claim on behalf of Carmen C. H. Mansholt, T. G. Goodman, D. L. Gray, D. C. Garris, I. Scott, C. Mason, R. E. Vaughn and A. D. Nolden for protective benefits under New York Dock II protective conditions.

OPINION OF THE COMMITTEE

I. INTRODUCTION

In 1982, the Interstate Commerce Commission (ICC) approved the coordination of operations between the Norfolk and Western Railway Company (Carrier) and the Southern Railway Company (SR). [ICC Finance Docket No. 29430 (Sub-No. 1).] To compensate and protect employees adversely affected by the merger, the ICC imposed the employee merger protection conditions set forth in New York Dock Railway - Control - Brooklyn Eastern District Terminal, 360 I.C.C. 60, 84-90 (1979); affirmed, New York Dock Railway v. United States, 609 F.2d 83 (2nd Cir. 1979) ("New York Dock Conditions") on the Carrier and the SR pursuant to the relevant enabling statute. 49 U.S.C. §§ 11343, 11347.

The Organization initiated this claim on behalf of eight Carmen at St. Louis, Missouri on March 24, 1983. The parties submitted the claim to final and binding arbitration under Section 11 of the New York Dock Conditions.[1] At the Neutral Member's request, the parties waived the Section 11(c) forty-five day limitation period for issuing this decision.

II. BACKGROUND AND SUMMARY OF THE FACTS

In anticipation of the merger, the parties negotiated the May 27, 1982 Implementing Agreement which provided for the consolidation of Carrier and SR facilities at common points such

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[1] All sections pertinent to this case are set forth in Article I of the New York Dock Conditions. Thus, the Arbitrator will only cite the particular section number.

as St. Louis. On September 2, 1982, the Carrier posted a bulletin notifying the Organization as well as affected employees that the Carrier would close the Coapman Shops and Yard, an SR facility at East St. Louis, Illinois and consolidate existing work and positions into the Carrier's Luther Yard in St. Louis effective October 1, 1982. In accord with the May 7, 1982 Implementing Agreement, the seniority of the transferring car employees was dovetailed into a single seniority roster. At the time of the consolidation, no workers were furloughed.

Claimants are Carmen who held positions at Luther Yard. Several Claimants worked at the facility before the October 1, 1982 consolidations while other Claimants had procured available positions when they moved from SR's Coapman Yard. On January 28, 1983, the Carrier laid off Claimants. While the record does not contain the exact dates, all eight Claimants were recalled to service during Spring, 1983.

III. THE POSITIONS OF THE PARTIES

A. The Organization's Position

According to the Organization, the true cause of Claimants' furlough was the Carrier's failure to transfer all carmen's work to Luther Yard. Instead, some car inspection work remained at Coapman Yard although the Carrier abolished all Coapman Yard inspector jobs on November 30, 1982. The Organization charges that thereafter employees of the Alton and Southern Railroad Company (A&S) handled approximately one departing and arriving SR train per day. In its submission, the Organization listed the

number of cars on the outbound and inbound SR trains allegedly handled by A&S employees at the closed Coapman facility.

Suspecting that the SR made a special arrangement with the A&S, the Organization argues that Claimants were deprived of employment because A&S employees were performing Carmen's work which should have been consolidated into Luther Yard pursuant to the May 7, 1982 Implementing Agreement.

Contrary to the Carrier's assertions, the reduced level of traffic flowing through Luther Yard stemmed not from a decline in business but from the diversion of trains to the A&S. Traffic was rerouted rather than reduced. Thus, Claimants lost their positions as the result of a merger related operational change.

Claimants seek displacement or dismissal allowances for the period they were furloughed under Sections 5 and 6 of the New York Dock Conditions.

B. The Carrier's Position

Initially, the Carrier contends that the Organization has not proven a causal nexus between a New York Dock transaction and Claimants' furlough. Neither the New York Dock Conditions nor the May 7, 1982 Implementing Agreement provides Claimants with absolute protection. Section 11(e) of the New York Dock Conditions requires the grieving employees to show a cause and effect relation between a merger coordination and their loss of employment. The furloughs were unrelated to a transaction. They occurred more than three months after the consolidation of the Coapman and Luther facilities. When the two yards were combined, Claimants assumed or remained in Luther Yard positions.

Similarly, the Organization has failed to establish a nexus between the furloughs and the single daily SR train dispatched from A&S's Davis Yard. While Claimants were unaffected by the work performed on the SR trains at Davis Yard, at most, the work consumed only two hours per day which would hardly warrant one carman position much less eight positions. Lastly, the Committee should disregard the Organization's list of SR trains purportedly handled at Coapman Yard since the evidence was not furnished on the property.

Alternatively, the furloughs were traceable to a factor other than the merger. During 1981-1983, the Carrier experienced a systemwide decline in business due to a prolonged economic depression. The business decline with the consequential decrease in rail traffic necessitated a widespread reduction in force. In early 1983, the percentage of locomotives in storage increased as did the number of freight cars in excess of shippers' orders. Since there was less equipment in service, fewer employees were needed for maintenance and repairs. The decline in business adversely affected Claimants along with workers from other crafts but not all Carmen at St. Louis were furloughed. When business improved, the Carrier recalled Claimants to service. Therefore, Claimants were furloughed due to a severe decline in business.

IV. DISCUSSION

Section 11(e) of the New York Dock Conditions sets forth the Organization's burden of going forward and the Carrier's burden of proof. As the moving party, the Organization must identify a Section 1(a) transaction (or transactions) and specify

"...pertinent facts of that transaction relied upon." The Carrier's burden of proof is conditional. If the Organization first fulfills its burden of going forward, then the Carrier assumes the burden of proving "...that factors other than a transaction affected the employee." On the other hand, if the Organization fails to either identify a transaction or state pertinent facts, the Carrier prevails regardless of whether it has satisfied its burden of proof.

Without a doubt, the Organization has identified a transaction. It points to the October 1, 1982 consolidation of the SR's Coapman Shops into the NW's Luther facility. The consolidation was a Section 1(a) New York Dock transaction expressly covered by the May 7, 1982 Implementing Agreement. Also, the Organization has demonstrated a coherent connection between the layoffs and the transaction. The close proximity of dates between the consolidation and the subsequent layoffs raises the rebuttable presumption that Claimants lost their job as a result of the coordination of yard operations in the St. Louis area. BRAC v. NYDR, NYD § 11 Arb. (4/22/83; Zumas). In addition, the Organization specifically alleged that Claimants were laid off because the consolidation was incomplete. Instead of transferring one hundred percent of SR Carmen's work to Luther, the Carrier (or the SR) ostensibly retained some work at Coapman which it then farmed out to the employees of a foreign railroad. Since the Organization has met its burden of going forward, the Carrier must prove that factors other than a merger transaction caused Claimants' furlough.

While there appears to be a correlation between the coordination and the layoffs, the Carrier presented substantial, probative evidence that a general decline in business motivated the Carrier to commensurately reduce its forces at St. Louis and elsewhere. Unfortunately, Claimants were caught in a system-wide furlough. The Organization did not refute the accuracy of the Carrier's data regarding the oversupply of cars and locomotives or the existence of a substantial business downturn. A severe decline in business triggers the domino effect: reduced traffic; less equipment in service; a decrease in maintenance, repair and inspection work and, consequently, a reduction in shop and yard forces. BMWE v. MC NYD § 11 Arb. (2/26/85; Lieberman). Furloughs and recalls are frequently dependent on the level of the Carrier's transportation business and are wholly unrelated to a merger transaction. Special Board of Adjustment No. 927, Award No. 4 (Van Wart). Indeed, when business increased, the Carrier renewed Claimants' positions. Therefore, their furlough for several months in 1983 was entirely attributable to a decline in business.

The Organization's final argument is that the Carrier used a decline in business as a subterfuge for diverting car inspection work to the A&S. We note that the Organization's contention would be more persuasive if the January 28, 1983 furloughs had coincided with the abolition of Coapman Yard car inspector positions on November 30, 1982. However, any arrangement involving the SR and the A&S was separate and distinct from the consolidation of SR and NW facilities. The

Organization has not provided us with evidence demonstrating when A&S employees began performing the work. Moreover, if the Organization is alleging that the Carrier improperly contracted out Carmen's work, such a dispute should be adjudicated in another forum because the alleged farming out of work was not part of a Section 1(a) transaction. Our authority is confined to interpreting and applying the New York Dock Conditions and the May 7, 1982 Implementing Agreement. We conclude that there is insufficient evidence to demonstrate that the Carrier utilized the decline in business as a pretext for rerouting trains or transferring work to another railroad.

AWARD AND ORDER

Claims denied.

DATED: July 16, 1986

R. P. Wojdowicz
Employees' Member

E. N. Jacobs, Jr.
Carrier Member

John B. LaRocco
Neutral Member