ARBITRATION PURSUANT TO SECTIONS 11(a) and (c)
OF THE NEW YORK DOCK CONDITIONS

In the Matter of	:	
MAINE CENTRAL RAILROAD (Guilford Transportation Industries)	:	
and	:	ICC Finance Docket 29720
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	:	Claim C - 3 (MT)

STATEMENT OF THE CASE

In January of 1984 the Organization submitted a claim on behalf of fourteen Employees asserting that the acquisition of the Boston and Maine Corporation (BM) by Guilford Transportation Industries (GTI) enabled the BM and the Maine Central Railroad Company (MC) to operate as an end-to-end rail system, and that resulted in the elimination of through trains from St. Johnsbury, Vermont to Portland, Maine and vice versa which allowed MC to downgrade the line of track with the only remaining traffic being a small local clientele. Thus, the Employees assert that they have been placed in a worse position with respect to compensation and that accordingly they are entitled to a dismissal allowance under Section 6 of the New York Dock Labor Protective Conditions.

The Carrier denied the claim and the matter was submitted to Arbitration.

The undersigned was designated as Arbitrator by the parties and a hearing was conducted in Boston, Massachusetts on July 12, 1984; at which time all parties represented and ample opportunity was afforded for presentation of evidence, testimony and argument.

The parties have submitted submissions, documents, rebuttals and argument; all of which has been considered by the Board.

STATEMENT OF ISSUE

Are the employees entitled to the benefits claimed in the Organization's January 25, 1984 letter?

STATEMENT OF FACTS

The Portland Terminal Company (PT) was a wholly-owned subsidiary of the Maine Central Railroad Company (MC) and Rigby Yard is a major classification yard and interchange point of the terminal company. In fact, the Yard comprises most of PT's property and facility.

Guilford Transportation Industries (GTI) acquired MC (and thus PT) on June 16, 1981. Approval by the Interstate Commence Commission (ICC) was neither required nor sought and thus, no labor protective provisions were mandated.

GTI subsequently acquired Boston and Maine Corporation (BM) and the ICC approved that acquisition on April 23, 1983 (Finance Docket 29720-SUB-No. 1) The ICC imposed the "New York Dock" Labor Protective Provisions.

A reorganization court approved BM's plan on June 30, 1983 and that date finalized GTI's common control of the various Carriers.

The 130 mile Mountain Division from Portland, Maine through North Conway, New Hampshire to St. Johnsbury, Vermont underwent an operational change in August of 1983. An interchange point with Canadian Pacific was changed from St. Johnbury, Vermont to Mattawaumkeag, Maine. Thus, there was only a need for local service on the Mountain Subdivision.

According to the Organization, the Carrier's plan of reoganization provided for the abolishment of five section crews assigned to the "Mountain Line" and as a result, in August of 1983 the Carrier did divert amounts of traffic from that line to other parts of

the system. Further, the Organization states that the Carrier specifically stated in its document submitted to the ICC that the diversion of traffic was one of the anticipated effects of the transaction. The January 25, 1984 claim was filed on behalf of employees who had been furloughed from the Mountain Line including those whose jobs had been abolished pursuant to an August 9, 1983 implementing agreement arrived at under the February 7, 1965 National Agreement.

The Organization argues that the Carrier was required by Section 4 of the New York Dock conditions to give at least 90 days' written notice of the intended transaction and the failure to do so constituted a violation of the conditions.

The Organization lays particular stress upon a portion of the Carrier's reorganization plan which states that the acquisition by GTI would permit an integrated operation and would result in an annual reduction of 780,500 gtm-mile on the Portland-St. Johnsbury Line of MEC.

The Organization points out that in March of 1983 the Mountain Line was 231 miles long and Maine Central was responsible for the maintenance of 123 miles which was maintained by 8 section crews headquartered throughout the line. The August 9, 1983 Implementing Agreement provided that said mileage would be maintained by only three section crews which, according to the Organization, clearly demonstrates that there has been a reduction of traffic on the line.

The Carrier notes that in recent years it operated the Mountain Run by use of one freight train in each direction per day and it performed switching for some local customers six days a week with a switcher working out of various points on the subdivision. However, in August of 1983 the interchange point with the Canadian Pacific Railroad was changed and as a result the Carrier discontinued operation of through freight trains on the line, although it continued to serve local mountain subdivision customers with a Whitefield, New Hampshire switcher and certain service out of Portland, Maine.

The Carrier notes that some of the fourteen allegedly affected positions were eliminated as a result of the August 9, 1983 Implementing Agreement to which the Organization was a party and further, while it concedes that there have been furloughs since that date, it points to the change in interchange point and a decline of 31 percent of employees as result of the severe recession of 1982 and competition by motor carriers and rail deregulation. See discussion in Claim C-1(PT) before this Board. Further, the Carrier argues that certain of the allegedly affected employees failed to exercise seniority rights to available positions whereas others were awarded disability or lost no time.

In similar terms to those presented in Case C-1(PT) the Carrier argues that there has not been a "transaction" as defined under the labor protective provisions since no action was taken pursuant to authorizations of the ICC, and since a dismissed employee is one who, by definition, is deprived of employment as a result of a transaction, there can be no remedy from this Board. In addition, a similar argument (as previously made in the earlier cited case) has been presented concerning "causal nexus", and the same Awards have been cited in that regard.

We have paid particular attention to the arrangements made with the Canadian Pacific Rail Company concerning interchange in an effort to ascertain if that arrangement could be considered to be a "transaction". The Carrier asserts, and we have no reason to disbelieve, that it is a common practice for connecting Carriers to change interstate points for traffic and further, we have noted that the Canadian Pacific is not part of the Guilford system. But, it appears that the change in interchange points is something that was done without reference to ICC and it needed no approval fromthat Commission. Thus, it was not related, as far as we are concerned, with the takeover by Guilford.

Upon our review of the entire record and all of the documents, it is our conclusion that there was no "transaction" as contemplated by the ICC Labor Protective Provisions and accordingly, notices were not required. There is no remedy available from this Board.

AWARD

For reasons set forth above, we will deny the claim.

Joseph A. Sickles
Chairman and Neutral Member

Bradley L. Peters
Carrier Member

William E. LaRue
Organization Member

12/3/84
Date