

Arbitration pursuant to Article I - Section 11 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	UNION PACIFIC RAILROAD COMPANY)	
	MISSOURI PACIFIC RAILROAD COMPANY)	
)	CASE NO. 3
TO	AND)	
)	DECISION
	UNITED TRANSPORTATION UNION (C&T))	
DISPUTE)	

QUESTION AT ISSUE:

Was the November 1, 1985 transfer of the Salina-
El Dorado local from the UP to the MP pursuant to
Implementing Agreement dated May 7, 1985, a trans-
action within the meaning of New York Dock?

BACKGROUND:

a. History of Dispute

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 March 21, 1984 the UP and MP served notice pursuant to
Article I, Section 4 of the New York Dock Conditions upon their respective
General Chairmen. Among other things the notice provided that the "[T]he
present UP Salina-McPherson Local and the present MP McPherson-El Dorado
Local may be combined into a single local operating Salina-El Dorado."

The notice also estimated that three UP and three MP employees would be affected, one conductor and two brakemen on each Carrier.

The parties entered into negotiations for an implementing agreement as also provided in Article I, Section 4 of the New York Dock Conditions. Certain threshold issues could not be resolved, and the matter was submitted to arbitration as further provided in Article I, Section 4. After the arbitration award issued resolving those questions the parties again entered into negotiations which resulted in agreement on May 7, 1985.

The implementing agreement provided for the abolishment of the two existing MP and UP locals and for the establishment of a Salina-El Dorado Local. The agreement further provided that the UP and MP employees would share equitably in the manning of the new local. MP employees were granted the right to man the new local seven months of the year, and UP employees were granted the right to man it the remaining five months of the year. However, UP employees were granted operational rights for the first five months. Under the agreement jobs were to be bulletined and vacancies filled from the extra board of the railroad from which the employees filling the assignments came.

Effective June 1, 1985 the UP and MP locals were abolished and the Salina-El Dorado Local established. All employees on the UP and MP locals and everyone in the chain of displacements were afforded protection under the New York Dock Conditions. Three UP employees bid to and were assigned the Salina-El Dorado Local. Another UP employee bumped to the brakemen's extra board.

The Salina-El Dorado Local operated from June 1 through October 31, 1985 with UP extra crews. During that time there was one regularly assigned local, and a second was operated as needed. The regular local was abolished on October 31, 1985 at which time the Salina-El Dorado Local was assigned to MP crews who operated it through May 31, 1986.

On January 13, 1986 the UP General Chairman claimed protection under the New York Dock Conditions for six UP employees who were displaced as a result of the turnover of the Salina-El Dorado Local to MP employees on November 1. The General Chairman also sought protective benefits for all employees in the chain of bumping initiated by the six affected UP employees. By letter of January 27, 1986 the Carrier denied the claim.

The parties agreed to place the dispute before this Arbitration Committee created pursuant to Article I, Section 11 of the New York Dock Conditions. Hearing in this case was held on April 15, 1986 in Omaha, Nebraska. The parties filed prehearing submissions and presented oral arguments at the hearing. The parties agreed to extend the time within which this Committee would render its decision.

b. Parties' Positions

The Organization maintains that a transaction occurred on November 1, 1985 when the Salina-El Dorado Local was turned over to MP employees. The Organization argues that as a result of that transaction three employees who worked the assigned local and three employees who regularly worked the extra local lost their positions. The bumping

generated by these six employees eventually resulted in three employees being dismissed and fifteen displaced to positions where they suffered diminished earnings.

The Organization emphasizes that no UP employees were affected on June 1 when the UP and MP locals were abolished and the Salina-El Dorado Local established because under the implementing agreement UP employees operated the newly established local for the first five months from June 1 through October 31, 1985. Thus, urges the Organization, the effect of the transaction on UP employees was postponed until November 1, 1985 when, pursuant to the implementing agreement, the Salina-El Dorado Local went to MP employees for seven months. The Organization contends that although the Carrier protected the three UP employees who lost their positions on June 1, 1985 as the result of the abolishment of the UP Salina-McPherson Local, those employees actually were not adversely affected at that time inasmuch as the Salina-El Dorado Local was established immediately and they successfully bid positions on the new Local.

The Organization points out that under Article I, Section 1(a) of the New York Dock Conditions a transaction covers any action taken pursuant to ICC authority. The Organization urges that the November 1, 1985 transfer of the Salina-El Dorado Local to MP employees fits that definition.

The Carrier argues that no transaction occurred on November 1, 1985. The Carrier contends that the transfer on that date resulted from

the implementing agreement. The Carrier urges that the transfer was not an action taken pursuant to authority granted by the ICC and thus does not come within the definition of a transaction in Article I, Section 1(a) of the New York Dock Conditions. The only action meeting that definition, the Carrier urges, occurred on June 1, 1985 when the UP and MP locals were abolished and the Salina-El Dorado Local established. The Carrier points out that the June 1 changes were the subject of the Carrier's notice and the implementing agreement governed by Article I, Section 4 of the New York Dock Conditions.

The Carrier argues that the Organization has failed to meet its burden of proof under Article I, Section 11(e) of the New York Dock Conditions which provides that:

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.

The Carrier urges that there is no evidentiary support for the Organization's contention that the transfer of the Salina-El Dorado Local on November 1, 1985 was a transaction.

The Carrier maintains that although the November 1, 1985 transfer of the Salina-El Dorado Local to MP employees was accomplished pursuant to a collective bargaining agreement which implemented the transaction of June 1, 1985, the November 1 transfer was not a transaction itself as the Organization argues. The Carrier contends that if the Organization's

argument should prevail it would lead to the absurd result that the Carrier would have to serve notice and negotiate an implementing agreement pursuant to Article I, Section 4 of the New York Dock Conditions each time the Salina-El Dorado Local was transferred between MP and UP employees pursuant to the implementing agreement.

FINDINGS:

The question the parties have placed before this Board is whether the transfer of the Salina-El Dorado Local from UP employees to MP employees on November 1, 1985 was a transaction. We believe the record in this case requires a positive answer to that question.

Article I, Section 1(a) of the New York Dock Conditions defines a transaction as any action taken pursuant to ICC authority. In the instant case the ICC authorized the consolidation of two separate UP and MP locals into the Salina-El Dorado Local. That transaction was implemented by an agreement pursuant to Article I, Section 4 of the Conditions. We believe the November transfer was an action taken pursuant to the consolidation authorized by the ICC, and as such it meets the definition of a transaction in Article I, Section 1(a).

In this regard we do not believe the Carrier's point is well taken that it is required to serve notice and negotiate an implementing agreement under Article I, Section 4 of the Conditions each time the Salina-El Dorado Local is transferred. Rather, we agree with the Organization that the matter is sufficiently covered by the implementing agreement and no further notice and/or agreement would be required.


Even if the November 1, 1985 transfer was not itself a transaction under the New York Dock Conditions, we are persuaded that the displacements and dismissals suffered by UP employees as the result of the November 1 transfer were the result of the consolidation of the UP and MP locals on June 1, 1985. The Organization's point is well taken that these employees simply did not suffer adverse effect because it was postponed due to the fact that UP employees operated the Salina-El Dorado Local for the first five months from June 1 to October 31, 1985. MP employees who lost their positions as a result of the abolishment of the MP McPherson-El Dorado Local on June 1, 1985, and MP employees who were in the chain of bumping initiated by that event, received full protection. Although the Carrier protected UP employees in June in fact those employees did not suffer a loss of positions or earnings and set forth a chain of bumping until November 1, 1985 when the local was transferred to MP employees. The fact that adverse effect on UP employees of the June 1 transaction was postponed does not change the fact that adverse effect resulted from the consolidation of the UP and MP locals on June 1. That the November 1 transfer was a creature of agreement between the parties is a factor supporting the Organization. That agreement was entered into pursuant to Article I, Section 4 of the New York Dock Conditions to implement the consolidation of the UP and MP locals. In our opinion that very agreement provides the causal nexus between the consolidation and the adverse effect upon UP employees.


We must conclude that the Organization has met its burden of proof under Article I, Section 11(e) of the New York Dock Conditions. It has identified two transactions either of which have resulted in adverse effect upon UP employees. This case is distinguishable from Cases 1 and 2 decided by this Committee. In those cases the adverse effect upon employees was caused by the operation of working agreements unrelated to a transaction. In the instant case the adverse effect was caused by the operation of the agreement entered into pursuant to Article I, Section 4 of the New York Dock Conditions which implemented the transaction.


We deem it important to emphasize that our ruling in this case is confined to the November 1, 1985 transfer of the Salina-El Dorado Local and the adverse effect resulting from that specific transfer. Nothing in our ruling should be construed as support, expressly or impliedly, for the proposition that any subsequent transfer of the Salina-El Dorado local would constitute a transaction under the New York Dock Conditions or that the protective benefits of those conditions would be available for any adverse effect resulting from such transfer. We find no support for that proposition, and we reject any implication as to its validity.

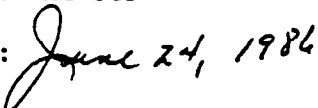
AWARD

The Question at Issue is answered in the affirmative.


William E. Fredenberger, Jr.
Chairman and Neutral Member


W. E. Naro
Carrier Member


J. L. Thornton
Employee Member

DATED:  June 24, 1986