ARBITRATION COMMITTEE

In the Matter of the Arbitration Between:	OPINION AND AWARD
BROTHERHOOD RAILWAY CARMEN - A DIVISION OF BRAC, Organization,	Pursuant to Article I, Section 4 of the New York Dock Conditions and Section 4 of the November 3, 1966
and	Merger Protective Agreement
CSX TRANSPORTATION, INC. and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Carriers.	I.C.C. Finance Docket No. 28905

Hearing Date: December 18, 1986
Hearing Location: Jacksonville, Florida

MEMBERS OF THE COMMITTEE

Employees' Member: R. P. Wojtowicz
Carriers' Member: J. T. Williams
Neutral Member: John B. LaRocco

APPEARANCES

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OPINION OF THE COMMITTEE

I. INTRODUCTION

On September 23, 1980, the Interstate Commerce Commission (ICC) approved CSX, Inc.'s petition to control two non-carrier holding companies: Chessie System, Inc. and Seaboard Coast Line Industries, Inc. ICC Finance Docket No. 28905 (Sub-No. 1). 363 I.C.C. 521 (1980). The Chesapeake and Ohio Railway Company (C&O) and the Baltimore and Ohio Railroad Company (B&O) are the major railroad subsidiaries of Chessie System, Inc. In 1980, Seaboard Coast Line Industries, Inc. was the parent of the Family Lines which included the Seaboard Coast Line Railroad (SCL). The successor enterprises of the Family Lines were Seaboard System Railroad and currently CSX Transportation, Inc. (CSX). The end to end consolidation produced a large single system serving the northeast, southeast and midwest. Id. at 553. The railroad subsidiaries remained separate entities. Id. at 575. To compensate and protect employees adversely affected by the control case and related proceedings, 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 all of the involved railroads pursuant to the relevant enabling statute. 49 U.S.C. 11343, 11347; 363 I.C.C. 521, 588.

In 1966, the ICC approved the merger of the Seaboard Air Line Railroad Company (SAL) and the Atlantic Coast Line Railroad Company (ACL). The merged carrier became the SCL.

On November 3, 1966, the Brotherhood Railway Carmen (BRC) and sixteen other rail labor organizations entered into an Agreement with the SAL and ACL for the Protection of Employees in the Event of the SAL-ACL Merger. The Agreement, commonly referred to as the Orange Book, was effective August 1, 1966. The parties negotiated the Orange Book pursuant to the last sentence of Section 5(2)(f) of the Interstate Commerce Act. In 1978, Congress enacted 49 U.S.C. 11347 and repealed Section 5(2)(f).

II. BACKGROUND AND SUMMARY OF THE FACTS

CSX and C&O (collectively "the Carriers") issued written notice, dated August 29, 1986, of their intent to close CSX's freight car heavy repair shop at Waycross, Georgia and to simultaneously transfer "...freight car heavy repair work and certain storeroom work at Waycross..." to the C&O's Raceland, Kentucky freight car heavy repair facility. The work moved from Waycross would be "...coordinated with such work presently being performed at Raceland under the C&O Agreement." The repair work and Waycross employees are presently subject to the SCL Schedule Agreement. Approximately fifty percent of the employees currently occupying positions at the Waycross repair shop are present employees within the definition set forth in Orange Book Section 2(a).

In their notice, the Carriers informed the Organization of their intent to abolish 149 positions at Waycross and establish 107 positions at Raceland. The Organization represents 121 of the incumbents holding positions slated for abolition. By class, the incumbents are 99 Carmen, 4 Carman Helpers, 13 Painters and 5 Painter Helpers. At the coordinated Raceland facility, the Carriers estimated that they would create 86 Carmen, 3 Carman Helper, 6 Painter and 4 Painter Helper positions to perform the work transferred from Waycross. Except as described above, the notice was silent concerning the 22 workers whose positions would be abolished but would be unable to either obtain an equivalent, newly established Raceland position or exercise their seniority to claim a remaining position at Waycross. The Carriers anticipated that they would close the Waycross freight car heavy repair shop on or about December 31, 1986.

The notice also indicated that CSX would abolish 3 clerical positions, 11 jobs in the blacksmith's craft, 6 laborer positions, 3 Machinist positions, 4 jobs held by sheet metal workers and 1 electric crane operator position. At Raceland, the Carriers intended to establish only 1 clerical, 4 blacksmith and 3 laborer positions.

After the Carriers served the August 29, 1986 notice, the parties conferred at least twice to negotiate an implementing agreement. Their bargaining efforts were unsuccessful primarily because irreconcilable disagreements developed over the application of certain Orange Book provisions, the interrelationship between the Orange Book and a New York Dock

implementing agreement and the Carriers' right to implement the transaction without first complying with the Railway Labor Act. 45 U.S.C. 51 et seq. Thereafter, the Organization, and later the Carriers, invoked arbitration in accord with Section 4(a) of the New York Dock Conditions.[1] Even though Section 4 contemplates arbitration by a single, neutral arbiter, the parties formed this Committee to resolve all outstanding disputes under the New York Dock Conditions and the Orange Book. Thus, we derive dual authority from Section 4 of the New York Dock Conditions and Section 4 of the Orange Book.

Beginning on November 4, 1986, the Organization challenged the jurisdiction of this Committee to fashion an implementing agreement. Despite its prior invocation of arbitration, the Organization may nonetheless contest our fundamental power to adjudicate this dispute. A lack of jurisdiction allegation may be raised at any time. Therefore, the Organization is not estopped from urging this Committee to dismiss all the substantive matters which the parties previously agreed to submit to us.

The Organization and the Carriers filed prehearing submissions and extensively argued their respective contentions at the December 18, 1986 hearing. Also, they filed post-hearing briefs which the Neutral Member received on January 2, 1987.

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

This decision was issued within the thirty day limitation period found in Section 4(a)(3) of the New York Dock Conditions.

III. STATEMENT OF THE ISSUES

The Carriers pose the following question to this Committee:

> "Shall the terms of the attached agreement, proposed by the Carriers, apply to the implementation of the Carriers' August 29, 1986 notice to transfer all freight car heavy repair work from Waycross, Georgia to Raceland, Kentucky and to coordinate such work with that presently being performed at Raceland under the C&O Agreement?"

The "attached agreement" referred to in the Carriers' question at issue is a proposed implementing agreement which it sent to the Organization on October 15, 1986. The Carriers withdrew all their prior proposals.

In its opening submission, the Organization proffered four issues which read:

> "ISSUE NO. 1:
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> "Is the CSX's notice dated August 29, 1986 (attached as Exhibit No. 1), concerning transfer of freight car heavy repair work from Waycross, Ga. on the SCL to Raceland, Ky. on the C&O adequate and specific enough notice under the New York Dock conditions?
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> "ISSUE NO. 2:
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> "If this arbitrator has jurisdiction of this dispute, can the affected employees who have lifetime guaranteed jobs on the SSR under the Orange Book agreement--which gives the SSR the right to transfer work and employees only from their home point to other points on the former SAL-ACL railroads--be compelled to transfer to another point on another railroad which is not on the property of the former SCL and ACL railroads without unilaterally effecting a change in their wages, rules or working conditions as set forth in the Orange Book?

"ISSUE NO. 3:

"Can CSX move the work which is subject to the SCL(SSR) Working Agreement and restricted to the SCL employees, out from under the SCL agreement and place it under another contract (Working Agreement) on another railroad?

"ISSUE NO. 4:

"If the above issues each are answered in the affirmative, what should be the terms of an implementing agreement under Article I, Section 4 of New York Dock?"

In addition, the Organization's General Chairman on the C&O raised another issue although the question is actually a subset of the above stated fourth issue. The C&O General Chairman presented the following question:

"Shall the C&O employes, junior in seniority to employes transferring from Waycross, Georgia, cooresponding [sic] to the number of senior employes transferring to the coordinated operations, be subject to the protective benefits set forth in Article 5 and 6 of the New York Dock Conditions?"

IV. RELEVANT STATUTES, ORANGE BOOK PROVISIONS, EXCERPTS FROM NEW YORK DOCK CONDITIONS AND RECENT COURT DECISIONS

To fully understand the parties' contentions, we must first relate the relevant statutes, contract provisions and legal authority.

The ICC promulgated and imposed the New York Dock Conditions pursuant to the Congressional mandate in Section 11347 of the Interstate Commerce Act. 45 U.S.C. 11347. Starting with Section 1(a), a transaction is "...any action taken pursuant to authorizations of this Commission on which these provisions have been imposed." Section 4(a) states that "...any assignment of employees made necessary by the transaction shall be made on the