In the Matter of the Arbitration Between MAINE CENTRAL RAILROAD COMPANY and BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES	OPINION AND AWARD (Marjorie Scott Grievance)

The hearing in the above matter, upon due notice, was held on March 18, 1987, at the offices of the Maine Central Railroad Company in Portland, Maine, before Irwin M. Lieberman, serving as Arbitrator under the provisions of Section 11 of the New York Dock conditions. The parties waived the provisions of Article 1 Section 11 for a three-member arbitration committee and agreed that the undersigned Arbitrator would serve as the Sole Impartial Arbitrator.

The case for Maine Central Railroad Company, hereinafter referred to as the Carrier, was presented by Daniel J. Kozak, Assistant Vice President, Labor Relations. The case for the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, hereinafter referred to as the Union was presented by V.E. Jones, Jr., Associate Director, Industry Relations. At the hearing the parties were afforded full opportunity to offer evidence and argument and both parties presented pre-hearing submissions.

ISSUE

The parties stipulated that the question at issue be posed as follows:

> "Is Marjorie M. Scott entitled to a separation allowance in lieu of transferring from Portland, Maine to North Billerica, Massachusetts?"

Neither party raised any procedural questions. It should be noted however that Carrier did raise the applicability of certain agreements to this case which will be dealt with hereinafter.

BACKGROUND

Guilford Transportation Industries acquired a group of railroads in the northeast United States during the early 1980s. These railroads included the Carrier herein as well as the Portland Terminal Company, The Boston and Maine Corporation and the Delaware and Hudson Railway Companies. These acquisitions were approved by the Interstate Commerce Commission in Finance Docket No. 29720 sub-1 and Finance Docket No. 29772. In its approval the ICC subjected the approval to the protected employees adversely affected by the acquisition as covered by the New York Dock II conditions. The New York Dock II conditions will hereinafter be referred to as New York Dock conditions.

The ICC approval was dated July 23, 1982. Subsequently the final approval involving the Maine Central Railroad occurred in 1983. Pursuant to the New York Dock conditions, the parties herein, that is Guilford Transportation Industries as well as the Union,

entered into an implementing agreement pursuant to Article 1 section 9 of New York Dock . That agreement was executed on October 17, 1984. That agreement will be referred to herein after as the Master Implementing Agreement.

Several provisions of New York Dock conditions are particularly relevant to this dispute. Those provisions provide as follows:

> "Section 1(c)
> 'Dismissed employee' means an employee of the railroad who, as the result of a transaction, is deprived of employment with the railroad because of the abolition of his position or the loss thereof as a result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.
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> "Section 7 Separation Allowance
> A dismissed employee entitled to protection under this Appendix may, at his option, within seven days of his dismissal, resign and (in lieu of all other benefits and protections provided in this Appendix) accept a lump sum payment computed in accordance with Section 9 of the Washington Job Protection Agreement of May , 1936."
>
> "Section 9
> Any employee retained in the service of the railroad....who is required to change the point of his employment as a result of the transaction, and within his protective period, is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects...."
>
> "Article 4
> Employes 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.
>
> In the event any dispute or controversy arises between the railroad and an employee not represented by a labor

organization, with respect to the interpretation, application, or enforcement of any provision hereof which cannot be settled by the parties within thirty days after the dispute arises, either party may refer the dispute to arbitration."

The Master Implementing Agreement in its initial sections defines the Carrier's right to transfer work and/or employees throughout the system as long as craft lines are not crossed. Further, there are certain time limits specified in the Master Implementing Agreement with respect to advance notice to employees of impending transactions.

Section 1 of the Master Implementing Agreement provides as follows:

"Article III--Displacement rights and separation allowances relating to abolished positions and transfers of employees

Section 1
The incumbents of any positions transferred or abolished in accordance with Article II hereof, or any employee or employees affected by actions taken by such incumbents, must exercise one of the following options within fifteen (15) calendar days from the date of receipt of the notice by the General Chairman or from date of displacement:

(a) Transfer with the position.

(b) Exercise seniority on their home Carrier under existing agreement rules.

(c) Elect a separation allowance pursuant to the New York Dock Conditions or according to the terms of any applicable on-property protective agreement. The Carrier may make force reductions equal to the number of employees who resign to accept a separation allowance as herein provided.

(d) Accept furlough status with a suspension of protective benefits during the furlough period.

In the event an employee fails to exercise an option under this Section 1, the employee shall be considered to have exercised Option (d).

> Employees accepting transfer which requires a change of residence will be entitled to moving expenses and loss in sale of home benefits provided in Article 1, Sections 9 and 12 of the New York Dock Conditions. In addition, employees exercising Option (a) shall be entitled to :
>
> (a) a lump sum of $800.00 and
>
> (b) reimbursement of wage loss not to exceed five (5) days in lieu of the three (3) days as provided in Section 9 of New York Dock Conditions.

As of January 1, 1986, the roster of stenographers and clerks in the office of the General Superintendant of Carrier contained the name of Marjorie Scott. That roster indicated that she entered Carrier's service on June 23, 1969, and carried that as her seniority date. She was listed as a stenographer. The footnote to that listing also indicated that with respect to Marjorie Scott: "Holds Rule 1,Group 2 position, Law Department, formally Rule 1, Group 1. Position reclassified as Rule 1, Group 2 effective 4/1/77. Present incumbent is exempt from all rules of the agreement except union shop. Retains seniority in this district under provisions of Rule 5(c)."

The provision quoted above related to an agreement effective April 1, 1977 between the parties, which ammended the Scope Rule of the Agreement. That understanding of 1977 specified that certain positions including that of Majorie Scott "presently classified as Rule 1, Group 1" would be reclassified to come under the provisions of Rule 1, Group 2 with the proviso that the present incumbants are "exempt from all rules of the Agreement except the union shop agreement." The agreement went on to provide that when those

positions became vacant, the stenographers' rate provided under the Agreement would apply. The same agreement specified, even though it is not directly relevant to this matter, that certain employees who had previously been classified as Rule 1, Group 2 positions would come within the full scope of the Agreement.

In January of 1986, Carrier's Law Department was transferred to and consolidated with the Boston and Maine Corporation's Law Department at North Billerica, Massachusetts. Mrs. Scott's position was transferred to North Billerica and she was given the opportunity to follow her position to that location. Following extensive correspondance between Mrs. Scott and the Carrier, it was finally Mrs. Scott's position that she would not accept the transfer and requested a separation allowance. The Carrier's ultimate position is expressed in a letter dated February 19, 1986, which states as follows:

> "Dear Mrs. Scott:
>
> This is in response to your letter of February 6, 1986 requesting a separation allowance in lieu of transfer in the event that you are ineligible to displace an employee working under the scope of the Brotherhood of Railway, Airline and Steamship Clerks (BRAC) Agreement. As I outlined in my letter to you of February 10, 1986, it is impossible for you to displace a junior employee working under the scope of the BRAC Agreement because yournon-agreement position has not been abolished. Your services as a non-agreement employee are needed in North Billerica and you will be afforded all the privileges and benefits of the management relocation policy in the event you elect to transfer with your position.

Regarding your request for a separation allowance, I regret to inform that you are ineligible for such an allowance. Separation allowances in lieu of transfer are provided only to BRAC represented clerical employees working under the scope of the BRAC Agreement. This benefit is provided under the so-called non-agreement position clearly does not fall under the scope of the BRAC Agreement with the Maine Central Railroad Company and, therefore, you are ineligible to receive a separation allowance under the Stabilization Agreement.

AS I stated to you on February 10, you, like all other non-agreement employees, are eligible for the rather substantial moving and relocation benefits contained in the Guilford Transportation Industries management relocation policy. I trust that this response addresses any questions that you may have regarding your scheduled transfer."

CONTENTIONS

A. THE UNION

The Union maintains that Mrs. Scott, as the incumbent of a position being transferred (or abolished) is entitled to separation allowances as outlined in the Master Implementing Agreement of October 17, 1984. Noting Carrier's position in defining Mrs. Scotts election of separation allowance, the Organization states that Carrier does not consider her as an employee represented by a labor organization. However, the Organization insists that despite her membership in BRAC, this position is inconsistent, since she is covered by the Union Shop Agreement and is identified as being covered by the scope of the Agreement even though exempt from all rules except the Union Shop Agreement. The Union maintains further that even if she is determined to be a non-represented

employee, which the Union does not agree with, she is covered by the provisions of Article IV of the New York Dock conditions.

The Union maintains that all employees of the Carrier who are clerical by craft are either covered by the Agreement, excepted totally from the Agreement or partially excepted. The claimant herein, Mrs. Scott, is clearly partially excepted. She is covered according to the Organization by the scope rule and by the Union Shop Agreement. Therefore, according to the Union, she is clearly covered with respect to the New York Dock conditions which has as principal criteria the representation of an employee by a labor organization. Furthermore it is immaterial as the Union sees it whether she is excepted or partially excepted. In fact, because theprovisions of Article IV of New York Dock would apply if she is indeed not covered by the scope of the Agreement or represented by a labor organization. In either event, she is entitled to the benefits and protections allowed under New York Dock conditions for all employees covered by the BRAC Agreement by the specific terms of New York Dock , and those conditions are best exemplified by the Master Implementing Agreement according to Petitioner. The Organization alludes to an award which was later rendered inoperative by virture of the issue being resolved by another arbitrator on this property between the same parties. That award, by Arbitrator Fredenberger will not be relied upon by this

Arbitrator in view of its history.

The Petitioner insists that Mrs. Scott's position was in fact abolished and the work transferred to North Billerica as part of a transaction. According to the Organization, the Carrier thereafter created a new position and offered it to Claimant. Thus she was not transferred, according to the Union, but rather her position was abolished.

In support of this position the Organization maintains that Carrier in a letter to Claimant in January of 1986 indicated that the retirement of a particular employee in North Billerica precipitated the need for Mrs. Scott at that location. The Organization argues that the work of Claimant's position was transferred to North Billerica and combined with that of another employee and a new position was created. That position is a new position and was offered to Claimant Scott. Therefore even if Mrs. Scott was not entitled to the benefits of the Master Implementing Agreement (which the Union does not agree with), she would still be entitled to separation allowance pursuant to the express terms of New York Dock according to the Union, since she was placed in a dismissed status and offered a position requiring a change of residence. The Organization notes that according to official interpretations of the New York Dock conditions, once Mrs. Scott was placed

in a dismissed category by virtue of the abolishment of her position in Portland she was entitled to opt for the separation allowance to be computed as indicated under New York Dock . She was not therefore required to accept a position which would require her to change her place of residence.

The Organization maintains that Mrs. Scott is entitled to a separation allowance either under the terms specified in the Master Implementing Agreement or the provisions of Article 1 Section 7 of New York Dock . This position is supported by another arbitration case involving this Carrier and a non-represented employee, in which the arbitrator awarded separation allowance computed as provided in New York Dock to a management secretary whose position was abolished when Carrier closed the office of the former D & H Railway Company's Chief Executive in New York and moved it to North Billerica. In that award the arbitrator took the position that the particular grievant's position was abolished as a direct result of the consolidation of the office of the President of the Company, and therefore there was a causal link between the transaction under New York Dock and the abolishment of the position. Therefore the arbitrator held that the employee was entitled to a separation allowance.

The Union notes that Carrier in its correspondance indicated that claimant is not entitled to the provisions outlined in the Master Implementing Agreement and can only be entitled to

the protective conditions specified in New York Dock. According to the Union, this is a complete misreading of the intent of Article IV of New York Dock, in that it fails to recognize that the parties are free to negotiate protective conditions superior to the protective conditions of New York Dock as was done in this instance through the Master Implementing Agreement. It is the level of protection which is specified in the Master Implementing Agreement to which non-represented employees are entitled. In short, the Organization argues that Article IV of New York Dock does not say that non-represented employees are only entitled to the provisions of New York Dock , but rather that they should be afforded the same levels of protection afforded to members of labor organizations.

The Organization concludes that the question at issue must be answered in the affirmative.

B. THE CARRIER

At the outset the Carrier indicated that there is no disagreement with respect to the facts pertaining to Mrs. Scott. Furthermore, Carrier maintains and does not dispute with the Organization that Mrs. Scott is afforded New York Dock protection under Article IV of that document. In fact, Carrier states that the type of position

held by Mrs. Scott is the type for which Article IV of New York Dock was designed to cover. Thus, Carrier's conclusion is that while Mrs. Scott is not an official, she is an employee of the Railroad "not represented by a labor organization" as specified under Article IV.

As a basic position with respect to the New York Dock conditions, the Carrier notes that an employee who failed to transfer with his or her position forfeits protection benefits under the New York Dock conditions. In this context the Carrier states that one of the primary obligations of employees under merger situations such as that involved herein is the obligation to transfer with their positions to a new location pursuant to "a transaction." Specifically, under the provisions of Section 1(c) of the New York Dock conditions, a dismissed employee must be one who as a result of a transaction is deprived of employment. Thus, in this instance Mrs. Scott was requested to transfer to a new location and was not "deprived of employment." This position is buttressed by the provisions of New York Dock which recognizes that employees may have to relocate pursuant to a transaction and thus provides certain substantial moving and relocation benefits. Thus the Carrier concludes that the definition of a dismissed employee and recognition of the impact of the transaction related to change in residence are sufficient to support the position of Carrier in this dispute.

In support of its position with respect to the status of Mrs. Scott as a transferred employee not entitled to the New York Dock protective benefits, Carrier cites a number of arbitration awards. In one of those awards, involving the Louisville and Nashville Railroad Company and the Brotherhood of Railway Carmen, the arbitrator held that the employees involved may not refuse to transfer and still come within the definition of a dismissed employee set forth in Article 1 Section 1(c) of New York Dock. Seven other similar cases are cited by Carrier.

Carrier further presents a number of arbitration awards which hold to the proposition that employees may indeed be eligible for certain protective benefits in lieu of transferring with a position (where a change of residence is involved) only if such rights are afforded the employee through on-property protection agreements and not merely to the New York Dock conditions. However, Carrier notes that in this situation the claimant was exempt from all rules of the BRAC Agreement. For that reason it is indicated by Carrier that the claimant cannot avail herself of a separation provision in lieu of transfer contained in the BRAC Stabilization Agreement. Additionally Carrier has relied in part on a series of arbitration awards involving this Carrier (and its parent the Guilford Transportation Cc and International Association of Machinists. In those awards, the arbitrators held that certain employees who fail to transfer

with available work were not dismissed employees and hence, were not eligible for dismissal allowances under the New York Dock labor protective conditions. The Carrier also notes certain legal decisions which go to the proposition that employees who refuse to transfer with available work are not dismissed employees under New York Dock conditions. In fact, according to Carrier, the ICC itself has refused to take the position espoused by the Organization in this dispute. In fact, in the proceeding involving the Carrier's control of the Delaware and Hudson Railway Company, the labor organization sought to enhance the provisions contained in the New York Dock conditions, again Carrier notes the ICC rejected this request. For this reason it is concluded by Carrier that the Organization cannot attempt through a New York Dock arbitration case to achieve the type of benefits and protections which the ICC explicitly refused to grant in hearings before that body.

Carrier also refers to the agreed-upon questions and answers with respect to the Master Implementing Agreement in support of its position.

Question No. 8 in particular is cited by Carrier. That Question/ Answer provides as follows:

> "Q: Under what conditions is an employee entitled to a dismissal allowance or separation allowance under the New York Dock conditions?
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> A: An employee must be deprived of employment. If an employee's position is listed for transfer, or if the Carrier offers such employee another position pursuant

> to the Master Implementing Agreement, such employee is not eligible for a dismissal allowance or a separation allowance under the New York Dock conditions. If such employee listed for transfer elects to separate in lieu of transfering such employee must elect the protective benefits of his on-property protection agreement and separate pursuant to the conditions outlined in his on-property protection agreement. If a position is abolished, and an employee is unable to exercise his seniority onto another position, pursuant to his working agreement, he will be considered eligible for a dismissal or separation allowance under the terms and conditions of the Master Implementing Agreement of October 17, 1984, and the New York Dock."

Carrier maintains that by that Question/Answer it is evident that Claimant's position must be first abolished in order for Claimant to be eligible for dismissal or separation allowance under the New York Dock conditions. The Carrier argues of course that Claimant does not come under the terms and conditions of the Master Implementing Agreement since she is not subject to any collective bargaining agreement by virtue of the non-applicability provisions in her particular situation. Thus, Claimant was not a dismissed employee because she was not deprived of employment.

As an additional point, Carrier notes that Article IV of the New York Dock conditions provides for employees not represented by a labor organization (which Carrier assumes with the case with respect to Mrs. Scott), substantially the same levels of protections are afforded to members of labor organizations under the New York Dock terms and conditions. These words (terms and conditions) obviously refer to the New York Dock labor protection conditions. For that reason, if an employee refuses to transfer with his or

her position, that employee is not deprived of employment and is not a dismissed employee eligible for the New York Dock separation allowance provisions.

Carrier notes that Claimant is apparently attempting to assert her rights under the BRAC "Stabilization Agreement" of October 17, 1984. That Agreement was an update and ammendment of the February 7, 1965 National Protective Agreement.

With respect to the Stabilization Agreement, the Carrier first takes the position the the jurisdiction of this Arbitration Committee is delineated by Section 11 of the New York Dock conditions only. In those provisions there is only a reference to the provisions of the Appendix which contain the New York Dock conditions. The Carrier argues that clearly the extent of coverage by the BRAC Stabilization Agreement is beyond the scope and jurisdiction of this New York Dock Section 11 Arbitration Committee. The Carrier cites a long line of cases in support of this contention. Thus, Carrier maintains that to what extent Claimant comes under the terms of the Stabilization Agreement, it is not the type of issue which can be resolved at a Section 11 Arbitration proceeding. The Stabilization Agreement itself provides that any dispute involving interpretation or application of the Agreement should be referred to Special Board of Adjustment No. 605 for a decision.

Carrier insists that even if the Arbitration Committee assumes jurisdiction, which Carrier believes would be incorrect, it must determine that Mrs. Scott was not working under the scope of the basic BRAC Agreement and therefore was not entitled to protective benefits under the BRAC Stabilization Agreement. Since Mrs. Scott held the position of a non-agreement stenographer in Carrier's Law Department, her status was clearly outlined in the Special Agreement executed on April 1, 1977. Carrier points out that Rule 1, Group 1 positions are exempt from all rules of the Agreement except Union Shop, while Rule 1 Group 2 positions are subject to all rules of the working agreement except that such positions are not subject to displacement. In the Scott case, she was specifically along with certain other limited numbers of employees, placed in a special category of being exempt from all rules of the Agreement except the Union Shop Agreement. For this reason according to Carrier when Mrs. Scott was transferred from Portland to Billerica she was not subject to the BRAC Collective Bargaining Agreement or any other collective bargaining agreement. Her only relationship to BRAC was through the Union Shop provisions of Footnote B and the Seniority Retention Rule. Clearly according to Carrier, the Organization's argument that Mrs. Scott was covered by the Stabilization Agreement must be rejected in view of the fact that she was exempt from all rules of the Agreement. In support of this position, Carrier also notes a letter of understanding reached pursuant

to the February 7, 1965 Master Protective Agreement which indicated that officials, supervisory or fully-excepted personnel only, are protected under the provisions of the February 7, 1965 Agreement when they exercise seniority rights in a class or craft of employees who are protected under such agreement. Thus, employees such as Mrs. Scott are entitled to no protective benefits when they are holding their position outside the scope of the Agreement. In support of this position further, Carrier notes that over the years Mrs. Scott in her position was considered to be a part of management in a non-agreement position. Mrs. Scott enjoyed certain benefits and pension rights and insurance benefits as well which. were similar to those of other management employees and beyond those accorded to employees covered by the BRAC Agreement.

Carrier notes the Organization's reliance on certain awards dealing with other positions of the same railroad. Specifically, for example, with respect to the award dealing with the secretory to the President. The Carrier states that the arbitrator's decision was based on the fact that the incumbent of that positions job was abolished as a result of a transaction and therefore claim for New York Dock separation allowance was sustained. However, unlike that situation, in this instance Mrs. Scott's position was not abolished because it was needed, and therefore she was not deprived of employment and was not entitled to a separation allowance under the New York Dock conditions.

Carrier concludes with respect to this argument that the Organization's attempt to base a separation allowance on the provisions of the BRAC Stabilization Agreement is unwarranted. Such a claim would establish an industry-wide precedent which would allow employees working outside of a collective bargaining agreement to select entitlements according to their own discretion. Such benefits could only accrue to an employee through a collective bargaining and should not be awarded through arbitration according to the Carrier.

As an additional point the Carrier notes that in at least two arbitration cases involving Carrier officials, arbitrators on the same property have ruled that employees who are officials were not entitled to the protective benefits described by the New York Dock conditions or the BRAC Stabilization Agreement (awards by Referrees Seidenberg and O'Brien).

In conclusion, Carrier notes that the answer to the question must be in the negative. Carrier argues that Claimant's rights are those of an employee covered by the New York Dock conditions under Article IV but since she refused to transfer with her position, she is not entitled to protective benefits including dismissal allowance. Furthermore, she has no rights whatsoever under the BRAC Stabilization Agreement as indicated before. In its arguments,

Carrier notes that even though it insists that the coverage of Claimant by the Stabilization Agreement should be rejected on jurisdictional grounds, it requests that the Arbitrator also dismiss the claim on its merits for purposes of future precedent and to enhance the ability of the parties to deal with future issues. Thus, the Arbitrator is asked to make a two-fold ruling with respect to the applicability of the Stabilization Agreement.

DISCUSSION AND OPINION

The Arbitrator will discuss the applicability of the Stabilization Agreement to this dispute first. Initially it must be observed that Carrier's argument with respect to jurisdiction is sound. The disputes under the Stabilization Agreement must, by terms of that Agreement, be referred to Special Board of Adjustment No. 605. This should not and cannot be turned over the arbitration committees established under the New York Dock conditions. Thus, as a basic position, this Arbitrator has no jurisdiction whatever with respect to any dispute coming under the Stabilization Agreement.

However, as requested by Carrier, a few comments are appropriate with respect to the implications of the Stabilization Agreement with respect to Mrs. Scott and similarly-situated employees. An examination of the Stabilization Agreement indicates that by its

terms it refers continually to employees covered by certain rules of the Schedule Agreement. This applies to transfers, it applies to exercise of seniority and other facets of the Stabilization Agreement. In fact, the very definition of a protected employee relates to a rule of the Schedule Agreement itself, in that an employee must hold a position under such agreement in order to become a protected employee. For that reason alone, it is apparent that the Stabilization Agreement was not intended by the parties to apply to non-agreement personnel such as company officials. In the particular case of Mrs. Scott she was by specific understanding in a special category and was exempt from all rules of the Agreement. Thus by the very terms of the of the understanding with respect to her position, she too, similar to an official, was not subject to the terms of the Stabilization Agreement as this Arbitrator views it. Based on the reasons expressed above and the particular reference to the jurisdictional question, this Arbitrator is convinced that this dispute must be resolved in terms of issues other than those embracing the Stabilization Agreement.

The first analysis of the problem herein must involve the status of Mrs. Scott and whether she was covered under any provisions of the New York Dock conditions. In this connection, when one examines the provisions of Article IV of the New York Dock conditions cited above, it is applicable to employees only who are "not represented by a labor organization." In Mrs. Scott's case, the special

agreement made with respect to her, placing her in a Rule 1, Group 2 status, with the particular exemption, specifically noted that she would be covered by the Union Shop Agreement. For this reason, she had to continue to pay dues to the Union herein in order to maintain her employment relationship. Being a dues paying member of the Organization, she was obviously an employee represented by that Organization which is further evidenced by the Union's representation of her in this case (albeit the early confusion concerning that representation). For that reason it would not appear that Article IV of the New York Dock conditions in spite of Carrier's agreement would be applicable to Mrs. Scott.

An examination of the record of this dispute indicates that Mrs. Scott's position (and that of seven other employees in a similar status) was indeed unique. She was not, for example, in the same category as a Carrier official. She was not a fully excepted employee. By the same token, she was not a fully covered employee either. Her status was that of an employee covered by the scope of the Agreement but with a specific proviso that she was exempt from coverage of all rules except the Union Shop provisions and, of course, seniority provisions. This status makes any resolution of her dispute inapplicable to any employees of this Carrier except those in the same posture as she was with respect to the rules and the Schedule Agreement.

It is this Arbitrator's view that Mrs. Scott was covered by the New York Dock agreement just as any other BRAC employee. She was represented by the labor organization, she was not a Carrier official, and it follows therefore that she must be an employee, as others represented by the labor organization, covered by the Agreement. The fact that she was a secretary with a rather unique status and exempt from the provisions of the basic Agreement does not per se remove her from the coverage of the New York Dock conditions.

What protection then is Mrs. Scott entitled to under New York Dock? As a number of arbitrators including Referree O'Brien have indicated, it is well established that employees who refuse to transfer with available work were not considered to be dismissed employees and therefore were not entitled to either dismissal allowance or separation allowance under the New York Dock conditions. In short, Carrier is correct in its interpretation of the New York Dock provisions with respect to this particular problem. The only difficulty with the precedent on this property and the conclusion reached by Carrier is that, with respect to the BRAC organization, the New York Dock is not the sole criteria. The parties agreed upon a Master Implementing Agreement which also must be considered. As part of that Implementing Agreement, Carrier has cited the anwer to Question No. 8 of the agreed upon Questions and Answers concerning that Implementing Agreement. It is also

instructive to examine the provisions of Question 7 which provides as follows:

> "Q: What is the intended application of Article 3, Section 1 as applied to incumbents holding positions listed for transfer?
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> A: The incumbent of a position listed for transfer or an employee displaced by such an incumbent, must exercise one of the options set forth in Article 3 Section 1. If such an employee has insufficient seniority to displace onto another position, he then must (1) transfer to a new location, (2) elect a separation allowance under the terms and conditions of any applicable on-property protection agreement or (3) accept voluntary furlough status with a suspension of protective benefits."

It is this last agreed-upon Question and Answer which provides the solution to the problems presented by this dispute. It is apparent that Mrs. Scott was not covered by an on-property protection agreement (the Stabilization Agreement) which has been discussed above. It follows therefore that she must only be covered by the provisions of the New York Dock agreement with respect to any severance arrangements. The questions with respect to her entitlement under the New York Dock conditions are governed by the agreed-upon answer to Question No. 8 cited by Carrier. Under that document it is clear that Mrs. Scott in refusing the transfer with her position is not eligible for dismissal or separation allowance under the provisions of the New York Dock conditions. Therefore, even through she is covered by the Implementing Agreement, the specific interpretation of the language of that Implementing Agreement preclude Carrier from treating her as it would an

employee who is covered by the terms of the on-property agreements dealing with separation allowances. Her status was dissimilar to that of other BRAC employees who refused transfers and were covered by the Stabilization Agreement and thus were permitted separation or dismissal allowances because of the refusal to accept a transfer which involved a change of residence.

In addition, several other observations are required. First, the facts indicate, contrary to the Union's position, that Mrs. Scott's job was transferred; it was not abolished and a new position established at Billerica as contended by the Organization. Therefore, the excellent precedents cited by the Organization are inapplicable since they deal with job abolishments. Mrs. Scott was not covered by the separation allowance provisions, except as defined by the New York Dock conditions, and as defined by the answer agreed upon to Question No. 8.

While this case is distinguishable from the other awards on this property which deal with the establishment of implementing agreements, the conclusion with respect to the Grievant herein is clear and unequivocal. She was in a special category and was different in terms of her rights than other BRAC employees by virtue of her exemption from the rules. While the provisions of Article IV do not apply to her, it is immaterial in fact since she was

not under either circumstance covered by any on-property agreement with respect to protective benefits. The Arbitrator recognizes the logic of the Organization's position that the provisions of Article IV contemplate the possibility of more liberal benefits in implementing the agreement, but in this instance, that agreement does not bring Mrs. Scott under the purview of the more liberal benefits for the reasons indicated.

AWARD

The question is answered in the negative.

I.M. Lieberman, Arbitrator

Stamford, Connecticut

April , 1987