
In The Matter of Arbitration Between

P.J. Kelley

and

Brotherhood of Railway, Airline and
Steamship Clerks, Freight Handlers
Express and Station Employees

and

Union Pacific Railroad Company

Pursuant to Article VI of the New York
Dock Conditions Imposed by the Inter-
State Commerce Commission in Finance
Docket No. 30,000

Before Arbitration Committee

Members:

Richard D. Meredith
Senior Director-Labor
Relations-Operating

Carrier Member

Deane D. Willey
General Chairman

Employee Organization
Member

Lamont E. Stallworth
Labor Arbitrator

Neutral Member

Appointment of Neutral Arbitrator

November 11, 1986

Hearing Held

Omaha, Nebraska
February 9, 1987

ISSUES IN DISPUTE;

The Parties submitted the following issues to the
Arbitrator:

1. Did Mr. P. J. Kelley lose his non-agreement position of
Assistant Manager Analysis Reports because of a merger-related
transaction?

2. If the answer to Question (1) is in the affirmative, to
what level of benefits is he entitled under the New York Dock
Conidtions?

STATEMENT OF FACTS:

This dispute involves the Claimant's charge that he was demoted because of a merger among the Union Pacific Railroad Company, the Missouri Pacific Railroad Company, and the Western Pacific Railroad Company. The Claimant contends that because he lost his job as a result of the merger, he is entitled to certain merger-related benefits. The Carrier disputes that the force reduction which eliminated his job was related to the merger.

The railroads first applied to the Interstate Commerce Commission (I.C.C.) for approval of the merger on September 15, 1980, and were granted approval on September 13, 1982. The merger finally took effect on December 22, 1982, under the name of the Union Pacific Railroad Company. (Carrier Submission, pp. -2).

As part of the merger, the I.C. C. approved a set of labor protective conditions designed to afford some protection to the thousands of employees affected by the merger. The Claimant here contends that he is covered by these rules, known as the New York Dock Conditions (Carrier's Exhibit B; see also Empoloyes' Exhibit No. 4, pp. 52-59).

As a result of the merger, the Carrier undertook a consolidation of the work forces of the three individual carriers that now constitute the new merged carrier. On September 13, 1983 the Union Pacific Controller, Mr. A. M. Underhill, sent a etter to various carrier officials containing a proposed consolidation plan for the Union Pacific and Missouri Pacific's

Accounting Departments. At that time the Claimant was employed as a Manager of Property Systems in the Union Pacific's Omaha, Nebraska office. The letter proposed force reductions of 332 Accounting Department positions, 29 management and 303 clerical. (Employees' Exhibit No. 2). According to the letter, the force reductions would occur throughout 1984 and 1985.

On June 1, 1984 the Union Pacific and Missouri Pacific railroads served notice upon the Organization of their desire to consolidate all the Accounting Department work of the two railroads. The letter describes this consolidation as part of the I.C.C.-approved merger. That letter stated that the companies anticipated that the consolidation of the Accounting Department work would begin during the first quarter of 1985, would continue on a progressive basis and would conclude "during the middle of 1986." (Employees' Exhibit No. 3).

As a result of this notice the Carrier and the Organization entered into an Agreement, dated September 19, 1984, which covered the proposed consolidation of the Accounting Department as it related to "agreement" personnel, i.e. those covered by a collective bargaining agreement. (Implementing Agreement No. 22, Employees' Exhibit No. 4). Attached to this Agreement are several letters of understanding between the Parties, one of which states that "the transfers and rearrangements contemplated herewin will be effected within the six (6) month period (January 1, 1985 to June 30, 1985)." (Employees' Exhibit No. 4, p. 26).

On July 26, 1984 the Union Pacific informed the Claimant that as part of its consolidation program, it was offering a voluntary force reduction program for non-agreement employees, i.e. those employees, like the Claimant, who were not working under a collective bargaining agreement. (Employees' Exhibit No. 5). On August 20, 1984 the Claimant received a new organization chart regarding the management of the Accounting Department, which stated that "a substantial reduction in nonagreement positions would be required to streamline the organization," that "this reorganization is part of an ongoing process", and that "we will need to make further changes in the future." (Employees' Exhibit No. 6). The Claimant decided not to participate in the voluntary force reduction program.

On September 4, 1984 the Claimant was notified that he would be reassigned to the non-agreement position of Assistant Manager-Analysis & Reporting (Property). The letter assured the Claimant that at a minimum his present salary would be retained. (Employees' Exhibit No. 8). The claimant accepted the position, as of October 1, 1984.

During 1985 the parties negotiated a second implementing agreement for the further consolidation of the Accounting Departments. This implementing agreement (No. 22, dated August 19, 1985) covered only "agreement" employees, as did the earlier one. This second implementing agreement includes a letter which states that "the transfers and rearrangements contemplated

herein will be effected within the six (6) month period (January 1, 1986 to June 30, 1986)." (Employees' Exhibit No. 10, p. 22).

On May 1, 1986 the Carrier announced another force reduction program for non-agreement employees, this time on a company-wide basis. The Carrier's letter announced that the Union Pacific, which includes the Union Pacific, Missouri Pacific and Western Pacific, "will be further streamlining its organization in order to become more cost effective and competitive." (Carrier's Exhibit K, p. 1). This letter offered, for a limited time only, a voluntary force reduction program. Several days later non-agreement employees in the Finance Department (of which the Accounting Department is a part) received two other letters, one including a revised organization chart for the department, and the other stating that the Finance Department intended to keep its "best performers" and would not accept applications from these unnamed employees for the voluntary force reduction program. (Carrier Exhibits L and M).

The Carrier alleges that the Finance Department did not receive a sufficient number of applicants for the voluntary reduction program, and so put into effect an involuntary program. On June 13, 1986 the Claimant was notified that there was no longer a non-agreement position available to him. As of June 19, 1986 the Claimant requested to exercise his seniority to bid on an available position covered by a collective bargaining agreement, since he continued to hold seniority under the collective bargaining agreement between BRAC and the Carrier.