

## ARBITRATION COMMITTEE

In the Matter of the	)	
Arbitration Between:	)	
	)	OPINION AND AWARD
TRANSPORTATION-COMMUNICATIONS	)	
INTERNATIONAL UNION (BRAC),	)	
	)	Pursuant to Article I,
Organization,	)	Section 11 of the
	)	New York Dock Conditions
and	)	
	)	
MISSOURI PACIFIC RAILROAD	)	
COMPANY and UNION PACIFIC	)	Case No. 6
RAILROAD COMPANY,	)	Award No. 1
	)	
Carriers.	)	

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Hearing Date: November 11, 1987  
Hearing Location: Sacramento, California  
Date of Award: December 18, 1987

### MEMBERS OF THE COMMITTEE

Employees' Member: F. T. Lynch  
Carriers' Member: L. A. Lambert  
Neutral Member: John B. LaRocco

### QUESTIONS AT ISSUE

Is the coordination of the MP-UP Centralized Crew Dispatching Centers at Omaha, Nebraska, a "transaction" as that term is used in the New York Dock Conditions?

If the answer to the above question is in the affirmative, shall Carrier be required to serve proper notice and enter into the necessary implementing agreement as provided in New York Dock?

OPINION OF THE COMMITTEE

I. INTRODUCTION

In September, 1982, the Interstate Commerce Commission (ICC) approved the merger and consolidation of the Union Pacific Railroad (UP), the Missouri Pacific Railroad (MP) and the Western Pacific Railroad (WP). [ICC Finance Docket No. 30000.] To compensate and protect employees affected by the merger, 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 the UP, MP and WP pursuant to the relevant enabling statute. 49 U.S.C. §§ 11343, 11347.

II. BACKGROUND AND SUMMARY OF THE FACTS

Subsequent to 1982, the merged Carriers began to consolidate and centralize crew calling and timekeeping (for train, engine and yard employees) functions. Pursuant to implementing agreements, the Carriers centralized crew calling and timekeeping work into three crew management centers (CMC). The Salt Lake City Center calls UP and WP crews. Prior to 1986, WP crew management duties were performed at Stockton, California. When the work was transferred to Salt Lake City, affected employees were accorded New York Dock protective benefits as set forth in a June 29, 1983

Memorandum of Agreement.<sup>1</sup> The CMC located at Spring, Texas (near Houston) performs only MP crew calling and timekeeping services. As a result of Implementing Agreement No. 29 dated July 16, 1986 which was negotiated under the auspices of Section 4 of the New York Dock Conditions, the Carriers transferred and consolidated the UP's Omaha Crew Management System (CMS) with MP crew calling and timekeeping functions at Kansas City.<sup>2</sup> Thus, the third CMC located in Kansas City performs both UP and MP crew calling and timekeeping work.

The parties stipulated to a two paragraph summary of the pertinent facts. The stipulated factual summary, which also explains the nature of this controversy, states:

"The UP and MP Railroads maintain three (3) Centralized Crew Dispatching Centers which are responsible for the calling and timekeeping functions associated with the train and engine employees within their respective jurisdictions. These Centers utilize clerical employees for these functions, two of which are governed by the hours of service and working conditions of the MP-BRAC Agreement effective May 1, 1973, with employees headquartered at Houston, Texas and Kansas City, Missouri with the final one headquartered at Salt Lake City, Utah with the employees governed by the UP-BRAC Agreement effective May 16, 1981.

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<sup>1</sup>The June 29, 1983 Agreement can best be described as a Master Merger Agreement since it provided for the UP to completely assimilate WP workers. The WP became a new seniority zone (Western District Zone No. 209) of the UP. The names of former WP workers were dovetailed into the UP Master Seniority Roster and were thereafter covered by the UP May 16, 1981 Working Agreement.

<sup>2</sup>All sections pertinent to this case appear in Article I of the New York Dock Conditions. Thus, the Committee will only cite the particular section number.

\* \* \* \*

"The Carrier intends to consolidate and coordinate the three Centers into one functional office in Omaha, Nebraska with all of its clerical employees governed under the UP-BRAC Agreement. In that respect, the parties are in dispute as to what agreements are applicable for the transfer of work and employees from these three Centers to Omaha, Nebraska. The Carrier contends the transfer of the MP offices will constitute a transaction under the New York Dock Conditions and that the transfer of the UP office at Salt Lake City would fall under the UP-BRAC February 7, 1965 Agreement, as amended. The Organization disagrees, contending that the consolidation of all three offices is a transaction and must be governed by the New York Dock Conditions." [Emphasis in text.]

### III. THE POSITIONS OF THE PARTIES

#### A. The Organization's Position

In summary, the Organization argues that creation of a centralized CMC at Omaha is a single, merger related consolidation within the definition of a New York Dock transaction.

Since the UP does not currently maintain a CMS at Omaha, all the crew dispatching functions from both the UP and MP will be flowing into Omaha. UP crew calling and timekeeping duties will be commingled with similar MP functions. UP employees transferring from Salt Lake City to Omaha will be performing MP crew dispatching duties. The consolidation of three centers into one new CMS office which will call crews across the entire merged system is a single transaction undertaken pursuant to the ICC's approval in Finance Docket 30000. The CMS unification could not be executed without authority from the ICC. The consolidation of crew calling centers could hardly be segregated so that, as the

Carriers unreasonably assert, the transfer of work and employees from Salt Lake City to Omaha falls solely within the purview of the February 7, 1965 Job Stabilization Agreement (as amended). The consolidation includes all involved employees. The coordination cannot be a transaction for only a portion of the affected workers. As part of the consolidation, all employees, regardless of whether they currently work in Salt Lake City, Spring, or Kansas City, will be governed by one working agreement and will hold seniority on one roster. Combining seniority rosters constitutes a New York Dock transaction. BLE v. NYD RR, NYD § 4 Arb. (Quinn; 12/15/80). If the Carriers are allowed to split the transaction, they would denigrate the protection afforded by the New York Dock Conditions.

When it promulgated the definition of a transaction in Section 2(a) of the New York Dock Conditions, the ICC intended for the term to broadly embody any action to merge, coordinate, consolidate or unify separate railroad facilities or functions which is the definition of a "coordination" in the 1936 Washington Job Protection Agreement (WJPA). The establishment of one CMC to perform work presently performed at three different points across two railroads is clearly a coordination and thus also a transaction.

Contrary to the Carriers' argument, the UP could not transfer the Salt Lake City CMS to Omaha under the February 7, 1965 Agreement and then later transfer and consolidate crew calling work from Spring and Kansas City into Omaha. Under such a

scenario, the shifting of crew dispatching functions from Salt Lake City to Omaha would obviously be accomplished in anticipation of moving the MP crew calling work into Omaha. Section 10 of the New York Dock Conditions protects employees affected by a force rearrangement undertaken in anticipation of a transaction.

Undoubtedly, the CMS consolidation will cause the displacement and dismissal of employees. The purpose of a negotiated or arbitrated implementing agreement is to provide for "...the selection of forces from all employees involved..." Thus, both questions at issue should be answered affirmatively.

B. The Carriers' Position

The Carriers contend that the transfer of crew dispatching and timekeeping duties from Salt Lake City to Omaha is solely an intra-UP transfer. The Organization seeks to expand the New York Dock transaction to unjustly enrich the Salt Lake City employees even though, subsequent to the consolidation, they will continue to be governed by the same UP Working Agreement. If the Carriers had decided to transfer crew calling and timekeeping work from Kansas City into Salt Lake City, current UP employees at the Salt Lake City CMC would not obtain New York Dock benefits. Therefore, the UP's contractual right to transfer the CMC from Salt Lake City to Omaha is solely grounded in the amended February 7, 1965 Job Stabilization Agreement.

Since both cities are former UP points, the intended transfer of crew dispatching work from Salt Lake City to Omaha is

not a merger related transaction. The transfer may be implemented wholly independent of the ICC's authority. Before the New York Dock Conditions are applied to a particular work transfer or consolidation, the Organization must demonstrate a causal nexus between the merger and the alleged transaction. UTU v. MC/PTC, NYD § 11 Arb. (O'Brien; 8/10/84). Unlike the transfer of work from the two MP centers into Omaha, the movement of work from Salt Lake City to Omaha is completely unconnected to the merger. Not every post merger change is a New York Dock transaction. ATDA v. MP, NYD § 11 Arb. (Zumas; 7/31/81).

The Carriers could have simply moved the Salt Lake City CMS to Omaha and, at a later date, consolidated the two MP centers into the Omaha office. While the latter action would be a New York Dock transaction, the initial transfer of work, separately undertaken, would be effectuated under an Implementing Agreement negotiated in accord with the February 7, 1965 Agreement. This very same situation occurred with the consolidation of PBX offices. First, in Job Stabilization Implementing Agreement W-22, dated October 28, 1985, the UP transferred eight Salt Lake City PBX clerical positions to Omaha. Next, the parties negotiated Implementing Agreement No. 25, in accord with Section 4 of the New York Dock Conditions, to cover the transfer and consolidation of MP PBX clerical functions at St. Louis with the UP Communication Department at Omaha. There is no difference between the PBX consolidation and the proposed CMC consolidation.

Since the 1982 merger, the Carriers and the Organization have executed more than 30 New York Dock Implementing Agreements. Nonetheless, they have also continued to negotiate Implementing Agreements under the February 7, 1965 Agreement. Thus, the parties recognize that not all operational changes are due to the merger.

#### IV. DISCUSSION

In Section 1(a) of the New York Dock Conditions, the ICC defined a transaction as "...any action taken pursuant to authorizations of this Commission on which these provisions have been imposed." The issue presented to this Committee is whether the Carriers' proposed consolidation of crew dispatching and timekeeping functions at a new Omaha office is completely or only partially a Section 1(a) transaction. Put differently, we must decide if the Carriers may segregate the CMS consolidation (so that one segment is governed by the New York Dock Conditions while the other segment is covered by the February 7, 1965 Agreement) or if the Carriers' proposed activity is a single, integrated transaction within the meaning of Section 1(a).

When it promulgated the New York Dock Conditions, the ICC adopted an expansive definition for the term "transaction." New York Dock Railway - Control - Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979). The ICC emphasized that the term incorporated not only the merger itself but also "...any future related action taken pursuant to our approval (i.e., consolidation



of rosters as a result of the control)..." 360 I.C.C. 60, 75. In addition, the Commission wrote:

"... Since article I, section 4 here is intended to incorporate the full protections of sections 4 and 5 of WJPA, the term "transaction" should be redefined to set the notice, negotiation, and arbitration provisions in motion in the same situations as does the term "coordination." We also note that the broad definition is necessary in the types of transactions for which approval is required under 49 U.S.C. 11343 et seq., because the event actually affecting the employees might occur at a later date than the initial transaction, yet still pursuant to our approval (consolidation of employee rosters, et cetera)." 360 I.C.C. 60, 70.

The Second Circuit affirmed that the ICC intended "...to encompass in its definition of 'transaction' the same situations that were within the parallel term 'coordination' employed in the admitted blueprint for all current employee protective packages, the WJPA." New York Dock Railway v. United States, 609 F.2d 83, 95 (1979).

Section 2(a) of the WJPA provides:

"The term 'coordination' as used herein means joint action by two or more carriers whereby they unify, consolidate, merge or pool in whole or in part their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities."

The definition of a New York Dock transaction is so broad that any coordination within the meaning of WJPA Section 2(a) is a subset of Section 1(a) of the New York Dock Conditions. Any manipulation of inter-carrier operations, facilities or services which is a coordination under the WJPA is absolutely and automatically a transaction under the New York Dock Conditions. In summary, a New York Dock transaction is any activity which is a coordination

under the WJPA or any other action taken pursuant to the ICC's authorization.

In this case, the Carriers intend to establish a single CMS to administer all crew calling and timekeeping functions across the entire merged system. At the onset, we note that the Carrier does not presently maintain a CMS at Omaha. Thus, the proposed activity involves not merely the transfer of work but also the establishment of a new CMS office. Crew calling and timekeeping work will be flowing into Omaha from both UP and MP points. As a direct consequence of the proposed consolidation, MP CMS work will be permanently intermixed with UP crew dispatching work at the newly established Omaha office. The Omaha office will not merely supplant the Salt Lake City center. Rather, the consolidation is structured so that UP and MP crew calling work will become indistinguishable and interchangeable at a new, central location. In essence, the advent of the new office will convert previously separate CMS work into a fungible systemwide crew dispatching and timekeeping function.

Aside from Kansas City, crew dispatching and timekeeping work has been performed separately on the UP and MP. Once the consolidation is implemented, the complete commingling of crew management functions renders it impossible to treat Salt Lake City workers differently from the employees involved in the portion of the consolidation which both parties concur is a New York Dock transaction. If the UP was only transferring the Salt Lake City CMC to Omaha, the UP crew calling functions would remain

readily identifiable and separate from similar work on the MP. However, since the Carrier is creating a new facility to perform crew management services across the merged system and UP crew calling work will no longer be distinct from MP CMS functions, it is simply not feasible to sever the consolidation into two mutually exclusive segments. The ICC's approval of the UP, MP and WP merger was designed to induce the participating Carriers to achieve economies of scale by combining operations performed separately on each railroad. The ICC did not contemplate that a consolidation involving one or more of the merged railroads could be split into fragments to avoid application of the New York Dock Conditions.

The consolidation of work at Omaha is analogous to the unification of separate facilities on more than one railroad which is clearly a coordination under the WJPA. As we found at the onset of our discussion, a coordination is, by definition, a transaction within the meaning of Section 1(a) of the New York Dock Conditions. The WJPA defines a coordination as the unification "...in whole or in part..." of separate railroad facilities. The "whole" unification of CMS facilities constitutes one coordination. The language in WJPA Section 2(a) militates against a finding that the Carriers may, at their discretion, carve a coordination into multiple parts.

Furthermore, the ICC, in New York Dock, twice referred to the combination of seniority rosters as an example of a necessary consequence of a Carrier action taken pursuant to a merger

approval. The Salt Lake City CMS workers, who transfer to Omaha, will be participating in a seniority roster consolidation with MP employees at the new CMS facility.

Thus, the ICC envisioned that the proposed consolidation herein would constitute a New York Dock transaction.

Pointing to a recent transfer and consolidation of PBX offices, the Carriers contend that the UP could initially transfer the Salt Lake City CMC to Omaha and then later consolidate the two remaining centers into the Omaha office. We disagree. Section 10 of the New York Dock Conditions prohibits the Carriers from doing indirectly that which they cannot do directly. The Carriers' CMS consolidation is a single, integrated transaction. The consolidation would not lose its characterization as a New York Dock transaction merely because the Carriers implement the consolidation in incremental steps. With regard to the PBX offices, the Carriers did not present sufficient evidence to show that the transfer of work, under Implementing Agreement W-22, and the subsequent consolidation, covered by Implementing Agreement No. 25, was equivalent to the complete integration of all crew calling work at a new, centralized facility. The Committee also notes that Article VIII, Section 2 of the W-22 Implementing Agreement provided that the Agreement "...will not be cited as a precedent in future situations."

The Committee emphasizes that its holding on the issues herein is narrow. We cannot foresee all the possible operational changes that the Carriers might accomplish in the future. These

matters should be handled on a case by case basis. As in the past, some intra-railroad actions, divorced from a concurrent or later New York Dock transaction, would fall solely within the ambit of the amended February 7, 1965 Agreement. Suffice to say, the proposed consolidation herein cannot be divided into a New York Dock transaction and an operational change under the February 7, 1965 Agreement.


Looking at the second question at issue, the Carriers' intent to implement a transaction triggers the notice, negotiation and, if necessary, arbitration procedures set forth in Section 4 of the New York Dock Conditions. Absent an agreement to the contrary, an Implementing Agreement must be in place before the Carriers may consummate the proposed CMS consolidation. The parties are free, of course, to mutually agree to extend the time limits set forth in Section 4 of the New York Dock Conditions.

AWARD AND ORDER

The Answer to the First Question at Issue is Yes.

The Answer to the Second Question at Issue is Yes.

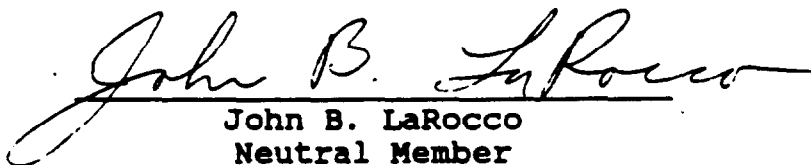
Dated: December 18, 1987



F. T. Lynch  
Employees' Member



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Carriers' Member



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