

EMPLOYEE PROTECTIVE CONDITIONS

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In the Matter of Arbitration Between: *

UNITED TRANSPORTATION UNION *

-and- *

MAINE CENTRAL RAILROAD COMPANY *

PORTLAND TERMINAL COMPANY *

* * * * *

* INTERSTATE COMMERCE COMMISSIC

* FINANCE DOCKET NO.: 29720

BACKGROUND

On September 26, 1983, the United Transportation Union (hereinafter referred to as the Organization) and the Maine Central Railroad Company and the Portland Terminal Company (hereinafter collectively referred to as the Maine Central) jointly advised the National Mediation Board that pursuant to the provisions of Section XI of the New York Dock Conditions that it wished to refer the following question to an Arbitration Committee for decision:

Insofar as employees represented by the United Transportation Union are concerned, did the establishment of run through trains and/or run through power between Maine Central Railroad Company and Boston and Maine Corporation, which commenced on or about August 11, 1982, constitute a "transaction" as contemplated under the provisions of New York Dock as imposed by the Interstate Commerce Commission in Finance Docket No. 29720 (Sub-No. 1) in anticipation of common control which was finalized on June 30, 1983?

Bradley L. Peters, Director of Human Resources, was appointed the Carrier Member of the Arbitration Committee. Eugene F. Lyden, Vice-President, was appointed the United Transportation Union Member

of the Arbitration Committee. The parties mutually agreed that Robert M. O'Brien would serve as the Chairman and Neutral Member of the Arbitration Committee.

The Arbitration Committee convened on March 19, 1984 in Portland, Maine. At that meeting both the Organization and the Maine Central submitted extensive oral and documentary evidence in support of their respective positions regarding the question at issue. Based on the evidence and arguments advanced by the parties, this Arbitration Committee renders the following Opinion and Award.

STATEMENT OF FACTS

The facts evidence that on June 16, 1981, Guilford Transportation Industries acquired the Maine Central Railroad and the Portland Terminal Company. On April 23, 1982, the Interstate Commerce Commission (hereinafter referred to as the ICC) approved Guilford Transportation Industries' acquisition of the Boston and Maine Corporation (hereinafter referred to as the Boston and Maine). The ICC also imposed New York Dock conditions on the Maine Central and the Boston and Maine on April 23, 1982.

On May 5, 1982, the Maine Central posted a "New York Dock Notice" advising its employees that Guilford Transportation Industries' application for control of the Boston and Maine was approved by the ICC on April 23, 1982. That Notice provided, in pertinent part, as follows:

"It is anticipated that after control proceedings are finalized that GTI (Guilford Transportation Industries) will commence consolidating operations of B&M and Maine Central (MeC) by means of run-through trains, equipment and pre-blocking of traffic and other activities which will result in a reduction, or the elimination, of switching, inspection, and servicing requirements of traffic and equipment moving between the two Railroads within the Portland Terminal Company (PC)."

The Notice also stated that the Maine Central estimated that approximately 60 positions may be abolished and 4 created.

On June 6, 1982, the Maine Central and the UTU (C-T) executed an Implementing Agreement in accordance with the New York Dock Conditions. The Maine Central and the UTU (E) executed a similar Implementing Agreement on June 7, 1982.

On July 26, 1982, the Organization's General Chairman wrote to the Manager of Personnel-Labor Relations and Safety of the Maine Central, expressing the Organization's opinion that the Maine Central had abolished a yard job in the Portland Terminal as a result of the consolidation between the Maine Central and the Boston and Maine. The Maine Central responded that abolishment of this yard switching assignment was due to a decline in business, and not the consolidation with the Boston and Maine. The Organization, of course, disagreed with the position of the Maine Central.

On June 30, 1983, Guilford Transportation Industries' acquisition of the Boston and Maine became final when the Reorganization Court approved it. Since June 30, 1983, the Maine Central and the Boston and Maine have been under common control.

POSITION OF THE PARTIES

It is the Organization's position that the "transaction" as contemplated under the New York Dock Conditions in the instant case became effective on or about August 11, 1982 when the Maine Central instituted run through trains. The Organization submits that as a result of this "transaction" approximately 17 employees of the Portland Terminal Company represented by the United Transportation Union were adversely affected since switching previously performed by the Portland Terminal Company at Rigby Yard was transferred to East Dearfield, Massachusetts.

The Maine Central retorts that operation of run through trains and/or run through power was not a "transaction" as defined in Article I, Section 1 of the New York Dock Conditions. Rather, it was an action taken by two independent carriers that did not require ICC approval nor the imposition of the New York Dock labor protection conditions. Thus, according to the Maine Central, implementation of run through trains in conjunction with the Boston and Maine on or about August 11, 1982 did not constitute a "transaction" in anticipation of common control of the two carriers as that term is defined in the New York Conditions.

The Maine Central further argues that even assuming, arguendo, that the implementation of run through trains is considered a "transaction" in anticipation of common control, nevertheless the assignment identified by the Organization as being adversely affected by

the "transaction" was, in fact, abolished because of a decline in business, and not because of common control of the Maine Central and the Boston and Maine by Guilford Transportation Industries. Consequently, those employees were not entitled to New York Dock labor protective conditions.

FINDINGS AND OPINION

As observed previously, the question to be decided by this Arbitration Committee is whether the establishment of run through trains and/or run through power between the Maine Central and the Boston and Maine on or about August 11, 1982, constituted a "transaction" as contemplated under the provisions of New York Dock in anticipation of common control which was finalized on June 30, 1983? It must be observed that Article I, Section 1 of the New York Dock Conditions defines a "transaction" as "any action taken pursuant to authorizations of this Commission (ICC) on which these provisions have been imposed."

In adjudicating the question submitted to this Arbitration Committee, we are guided by principles that have evolved from previous Arbitration Committees established pursuant to the New York Dock Conditions. For instance, it has been held that historically protective agreements are intended to provide protection from the impact of decisions for which ICC approval is required. It has also been stated that the ICC has viewed the imposition of protective benefits as requiring a proximate nexus between the actual merger

and the carrier action at issue. When such a causal nexus is absent, then the protective conditions set forth in New York Dock have been held not to be applicable. New York Dock Arbitration Committees have further ruled that in order to obtain the protective benefits required by New York Dock, one's displacement or dismissal must be the result of the "transaction" authorized by the ICC. Conversely, any decision made by a carrier independent of ICC authorization has not been considered a "transaction" under New York Dock. Arbitration Committees have additionally declared that merely because a position was abolished does not, by itself, establish that this was caused by the "transaction." Rather, there could be other factors that caused the position to be abolished apart from a merger authorized by the ICC. When the latter was shown to exist, labor protective conditions have not been applied.

When the foregoing guidelines are applied to the dispute at hand, it becomes clear that the establishment of run through trains and/or run through power by the Maine Central and the Boston and Maine, which commenced on or about August 11, 1982, did not constitute a "transaction" as contemplated under the provisions of New York Dock. Several significant factors have compelled this Arbitration Committee to reach this conclusion not the least of which is the definition of "transaction" set forth in Article I, Section 1 of the New York Conditions. The ICC has explicitly defined a "transaction" as "any action taken pursuant to authorizations of this Commission on which these provisions have been imposed" (Emphasis added). Naturally,

this Committee is constrained by that definition. Consequently, if a carrier has taken any action that was not "pursuant to authorizations of this Commission," then, by definition, such action does not constitute a "transaction" under the New York Dock Conditions.

It is the considered judgment of this Arbitration Committee that establishment of run through trains and/or run through power by the Maine Central and the Boston and Maine on or about August 11, 1982, was not an action undertaken pursuant to authorizations of the ICC. It is certainly not uncommon for run through trains to be operated in this industry. Carriers clearly do not need ICC authorization to operate run through trains. Thus, despite the pending merger between the Maine Central and the Boston and Maine, the ICC was not required to authorize their decision to establish run through trains on or about August 11, 1982. It is significant to note that when these trains were established, the Maine Central and the Boston and Maine were not under common control, although this was obviously the goal of Guilford Transportation Industries when it acquired the Boston and Maine. However, it was not until the Reorganization Court approved Guilford's acquisition of the Boston and Maine on June 30, 1983, that it acquired this common control. Until that date, the Boston and Maine and the Maine Central were independent entities.

Inasmuch as the Maine Central and the Boston and Maine could have implemented run through trains even without the ICC approved merger, the proximate nexus between the merger and the establishment of run

through trains has not been established to the satisfaction of this Arbitration Committee. Rather, the decision to establish run through trains was made independent of the merger, in our view. We are not convinced that run through trains would not have been implemented even if the merger had not been approved.

That the Maine Central never operated run through trains prior to August of 1982, or did so only infrequently, is not dispositive of the question before us. In our judgment, the Maine Central retained the right to operate run through trains prior to August, 1982 even though it never, or only rarely, elected to do so. Certainly, the order issued by the ICC on April 23, 1982, did not grant the Maine Central a right that it previously did not possess since the right to establish run through trains antedated the ICC order, in the judgment of this Committee. Simply stated, no ICC authorization was needed for the Maine Central to operate run through trains.

Finally, this Arbitration Committee wishes to declare that the Organization's reliance on the May 5, 1982 "New York Dock Notice" was misplaced since that Notice explicitly stated that run through trains etc. will be implemented after control proceedings between the Boston and Maine and Maine Central are finalized. However, in August of 1982, when run through trains were established, control proceedings had not been finalized. Such common control, as observed previously, did not occur until June 30, 1983.

Based on all the foregoing, it is the considered judgment of this Arbitration Committee that the Organization has failed to demonstrate that establishment of run through trains and/or run through power by the Maine Central and the Boston and Maine, which commenced on or about August 11, 1982, constituted a "transaction" as contemplated under the provisions of New York Dock.

AWARD

Insofar as employees represented by the United Transportation Union are concerned, the establishment of run through trains and/or run through power between the Maine Central Railroad Company and Boston and Maine Corporation, which commenced on or about August 11, 1982, did not constitute a "transaction" as contemplated under the provisions of New York Dock as imposed by the Interstate Commerce Commission in Finance Docket No. 29720 (Sub-No. 1) in anticipation of common control which was finalized on June 30, 1983.

Robert M. O'Brien

Robert M. O'Brien, Chairman and Neutral Member

E. F. Lyden (dissent attached)

Eugene F. Lyden, Organization Member

Bradley L. Peters

Bradley L. Peters, Carrier Member

DATED: August 10, 1984

D I S S E N T
OF
ORGANIZATION MEMBER

Before an Arbitration Committee established under New York Dock (II)

The award to which this dissent is attached is gravely in error as follows:

FACT 1: The Carrier gave legal advance notice on May 4, 1982 that they were to implement and operate "run through trains" in August, 1982 pursuant to and in accordance with ICC approval to consolidate under common-control.

FACT 2: The Carrier and Union negotiated an agreement on June 6, 1982 to provide: "Any Employee whose regular assignment is abolished on or about the effective date of control of the Boston and Maine by Guilford Transportation Industries, Inc., or in advance thereof, as a result of the coordination, plus all Employees who are inturn displaced by such Employees, will be recognized as having established a valid basis for for protective benefits if placed in a worse position with respect to his compensation.

FACT 3: Operation of "run through trains" was not possible at Rigby Yard due to an agreement dated August 4, 1943 signatory between the Maine Central Railroad and General Chairman Erickson. This information surfaced during the Arbitration Board hearing and copies of this documentation forwarded to the arbitrator and all concerned parties under date of March 26, 1984. Such agreement was in full force and effect on the property at the time in question.

The foregoing are the salient facts, the latter of which evidently overlooked or not mentioned in the award and disregarded in entirety.

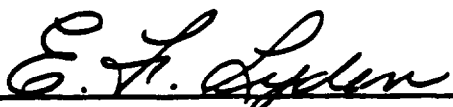
None-the-less, the factual situations in this case were unique and distinguishable from many other awards the arbitrator chose to accept as his guide to decide this dispute. To do so contrary to local agreements properly before the board for consideration, created a flawed basis on which to determine the question in dispute.

Moreover, the conclusions of the award drawn from pages 7 and 8 thereof are clearly contrary to the documented facts set out above. Simply put; they are erroneous and when the final decision was based on the false premise stated on pages 7 and 8; the decision was equally erroneous.

For all of the reasons stated herein; I must dissent to an award that is unjust and unfair to the Employees -- particularly so when said award was not based on the true facts involved and does serious harm to the Employees involved contrary to existing agreements between the parties.

Lastly, with all due regard to the theory of "casual nexus" and "proximate nexus" on which Mr. O'Brien seemed to have relied in part in his decision; such theory of connection flies in the face of existing agreements, notices of intent and appear to be a very easy and cavalier way of subserving protection the ICC imposed on the Maine Central Railroad.

Dated: August 3, 1984
Portland, Maine


Organization Member