

ARBITRATION COMMITTEE

In the Matter of Arbitration :
Between : Pursuant to Article I, Section 11
Brotherhood of Locomotive Engineers : of the New York Dock Conditions
and : ICC Finance Docket No. 30000
Union Pacific Railroad Company :
.. .. .

Committee Members : Jacob Seidenberg, Esquire, Neutral Member
R. E. Dean, Organization Member
W. E. Naro, Carrier Member

Hearing : June 17, 1986

Post Hearing Statement :
(Carrier) : July 19, 1986
Reply (Organization) : August 2, 1986

Issue : Were the following names 20 engine service employees
adversely affected as a result of the consolidation
of the Kansas City Terminal? The Claimants in order
of seniority were:

F. D. Weatherford
B. W. Jeter
D. D. Reeves
S. M. Prince
D. B. Clark
L. E. Humphrey
J. F. Valenti
J. S. Bider
M. H. Kerr
M. A. Barger
J. D. Tillman
D. L. Turney
P. O. Hendrix
R. S. Schneider
S. R. Alexander
S. H. Tirk
M. G. Hansen
C. H. Horsley
J. L. King
L. V. Bell

Background: The antecedents of these claims stem from the fact that the Inter-
state Commerce Commission approved on September 13, 1982 the merger of the

Union Pacific Railroad with the Missouri Pacific Railroad, and as a condition of its approval prescribed the New York Dock Protection Conditions. The two Carriers effected the merger on December 22, 1982.

Thereafter, on March 18, 1983 both Carriers served notice on the requisite General Chairman that they proposed to merge, combine and co-ordinate their Kansas City Terminals and to govern the Terminal under the applicable provisions of the MP Schedule Agreement.

Following the service of the above stated notices, the Carriers and the involved Organizations engaged in extensive negotiations which, on August 3, 1983, culminated, among other matters, in an Agreement governing the operations of the combined Kansas City Terminal. It provided that any subject that was not covered by this Agreement, or the Implementing Agreement also executed on August 3, 1983, would be governed by the MP-BLE Schedule Agreement.

As a result of these 1983 Agreements, UP and MP employees holding rights in Kansas City were accorded prior rights and would continue to have the right to be called for positions in Kansas City. Prior to the consolidation, the UP manned its KC Terminal with engine service employees who held seniority in the Terminal and on the territory between Kansas City and Maryville, and between Kansas City and Junction City, Kansas, including the Topeka Yard. A combination road/yard board was maintained for the entire seniority district, but there was no hostler/helper extra board. The Carrier stated that these vacancies were filled by utilizing the UTU Manning Agreement.

The MP, prior to the consolidation, manned the Terminal by engineers who held seniority in Kansas City and who held a separate road date on one of several road rosters. There were separate extra boards for yard engineers and one for hostler/helpers.

Upon the completion of the negotiations for the Implementing Agreement and the Agreement governing the operations of the Terminal, the consolidation became effective as of November 1, 1983.

The Carrier states that on November 1, 1983, there were in the Terminal 75 engine assignments (45 MP and 30 UP) and 63 hostler/helper assignments (37 MP and 26 UP). The Carrier states the records as to the composition of the yard engine extra boards and the hostler/helper extra boards no longer exist as they were destroyed prior to the filing of these claims.

The gravamen of this dispute arises because on November 1, 1983 there were 19 firemen working in pool freight service on the UP west out of Kansas City and one individual working in Topeka, Kansas, some 68 miles west of the Kansas City Terminal. The latter was working there under the "Home Rule" agreement which allowed a junior fireman to work as an engineer at an outlying point.

These 20 engine service employee Claimants contend they were adversely affected by the consolidation of the Terminal by being placed in a worse condition with respect to their compensation and working conditions as a result of the Transaction of the terminal consolidation.

The relevant provisions of the New York Dock Conditions provide:

Article I which states in part:

"1. Definitions - (a) 'Transaction' means any action taken pursuant to authorizations of this Commission on which these provisions have been issued.

(b) 'Displaced employee' means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

...

5. Displacement allowances - (a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules or practices, to obtain a po-

"sition producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the compensation in which he is retained and the average monthly compensation received by him in the position for which he was displaced.

...

11 (e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee."

The Organization states that there were basically four categories of the affected Claimants:

Category 1. Firemen who before the merger of the Terminal were working in the freight pool or as a hostler, and were adversely affected because they no longer had the opportunity to pick up extra earnings on their off or layover days because of the creation of a Firemen's Extra Board as a result of the transaction.

Category 2. Firemen who prior to the terminal consolidation were working in the freight pool as firemen, who were forced from their position in the freight pool to a position as a hostler or to the hostler's extra board because of an increase in the number of hostling assignments and the creation of a hostler's extra board as a direct result of the transaction, which greatly reduced their earnings.

Category 3. A Fireman prior to the transaction was working at Topeka as a yard engineer seven days a week under the Home Rule agreement. As a result of the transaction he was forced to go to Kansas City to work as a hostler because of the increase in hostler assignments and the creation of a hostler's extra board, resulting from the transaction.

Category 4. Engineers prior to the transaction who were working as pool firemen, but were promoted to the engineer's list due to the increase in the number of yard assignments caused by the five day week yard agreement, were adversely affected because, absent the transaction, these engineers would be working a seven day yard job.

The Carrier alleges the work records of the 20 Claimants for October and November 1983 shows the following:

Claimant Weatherford

In October 1983 the Claimant was assigned as an Engineer at Topeka, Kansas. He worked as a fireman in the Maryville to Kansas City pool November 2 and 3. He performed service as a pool engineer November 4, 5, 6 and 7. He performed local freight service on November 12. he then worked in the

Kansas City Yard as an engineer November 19, 20, 24, 25, 26, 27, 28 and as a pool freight engineer on November 29, 30. He remained in the Kansas City Yard as an engineer through December 1983.

Claimant Jeter

In October 1983 the Claimant was an engineer in the Jeffrey Coal Pool at Maryville until November 1. From November 4 to 5 he was a Maryville to Kansas City pool fireman. He then bid a Maryville to Kansas City pool turn as an engineer from November 7 to November 16. On November 24 he bid to Kansas City Yard as an engineer.

Claimant Reeves

In October the Claimant was assigned as a fireman in Kansas City - Maryville pool. From October 16 to 24, he worked as a yard engineer in Topeka. On October 28, he worked as an engineer in the Kansas City Yard. In November he returned to his fireman's assignment and worked there until November 23 when he returned to an engineer's job in the Kansas City Yard. He remained there through December except for performing road service as an engineer on December 26, 27 and 28.

Claimant Price

In October the Claimant was an engineer in the Jeffrey Coal Pool at Maryville. October 27 and 28, he worked as a fireman in the Kansas City-Maryville Pool. He did not work from October 29 through November 3. On November 4 and 5 he worked as fireman in the Maryville Pool. From November 1-15 he performed no service except for one day's service as a Kansas City Yard engineer. He worked as an engineer in the Maryville Pool November 17, 20 and 21. He performed no service until he was promoted to engineer in the Kansas City Yard and performed service as such on November 28, 29 and 30. He worked the entire month of December as a Kansas City Yard engineer except for one road trip as an engineer.

Claimant Clark

In October the Claimant was an assigned fireman in the Kansas City-Salina Pool. He worked as such the entire month of October. From November 1-15 the Claimant worked this Pool as a fireman except for one day as a hostler/helper in the Kansas City Yard. The second half of November, he continued to work as a fireman until November 22 when he was promoted

to yard engineer in the Kansas City Terminal. He remained in this position for November and December except for four emergency road trips as an engineer.

Claimant Humphrey

In October the Claimant was regularly assigned as a fireman in the Maryville Pool and remained in this service for November except for three days that he worked as a hostler/helper in the Kansas City Terminal.

Claimant Valenti

In October the Claimant was a regularly assigned fireman in the Maryville Pool. He remained in this Pool and performed no service in the Kansas City Terminal.

Claimant Bider

In October the Claimant was a regularly assigned fireman in the Maryville Pool. He remained in this service throughout the month of November except for four days he filled one day vacancies as a yard engineer, hostler or hostler/helper.

Claimant Kerr

In October the Claimant was assigned as a fireman in the Maryville Pool and he continued to work that Pool during November. He performed no service in the Kansas City Terminal.

Claimant Barger

The Claimant did not perform service at the Kansas city Terminal. He worked as a fireman on the Bonner Springs Local. He remained on this job until the second half of December when he was promoted to engineer in the Maryville Pool.

Claimant Tillman

The Claimant was regularly employed as a Maryville Pool fireman. He remained in this service through November except four dates when he was used to fill vacancies as engineer or hostler/helper in Kansas City Terminal.

Claimant Turney

The Claimant was regularly assigned as a fireman in Maryville Pool. He remained in this service throughout November except for one day's service as hostler in Kansas city Terminal.

Claimant Hendrix

The Claimant was assigned as a Maryville Pool fireman and worked this service throughout November except for one day's service as a yard engineer in the Kansas City Terminal.

Claimant Schneider

The Claimant was a regularly assigned fireman in the Maryville Pool and he remained in this service except for two dates in November when he was used as a hostler in the Kansas City terminal.

Claimant Alexander

The Claimant was regularly assigned as a fireman in the Maryville Pool. He remained in this service except for two days when he was used for hostling service in the Kansas City Terminal.

Claimant Tirk

The Claimant was a regularly assigned fireman in the Maryville Pool. He remained in this service and performed no service in the Kansas City Terminal.

Claimant Hansen

The Claimant was assigned as a fireman in the Maryville Pool and continued in this service through November and December and performed no service in the Kansas City Terminal.

Claimant Horsely

The Claimant was a regularly assigned fireman in the Maryville Pool and performed no service in the Kansas City Terminal

Claimant King

The Claimant was regularly assigned as a fireman in Maryville Pool, and remained in this service except for one day's service as a hostler in the Kansas City Terminal.

Claimant Bell

The Claimant was a yard engineer in Topeka, Kansas and performed no service in the Kansas City Terminal.

The detailed respective positions of the parties are:

Organization

The Organization asserts that the Claimants represented by the four delineated categories were all adversely affected by the consolidation of the Kansas City Terminal. It chose as an adversely affected representative employee in Category 1, Claimant Bider.

The Organization produced data to show that Claimant Bider earned the test period from November 1982 to October 1983, a total of \$39,414.19, which was derived by earnings of \$30,750.60 from regular assignments, and by earnings of \$8,663.59 from working vacancies. This produced monthly average earnings of \$3,284.52. The data for the test period also revealed that Claimant Bider worked 1694.33 hours on his regular assignments and 248.5 hours from working vacancies for a total of 1942.83 hours or an average of 161.90 hours.

The Organization states for the period from January 1984 to December of that year, Claimant Bider earned \$32,910.09 for 2117.93 hours. This produced an average monthly earnings of \$2742.51 for 176 average hours. This was a diminution of \$543.01 coupled with an increase of 14.59 hours on a monthly basis when compared to the test period earnings and hours worked.

The Organization asserts that the other Claimants experienced comparable losses in earnings such as Claimant Bider.

The Organization further asserted that another form of adversity suffered by Claimant Bider was that his ultimate retirement annuity would be reduced as a result of his lowered income because his reduced income denied him the opportunity to make his maximum contribution to the railroad retirement fund. The Organization cited data to show that for the year 1984 the annual shortage between his actual contributions and the maximum shortage was \$414.19. The Organization adds the other Claimants also experienced this same sort of adverse effect as a result of the Terminal consolidation.

With respect to Category 2, the Organization cited Claimant Hansen. Prior to the consolidation of the Terminal, Mr. Hansen was a pool fireman whose test earnings were \$38,032.32 for an average of \$3,169.36. The average test hours worked was 229.76 per month. As a result of the consolidation there was an increase in hostling assignments, and that the creation of a hostler extra board as well as the increase of hostler jobs forced Claimant Hansen and other Claimants from their pool freight turns as firemen, and force assigned them to a hostling position or to a place on the hostler extra board. This was caused by the terminal consolidation.

The Organization notes that Claimant Hansen, for example, was forced to work as a hostler from July 16 to July 26, 1984; from October 1 to October 8, 1984; from December 27, 1984 to March 29, 1985; from April 21, 1985 to May 14, 1985 and from September 20, 1985 to the present - all this was at greatly reduced earnings for Claimant Hansen. For example Mr. Hansen's test earnings were \$3,169.36 average monthly, but his earnings were reduced when he had to work as a hostler.

The Organization maintains that the hostler and the hostler/helper extra board did not exist on the UP prior to the merger. Thereafter, when the extra board was established to fill hostler vacancies, and UP hostlers began to appear on such board. The Organization notes that the movement to the hostler's extra board was a seniority move, hostlers would vacate the regular assignments to go to the extra board. The Organization adds when this occurred, a vacancy was created on a regular UP assignment which was then filled by a UP fireman, who could only come from one place - a fireman's position. A fireman who moved from a higher position to a hostler position was adversely affected.

The Organization stresses that Claimant Hansen who was removed from fire-

man pool turn and force assigned to a hostler position on the hostler extra board as a direct result of the merger has been adversely affected and is properly entitled to be protected by New York Dock Conditions.

With respect to the third category, the Organization cited Claimant Bell who was working in Topeka as a "Home Rule" Engineer. After the consolidation, the Organization states this Claimant was forced to go to Kansas City involuntarily to protect a hostler assignment. It adds that there had been an increase in hostling assignments in the Terminal and as a result thereof, Claimant Bell was placed in an adverse position caused by the consolidation.

The Organization states the 4th category affected all the Claimants who prior to the Terminal consolidation worked a seven day a week schedule as yard engineers. After the merger there was an increase in engineer yard positions and this caused the implementation of the five day work agreement in the merger agreement, with the result that these employees suffered a sharp reduction in earnings. The Organization stresses that it is immaterial whether the number of jobs increased or decreased, the Claimants have to take their turn as yard engineers in the Terminal. As promoted engineers they have to protect their assignments. If they had continued to work their seven day assignments, as they did prior to the consolidation, their earning opportunities would have been approximately \$700.00 more a month. The Organization asserts that there can be no doubt that these Claimants were in a worse position as yard engineers after the consolidation.

The Organization states that the New York Dock Conditions should be applied to the Claimants because some were required to move from their pool firemen jobs to work in the Kansas City Terminal either as engineers or hostlers to protect vacancies therein. In so doing they were financially adversely af-

ected by either losing the opportunity to pick up extra work or to work a seven day a week as scheduled or have to work as a hostler from the extra board. The Organization stresses that it is irrelevant that some of these moves did not occur on November 1, 1983 but at a later date. It states that as long as the transaction took place within six years of Merger Day, the Claimants were protected by the protective conditions.

The Organization states that all moves employees make in the course of their job, including the move to the Kansas City Terminal, are always an exercise of seniority, and therefore there is no merit to the Carrier's allegations that there were no moves made pursuant to the Transaction vis a vis the Claimants, but all that occurred was the normal exercise of their seniority.

The Organization stresses it has shown that the increase in the number of hostler jobs subsequent to the consolidation was responsible for the adverse affects on the Claimants, and the burden shifts to the Carrier to demonstrate that there were other factors that were responsible for the Claimants' adverse affects. This is asserts the Carrier has not done.

Carrier

The Carrier states that the Claimants are not entitled to the requested protection - either those who worked in the Terminal and those who did not work in the Terminal - because neither were adversely affected by the consolidation of the Kansas City Terminal. It stresses that all the Claimants had preserved their seniority rights to work in Kansas City, and all the movements in and out of the Terminal were because of the exercise of their seniority, not as a result of the Transaction.

The Carrier asserts the weight of arbitral authority has held that a

causal nexus has to be shown between the Transaction and the adverse impact on the employees claiming the protective benefits. In the case at hand the employees who were working in the Kansas City Terminal were treated as covered employees and afforded protection. However, those employees who were not working in Kansas City but who held seniority in the UP Terminal retained prior rights to a designated percentage of jobs in the Terminal. These Employees could move in and out of the Terminal as their seniority required or permitted.

The Carrier stresses it was retained seniority rights and not the Transaction that obligated the employees to work in the Terminal. The Carrier adds the exercise of seniority does not create a causal nexus entitling employees to protection. The Claimants were not involved in the Terminal consolidation. Being required to work in the Terminal after the Transaction was completed was unrelated to the Transaction but was an exercise of seniority.

The Carrier further states that those employees who did not work in the Terminal but who alleged a loss of earnings, are also not entitled to protective benefits, because there is an insufficient causal nexus. While there may be factors that adversely affect the compensation of employees, in order for the protective benefits to ensure to the covered employees, these adverse effects have to be the result of the Transaction. Mere loss of earnings are not sufficient to ensure protective benefits.

The Carrier states, by way of reply, to the four categories listed by the Organization that:

Category 1

The Carrier states that the Organization's estimates of Claimant Bider's earnings from working vacancies from November 1982 through October 1983 is extremely high and incorrect. It states that while the Organization figures for

April and May 1983 are correct, these earnings were made while working as a yard engineer and not as a hostler/helper. With respect to June 1983, the Carrier states the Organization alleges Claimant Bider earned \$813.58 working as a hostler/helper. The Carrier maintains that Mr. Bider worked as a yard fireman through June 3; as a yard engineer on June 4, and then service as a road fireman for the rest of June except for June 7, 19 and 26 when he worked as a hostler/helper. The Carrier states the Claimant received \$286.76 for these three days. It notes that the Claimant received make whole pay for these three days, indicating that these days were not on the Claimant's days off or layover days.

In July the Organization asserts that Mr. Bider earned \$2,748.29 working vacancies. He filled seven hostler/helper vacancies. In each of these instances, Mr. Bider was made whole, again indicating he did not work on rest or layover days.

In August, Mr. Bider filled four hostler/helper vacancies and again was made whole. In September the Claimant earned \$675.61 filling vacancies in the Terminal. He worked one day as a hostler/helper and one day as a yard engineer, and was made whole for his hostler/helper work. In October the Claimant worked five days as a hostler/helper and one day as a yard engineer and was made whole for his hostler/helper work.

The Carrier states its review of Mr. Bider's test earnings period reveals that he only worked one day for which he was not made whole. It adds that if Claimant Bider's earnings declined after the Terminal consolidation it was not the result of his inability to obtain extra work as a hostler/helper on his rest or layover days.

The Carrier states that a review of the hostler/helper extra board from January 1, 1984 through December 1985 indicates there was only one UP employee

on that board. The UP employees protected their assignments and there was a minimal need for filling temporary vacancies on layover or rest days. The Carrier stresses that road employees were not adversely affected by the creation of the hostler/helper extra board.

Category 2

The Carrier denies there was an increase in hostler assignments and the creation of the hostler/helper extra board did not adversely affect or force Claimants from the road into the yard.

The Carrier notes that these 26 UP hostling assignments on October 31, 1983 and this number did not change until June 1985 when it was reduced to 16. In September 1985 it was increased to 26 and has remained at that number until the present. The Carrier asserts that it is untrue that Claimants were required to work in the Yard filling hostler posts because of an increase in hostler/helper jobs.

With respect to the hostler/helper extra board it did not exist until February 16, 1984. At that time J. W. Weaver was assigned to it. He remained on it until June 1984 when it was increased by adding Mr. Lemon. Mr. Lemon was replaced on July 1. On August 1 the Board was increased to three employees but reduced to two by August 16. On September 1 it was reduced to one and remained at that figure until May 1985. From June 1985 to October the number on the Board fluctuated from one to three. On October 16, 1985 there were no employees thereon. On November 1, one employee was added but by November 16 there were three at which figure it remained until December 16 when it was reduced to two.

The Carrier asserts that during this entire period only two of the Claimants appeared on the Board, Claimant Bell on August 1, 1984 and July 1, 1985. These were summer months when extra boards normally increase. Claimant Hansen

appeared on the Board from November 16 to December 16, 1985. Although the Board was increased, it was not due to the consolidation, because the number of hostler/helper assignments had not increased. The Carrier asserts that it must be assumed that the number of UP vacancies had increased and therefore it was necessary to place more UP employees on the extra board.

The Carrier states it followed the practice of not forcing employees to hostler jobs after the consolidation of the Terminal. If a vacancy was not filled by assignment, it was filled from the extra board. UP employees objected to this practice after consolidation, and initially did not place anyone on the Board. The Carrier states it was finally agreed that participation would be based on the need to fill UP hostler/helper vacancies. For this reason the numbers of UP employees remained small in comparison to the total number.

The Carrier emphasizes that road employees were not forced into the Yard either because of the increase in hostler/helper assignments or the creation of the extra board. It came about through the normal operation of the Terminal and through the devolution of their seniority.

Category 3

The Carrier states the same analysis applicable to Category 2 is applicable here. It states that Claimant Bell was not forced to go from Topeka to the Kansas City Terminal when the consolidation occurred. There was no increase in hostler assignments after consolidation. If Claimant Bell had to go to Kansas City it was not because of the merger.

Category 4

The Carrier asserts that the record shows that the Claimants were not re-

moved from their pool freight firemen assignments and promoted to the engineer's list, and then required to work the five day yard assignments rather than the seven day yard assignments. The aforesaid record further shows that prior to the consolidation the UP had 36 yard assignments and on the day of consolidation the number of assignments were reduced to 30. It did not exceed this number from November 1, 1983 through December 16, 1985. The Carrier stresses therefore the Claimants were not forced into the Terminal because of the consolidation but rather because of the exercise of their seniority.

The Carrier insists that it is irrelevant whether the Claimants worked a five day rather than a seven day assignment. These employees were only protecting their seniority, and protecting their seniority is not an adverse affect, entitling the Claimants to protective benefits under the New York Conditions.

The Carrier in support of its position, especially as it pertained to the four categories enunciated by the Organization, submitted records showing, as of the 1st and 16th day of each month for the period from October 31, 1983 through December 16, 1985, the number of yard engine assignments, helper/hostler assignments, the number of employees assigned to the yard engine extra board and to the hostler/helper extra board.

The Carrier asserts that this data presents a representative picture for the period in issue, and the data conclusively show that the claimants were not adversely affected by the consolidation of the Terminals.

Findings:

Upon a review of the total record the Arbitration Committee finds that the former pool freight firemen and the "Home Rule" firemen working in Topeka, were not adversely affected by the consolidation of the Kansas City Terminals, within the meaning and purport of the New York Dock Conditions, and therefore

were not entitled to receive the contractually prescribed protective benefits set forth therein.

The Committee concludes there was not a causal nexus between the Transaction of the consolidation and the alleged adverse effects on the Claimants as a result of working in the Terminal. On the contrary, the Committee finds the Claimants who worked in the Terminal or elsewhere, so worked because they were the recipients or the grantees of the "prior rights" afforded them under the August 3, 1983 Implementing Agreement, negotiated by the parties in the course of effecting the aforesaid consolidation. Article II of the Implementing Agreement provided for the designation of "prior rights" employees on the applicable rosters to work in the Terminal subsequent to the consummation of the consolidation. All the Claimants were "prior rights" employees.

All the employees working in the Terminals at the time of the consolidation were "protected" employees under New York Dock. However, the Claimants who were in pool service firemen or a "Home Rule" fireman, and worked in, and around, and out of the Terminal, as well as in pool freight service, did so because they held seniority in the Terminal entitling them to work a certain percentage of jobs therein because of the "prior rights" agreement. It was in the exercise and pursuance of these seniority rights that they were required to work in the Terminal rather than in their former pool service. It was the exercise of seniority rather than the Transaction that obligated them to work in the Terminal following consolidation.

The Committee is aware that the Organization has stressed that but for the Transaction the Claimants would have remained in pool freight service and not had to work in the Terminal with the resultant alleged adverse effects. However, the criterion that determines whether affected employees are covered

by the protective benefits is whether there is a direct causal and immediate rather than a remote or incidental relationship between the Transaction and the incidence of having to work in the Terminal. In order to be contractually eligible to receive protective benefits, the Claimants have to demonstrate or prove more than a reduction in earnings. To repeat, the Claimants have to show that there is a direct and immediate, rather than an indirect or tangential relationship, between their working in the Terminal and the consolidation, with alleged concomitant adverse effects. The Committee finds this causal nexus has not been established.

The Committee also wants to discuss the alleged nature of the adverse results on the Claimants and the factors which purportedly caused them.

The Record reveals that the principal, but not the sole, contention of the Organization with respect to reduced earnings is that the consolidation created a new and large number of hostler/helper positions, forcing the Claimants either to work these assignments or protect them through the creation of a newly established hostler/helper extra board. It should be noted, preliminarily, that when the Claimants were forced to occupy a hostler/helper job in the Terminal, they received make whole pay based on their current engine service assignment. However, a more important fact revealed by the record, is that there was not the alleged great increase in hostler assignments or a great number of employees forced to man the hostler/helper extra board.

The record shows that on October 31, 1983 the UP had 26 hostling assignments in the Terminal and this number remained constant until June 1985 when it was reduced to 16, and subsequently increased to the former number of 26. The Committee finds no probative evidence to support the Organization's contention that there was an expansion of hostler assignments in the Terminal and that forc-

ed the Claimants to relinquish their pool freight jobs in order to fill afore-said hostler assignments. Likewise, the record does not support the allegation that the establishment of a UP hostler/helper extra board in the terminal compelled many Claimants to protect the board. The evidence shows that the extra board was not established until February 1984 with one employee placed thereon. During 1984 it was increased intermittently by one or two more employees, but there was never more than three employees, and frequently there was only one employee assigned to the board. From the period of 1983 to December 1985, there were only two Claimants on this extra board at different and not the same times.

The Committee finds that while there was an increase in the extra board, it cannot be ascribed to the consolidation, but rather to an increase in job vacancies which had to be covered by the extra board. The Committee concludes that the Claimants who held hostler/helper jobs or who covered the extra board did so through the normal devolution of their seniority rather than as direct result of the merger.

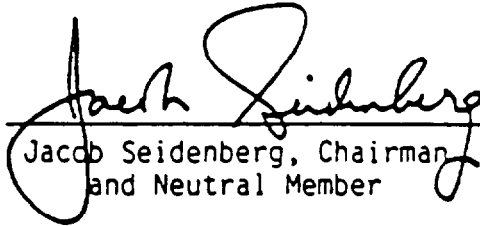
The Committee finds, that with respect to the Organization's contention that there was an increase in yard assignments as a result of the consolidation, which caused the Claimant firemen to work in the Terminal on five day yard assignments and to lose their seven day a week yard engineer jobs, this allegation is not well founded. The record shows that there were 36 UP yard assignments on the day of the consolidation and that this number never increased from October 1983 to December 1985 and often there were a lesser number of yard assignments. The Committee finds no merit that the Claimants were adversely affected because of an increase in UP yard assignments in the Terminal.

The Committee also finds no support for the "Home Rule" fireman who had to leave Topeka and work a hostler job in the Terminal. Since the hostler jobs

did not increase after the consolidation, this was not the factor which forced this Claimant to leave his assignment and come to work in the terminal.

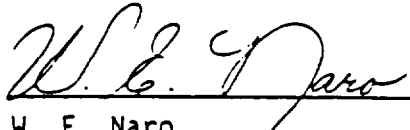
In summary, the Committee finds no valid basis to sustain the claims because the moves which occurred after the consolidation were not causally and directly related to the consolidation, or the Transaction. Not every action that was or instituted initiated after the consolidation was covered by the New York Dock Conditions. In the instant claims, the Committee finds that the Claimants worked in the Terminal in pursuance of their seniority prior rights rather than directly because of the Transaction. Accordingly, the Committee must hold that the claims cannot be sustained.

Award: Claims denied.

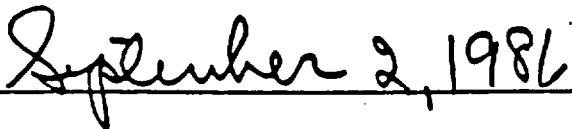


Jacob Seidenberg, Chairman
and Neutral Member

R. E. Dean
Employee Member **I DISSENT**



W. E. Naro
Carrier Member



September 2, 1986