

ARBITRATION COMMITTEE

In the Matter of the)	Pursuant to Article I,
Arbitration Between)	Section 11 of the New
)	York Dock Conditions
INTERNATIONAL ASSOCIATION)	
OF MACHINISTS AND AEROSPACE)	
WORKERS,)	
)	I.C.C. Finance Docket 30000
Organization,)	
)	
and)	OPINION AND AWARD
)	
WESTERN PACIFIC RAILROAD)	
COMPANY and UNION PACIFIC)	
RAILROAD COMPANY,)	Case No. 2
)	Award No. 2
Carriers.)	
)	

Hearing Date: May 8, 1987
Hearing Location: Roseville, California
Date of Award: July 10, 1987

MEMBERS OF THE COMMITTEE

Employees' Member: J. R. Smothers
Carrier Member: Dan Moresette
Neutral Member: John B. LaRocco

APPEARANCES

For The Organizations:

Mr. J. R. Smothers
General Chairman
District No. 19
International Association of
Machinists and Aerospace Workers
729 Sunrise Avenue, Suite 502
Roseville, California 95661

For The Carrier:

Mr. Dan Moresette
Director - Labor Relations
Union Pacific Railroad
1416 Dodge Street
Omaha, Nebraska 68179

I.A.M. File No.: 57-87
Carrier File No.: M-86158G-SLC

OPINION OF THE COMMITTEE

I. INTRODUCTION

In a formal decision dated October 20, 1982, the Interstate Commerce Commission (ICC) approved the merger of the Union Pacific Railroad (UP), the Missouri Pacific Railroad (MP) and Western Pacific Railroad (WP). [I.C.C. Finance Docket No. 30,000.] To compensate and protect employees adversely 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 merged Carrier pursuant to the relevant enabling statute. 49 U.S.C. §§ 11343, 11347.

The Organization and Carrier submitted this dispute to final and binding arbitration under Section 11 of the New York Dock Conditions.¹ At the Neutral Member's request, the parties waived the Section 11(c) forty-five day limitation period for issuing this decision.

II. BACKGROUND AND SUMMARY OF THE FACTS

On March 3, 1983, the Carrier notified the Organization that it intended to coordinate WP mechanical forces located at Stockton, California and Sacramento, California with UP mechanical department workers at Salt Lake City, Utah and

¹All sections pertinent to this case are found in Article I of the New York Dock Conditions. Thus, the Neutral Member will only cite the particular section number.

Pocatello, Idaho. After prolonged negotiations, the parties entered into an Implementing Agreement dated September 19, 1983 and the Carrier subsequently effectuated the coordination.

Claimants transferred from Stockton to Salt Lake City on or about October 31, 1983. Since Claimants were affected by the New York Dock transaction, the Carrier computed each Claimant's test period average earnings in accord with the formula set forth in Section 5(a) of the New York Dock Conditions. When the Carrier issued the March 3, 1983 notice, both Claimants were Machinist Apprentices. Claimant Bailey successfully completed the apprenticeship program and achieved journeyman status on September 14, 1983. Claimant Mendez became a Journeyman Machinist during January, 1985. While working as an apprentice, Claimant Mendez progressed through the six incremental steps of the apprenticeship. Every 122 days, he received an hourly wage increase. When he achieved his journeyman status, he went from an \$11.03 hourly rate to the journeyman's rate of \$13.26 an hour.

The issue presented to us is whether Section 5(a), Paragraph 2 of the New York Dock Conditions compels the Carrier to recompute Claimants' aggregate displacement allowances to take into account their journeyman's pay rate achieved after their test period. The second paragraph of Section 5(a) provides:

"Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period), and provided further, that such

allowance shall also be adjusted to reflect subsequent general wage increases." [Emphasis added.]

III. THE POSITIONS OF THE PARTIES

A. The Organization's Position

The last clause of the second paragraph of Section 5(a) explicitly provides that displacement allowances shall be adjusted to reflect all subsequent general wage increases. Upon attaining journeyman status, both Claimants received a general wage increase. Consequently, the Carrier should have recomputed Claimants' test period average earnings so their displacement allowances would include the wage increase.

Contrary to the Carrier's assertions, the final phrase in the second paragraph of Section 5(a) would be inapplicable to employees who voluntarily bid on a higher rated position. Unlike the voluntary exercise of seniority, Claimants received a wage increase as a result of a fixed escalation factor contained in the applicable Agreements. Put differently, Claimants received the wage increase pursuant to labor contracts as opposed to gaining a higher rated position through their own action.

The Carrier should be ordered to recalculate Claimants' displacement allowances to reflect their current journeyman's rate of pay. In addition, the Carrier should pay Claimants retroactive protective benefits due them as a result of the increase in the amount of their displacement allowances.

B. The Carrier's Position

The displacement allowance adjustment set forth at the end of the second paragraph of Section 5(a) applies solely to across the board wage increases accruing to all workers in a particular

classification. The change in classification from Machinist Apprentice to Journeyman Machinist is not tantamount to a general increase in hourly pay. It was not the intent of the New York Dock Conditions to inflate employees' protective compensation merely because sometime after their test period they assumed a higher rated job merely by moving from one position to another or from one class to another.

The Organization has adopted an inconsistent position. While it asserts that Claimants are entitled to an upward adjustment to their displacement allowances when they completed their apprenticeship and became journeymen, the Organization failed to request a similar adjustment each time Claimant Mendez progressed through the incremental wage steps in the apprentice program. By failing to claim a displacement allowance adjustment each time Claimant Mendez went to a higher apprentice rate, the Organization conceded that the higher hourly rate is not a general wage increase.

If the Organization prevails in this case, the decision would unreasonably cause the Carrier to continually adjust protected workers' displacement allowances. Whenever an employee bid on and was awarded a higher rated position, the Carrier would be obliged to recalculate his test period average earnings.

IV. DISCUSSION

This dispute is governed by the proviso at the end of the second paragraph of Section 5(a) of the New York Dock Conditions. The precise question at issue, which appears to be one of first impression, is whether the increase in Claimants'

hourly rate arising out of Claimants' movement from Machinist Apprentice to Journeyman Machinist constituted "...subsequent general wage increases..." as specified in Section 5(a).

The ICC did not define a general wage increase. Nonetheless, the adjective "subsequent" in the Section 5(a) proviso impels us to summarily deny the claim brought by Machinist Bailey. Claimant Bailey became a journeyman on September 14, 1983 which was before implementation of the coordination. The term "subsequent" can only be construed to mean that displacement allowances will be adjusted to reflect those general wage increases which occur after the expiration of a protected employee's test period. In other words, any general wage increase coming after the date a protected worker is displaced as a result of the transaction is within the Section 5(a) proviso. General wage increases occurring before "...the date of his displacement..." are already factored into the employee's test period average earnings.

Unlike Claimant Bailey, Claimant Mendez achieved journeyman status subsequent to the expiration of his test period. Thus, this Committee must interpret the words "general wage increases." New York Dock displacement allowances are designed to protect employees from being placed in a worse position with respect to their compensation because the Carrier has implemented a transaction. However, a worker is not placed in a worse position merely because after the transaction, the employee successfully completes an apprenticeship and moves into journeyman status. Therefore, the term "general wage increase"

was intended to apply to increases in the rate of pay to those positions which the protected employee occupied during his twelve month test period. In this instance, progressing from Machinist Apprentice to Journeyman Machinist was only a change in Claimant's status. There was not an increase in the compensation for apprentices. Overall wages remained constant. While we do not endorse the Carrier's interpretation that general wage increases are limited to across the board increases, the word "general" connotes a broader application than a rise in wages accruing to an employee as a result of his individual accomplishment such as successfully completing an apprentice program.

Although we are denying the claims herein, we emphasize that our holding is restricted to the specific facts in this case. To reiterate, we have narrowly decided that a protected worker is not entitled to an upward adjustment in his displacement allowance when he moves from Machinist Apprentice to Journeyman Machinist after the expiration of his test period.

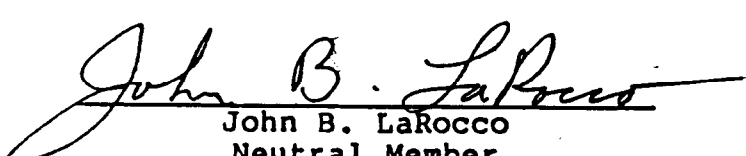
AWARD AND ORDER

The Organization's petition that the Carrier recalculate the displacement allowances for Claimants Bailey and Mendez is denied.

DATE: July 10, 1987

J. R. Smothers
Employees' Member


Dan Moresette
Carrier Member


John B. LaRocco
Neutral Member