

ARBITRATION COMMITTEE
ESTABLISHED UNDER NEW YORK DOCK PROTECTIVE CONDITIONS

In the Matter of an Arbitration Between)
UNITED TRANSPORTATION UNION (E))
and)
UNION PACIFIC RAILROAD COMPANY)
(Former Missouri Pacific - Upper Lines))

FINDINGS & AWARD

QUESTION AT ISSUE:

"On what date(s) do the protective conditions of New York Dock Conditions commence for Kansas City Firemen F. J. Blakely, M. H. True, and R. D. Blakely?"

BACKGROUND:

As with Award No. 1, the dispute here at issue arises under those conditions which the Interstate Commerce Commission (the "ICC") imposed in its Decision and Order in Finance Docket No. 30,000, rendered on October 20, 1982, i.e., the employee protective conditions as set forth in New York Dock Railway - Control - Brooklyn Eastern District, 350 I.C.C. 60 (1979).

However, unlike the circumstance which prevailed in Case No. 1, Award No. 1, the Carrier and the Organization entered into an implementing agreement without resort to arbitration as concerned the Carrier's employees in engine service who are represented by the Organization, albeit such Agreement was only arrived at after protracted negotiation.

Article I, Purpose, of this October 9, 1983 Agreement reads:

"(a) Effective on or after October 1, 1983, (1) all UP fireman functions now being performed at Kansas City and (2) all MP fireman functions now being performed at Kansas City, will be consolidated into a single combined terminal controlled by MP with all work being performed under the collective bargaining agreement identified as Attachment 'A'.

(b) As set forth in the preamble of the collective bargaining agreement identified as Attachment 'A', items

not specifically covered in Attachment 'A' shall be governed by and be subject to the Agreement between MP and the UTU which governed MP operations at Kansas City."

Thereafter the Carrier notified the Organization and affected employees that the consolidation of the Kansas City Terminal would occur on November 1, 1983. In this connection, all assignments at Kansas City on both the UP and MP were abolished effective with the end of tours of duty on October 31, 1983, and new assignments were established effective November 1, 1983.

The notice also advised that all UP and MP extra boards were combined into consolidated extra boards. Thus, the MP hostling extra board became a consolidated extra board on November 1, 1983. The UP had no hostler extra board prior to November 1, 1983.

On March 4, 1986, or some two years and four months following the consolidation, the Organization raised the instant dispute, as is noted by the contents of the following letter which it addressed to the Carrier's Director of Labor Relations:

"This is to confirm our recent conferences in regard to R. D. Blakely, F. J. Blakely and M. H. True. The claimants were protected by New York Dock beginning on date of KCT consolidation agreement. But, we are contending protection should begin on date certain items of the agreement were implemented.

F. J. Blakely's should begin when the allocation of fireman's extra board was implemented - February, 1984. R. D. Blakely's should begin on date MP hostling jobs were abolished and re-established at different location -- April, 1984.

You have expressed disagreement with our position; therefore, we are requesting these issues be presented to arbitration with similar issues which Brother Irving Newcomb with Vice President L. W. Swert assisting are progressing."

POSITION OF THE ORGANIZATION:

The Organization maintains that the Carrier had authority to allocate the hostlers' extra board effective October 9, 1983, or namely, the date the Implementing Agreement was signed by all parties, but that the Carrier did not do so until February 13, 1986. Thus, it is the position of the Organization that Claimants were placed in a worse position with respect to their compensation and rules governing their working conditions.

In setting forth its position to this Arbitration Committee, the Organization said:

"By increasing the working list of UP prior right

firemen, such UP firemen were brought into hostling service from road assignments causing a chain of displacements until UP prior right firemen were either placed onto the hostlers' extra board or placed on designated MP prior right assignments which had been previously protected by the MP extra board. Either circumstance would result in less work protected by claimants assigned to the hostlers' extra board. The loss of earnings in the case of UP prior right firemen marking up on the extra board would be due to employees being added to the extra board, and in the case of UP prior right firemen marking up on open MP designated jobs. This would reduce assignments being worked by the extra board. Thus, claimants earnings were reduced after Article II, (b) (1) was implemented."

Article II, (b)(1), of the October 9, 1983 Agreement reads as follows:

"Regular and extra hostler and hostler helper assignments in the consolidated Terminal shall be allocated between UP and MP on a 41.33% (UP) and 58.67% (MP) basis. The allocation of jobs between UP and MP flowing from this percentage division is set forth on Attachment 'B'."

The Organization makes the further argument that Claimant R. D. Blakely "contends being adversely affected due to the Carrier closing the diesel servicing facilities in MP Neff Yard, Kansas City Terminal; and, combining operations at the UP diesel shop in Armstrong Yard." In this regard, the Organization asserts:

"Prior to March of 1984, the outside hostlers in MP Neff Yard would perform the service of bringing locomotives to the service track located in the Mechanical Yards, Neff Yard, supplying engines with fuel, cooling water and sand, placing engines on drop pit to be inspected by mechanical personnel, switching locomotives among eight tracks in the shop, etc.

During March of 1984, the diesel shop was closed down and all servicing operations were transferred to the UP diesel shop located in Armstrong Yard. At this point, the supplying of engines and much of the other work listed above was performed by the craft of laborers.

On March 31, 1984, the hostling assignments beginning work at the MP Mechanical Yards, Neff Yard, were abolished. Jobs were re-established, with some located at the east end of Neff Yard (former Rip Track) and some at UP Armstrong Yard; however, much of the work that had been performed by hostlers was eliminated."

POSITION OF THE CARRIER:

Basically, it is the position of the Carrier that:

"1. The Petitioner has failed to provide the essential facts to establish a basis for claim and has failed to provide any authority or expression of position to which Carrier may respond.

2. Nothing occurred in 'February, 1984' which could be considered a transaction or which would require any change in the protection of F. J. Blakely or any other employee at Kansas City.

3. Nothing occurred in 'April, 1984' which could be considered a transaction or which would require any change in the protection of R. D. Blakely or any other employee at Kansas City."

As concerns Claimant True, the Carrier submits that the letter which the Organization addressed to Carrier under date of March 4, 1986, represents the sum total of expression of facts and position offered in writing by the Organization on the property and that the events or circumstances mentioned in such letter set forth no basis for claim for Claimant True.

In this same respect, the Carrier argues that the March 4, 1986 letter from the Organization offered nothing but generalities and failed to show the manner by which it was being claimed that the Claimants had been affected by a transaction.

The Carrier says that it can only assume that this dispute involves former UP firemen being required to protect their percentage allocation of work on the hostler's extra board at Kansas City and, based upon such assumption, offers the following argument:

"Prior to the consolidation, the UP manned its Kansas City Terminal with engineers/firemen who held seniority in the terminal and the territory between Kansas City and Marysville and between Kansas City and Junction City, Kansas, including the Topeka Yard. A combination road/yard extra board was maintained for the entire seniority district. A hostler/helper extra board was not maintained. These vacancies were filled through the utilization of the Manning Agreement.

The MP terminal immediately prior to the consolidation was manned by engineers who held seniority in the Kansas City Yard and a separate road date on one of the several road rosters. A yard engineer's extra board was maintained, as well as a hostler/helper extra board.

After November 1, 1983, all hostler vacancies were protected by a common, rotary extra board. This was pursuant to Article II, Section (c)(1) of the Consolida-

tion Agreement (Attachment 'B'), reading:

'(c)(1) There shall be a common rotary extra board protecting both designated UP and designated MP regular hostler and hostler helper assignments. The total number of employes to be maintained on the common consolidated terminal extra board shall be determined by the procedure set forth in the applicable collective bargaining agreement. The respective number of UP and MP employes on the extra board shall be based on the allocation percentage set forth in (b)(1), above. Extra board employes may work either UP or MP designated assignments without restriction.'

A dispute arose regarding the application of the foregoing agreement provisions. Prior to the consolidation of the two terminals it was a practice on the MP that employees would not be force assigned to hostler positions which were advertised, but closed with no bids. Such vacancies were then left open and filled off the extra board. After the consolidation of terminals the practice continued; however, former UP employees objected to having to provide a proportionate number of employes on the hostler extra board, arguing that the number of such employes was excessively large due to the MP practice of not filling regular assignments. Consequently, they did not initially place anyone on the common rotary extra board and the matter was a subject of considerable discussion between the various representatives of the Organization and the Carrier. Agreement was finally reached whereby the number of employes carried on the extra board would be reduced by the number of open MP assignments and the UP allocation would then be applied to that smaller remaining number. This understanding and application of the Agreement was placed into effect on February 13, 1984, as a result of which one or more UP enginemen were forced to protect their portion of the hostling extra board allocation at Kansas City.

If it is this action which the Organization is now contending creates a new and separate obligation under the New York Dock Conditions, Carrier vigorously disagrees therewith. How this series of events could be considered a separate 'transaction' is beyond Carrier's comprehension. Clearly this entire matter pertains to the application of MP schedule rules and practices regarding forcing employes onto hostler assignments which have gone no bid, as well as the proper interpretation and application of the Kansas City consolidation agreement as it pertains to allocation of work on the consolidated extra board.

The New York Dock Conditions define a transaction as

'any action taken pursuant to the authorizations of this Commission.' The events described above obviously were done to comply with negotiated agreement provisions, and were not done pursuant to any authorization of the ICC.

Carrier submits that the facts surrounding this incident are related directly to the application of the relevant schedule rules and agreements and no benefits under the New York Dock Conditions could possibly flow therefrom." (Underscoring above by Carrier.)

As concerns what it says was nothing having occurred in April 1984 which could be considered a transaction or which would require any change in the protection of Claimant R. D. Blakely at Kansas City, the Carrier offers argument that if such claim is based on a change in the manner that locomotives were fueled that concurrent with the shifting of fueling operations from Neff Yard to Armstrong Yard a number of hostler and hostler helper jobs were abolished at Neff and readvertised at Armstrong, but its record do not indicate, and it submits the Organization has not demonstrated, exactly how, if at all, Claimant Blakely was involved in this change.

The Carrier further argues that all job functions performed by firemen were consolidated into a single combined terminal when, pursuant to the October 9, 1983 Implementing Agreement, the Kansas City Terminal became a single, combined terminal. In this respect, the Carrier says that one of the purposes at that time was that of abolishing every assignment and reestablishing every assignment effective November 1, 1983 so as to have the effect of certifying every regular assigned employee at Kansas City for protection so that there would be no dispute at a later date and the Organization would not have to contend with handling individual grievances for protected status. Thus, the Carrier says that it would be far-reaching and damaging to such action if every time work was thereafter consolidated or redistributed at Kansas City for it to be considered that there was another covered transaction invoking new protective periods and rates.

FINDINGS:

There is no question that pursuant to Section 11(e) of the New York Dock Conditions before an employee may claim entitlement to employee protective benefits, that employee is obliged to show a reasonably direct causal connection between a control transaction and a claimed injury. It is not sufficient for an employee to merely identify a transaction, and not otherwise specify the pertinent facts of that transaction relied upon to show an adverse affect upon employment.

In the instant case, it is evident in studied consideration of the record that neither the Claimants nor the Organization on their behalf have been able to meet a necessary burden or proof in seeking to link the Claimants to an initial or control transaction which gave the Carrier the authority to consolidate its operations at Kansas City and the injury they claim to have mean-

time sustained.

Conversely, it appears from the record that Claimants were affected by post-transaction operational job changes, or, namely, circumstances which had no direct causal connection to the control transaction.

In this latter regard, it is noteworthy that pursuant to the October 9, 1983 Implementing Agreement that all functions of firemen were consolidated into a single combined terminal operation, with all assignments being abolished and then reestablished effective November 1, 1983. Thus, it would seem that except as the Claimants might have shown, which they did not, that there was a reasonably direct causal relationship between that transaction and a claimed injury, it must be held that any later adverse affect which they suffered came as a result of a redistribution of work, as offered by the Carrier, or an operational change that might otherwise have obtained in the normal course of business.

Accordingly, as concerns the Question at Issue, it must be held that Claimants came to be subject to the protective conditions of the New York Dock Conditions on October 20, 1982, i.e., when the ICC released its Decision and Order in Finance Docket No. 30,000. Further, although it may be that Claimants came to be "displaced" or covered employees by virtue of the Carrier having abolished all positions at Kansas City effective November 1, 1983, this is not a circumstance which, in any event, impacts upon the dispute here at issue. This Arbitration Committee's consideration of the instant dispute is related solely to those circumstances which came into being following the above dates and, in this respect, there is nothing of record to hold that Claimants are entitled to New York Dock benefits as a consequence of post-transaction changes in operations.

AWARD:

The Question at Issue is disposed of as set forth in the above Findings.



Robert E. Peterson, Arbitrator

Kansas City, MO
March 30, 1988