ARBITRATION COMMITTEE

Established Pursuant to Section 4 of Article I
of the New York Dock conditions imposed by the
Interstate Commerce Commission in FD No. 30800

In the Matter of Arbitration between UNION PACIFIC RAILROAD COMPANY and UNITED TRANSPORTATION UNION	FINDINGS & AWARD

QUESTION AT ISSUE

What provisions shall be contained in an implementing agreement pursuant to Article I, Section 4, of the New York Dock conditions in order to consummate the merger transaction authorized by the Interstate Commerce Commission in Finance Docket No. 30800?

APPEARANCES

For the Union Pacific Railroad Company (Carrier):

R. D. Meredith, General Director-Labor Relations
M. A. Hartman, Director-Labor Relations
T. L. Wilson, Sr., Director-Labor Relations
A. T. Olin, Asst. Director-Employee Relations Planning
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S. A. Teller, Asst. Director-Labor Relations
G. T. Graham, Assistant Vice President-Operating Dept.
J. M. Krier, Merger-Coordinator-Operations

For the United Transportation Union (C-T-Y-E) (Union):

J. A. Alford, Vice President
P. C. Thompson, Vice President
W. H. Bannon, General Chairman, UTU-T (MP/TP/KO&G)
J. T. Bay, General Chairman, UTU-E (MP/GC&T&P) (*)
F. C. Bertsch, General Chairman, UTU-E (MKT/OKT)
S. L. Freeman, General Chairman, UTU-CTE (MP/MV)
M. B. Futhey, Jr., General Chairman, UTU-CTY (MP-Proper)
R. A. Green, General Chairman, UTU-CTY (MP/GC)
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M. W. Lewis, General Chairman, UTU-C (MP/TP/KO&G)
J. D. McBride, General Chairman, UTU-CTY (MKT/OKT)
S. B. Rudel, General Chairman, UTU-CTY (MP/T&P)
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BACKGROUND

On May 13, 1988, the Interstate Commerce Commission (ICC or Commission) in Finance Docket No. 30800 authorized the Union Pacific Corporation (UPC) and its wholly owned rail carrier subsidiaries, the Union Pacific Railroad Company (UP) and the Missouri Pacific Railroad Company (MP), to acquire and exercise control over the Missouri-Kansas-Texas Railroad Company (MKT) and its carrier subsidiaries, including the Oklahoma, Kansas and Texas Railroad Company (OKT).

In its decision, the ICC held that the employee protective conditions set out in New York Dock Ry. - Control - Brooklyn Eastern District, 360 ICC 60 (1979), commonly known as the New York Dock conditions, were appropriate to protect employees affected by this transaction. In response to requests by the Railroad Brotherhoods for additional protection, the ICC held that no unusual circumstances had been shown in this case to justify additional protection.

Pursuant to Section 4 of the New York Dock conditions, the Carrier served notice upon representatives of the United Transportation Union (Union) of its intent to fully integrate all MKT, OKT and Galveston, Houston and Henderson (GH&H) personnel, facilities and operations into UP operations. The Carrier served separate, but essentially like notice for employees represented by the Union in both train and engine services. For purposes of this arbitration the separate notices will be treated as one and the same notice, albeit the Arbitration Committee recognizes that the parties have taken some slightly differing positions concerning the separate crafts or classes of service.

The Carrier notice described the manner in which consolidations would occur on or after September 1, 1988. This notice stated that in order to effect the transaction, all MKT, OKT and GH&H agreements would be eliminated and that both the employees and the work covered by these agreements would thereafter be covered by the MP-Upper Lines Agreement. The notice also stated that the seniority rights of employees under the MKT, OKT and GH&H agreements would be dovetailed into rosters provided for under the MP-Upper Lines Agreement, and that any prior rights understandings and agreements impacted by the merger would be eliminated.

The notice also outlined the manner in which through freight service in the affected areas would be changed, and designated those home terminals which were to be either eliminated or relocated.

In its June 1, 1988 cover letter to the Union representatives the Carrier, among other things, said:

> "We look forward to commencing our negotiations on this notice on June 20, 1988. We believe we can reach an agreement which will achieve the goals of the merger and be beneficial to all concerned."

It is noted, however, that prior to the Carrier having formally issued its notice on June 1, 1988, and prior to the ICC issuing its decision in FD 30800 on May 13, 1988, representatives of the Union, at the request of the Carrier, met with the Carrier on April 27, 1988. At such time the Carrier presented its proposed notice and its Operating Plan to the Union.

Following this meeting, under date of May 11, 1988, the Union formally advised the Carrier that it took exception to the Carrier's proposed notice. In part here pertinent, the Union's May 11, 1988 letter reads as follows:

> "This is to advise you that the Organization takes exception to your proposed Notice on grounds that it is not in compliance with the requirements of New York Dock. In particular, we take exception to that part of your notice contained in Section II reading as follows:
>
> > (A) All MKT, OKT and GH&H agreements will be eliminated and the employees covered thereby will be dovetailed into appropriate UP rosters.
> >
> > (B) The Agreements applicable on the former Union Terminal Railway Company, Missouri and Illinois Railroad Company, Memphis Union Terminal, Kansas Oklahoma and Gulf Railroad Company, and Midland Valley Railroad Company will be eliminated and the employees covered thereby will be dovetailed into the appropriate UP rosters.
> >
> > (C) The employees covered by Sections A and B above and the work performed by them will be covered by the appropriate UP agreements. Any prior rights understandings and agreements impacted by this merger will be eliminated."

The Union also requested in its May 11, 1988 letter that meetings scheduled for the weeks of May 16 and May 23, 1988 be cancelled since it was not in a position to begin negotiations at that time and wanted to meet with the concerned General Committees to discuss the proposed notice and the coordination of the various yards that were involved in the Operating Plan.

In subsequent negotiating conferences the Carrier continued to pursue acceptance of the issues covered by its proposed implementing agreement. At the same time, the Union continued to take exception to the notice and implementing agreements as proposed by the Carrier, and sought additional protective benefits. In this latter regard, the Union's protection proposal was as follows:

> 1. Certification for all employees in the involved seniority rosters.
>
> 2. Length of protection based on Article XIII of the UTU 1972 National Agreement.

3. Unlimited continuation of fringe benefits for dismissed employees.

4. All involved employees to be considered protected employees for crew consist purposes.

5. The Carrier's proposed separation package.

In addition to its need to negotiate with the Union, it was necessary for the Carrier to also negotiate with the other labor unions who represented other Carrier employees. One of these other organizations was the Brotherhood of Locomotive Engineers (BLE). The Carrier reached agreement with the BLE, and thereafter sought to have the Union enter into a like agreement.

On November 16, 1988, the Union informed the Carrier that it did not find the concept of the Carrier-BLE agreement acceptable. The Carrier then declared a negotiating impasse, and the Union, in turn, advised the Carrier that it would move for arbitration of the dispute under the New York Dock conditions. The Union formally confirmed this to the Carrier in a letter dated November 21, 1988.

In its November 21, 1988 letter to the Carrier the Union, among other things, said:

> "The purpose of this letter is to confirm that which we stated to you during the conclusion of the negotiation session on November 16, 1988. Because of the Carrier's continued insistence that we include many items into an Implementing Agreement that are not merger related, as well as the Carrier's efforts to reduce the protection benefits below that which is provided in New York Dock, the Organization has no other choice but to request expedited arbitration as provided for in Section 4 of Appendix III of New York Dock. Please consider this as the required request for arbitration of this dispute."

Thereafter, the parties jointly selected Richard R. Kasher and Robert E. Peterson to serve as an Arbitration Committee for the resolution of the dispute.

The parties were requested to and did provide pre-hearing briefs to the Arbitration Committee under date of December 22, 1988. Hearings in this matter were held on January 3, 1989 in Miami, Florida. At the hearings the Carrier was requested to provide additional information pertaining to the projected impact on labor arising from implementation of its Operating Plan in the manner such information had been originally presented and amended in its submission to the ICC. This data was received by the Arbitration Committee on January 9, 1989.

Position of the Union

The Union acknowledged that it might be necessary to renegotiate certain agreements "in order to make this merger work due to the

parallel lines involved." However, the Union took the position that it was not willing to negotiate concerning issues that, in its opinion, were not related to the merger. The Union takes exception to the Carrier proposals which relate to the following issues:

1. The creation of new seniority districts throughout the former MP and MKT properties by combining numerous existing seniority districts and dovetailing all the employees onto a new roster.

2. The inclusion of some 20 different railroads in the implementing agreement which are not involved or related to the UP and MKT merger.

3. The elimination of all the various Agreements now in effect and placement of all employees under the MP-Upper Lines Agreement.

4. The granting of relief from crew consist agreements as under the MP-Upper Lines Agreement in place of the elimination of individual schedule agreements.

5. The establishment of interdivisional service, special train operations and the changing of present home terminals under the guise of an implementing agreement.

6. The proposed forced transfer of employees off their present prior rights seniority districts.

The Union also submitted that in addition to the foregoing, its General Chairman for train service employees on the MKT/OKT had advised the Carrier by letter dated June 13, 1988 that he was of the belief that the notice of June 1, 1988 failed to meet prescribed requirements of the New York Dock conditions for the following stated reasons:

"1. It is not being adhered to in that written notice of such intended transaction has not been posted on the bulletin boards convenient to the interested employees at Dallas, Texas.

2. Your purported notice is vague and indefinite in each and every respect to be specific concerning your intended operating plan. It also fails to parallel your notice of operation to the ICC and finally, was not served timely on this Committee as required by Paragraph IV of Article I of the New York Dock."

The Union submits that during conferences on the property it expressed a willingness to negotiate an implementing agreement consistent with the "Orange Book" principles that were adopted in the merger of the Seaboard Air Line Railroad Company and the Atlantic Coast Line Company. The Union points out that the Carrier rejected such proposal.

The Union contends that because of 1) the Carrier's continued insistence to include items in an implementing agreement that are

not related to the merger, 2) the Carrier's insistence upon an agreement similar to that which it had entered into with the BLE and, 3) the Carrier's efforts to reduce the protection benefits below those provided in New York Dock, it had no other choice but to request arbitration as provided for in the New York Dock conditions.

The Union maintains that threshold procedural issues must be resolved before the Arbitration Committee may proceed to the substantive issues. These procedural issues, as stated by the Union, are:

> 1. Third party interests on behalf of the Houston Belt Terminal Railroad (HBT), Alton and Southern Railroad (A&S), Terminal Railroad Association (TRRA), and Chicago and Eastern Illinois Railroad (C&EI). The Union submits that representatives of employees for these carriers were not provided copy of Carrier's June 1, 1988 notice nor have they been involved in any negotiations concerning implementation of the transaction.
>
> 2. The failure of the Carrier to have bargained in good faith, and the Carrier's seeking relief from labor contracts which have no impact on implementation of the transaction.
>
> 3. The Carrier's amending the June 1, 1988, proposal and submitting an unnegotiated amended proposal by letter dated December 1, 1988 to only two of the involved General Committees; when in fact the General Committees on the Missouri Pacific (Upper Lines), MKT, OKT, KO&G, and Midland Valley would be involved in this amendment to the June 1, 1988 notice. Further, the Union submits that this action would also have an affect on those properties that have not been included in the original notice as set forth in (1) above.

Based upon the foregoing contentions the Union submits that the Arbitration Committee should conclude that the Carrier's notice, as amended, is procedurally defective and that the Arbitration Committee should further conclude that the Carrier has bargained in bad faith by its insistence upon including non-merger related subject matters in a New York Dock implementing agreement.

Position of the Carrier

The Carrier asserts that neither its notice nor its demands are inappropriate. It says that everything it needs to fully implement the ICC decision and order in FD No. 30800 can be achieved "in return for New York Dock protection" provided the employees.

In order to fully implement the transaction the Carrier takes the position that:

> 1. The MKT, OKT, KOG and MV collective bargaining agreements be eliminated;

2. Seniority districts be redrawn to allow for implementation of the ICC-approved Operating Plan;

3. Seniority rosters be established based on work equity ordering rather than prior rights;

4. A single combination roster be established for each new seniority district; and,

5. Four special train operations be established.

Contrary to the position of the Union, the Carrier contends that the right to provide for implementation of the above mentioned matters flow from the Operating Plan that was submitted to and approved by the ICC during the merger proceedings. The Carrier argues that the Operating Plan encompasses all the functional areas of the two railroads' operations and organizes the operation of the UP and MKT into a single railroad system with unified operations, with the integration of MKT and UP functions, personnel and facilities to the maximum feasible extent, in order to provide the best possible service to the shipping public at the lowest possible cost.

The Carrier submits that: "Inasmuch as the ICC has approved this Operating Plan, it has mandated its implementation." (Emphasis by the Carrier.)

The Carrier then offered extensive argument in support of each article of its proposed implementing agreement. It is unnecessary to here cite all of the details of those arguments.

While the Union has raised certain procedural issues to this Arbitration Committee, the Carrier introduced what it termed to be "legal" and "secondary procedural" issues.

The so-called legal issues are described by the Carrier as follows:

"1. Whether an ICC-approved transaction is exempt from the Railway Labor Act.

2. Whether existing working conditions and collective bargaining agreements which conflict with an ICC-approved transaction may be set aside.

3. Whether New York Dock arbitrators have jurisdiction to disregard the Railway Labor Act and to set aside existing working conditions and collective bargaining agreements in order to ensure an approved transaction is implemented."

It is the Carrier's position that these issues have been decided by the ICC, the federal courts, and various arbitrators in a manner that supports the Carrier's position. The Carrier offers argument in support of such contentions.

The so-called secondary procedural issues concern the Carrier's position relative to the Union's contentions that the notice of

June 1, 1988 did not constitute a proper and valid notification because 1) the HBT, A&S and C&EI were not included in the notice, 2) the notice included items such as special train operations and seniority roster/district/ordering changes, or matters which the Union alleged were not proper subjects for negotiation involving the transaction.

The Carrier is of the firm belief that its notice fully satisfies the requirements set forth in the New York Dock conditions and constitutes a proper and valid notification.

The Carrier submitted that the HBT, A&S and C&EI were properly excluded from its notice. The Carrier maintains that they are separate railroad entities and must be treated like any other railroads not parties to the UP/MKT merger.

The Carrier also submitted that the inclusion in its notice of such items as the relocation of home terminals, establishment of special train operations and realignment of seniority districts are matters appropriate and necessary for what it says is "the complete implementation of the ICC-approved Operating Plan."

The Carrier offerred that it amended its June 1, 1988 notice as the result of agreements reached with representatives of the train service employees on the former Texas and Pacific Railroad (T&P) and the former Gulf Coast Lines Railroad (GCL).

In addition to setting forth its position on all the procedural arguments, the Carrier offers what it says are two final arguments which it contends should put the procedural protests of the Union to rest. Those arguments, as presented by the Carrier in its brief, are:

> "(1) The merits of the Organization's procedural arguments diminish greatly when one inspects the merger implementing agreement negotiated with the Brotherhood of Locomotive Engineers (BLE). At no point during negotiations with the BLE was the appropriateness of the Carrier's notice challenged. The A&S, HBT and C&EI were not included in the notice, negotiations nor final agreement. Collective bargaining agreements were eliminated and seniority rosters/districts and ordering were changed.
>
> (2) This case should be and must be decided on the merits. The Carrier served a valid notice. Once the notice was served, the Organization would have been better served to negotiate rather than be concerned with procedure. The BLE negotiated and reached agreement. The UTU should not be allowed to avoid its obligation to negotiate, to hide behind procedural objections, and to further delay the implementation of the ICC-approved merger of the UP and MKT."

Based upon the foregoing contentions the Carrier submits that its proposed implementing agreement should be adopted by the Arbitration Committee.

Findings and Opinion of the Arbitration Committee

As the touchstone for these findings, the Arbitration Committee observes that the ICC stated in FD 30800 that it found no need to impose more extensive labor protection conditions than those found in the New York Dock conditions. The ICC in a section of its Decision entitled, Synopsis, described the Labor Issues as follows:

> "Our public interest analysis includes consideration of the effects of the proposed transactions on the interests of railroad employees. The primary transactions will be subject to the New York Dock labor protective conditions for railroad consolidations. ..... More extensive labor protection conditions than these will not be imposed. ....."

The ICC continued in setting forth its determinations relative to Labor considerations and held:

> "[W]e may tailor employee protective conditions to the special circumstances present in a particular case. This is done, however, only if it has been shown that unusual circumstances require more stringent protection. ....
>
> The unions seek modification to the New York Dock conditions, allegedly to take into account the magnitude and extent over time of the alteration in the work forces of the merging carriers. ..... They also ask that protection be afforded to non-applicant railroad employees.
>
> We find that the statutory protections provided in New York Dock are appropriate to protect employees affected by this transaction. ..... [N]o unusual circumstances have been shown in this case to justify additional protection. .....
>
> Finally, the unions argue that the Commission does not have the authority to exempt this transaction from the Railway Labor Act and collective bargaining agreements. We disagree. The Commission has exclusive and plenary jurisdiction over railroad consolidations, including the effects on labor arising from such transactions. This authority is based on several legal grounds. One source of this authority is section 11341(a) of the Interstate Commerce Act, 49 U.S.C. 11341(a), which ..... exempts Commission-approved mergers from the Railway Labor Act). The self-effecting exemption enables the carriers to implement not only the legal and financial, but also the operational aspects of the transaction upon consummation, without the need to apply to courts or labor unions (except as required under the labor conditions we impose) for authority to do so. Any other result would render the exemption, as well as Commission approval of a transaction, meaningless. We see no

> reason to speculate on the practical effects of exclusive Commission jurisdiction in this transaction, since the parties will have the opportunity to resolve differences through negotiation and arbitration or seeking further guidance from us on specific problems."

The above language leads this Arbitration Committee to reach two general conclusions. First, the ICC did not view the nature of this particular merger as one which required any special conditions insofar as the employees' interests were concerned. The underlying thrust of the ICC's pronouncements at pages 8 and 80-82 of its decision make it clear that the Commission viewed the labor-management aspects of the merger to be very "normal" or "ordinary." The ICC gives no indication that this merger had any special labor-management aspects or required that there be any "unusual" provisions contained in a negotiated or arbitrated implementing agreement.

Secondly, this Arbitration Committee finds no reason to discuss the question of the preeminence of the Interstate Commerce Act vis a vis the Railway Labor Act. That question is one that is properly resolved in other forums, and, more importantly, we do not find that the Commission's decision requires this Committee to do anything more than establish a standard implementing agreement in the context of the not "unusual circumstances" of this merger.

In our view, the reason an implementing agreement was not attainable on a voluntary, collectively bargained, basis was due to the fact that both the Carrier and the Union insisted on remaining firm throughout the handling of this dispute on a number of so-called "legal" and/or "procedural" issues.

The unyielding and uncompromising positions of the parties is evidenced on the one hand by the Carrier's unrelenting demand for extensive relief from varied work rules and in its insistence that such changes had been mandated by the ICC by its approval of the Carrier's Operating Plan. On the other side, the Union's resistance is revealed by the sharp focus of attention that the Union gave to procedural issues and its insistence on benefits that far exceeded the standard levels and durations of protection typically afforded to employees under New York Dock.

In order that the parties may properly and promptly return to the "New York Dock bargaining table," the Arbitration Committee will make findings as to which subject matters fall outside the scope of our perceived understanding of an ordinary New York Dock implementing agreement. We are, therefore, directing the parties back to the bargaining table because we recognize that their broader desires would be better served by use of their considerable skills and expertise in collective bargaining to reach the terms of a voluntary implementing agreement. After all, the parties are sensitive to their own critical needs. They are uniquely equipped, by direct past association with merger-related matters, to understand how such concerns may best be resolved through the give and take of collective bargaining.

If either one or both parties insist on staying the past course

of action, then each will have to contend with both the bitter and the better of an arbitrated disposition of the dispute. This Arbitration Committee expects that such ultimate action will not be found to be necessary. Surely it must be recognized that neither side can hope to obtain through arbitration non-merger related benefits, either in the form of relief from work rules not directly merger-related or in the form of additional protective conditions which go beyond the parameters of the New York Dock conditions.

THE ISSUES THAT FRUSTRATED BARGAINING

A. The Interstate Commerce Act v. The Railway Labor Act

As noted above, this Arbitration Committee finds that this issue, characterized as a "legal" issue by the Carrier, is not properly before us in the context of an ordinary New York Dock implementing agreement.

This Arbitration Committee is cognizant of the present state of the law concerning the interrelationship of these two federal statues. However, we find no direct conflict before us regarding the applicability of one statute vis a vis the other.

The Union at the hearing, conceded that "Where there are terminal consolidations, the predominant Carrier's agreement should apply, we recognize that." The Union has not maintained that all MKT, OKT and GH&H employees "carry their agreements with them" nor has the Union challenged the general applicability of the Interstate Commerce Act to the merger transaction.

It is the Arbitration Committee's understanding that the "legal" issue of the preeminence of one federal statute vis a vis the other did not frustrate the speedy negotiation of implementing agreements with thirteen (13) other crafts on the property. Thus, we find that this "issue" has no place in the New York Dock negotiations in this case.

B. The Carrier Notice

The Union asserts that the Carrier has failed to serve or post proper written notice of its intended transaction pursuant to Article I, Section 4, of the New York Dock conditions. The Union maintains: 1) The notice as served by Carrier on June 1, 1988 was vague and indefinite; 2) The notice had included general committees of adjustment for the Union not affected by the transaction and, at the same time, the notice had excluded other entities which the Union holds to be properly involved or affected by the transaction; 3) The Carrier had wrongfully assumed a right to amend the notice on December 12, 1988 to provide a crew consist modification exclusion; and, 4) The notice had not been properly posted at the Carrier's Dallas, Texas facility. The Union therefore contends that the Carrier should be directed to serve a proper 90-day written notice before proceeding with the transaction.

These contentions by the Union are found to be lacking in merit.

The notice as served was not inconsistent with the requirements of Article I, Section 4, of the New York Dock conditions. As required by such provisions, the notice contained a full and adequate statement of the proposed changes to be affected by the transaction and included an estimate of the number of employees affected by the intended changes. Further, the fact that the notice included items which the Union contends are not directly involved or related to the transaction, does not constitute sufficient cause to hold the notice to be improper.

The record reflects that the Carrier made a good faith effort to notify all concerned employees and union representatives regarding its plans to implement the transaction. The Union's contention that the notice was defective is lacking in merit.

The argument which the Union offers on behalf of employees of the HBT, A&S, TRRA and C&EI, which it says have wrongfully been excluded from the Carrier notice, must be weighed in the light of their participation in the ICC hearings. The ICC did not find it appropriate to provide notice to such entities.

The Arbitration Committee further concludes that the Carrier's notice was not rendered defective, as the Union contends, because the Carrier amended that notice as the result of reaching partial agreement with two of the concerned General Committees of the Union. The purpose of the notice is to timely advise employees and their representatives of the intent to implement the transaction. That purpose was neither undercut or nullified by the fact that the Carrier amended its notice.

The Union complained that the notice was not properly posted at Dallas, Texas. The Union offered insufficient evidence to support this contention. In any event, there is no question that the Carrier properly provided registered mail notice to the representatives of the employees and no prejudice occurred to the Union or the employees it represents because of the alleged deficiencies of the notice.

Based upon the foregoing reasons, the Union's protests concerning the Carrier's notice are found to be without merit.

C. The Carrier's Operating Plan

The Arbitration Committee does not find that the ICC has mandated implementation of the Carrier's Operating Plan irrespective of appropriate consideration of other issues, such as labor negotiations. The Operating Plan, at page 13, provides:

> "The Operating Plan also considers the impact of phased gains in operating efficiency. Due to the time required to complete .... and to negotiate labor agreements, complete coordination and consolidation of operations will not occur immediately upon approval."

Further, the Operating Plan, at page 2, states: "The overall objective in planning consolidated operations was to integrate MKT and UP functions, personnel, and facilities to the maximum feasible extent, ..."

It is obvious, therefore, that the Carrier recognized that in order to implement its Operating Plan it was obliged to negotiate on matters that concerned appropriate or necessary changes in collective bargaining agreements, such as seniority integration, changes in home terminals, interdivisional service, and the operation of special trains, including the modification of crew consist rules.

D. The Elimination of All MKT, OKT and GH&H Agreements

The Carrier has proposed that all MKT, OKT and GH&H agreements be eliminated and that the remaining effective collective bargaining agreements governing rates of pay, rules and working conditions shall be (1) the former MP-Upper Lines; (2) the Texas & Pacific Railway (including sub lines); and, (3) the Gulf Coast Lines.

The Carrier submits that the three agreements which it proposes be the sole controlling agreements are the predominate collective bargaining agreements currently in effect on the overall territory comprehended by the Carrier's Operating Plan. The Carrier says that the totality of the restructuring and integration of the work covered by the MKT, OKT and GH&H agreements is so complex and, in many cases, the work would be so impossible to identify post-merger, that it would simply be impossible to continue to apply the collective bargaining agreements it seeks to eliminate.

The Carrier also seeks to eliminate a number of agreements which involve railroads that it says are no longer in existence or to integrate those agreements into the three agreements it would retain. The Carrier refers to the elimination of these agreements as "a housekeeping chore."

This Arbitration Committee does not question the Carrier's contention that there is a need for current agreements to be modified, which would facilitate implementation of the operational aspects of the transaction. However, the record is devoid of any evidence supporting the precise nature of such need, let alone the complete elimination of the collective bargaining agreements of the MKT, OKT and GH&H. In the opinion of this Arbitration Committee, while the Carrier's proposal might eliminate some administrative problems associated with the continued application of the referenced agreements, there is no evidence in the record to establish that these cost savings were factored into the Operating Plan or presented for the ICC's consideration.

If the Carrier firmly believes that current collective bargaining agreements, which it seeks to eliminate, are millstones which prevent it from achieving its goal of becoming what it says would be "the most competitive and efficient transportation mode in the territory affected by the merger," or, "the most competitive transportation force in the involved corridor," it has the right to seek change through negotiation and the orderly procedures of the Railway Labor Act. We do not see that it has the right to have all such agreements declared null and void by simple reason of the fact that the ICC authorized a transaction.

As to the agreements which the Carrier desires be declared of no force or effect since the properties are said to be either no longer in existence or no employees are presently covered by such agreements, these are matters which the Carrier may pursue in direct negotiation with the Union or with the National Mediation Board in a manner consistent with that Board's rules.

Accordingly, the Arbitration Committee concludes that the Carrier's proposal to completely eliminate existing collective bargaining agreements is not a mandatory subject of bargaining in the context of these New York Dock negotiations.

E. Changes in Seniority Rights or Rosters

The Carrier has proposed that concurrent with implementation of its proposed elimination of MKT, OKT and GH&H labor agreements that the seniority standing of employees covered under those agreements be integrated into eleven (11) proposed seniority rosters. It says, except for very minor changes, that this action would permit existing UP seniority territories to remain virtually unaffected as to geographical definition and would allow for implementation of its Operating Plan.

There is no question that this change in seniority could represent a major reallocation of forces. It would require an unspecified number of employees to be force transferred from their present or prior rights seniority districts to positions on new seniority districts.

In the context of the Carrier's Operating Plan, which contemplates the abandonment of approximately 325 miles of track, over an operating system that exceeds 3,100 miles of track, and the potential adverse affect upon 426 train service employees out of a complement of approximately 3,000 train service employees, the Carrier's proposal to rearrange seniority would appear to unnecessarily force the transfer and relocation of employees remotely concerned or completely removed from the involved transaction.

Since this Arbitration Committee finds the Carrier proposal for the rearrangement of forces to be be overly broad, beyond the obligations and protections provided in the New York Dock conditions, the Carrier proposal should be withdrawn from the New York Dock negotiations.

Therefore, this Arbitration Committee concludes that the wholesale rearrangement of seniority for employees represented by the Union is not justified in the context of the limited scope of this transaction. Nevertheless we would recommend to the parties that they work cooperatively in developing the necessary rearrangement of seniority rights where certain changes are implemented, such as the consolidation of terminals.

F. Special Train Operations and Changes in Home Terminals

The Carrier desires to establish special train operations, which would essentially call for the creation of interdivisional serv-

ice runs. The Carrier's intention in this regard is contained in its Operating Plan as presented to the ICC.

This Arbitration Committee has no reason to conclude that the ICC had intended that the Carrier would have a unilateral right to establish interdivisional service and circumvent agreed-upon or recognized procedures for attainment of such service. Here, it is to be noted that creation of interdivisional service is not something which the collective bargaining agreements prohibit. Rather, current agreements provide an orderly manner and reasonably expeditious means by which such service may be implemented and myriad problems resolved; such agreements include final and binding arbitration provisions should such action be necessary.

Such issue will, therefore, be remanded for direct negotiation between the parties pursuant to the guidelines contained in existing agreements for the establishment of interdivisional service.

G. The Carrier - BLE Implementing Agreement

The Carrier proposition that the Implementing Agreement which it has entered into with its employees represented by the BLE be imposed upon the Union does not represent a viable resolution to the dispute, in this Committee's opinion. That Agreement was achieved through voluntary collective bargaining. The Carrier and the BLE recognized in executing the Agreement that they had negotiated conditions which differed from those which might be properly implemented under New York Dock conditions.

While the BLE Agreement may contain changes which the Carrier finds appropriate to conduct a more efficient operation of merged services, such agreement must nevertheless be recognized as the product of voluntary collective bargaining that reached beyond the parameters of the New York Dock conditions. Evidence of this is found in the preamble to the Carrier-BLE Agreement, whereby it is stated as follows:

> "The parties acknowledge that the provisions of this Agreement, though different from the provisions of New York Dock, satisfy the Interstate Commerce Commission's imposition of labor protective conditions in Finance Docket No. 30,800. Further, the provisions of this Agreement constitute a valid exchange of benefits and obligations. For every additional benefit received by the Carrier or the employes there is a corresponding obligation accepted by the Carrier or the employes.
>
> Finally, the parties hereto, in keeping with their mutual good faith efforts to reach agreement on all the issues covered by this Agreement and in view of the nature of some of the terms of this Agreement, understand that such Agreement is without prejudice to the positions of either party regarding the proper application of New York Dock conditions, and is not to be cited by any party in any other proceeding as an example of the proper application of the New York Dock conditions or

any other protective conditions." (Emphasis by the Arbitration Committee.)

Despite the foregoing understanding relative to the conditions of the Agreement not being cited by any party in any other proceeding, the Carrier and the BLE entered into a separate Letter of Understanding which stated the following:

> "This refers to our negotiations of the UP/MKT merger. In the preamble to the Agreement dated this date, as well as Article VIII(D), the parties exercised certain limitations upon the precedential effect of the Agreement. It was understood, however, that such limitation did not preclude the Carrier from referring to the Agreement in other MKT merger proceedings as an example of fair and equitable consolidation of operations, seniority territories and rosters."

Under the circumstances, it is apparent that contrary to the Carrier's contention that the terms of the BLE Agreement do not go beyond New York Dock conditions, the Carrier has expressly recognized the "extra-territorial reach" of its agreement with the BLE.

The Carrier can be justifiably proud of implementing agreements it has negotiated with other labor unions. However, the fact that the Carrier has an agreement with another organization, which it finds to be desirable, did not persuade the Union, and does not persuade this Arbitration Committee that that agreement must be applied in the instant case. While the Union could voluntarily accept any agreement similar to the BLE Agreement, it is not obligated to do so under New York Dock.

H. Impact Upon Employees of Carriers or Terminal Companies Not Party to These Proceedings

The Carrier's Operating Plan as filed with the ICC, set forth the manner traffic would most likely be rerouted. It is evident from such presentation that there will be some impact on traffic which is to be routed over or through certain jointly owned facilities and that services at a number of locations will be affected.

In its Decision, the ICC, in a section titled, Synopsis, among other things said: "Although we expect the proposed transaction will also produce some financial benefits for the consolidating carriers that are purely transfers from competing carriers, these private benefits have not been considered in our analysis of the public benefits of the consolidation."

Accordingly, this Arbitration Committee cannot presume to make an anticipatory judgment that employees of terminal companies which were not made a part of the ICC hearing or determination will necessarily be affected by the proposed transaction or the Carrier Operating Plan. It will have to be left to another time and another proceeding either before the ICC or another arbitration board to make a determination on such matter.

I. Additional Protective Benefits and Transfer Policy

The Carrier has offered the Union benefits which it submits are protections that far exceed the provisions of the New York Dock conditions insofar as eligibility for separation pay and relocation allowances are concerned. These additional benefits come with a price tag, principally, a rule to force surplus employees to cover open positions beyond those positions which may be merger-related, and to relocate from one seniority district to another, with the goal of limiting the need to hire employees.

There is no question that the Carrier offers justification from a general operating or business standpoint for its desired course of action. However, the fact that the Union does not find the Carrier offer to be advantageous to the employees it represents, while another union did, i.e., the BLE, will not be viewed by this Arbitration Committee as sufficient basis to hold that the conditions of such benefits should be imposed upon the Union.

Since such protective benefits and rights of transfer appear to go beyond the scope of the New York Dock conditions, they are not, in our opinion, a proper subject for this arbitrated implementing agreement.

In a somewhat same manner the Union has proposed a number of protective benefits and conditions which also reach beyond the scope of the New York Dock conditions, namely:

1. Certification for all employees in the involved seniority rosters.

2. Length of protection based on Article XIII of the UTU 1972 National Agreement.

3. Unlimited continuation of fringe benefits for dismissed employees.

4. All involved employees to be considered protected employees for crew consist purposes.

5. The Carrier's proposed separation package.

All of the above-mentioned matters represent employee protections which exceed those provided for under the ICC imposed New York Dock conditions, and therefore the Arbitration Committee would not impose such obligations upon the Carrier.

CONCLUSION

While this Arbitration Committee has focused, at length, upon those issues which we believe should be removed from the bargaining table, we recognize that we have not addressed the specifics of those items which should be included in an implementing agreement. We have purposefully done so; since we do not believe that the parties have availed themselves of a fair opportunity to negotiate a standard New York Dock implementing agreement.

We would further observe that both the Carrier and the Union are staffed with representatives who possess considerable expertise in negotiating standard implementing agreements applying standard benefits, protections and obligations customarily contained in ICC imposed protective arrangements. In our opinion, the parties deserve such a fair opportunity to negotiate such a standard agreement and thus we we will remand this dispute to the property for that purpose.

The Committee is optimistic that with the removal of the above identified negotiating roadblocks, the parties will bargain realistically and in good faith to voluntarily reach a valid implementing agreement consistent with the New York Dock conditions within thirty (30) days from the date of these findings.

In the event the parties fail to reach such agreement within the time limit set forth above, then either party may petition this Arbitration Committee to impose an implementing agreement.

In this latter event, the Arbitration Committee directs that each party submit a detailed proposed implementing agreement which it believes most fully complies with the guidelines which we have provided and the standard requirements of the New York Dock conditions. Each party's proposed implementing agreement must be supported by a brief narrative justification, no more than five pages in length. The Arbitration Committee will then promptly issue an implementing agreement consistent with the proposals.

AWARD:

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

Richard R. Kasher
Arbitrator

Robert E. Peterson
Arbitrator

Philadelphia, PA
February 14, 1989