
In the Matter of Arbitration Between:)

Transportation-Communications)
International Union -- BRAC)

and)

Union Pacific Railroad Company.)

Case No. 1

Pursuant to Article I, Section 11)
of the New York Dock Conditions)
Imposed by the Interstate Commerce)
Commission in Finance Docket No.)
30,000)

Before Arbitration Committee
Members:

Richard D. Meredith

Carrier Member

William R. Miller

Employee Organization
Member

Lamont E. Stallworth
Labor Arbitrator

Neutral Member

Hearings Held

Chicago, Illinois
August 18, 1988
December 19, 1988

ISSUE IN DISPUTE:

The Parties have submitted the following issue to the
Committee:

1. Did employees who were affected by a New York Dock
transaction waive their rights to the protective benefits of the
New York Dock Conditions when they signed the General Release and
Covenant Not To Sue?

BACKGROUND:

This case involves the rights of employees who accepted

certain benefits from the Carrier and signed a release ostensibly waiving their rights to any other claims, including their New York Dock Conditions benefits. In September, 1982 the Interstate Commerce Commission (I.C.C.) approved the merger and consolidation of the Missouri Pacific Railroad Company (MP), the Western Pacific Railroad Company (WP) and the Union Pacific Railroad Company (UP). As a condition of that merger the I.C.C. imposed a set of labor protective conditions upon the railroads involved to afford some protection to the employees affected by the merger. Known as the New York Dock Conditions, this agreement offers certain benefits and guarantees to employees who are affected by merger-related transactions.

On May 1, 1986, the Carrier announced a company-wide force reduction. (Carrier Exhibit A, pp. 1-2). On this date the Carrier offered employees certain benefits under a voluntary force reduction program. (Carrier Exhibit A, pp. 3-13). In the same announcement the Carrier also described the terms of an involuntary force reduction program, which it said it would put into effect if it did not obtain enough volunteers for the voluntary program. (Carrier Exhibit A, pp. 13-21).

Several of the claimants in this case accepted benefits under the voluntary program; others accepted benefits under the involuntary program, instituted when the Carrier did not obtain a sufficient force reduction under the voluntary program. (Carrier Exhibits C,D,E, and F). In connection with the receipt of these

benefits each of the claimants signed a "General Release and Covenant Not to Sue," releasing the Carrier from,

any and all claims, causes of action and liabilities of any kind or nature arising out of my employment at, or termination of my non-agreement employment from, [the Carrier].

(Carrier Exhibits G, H, I and J).

As part of the package of information originally given to each employee regarding its force reduction program, the Carrier included a question-and-answer fact sheet. One section of that fact sheet states,

Q. If I am severed under the Involuntary Force Reduction Program, will I be entitled to New York Dock protection?

A. No. This force reduction is not merger related.

In June, 1987, in another case before an Arbitration Committee between the same Parties, the Committee decided that the force reduction was related to the merger, at least as it affected the claimant, P. J. Kelley, who worked in the Accounting Department. Therefore the Committee determined that the claimant was eligible for benefits under the New York Dock Conditions, which are more generous than the benefits and protection offered by the Carrier in its two force reduction programs.

At some point thereafter the Claimants here filed claims for New York Dock benefits, alerted by Mr. Kelley's successful claim. The Carrier denied the claims on several grounds, e.g. that the Claimants had not been affected by merger-related transactions. In each of the cases before us, the Carrier also denied the

claims on the basis that the Claimants had signed the general release.

For purposes of the case before this Committee, the Carrier's other objections are not at issue. Therefore the only question before this Committee is whether the Claimants waived their rights to the protective benefits of the New York Dock Conditions when they signed the General Release and Covenant Not to Sue.

After the initial hearing in this case the Neutral Member of the Committee asked the Parties for further argument and information regarding the following question:

Did the Claimants execute a knowing and voluntary waiver or release of their New York Dock rights, under the circumstances of this case?

The Parties responded with additional information and arguments on December 19, 1988.

THE ORGANIZATION'S POSITION

The Organization argues that the Release and Covenant Not To Sue signed by the Claimants in this case is invalid. Therefore the Organization asks the Committee to rescind the document.

In support of its argument the Organization asserts first that the document provides no mutuality of benefits and obligations necessary to support a valid contract. The Organization suggests that the difference between the benefits offered by the Carrier and those rightfully available to the Claimants under the New York Dock Conditions is so great that

there was no mutuality of benefit to the Claimants. This great difference demonstrates that there was insufficient consideration to support the contract, according to the Organization.

The Organization also argues that the document should be rescinded because it is based upon a mistake of fact regarding the Claimants' eligibility for benefits under the New York Dock. Rescission is appropriate, according to the Organization, whether the mistake was a unilateral mistake on the part of the Claimants, induced by the Carrier's fraud or misrepresentation; or whether the mistake was a mutual mistake made by both Parties, based upon their understanding of the nature of the force reduction program.

The Organization also asserts that the terms of the release are so extreme that the document is unconscionable. According to the Organization, the document is drafted so broadly that it would negate many other important rights negotiated through the collective bargaining agreement. The Organization argues that such broad terms make the contract unenforceable as a release, particularly given the Carrier's superior bargaining power. In addition, the Organization contends that the Carrier may not make an individual contract with an employee which serves to undermine the collective bargaining process.

Furthermore the Organization contends that the Committee must interpret the scope of the release by the intent of the Parties. The Claimants' were not in a position to release their New York Dock rights at the time they signed the releases, the

Organization argues, because they did not know at that time that they were eligible for New York Dock benefits. Therefore, the Organization argues, the scope of the release does not cover the Claimants' New York Dock rights.

In response to the Neutral Member's request for more information the Organization argues that the Claimants exercised due diligence in relying upon the Carrier's information when signing the waivers. Mr. Kelley, argues the Organization, showed unusual foresight in not signing the waiver, beyond that which is to be expected of someone under the circumstances. According to the Organization, it was the Carrier which failed to exercise the care demanded of it under the circumstances, and therefore the Carrier should bear the burden of that mistake. For all of the above reasons, the Organization asserts that the document should be rescinded, and should have no validity regarding the Claimants' claims.

THE CARRIER'S POSITION

The Carrier contends that the waivers are valid. The form of the Carrier's Submission is to respond to sixteen objections to the release raised by the Organization on the property.

The Carrier first refutes the Organization's assertion that it did not provide sufficient information about the effect of signing the release form to the Claimants. According to the Carrier, the program documents adequately explained the release and told employees where to go to obtain additional information.

In a similar vein, the Carrier contends that it had no obligation to inform employees to consult an attorney or other representative before signing the claim.

Furthermore, the Carrier refutes the Organization's view that it misled the Claimants regarding the legal effect of the waivers. The Carrier also disputes the Organization's position that because the release did not mention the New York Dock benefits the employees were not aware that it applied to these benefits. The Carrier argues that Mr. Kelley realized the waiver applied to his New York Dock rights and refused to sign it.

In the Carrier's view, the Claimants voluntarily decided to relinquish the higher benefits which might (or might not) be available under the New York Dock Conditions in lieu of the sure benefit of the severance program. The Carrier does not believe that the fact that it told the Claimants they were not eligible for the benefits affects the voluntary nature of the signing. The Carrier categorically denies that the releases were obtained under duress, or through undue influence, or that those signing the releases were "bereft of the quality of mind" necessary to make such an agreement.

The Carrier also disputes several other objections relating to the release's validity under general principles of law. According to the Carrier, the lack of a "window period" for rescinding the waiver is not critical to its validity. In addition, the Carrier disputes that there was insufficient consideration to support the release, given the fact that it was

offering sure benefits in contrast to the risk involved with obtaining New York Dock benefits.

Furthermore, the Carrier disputes several statements regarding its refusal to return one of the releases, or the allegation that it did not treat all employees signing the release in the same manner. The Carrier argues that it does not have sufficient information to respond to these claims, and that once the release was signed the Carrier had no obligation to return it. The Carrier also disputes several of the Organization's claims regarding the general effect or legality of the release as conclusory, rhetorical or inflammatory hyperbole.

Upon rehearing the Carrier stated that the issue as originally presented by the Parties is a procedural one, while the issue posed upon rehearing goes to the facts of the case. If the original question is answered in the affirmative, the Carrier urges, it will be necessary to hold additional hearings regarding each Claimant's signing of the waiver to determine whether such action was a knowing, voluntary release of their rights. Thus, it appears that in this proceeding the Carrier is seeking an adjudication of whether the waiver is valid at all, as it stands. If that question is decided in the affirmative, then, according to the Carrier, the Parties will need to examine whether the Claimants entered into the waivers in a knowing, voluntary fashion, making them enforceable.

OPINION

The Parties submitted the following issue to the Arbitration Committee:

1. Did employees who were affected by a New York Dock transaction waive their rights to the protective benefits of the New York Dock Conditions when they signed the General Release and Covenant Not To Sue?

The Committee has considered the evidence, documents and arguments put forth by both Parties and concludes that the employees did not waive their rights to the New York Dock Conditions when they signed the general release and covenant not to sue. The findings, conclusion and reasoning of the Committee is set forth below.

In its submission the Organization has made the following arguments against the validity of the waiver: 1) it circumvented the collective bargaining agreement; 2) it negates protection imposed by statute; 3) there was not sufficient mutuality of benefit to support a valid agreement; 4) the terms of the release are unconscionable; 5) the release was obtained through fraud and misrepresentation; and 6) the release does not express the intent of the parties. The Committee will address these arguments as necessary below.

Individual vs. Collective Rights

As a preliminary matter the Committee concludes that it is possible, under certain circumstances, for an employee to waive his/ her New York Dock rights. Therefore it is not the case that any waiver or release of the employees' rights under the New York

Dock Conditions would be invalid per se, for the following reasons.

As a general rule the Committee concurs that an employer may not induce an employee to sign an individual agreement which negates or alters the terms of a collective bargaining agreement. For example, an employer may not make an individual agreement with an employee to pay him less than the wage rate mandated in his collective bargaining agreement. But the Claimants here were non-agreement personnel when the events causing this dispute arose, i.e. employees not covered by the regular collective bargaining agreement.

The Organization suggests that the New York Dock Conditions have the same force and effect, in this regard, as a collective bargaining agreement. But the Conditions are not a comprehensive collective bargaining agreement: they do not establish the general wages, hours and working conditions of the employees. Rather the Conditions cover only the benefits and conditions governing employer actions relating to the merger of these three railroads. Furthermore, these Conditions were imposed by the I.C.C. as part of the merger, and were not obtained exclusively through the collective bargaining process.

Consequently, in the Committee's view, the power and authority of the New York Dock Conditions emerges from its status as part of the I.C.C.'s order rather than any authority it may have as a quasi-collective bargaining agreement. And, as the Organization notes, the I.C.C.'s order is part of the statutory

mandate of protective benefits for employees affected by a railroad merger.

The Committee concludes further that a release of an employee's rights under a statute or I.C.C. order is not invalid per se. In Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974), the Supreme Court suggested that an employee could waive a cause of action under Title VII, e.g. by obtaining a settlement through the grievance procedure of a collective bargaining agreement. The Court also suggested, however, that an employee's consent to the waiver or release must be knowing and voluntary.

(See Stallworth, L. and Hoyman, M. "Who Files Law Suits and Why: A Portrait of the Litigious Worker" University of Illinois Law Review, 1981).

The Committee concludes that the same rationale which permits an employee to waive his Title VII rights applies to his rights during a railroad merger, rights which are likewise mandated by statute. Therefore the Committee finds that the waivers or releases are not invalid per se, simply because they waive rights which are enforced by the labor organization. Just as an employee may consent to waiving his employment discrimination rights, he may waive his statutory rights to employment benefits after a merger, if that waiver is knowing and voluntary.

The Validity of the Releases

The Committee concludes, however, that, where, as under the circumstances of the instant case, no knowing waiver was possible. Although the terms of the waiver do not indicate that it was invalid on its face, the undisputed facts concerning its signing lead the Committee to conclude that it was invalid.

The Carrier contends that at the time of the force reduction, it did not consider the employees affected by it as eligible for the New York Dock Conditions, because it did not consider the force reduction to be a merger-related transaction. Thus, at the time of the force reduction, the Carrier communicated to the employees that they were not eligible for the New York Dock Conditions benefits. At least one form of this communication was in a question-and-answer fact sheet accompanying the notice of the benefits the Carrier was offering as part of its force reduction program. This section stated,

Q. If I am severed under the Involuntary Force Reduction Program, will I be entitled to New York Dock protection?

A. No. This force reduction is not merger related.¹

¹ The information on its face pertains only to the Involuntary Force Reduction. However, it would have been reasonable and logical for the employees to assume that the statement applied to the voluntary force reduction program too. The Carrier's announcement described the two programs as two options available to employees in response to one comprehensive force reduction program. The Committee concludes that the Carrier intended this statement about the force reduction to apply to the entire program, and an employee reading this would have acted reasonably in assuming this was the case.

The scope of a release is generally only as broad as the parties intended:

Courts of equity will restrict a general release to the thing or things intended to be released.

(66 AmJur 2d, Section 55).

Thus where, the Carrier specifically has told an employee that he or she was not eligible for New York Dock benefits, the Committee concludes that the Claimant did not intend to release the Carrier from paying these benefits when they signed the releases. Therefore even though the release is stated in very general terms, under the circumstances of the instant dispute the Committee concludes that the parties intended it to have a more restricted meaning. Thus, the Committee will not find the waiver effective to release the Carrier from claims based upon the New York Dock Conditions. Where the above-detailed fact circumstances can be shown to have existed at the time the affected claimant signed the disputed release and waiver.

Furthermore, under general contract law, when one party's misrepresentation, even if done innocently, induces another party to enter into a contract, the contract may be rescinded. This is especially true where, because of the relationship between the parties, it is reasonable for one party to rely upon the representations of the other party. (Corbin on Contracts, p. 575). Here the Carrier, which had designed the force reduction program, was in the best position to know whether it was merger-related. Generally when an individual employee enters into any individual contract with his employer, he does not have the legal

and other resources for understanding it available to the company. In addition, here the Carrier specifically held out its representatives as the sole source of information concerning the program. Therefore under these circumstances it was reasonable for the employees to rely upon the representations of the employer regarding the availability of New York Dock benefits.

If the Carrier had in mind the New York Dock Conditions when it drafted the waivers which the employees were required to sign, then the possibility of fraud also arises, because the Carrier specifically told the employees they were not eligible for these benefits. No evidence of fraud has been introduced, however, and the Arbitration Committee concludes that any misrepresentations probably were based upon the Carrier's sincere position that the force reduction was not merger-related, rather than an intent to deliberately mislead the Claimants through fraud. Although the Organization in its submission suggests that the Carrier may have engaged in fraud, the Organization's representative at the Arbitration Committee's first hearing acknowledged that the Carrier's misrepresentations probably were unintentional.

The Carrier stated at the initial arbitration hearing that it would not stipulate that it had made any representations to its employees regarding their entitlement to New York Dock Conditions. At the second hearing the Carrier argued that if the waiver is not invalid on its face, then the Committee must hold separate hearings regarding the factual issue of whether the

Claimants entered into the waivers in a knowing and voluntary fashion.

The Committee questions, however, whether separate hearings are warranted. The facts regarding this information given to the Claimants are undisputed. The Carrier does not contend that the Claimants did not receive the notice stating they were not eligible for New York Dock benefits. Nor has the Carrier stated that the Claimants received any contradictory communications from the Carrier stating that they were eligible for New York Dock benefits. The Carrier's representatives may have made additional remarks to individual Claimants regarding the unavailability of New York Dock benefits. However, the notice at issue here, standing alone, is sufficient to lead to the general conclusion that the Claimants were misled regarding their entitlement to benefits under the New York Dock Conditions. Notwithstanding, in those cases where there is no mutual agreement as the facts, individual hearings may be held.

The Organization also has argued that the terms of the waiver are unconscionable. In particular, the Organization has argued that the terms of the release are so broad that it would invalidate many rights which are the result of collective bargaining between the Parties. The Committee concludes that it need not resolve this issue. Having determined that the waiver does not cover the employees' rights under the New York Dock Conditions, there is no need for the Committee to examine whether

the waiver is effective to waive other employment rights not at issue here.

Nor is it necessary for the Committee to invalidate the release on the grounds that the Carrier offered insufficient consideration, or there was not a mutuality of benefit. In general, neutral bodies will not examine the sufficiency of consideration between two Parties to a contract, as long as there is some consideration, and the difference between the two Parties' benefits is not so great that in effect there is no consideration. The Carrier's "bird-in-the-hand" argument has some validity; Kelley traded the security of some benefits for the risk of greater benefits -- or no benefits at all -- under New York Dock or some other possible source. The Claimants who signed the releases and accepted the program's benefits gained the security of certain benefits, a value constituting part of the consideration for the release. Therefore the release will not be invalidated on the grounds of insufficient consideration.

In summary, the Committee concludes that where as under the circumstances of the instant case, the release signed by the Claimants was not effective to negate their rights under the New York Dock Conditions. Therefore the claims of these Claimants will not be generally dismissed on the grounds that they signed a waiver, and the question presented in this case is answered in the negative.

AWARD

The issue is decided in the negative. Where necessary, based upon a question of variance of fact, each claimant shall be afforded a hearing during which a record of the fact circumstances under which he or she signed a release and waiver shall be made. Where said record reveals the same or similar fact circumstances as detailed in this award, the claimant shall prevail, finding that no waiver of their New York Dock exists.

Richard D. Meredith
Carrier Member

William R. Miller
Employee Organization Member

Lamont E. Stallworth,
Neutral Member

Dated this ____ day of February, 1989.

City of Chicago.
County of Cook.
State of Illinois.