****

In the Matter of Arbitration Between:

Transportation-Communications International Union -- BRAC

and

Union Pacific Railroad Company

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

Case No. 3

****

Before Arbitration Committee Members:

Richard D. Meredith	Carrier Member
William R. Miller	Employe 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. Is an employee receiving New York Dock benefits under Article IV entitled to a continuation of Section 8 fringe benefits attached to the position held on the date affected?

BACKGROUND:

This case involves the level of fringe benefits to be awarded to certain employees under the New York Dock Conditions.

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.

In June, 1987, in another case before an Arbitration Committee between the same Parties the Committee decided that a particular 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.

After the decision was rendered in the Kelley case, the Parties attempted to establish a level of fringe benefits to which Mr. Kelley and similarly-situated employees were entitled as a result of a merger-related transaction. Apparently all of the Claimants in the instant case were non-agreement employees at the time of the transaction at issue, at which time they assumed positions covered by a collective bargaining agreement. The Carrier proposed that the Claimants would not be eligible for benefits to which they were entitled as non-agreement employees,

but rather would be entitled only to benefits provided for under the collective bargaining agreement. (TCU Exhibit B).

The Organization objected to this proposal and compiled a list of a group of employees, including Mr. Kelley, who would be affected by the Carrier's proposal, and filed a claim. The Parties were unable to resolve the issue of the proper fringe benefits for this group and sought its adjudication.

After the initial hearing on the issue the Neutral Member of the Committee asked the Parties to provide more information and argument regarding their interpretation of the New York Dock Agreement. In particular the Neutral Member asked,

> 1. What is the meaning of the language of Article I(8) (especially the underlined section) which reads:
>
> "...to the extent such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained."
>
> 2. Do the New York Dock Conditions distinguish between dismissed and displaced employees, for the purposes of fringe benefits?

The Parties responded to these questions and the Committee held a second oral hearing to argue the issues on December 19, 1988.

THE ORGANIZATION'S POSITION

The Organization contends that the Claimants should be awarded fringe benefits at the level they enjoyed as non-agreement personnel, at the time the transaction occurred. The Organization relies upon several arguments to support its position.

First, the Organization relies upon the language of Article V, Section 1 of the New York Dock Conditions, which states that the intent of the agreement is to provide employee benefits which are not less than the benefits established "under 49 U.S.C. 11347 before February 5, 1976, and under section 565 of title 45." According to the Organization, these parts of the U.S. Code guarantee that an employee may not be placed in a worse position with respect to his or her employment as a result of a transaction. The Organization contends that to refuse the Claimants benefits at the better non-agreement rates would be to place them in a worse position as a result of the transaction.

As support for its position, the Organization relies upon several arbitration awards, including a number rendered by the Secretary of Labor under very similar language applying to AMTRAK employees' protective benefits. According to the Organization, these decisions hold that the language at issue protects the fringe benefits of employees as they were in their previous employment, i.e. their employment prior to the adverse effects resulting from a transaction.

The Organization provided full copies of several of these opinions in response to the Committee's request for further clarification of the issue. The Organization also relied upon decisions of the Interstate Commerce Commission to support its claim as well.

In further response to the Committee's request for additional argument, the Organization responded that these

decisions hold that so long as a benefit is available to other employees, then the same benefits should be afforded to similarly-situated employees who are affected by a transaction. According to the Organization, the employees are entitled to the fringe benefits in effect at the time of the transaction for other similarly situated employees who were not affected by the transaction.

The Organization also argues that the New York Dock Conditions make no distinction between displaced and dismissed employees, as far as one's entitlement to fringe benefits is concerned. The Organization urges that the Claimants receive the fringe benefits attached to the non-agreement jobs they held before the transaction occurred and resulted in their displacement to agreement-covered jobs.

THE CARRIER'S POSITION

The Carrier contends that the Claimants are not entitled to continued coverage under the nonagreement benefits package. According to the Carrier, the Organization's literal reading of Article I(8) and Article IV would create the anomolous situation of having employees occupying positions fully-covered by a collective bargaining agreement who are nonetheless receiving nonagreement benefits. The Carrier contends that this inconsistent result was not intended by the Parties under the New York Dock protections.

According to the Carrier, Article I(8) was designed for employees who are dismissed from a particular class or craft. Under these circumstances the Parties wanted to ensure that the employee would continue to enjoy the same level of benefits they enjoyed under their former (agreement) positions. The Carrier argues that this section was not intended to apply to an employee moving from a nonagreement to an agreement position.

According to the Carrier, the Organization is attempting to superimpose the language of Article I(8) on Article IV, which states that employees who are not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations. The Carrier contends that a more reasonable interpretation is to restrict the application of Article I(8) to situations in which an employee is dismissed and not when he or she moves from a nonagreement to an agreement position.

Even if the language is applied literally, however, the Carrier contends that the literal language of Article I(8) precludes the Claimants from collecting nonagreement benefits. Article I(8) applies only "to the extent such benefits can be so maintained under present authority of law or corporate action." According to the Carrier, the benefit programs at issue here specifically exclude employees who occupy positions fully covered by a labor agreement. Therefore these benefits, the Carrier argues, may not be "maintained under present authority of law or corporate action."

The Carrier also contends that federal law requires the Carrier to define the class eligible for at least one of the benefits, the Thrift Plan. Because the Carrier's definition of the class eligible for the Plan does not include agreement personnel, the Carrier suggests that it is prohibited by law from awarding this benefit to the Claimants.

In response to the Neutral Member's further questions, the Carrier offered an arbitration award which it contends supports its position regarding the proper interpretation of Article I(8)'s language regarding law and corporate policy. The Carrier also concurs with the Organization regarding the second question; both replied that the New York Dock Conditions do not distinguish between dismissed and displaced employees, in regards to the issue in question.

OPINION

This case involves the proper fringe benefits to be awarded to Claimants affected by a transaction and protected under the New York Dock Conditions attached to this merger. The Carrier argues that the Claimants are entitled only to the fringe benefits attached to the jobs they assumed after the transaction, which are covered by a collective bargaining agreement. The Organization argues that the Claimants are entitled to the fringe benefits attached to the jobs they held before the "merger-related transaction" occurred, i.e. their non-agreement

management jobs. These benefits are more generous than those available to bargaining unit personnel.

Once again the Committee is faced with determining the effects of the New York Dock Conditions, which were designed primarily to protect bargaining unit personnel, on employees who want to preserve at least some of their non-agreement status or benefits. This is not an easy task.

Article IV of the New York Dock agreement requires,

> Employes of the railroad who are not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under these terms and conditions.

The question in this case is what does it mean to afford "substantially the same levels of protection" to non-agreement personnel as to agreement personnel, with regard to fringe benefits? Does the Agreement require that the claimants be awarded the same fringe benefits as bargaining unit personnel, or does the "same level of protection" mean that they should be awarded the fringe benefits attached to the (non-agreement) jobs they held at the time of the transaction, just as employees in agreement positions receive the fringe benefits attached to the (agreement) jobs they hold at the time of a transaction?

Article I, Section 8 of the Conditions specifically addresses fringe benefits, and states,

> 8. Fringe benefits. No employee of the railroad who is affected by a transaction shall be deprived, during his protection period, of benefits attached to his previous employment, such as free transportation, hospitalization, pensions, reliefs, et cetera, under the same conditions and so long as benefits continue to be accorded to other employees of the railroad in active or on furlough as the

> case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

Article I, Section 8, which deals specifically with the issue of fringe benfits, states that the proper fringe benefits to be awarded to an affected employee are the benefits "attached to his previous employment." A literal interpretation of the two articles suggests that in order to provide the same level of protection to non-agreement personnel under Article IV, the claimants should receive the fringe benefits "attached to their previous employment," i.e. the fringe benefits of their non-agreement positions.

Nevertheless the Committee concludes that the Claimants are entitled only to the fringe benefits they are eligible for under the collective bargaining agreement. The Committee reaches this conclusion for the following reasons.

First, the Committee concludes, contrary to the Carrier's argument, that Article I(8) does apply to non-agreement personnel. Article IV, which addresses the rights of non-agreement personnel most specifically, contains no language which would exclude them from the coverage of Article I(8) regarding fringe benefits. The Committee cannot ignore the literal language of the Agreement, and is bound to interpret the whole Agreement unless there is some compelling reason for an interpretation contrary to its literal language.

The Carrier suggests that a literal reading of these two sections together leads inevitably to the Organization's

"unreasonable" position. However, as the Carrier itself points out, the second section of Article I(8) contains an exclusion which covers the Claimants in this case. The literal application of Article I(8) establishes that the Claimants may not claim non-agreement fringe benefits, and there is no reason to apply some other interpretation which ignores the plain language of the Conditions.

The controlling language states that an affected employee is entitled to the benefits attached to his previous employment,

> "to the extent such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained."

The Carrier has presented unrefuted evidence that agreement personnel are not eligible, under corporate policy in existence at the time of the transaction, to participate in the fringe benefits at issue here. The Committee concludes that this is the type of "present authority of ... corporate action" the Parties contemplated in this section. Because all of the Claimants became, at the time of the transaction, holders of jobs covered by a collective bargaining agreement, they became ineligible at that time to participate in these programs. The Carrier also has presented evidence that agreement personnel are excluded, by operation of law, from one of the programs.

As the Neutral Member pointed out in Bevil v. Illinois Central Gulf Railroad (LaRocco, 1988), the Carrier there was offering the same fringe benefits to the Claimants as to other employees who were similarly situated, but for other reasons

unrelated to a New York Dock transaction. Here the Carrier is offering the same fringe benefits to the Claimants as to other agreement employees, who may also have been bumped from non-agreement jobs for reasons other than a New York Dock transaction.

As Neutral Member LaRocco suggested in that opinion, there is a difference between benefits obtained through a collective bargaining agreement and those obtained through corporate action. In the latter case the benefits exist only through the unilateral action of the Carrier. The New York Dock Conditions contain a specific exclusion so that Carriers are not required to expand their benefits to cover employees whose status does not, under any other circumstances, permit them to collect these benefits.

The situation might be different if the Carrier offered the same benefits to bargaining unit and non-agreement personnel, with simply higher levels of benefits to the latter group. In a case in which agreement personnel are not totally excluded from a benefit program through law or corporate policy, the Committee might decide that they should be maintained at the same level of benefits they enjoyed before the transaction. But here, where agreement personnel simply are not eligible at all for these programs, the "corporate action" is one of total exclusion, and under Article I(8) that policy must be upheld.

In reaching this decision the Committee has considered the cases put forth by the Organization which argue, in effect, that an employee furloughed by a covered transaction should receive

the benefits of an active, not a furloughed employee. However, the Committee concludes that these cases are not directly on point, and the difference between an agreement vs. a non-agreement job are much greater than that of an employee who holds the same job, whether in active or furloughed status.

Furthermore, the Organization has not offered an alternative explanation for the meaning of the words in Article I(8) referring to law and corporate policy. In interpreting this Agreement the Committee must interpret every part of it, and the lack of an alternative explanation offered by the Organization suggests that the Carrier's interpretation is correct. Therefore the fringe benefits will be awarded at the level of bargaining unit employees.

AWARD

The Claimants are to be awarded fringe benefits at the level of their agreement jobs.

Richard D. Meredith
Carrier Member

William R. Miller
Employe Organization Member

Lamont E. Stallworth,
Neutral Member

Dated this 26th day of February, 1989.

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