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In the Matter of Arbitration Between: )  
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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 )  
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Case No. 4

Before Arbitration Committee  
Members:

Richard D. Meredith  
General Director -- Labor Relations

Carrier Member

William R. Miller

Employe Organization  
Member

Lamont E. Stallworth  
Labor Arbitrator

Neutral Member

Hearing Held:

Chicago, Illinois  
August 18, 1988

**ISSUE IN DISPUTE:**

The Parties have submitted the following issue to the Committee:

1. Did the following employees fail to timely file for New York Dock benefits?

Cases: L. A. Avery  
M. A. Rogers-Dopheide  
R. T. Ford  
J. O. Kjosa  
G. D. Points  
M. F. Mull

**BACKGROUND:**

This case addresses whether certain employees filed for New York Dock benefits so late that they are no longer entitled to those 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. This protection, known as the New York Dock Conditions, 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. On this date the Carrier offered employees certain benefits under a voluntary force reduction program. 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.

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. Kelly, 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 under its force reduction programs.

Most if not all of the Claimants in the instant case were affected by force reductions which occurred prior to the force reduction which affected Mr. Kelley. Most of them applied for benefits shortly after the Kelley decision was rendered; two applied for benefits approximately five months before that decision was rendered. (See chart, p. 11 of Carrier's Submission).

The Carrier denied the claims on several grounds, e.g. that even though Mr. Kelley may have been affected by a merger-related transaction, they were not. In each of the cases before us, the Carrier also denied the claims on the basis that the Claimants had not filed in a timely fashion.

For purposes of this case the Parties have narrowed the issue to the timeliness of the claims. Therefore the only question before this Committee is "whether the doctrine of laches dictates that the Claimants have waived their rights to the protective benefits of the New York Dock Conditions".

#### EMPLOYEE'S ORGANIZATION'S POSITION:

The Employee Organization contends that the claims involved in this dispute should not be denied on the basis that they were not filed in a timely fashion. The Employee Organization argues first that there is no dispute that the New York Dock Conditions contain no time limit for filing claims. According to the

Organization, this issue is so well-settled that the issue has become a foregone conclusion, an accepted fact.

The Organization also asserts that the doctrine of laches does not apply to this case. The Organization suggests that standard time limit provisions do not apply to disputes arising under employee protective agreements, which are particularly attuned to the rights of employees.

Even if the doctrine of laches does apply to these claims, the Organization insists that it does not apply in this case to bar the claims. According to the Organization, the doctrine of laches encompasses more than the mere passage of time. In the spirit of equity which governs the application of laches, the Organization contends that it does not apply because there has been no lack of due diligence on the part of the Claimants, and because the Carrier has not been harmed by the delays.

According to the Organization, the Carrier agreed to hold the time limits on similar claims in abeyance until the Kelley decision was rendered. According to the Organization, it has been clearly established in this record, as well as other records before this Committee, that the Carrier told all of the Claimants initially that they were not entitled to the protective provisions of New York Dock. The Claimants accepted the Carrier's contention until the Kelley decision was issued. The Organization argues that because the Carrier led the Claimants astray in terms of defining their rights, the Carrier is estopped from interposing laches as a bar to the claim.

The Organization also urges the Committee to consider the Claimants' situation in relation to the pendency and findings of the Kelley case. According to the Organization, the Carrier's agreement to hold the disputes of similarly-situated employees in abeyance pending the outcome of the Kelley case delayed the filing of the written claims.

In addition, the Organization contends that the Carrier has not been prejudiced by the delay. The claims represent no surprise for the Carrier; according to the Organization they represent the culmination of an ongoing dispute and most of the delay is the Carrier's own fault for refusing to pay benefits earlier. The Claimants, not the Carrier have suffered more from the delay, the Organization contends.

For all of the above reasons the Organization argues that the claims should not be denied on the grounds of laches.

#### THE CARRIER'S POSITION

The Carrier contends that these claims should be denied on the basis of laches for a number of reasons. As a preliminary matter the Carrier contends that although there are no precise time limits set forth in the New York Dock Conditions, there is inherent in the agreement an obligation to file a claim in a timely manner. The Carrier cites several arbitration opinions to support this proposition, including one which states that even in the absence of contractual or statutory time limits, the failure of a party to process a claim within a reasonable time must be construed as an abandonment of the claim.

The Carrier also contends that all of the following requirements for imposing laches to bar a claim have been satisfied in this case. First, the Carrier acted in such a way to trigger an obligation on the part of Claimants to act or exercise their rights. Second, the Claimants delayed in filing their claims, long after they were clearly aware of the Carrier's action. Third, the Carrier had no notice that the Claimants would assert their rights until they filed their claims. Fourth, the Carrier asserts that it was prejudiced by the Claimants' failure to assert their rights. In particular the Carrier claims that the Claimants' delays made it impossible to mitigate the Carrier's liability for protective benefits, as the New York Dock Conditions require.

At the arbitration hearing the Carrier specifically pointed out the difficulty of recreating seniority rosters now for employees affected several years ago. These rosters would need to be recreated in order to determine the highest position each employee should have been offered in order to mitigate the damages of the Carrier in offering protective benefits.

The Carrier also contends that a "reasonable" period of time for filing a claim in the instant case should be relatively short, because the Claimants had immediate and definitive knowledge of their displacements as soon as they occurred. According to the Carrier, any delay beyond the date of the alleged displacement represents pure procrastination on the part of the Claimants.

Therefore the Carrier argues that an appropriate "reasonable" time frame within which to file claims for displacement allowances is ninety (90) days. Therefore the Carrier urges that all of the instant claims in this case should be denied.

### OPINION

The Parties submitted the following issue to the Arbitrator:

1. Did the following employees fail to timely file for New York Dock benefits?

Cases: L. A. Avery  
M. A. Rogers-Dopheide  
R. T. Ford  
J. O. Kjosa  
G. D. Points  
M. F. Mull

After considering the evidence and arguments presented by the Parties the Arbitrator concludes that the Claimants did not fail to timely file for their New York Dock benefits. The Arbitrator's conclusions, findings and reasoning follow.

The Carrier concedes, as it must, that there is no precise period for filing claims which is stated in the New York Dock Conditions. However, the Carrier, after examining other parts of the Conditions, contends that a period of ninety (90) days after the initial displacement is a sufficient period in which to file. Claims filed after that period should be barred by laches, according to the Carrier.

This Committee concurs that laches may apply to claims filed under the New York Dock Conditions or other labor protective agreements in the railroad industry, as another Committee wrote

in Gerald Thomas and Brotherhood of Locomotive Engineers and Union Pacific Railroad Company, (Stallworth Neutral Member 1988).

The Carrier in this case has asked the Committee to establish a precise filing period after which laches takes effect. To establish one period for an entire group of cases would violate the spirit of laches. The Committee point out that laches is an equitable doctrine which depends to a large extent upon the circumstances of a particular case. Furthermore, there is no need for the Committee to establish a standard filing period, because the agreed-upon issue asks only whether these individual claimants filed in a timely manner. Therefore the Committee declines to set a precise filing period.

In deciding the individual cases at issue here, the Committee notes first of all that the employees were grouped together for the purposes of this claim actually hold somewhat distinct positions. All but one of the employees was involved in a transaction that occurred before the transaction which formed the basis of the Kelley claim. It is a bit difficult to see how these employees could have been waiting for the resolution of the Kelley claim, when their own situations arose as much as three years before the circumstances giving rise to the Kelley claim.

Nevertheless, the Organization has argued that the transactions were similar, that the same type of non-agreement employees were involved, and most important, that the Parties had an ongoing dispute about whether non-agreement employees were entitled to New York Dock benefits. The Carrier has not refuted

this assertion. Therefore the Carrier cannot reasonably argue that the claimants should have known about their claims as soon as they were displaced, or with the first paycheck thereafter.

Furthermore, in a sense the Carrier's failure to grant benefits to the non-agreement employees can be viewed as a continuing violation. Under the applicable New York Dock agreement an affected employee generally is entitled to six years' protection, including six years' monetary benefits if dismissed or displaced to a job which pays less than the claimant's original job. For every monthly payment missed, the claimants were injured. Where there is a continuing violation it is not uncommon to hold that a reasonable filing period does not begin only with the first missed payment.

Finally, the Committee notes that the Carrier has not pointed to a single case in which laches has been applied to block New York Dock claims, except perhaps where the Parties had a well-established past practice establishing a certain time limit. Furthermore, given the particular circumstances of this case, the Committee holds that the application of laches is not appropriate.

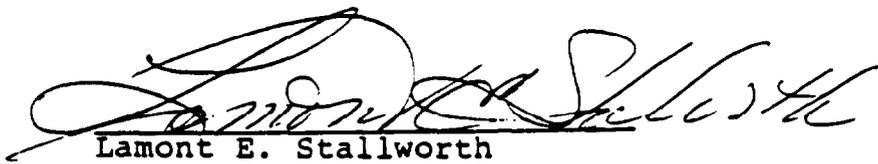
Notwithstanding this ruling, the Committee concludes that it would greatly serve to ensure and preserve the rights of employees if they were to file their claims in a more timely fashion, notwithstanding the filing of a Kelley type test claim. After all, in order for the mechanism of the grievance and arbitration process to operate, a claim must be filed. Several

of the claims here arose long before Kelley. Perhaps any of them could have served as a Kelley-type test claim, and resolved these issues at an earlier date.

Nevertheless, based upon the circumstances of this case, the claims will not be denied on the basis of laches.

**AWARD**

The claims will not be denied on the basis of laches.



Lamont E. Stallworth  
Neutral Member

Richard D. Meredith  
Carrier Member

William R. Miller  
Employee Organization Member

Signed this 26th day of November, 1988.

City of Chicago  
County of Cook  
State of Illinois