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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

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Case No. 5

Before Arbitration Committee Members:

Richard D. Meredith — Carrier Member

William R. Miller — Employee Organization Member

Lamont E. Stallworth — Neutral Member
Labor Arbitrator

Hearing Held: Chicago, Illinois
August 18, 1988
December 19, 1988

ISSUE IN DISPUTE:

The Parties have submitted the following issue to the Committee:

1. May an affected employee who was offered a comparable non-agreement job be considered a dismissed or displaced employee?

BACKGROUND:

This case addresses whether an employee who allegedly was offered a comparable non-agreement position may be considered a dismissed or displaced employee if she refused that position. 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 announced May 1, 1986 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 Kelley 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.

Claimant Edgar in the instant case was affected by the same company-wide force reduction, when she was employed in the non-agreement position of Labor Protection Officer in the Missouri Pacific Labor Protection Bureau in St. Louis, Missouri. According to the Organization, during the summer of 1986 the Carrier consolidated the Claimant's office with the Union Pacific Labor Relations Department in Omaha, Nebraska. Of the two Labor Protection Officer positions in St. Louis, only one was relocated to Omaha in the transaction.

According to the Organization, the Claimant's non-agreement position was abolished. The Carrier contends that she declined a position in Omaha. The Parties agree that she exercised her seniority to a clerical position in the Customer Accounting Department in St. Louis. This displacement generated a chain which affected three other employees, A.B. Shannon, W.S. Coleman, and K.A. Repking. According to the Organization, all four Claimants were placed in a worse position with regard to their wages, as a result of the merger-related transaction affecting Edgar.

The Organization filed a claim on behalf of the four employees on September 10, 1986. The Carrier denied the claim, alleging that Claimant Edgar's position was abolished because of a voluntary force reduction, which was not related to the merger. In June, 1987, the Carrier agreed to hold the claim in abeyance pending the award in the Kelley case.

After the Kelley decision came down the Carrier disputed this claim on the grounds that Claimant Edgar was not a displaced or dismissed employee after she refused the alleged transfer to Omaha. Therefore the Carrier denied her claim and the claims of the other claimants who were bumped when she went back into the clerical unit. The Parties could not settle the dispute and presented the dispute to this Committee for arbitration.

ORGANIZATION'S POSITION:

The Organization contends that a transaction relating to the merger affected the Claimants in this dispute and placed them in a worse position with respect to compensation. Therefore the claims should be sustained, according to the Organization.

The Organization also argues that the Carrier itself has admitted in the handling of this case that Claimant Edgar's position was abolished as a result of the voluntary force reduction. Furthermore, the Organization argues that the Carrier's notice regarding the force reduction specifically states that an employee is not eligible for the program unless her position, or another equivalent position in the department has been abolished. This evidence clearly shows that Claimant Edgar's position was abolished, according to the Organization.

The Organization also argues that it was only after the Kelley award was rendered, and the Organization pressured the Carrier to apply it to this case that the Carrier introduced the argument that the principal Claimant had refused a comparable

job. This statement, according to the Organization, contradicts the Carrier's earlier statements regarding Claimant Edgar's job, as well as the intent of the voluntary force reduction program. According to the Organization, the intent of the force reduction program was to reduce the ranks of non-agreement employees, not to provide them with a lump-sum payment and then to offer them comparable non-agreement employment as well.

The Organization asserts that the Carrier manufactured the alleged offer of comparable employment only after the Kelley decision, when the Carrier realized that Claimant Edgar and the other employees affected by the transaction were entitled to New York Dock benefits. The Organization also contends that the Carrier has the burden to show that there was indeed an offer of comparable employment, and that the Carrier has not met that burden.

The Organization argues in addition that even if Claimant Edgar was offered comparable employment, an employee is not required to accept a comparable position which would require a change in residence in order to be entitled to protective benefits. As authority for this proposition, the Organization cites a decision by the Department of Labor involving similar protective benefits under a different agreement.

The Organization asserts that in this dispute it has met its burden of proof: the transaction which affected the Claimants has been identified and the Carrier has been unable to show that factors other than a transaction affected them. In addition,

Carrier's assertion that the Claimant refused an offer of comparable employment is not substantiated by the record and is belied by the fact that she was paid a lump sum pursuant to the Force Reduction Program, according to the Organization. Finally, even if the Carrier had offered a comparable job, the Claimant need not have accepted it in order to qualify for benefits. Therefore the Organization argues that all of the Claimants' claims should be sustained.

THE CARRIER'S POSITION:

The Carrier's submission simply assumes that Claimant Edgar was offered a comparable position. At the arbitration hearing the Carrier attempted to establish this point by pointing to a letter from the Organization regarding this claim which states that Claimant Edgar was displaced after refusing a job in Omaha.

Assuming that Claimant Edgar was offered a comparable job, the Carrier asserts that an employee who is offered a comparable position loses her status as a displaced or dismissed employee if she refuses that position. The Carrier relies in particular upon a decision by Arbitrator Seidenberg which holds that an employee in the position of Claimant Edgar is not an employee disadvantaged by a merger if she refuses other comparable employment.

As to the other Claimants, the Carrier argues first that if Claimant Edgar is not a dismissed or displaced employee, as that term is used by the New York Dock Conditions, then the other

Claimants are not entitled to benefits either. According to the Carrier, this is because the other Claimants were not involved in a chain of bumps initiated by a displaced or dismissed employee.

The Carrier argues that it would be incorrect to impose upon the Carrier an obligation to provide benefits in this case when it took action, by offering a comparable position to Claimant Edgar, to eliminate its obligation. According to the Carrier, once it offered the first employee a job, its New York Dock obligation ended.

Any loss in compensation to employees other than Claimant Edgar was not due to the Carrier's action, the Carrier contends. In order for these employees to be entitled to protection there must be a direct relationship between their loss of compensation and a New York Dock transaction. According to the Carrier, when Claimant Edgar rejected the Carrier's comparable job offer, any possibility of a direct relationship ended.

The Carrier also argues that an employee involved in a chain of bumps will be considered a displaced or dismissed employee only if the employee initiating the bumps made an involuntary exercise of seniority. Here the Carrier contends that the exercise of seniority was voluntary and therefore none of the Claimants is entitled to New York Dock protection. Thus, the Carrier argues that the claim should be denied.

OPINION

The instant claim involves an employee, Claimant F. E. Edgar, whose job was eliminated during the same company-wide force reduction that affected Claimant Kelley in the decision rendered in 1987. When Ms. Edgar exercised her seniority to return to a bargaining unit position other employees were bumped, and also have filed claims in this dispute.

The Carrier argues that this case is distinguishable from the Kelley claim because Claimant Edgar here refused a comparable position at another location. Under these circumstances the Carrier argues that she cannot be considered a displaced employee and neither she nor the other Claimants are entitled to benefits.

The Committee concurs with the Carrier's view that if the Claimant originating the series of bumps is not eligible for New York Dock protection, neither are the other Claimants. Their claims to protection must be related to a "transaction," as that term is used in the New York Dock Conditions, and their demotions would not be related to a transaction if the original Claimant could not also establish such a relationship.

Furthermore, the Committee also concurs with the Carrier's view that if the original Claimant had been offered a comparable job, she is not eligible for New York Dock benefits. In arriving at this decision the Committee has adopted the position taken by Arbitrator Jacob Seidenberg in B.J. Maeser, T.P. Murphy, E.M.

Sengheiser, and K.W. Shupp v. Union Pacific Railroad Company, (1987, Arb. Seidenberg). There Arbitrator Seidenberg held,

> It is a distortion of the concept of an employee disadvantaged by a merger, to hold that when such an employee has been offered a relatively comparable job at the same salary in the merged company that this employee is a dismissed or displaced employee and thus adversely affected. (Ibid., pp. 49-50).

The factual situation in that case is very similar to the alleged facts of this case, i.e. the same Carrier merged the departments of two of the former railroads, and the employees were offered positions which the Committee ruled were comparable. As Arbitrator Seidenberg (or more precisely the Committee) reasoned, it is to be expected that when a merger has occurred, there will be disruptions in the organizational life of the affected personnel. He used the analogy that it is impossible to make an omelette without breaking the eggs.

Arbitrator Seidenberg ruled this way even though the transaction at issue there required the claimants to change their residences from St. Louis, Missouri to Omaha, Nebraska. The same situation allegedly occurred in the instant case. Furthermore, the same New York Dock Conditions applied in that case as apply in this case.

This Committee concludes that this case is more similar to the case at issue here than the case cited by the Organization which held that an employee need not change residences in order to obtain a comparable job, at the risk of losing one's protective benefits. The Committee concurs that when the Carrier has attempted to mitigate or eliminate its obligations under the

New York Dock Conditions by offering a displaced employee a comparable job elsewhere, the employee may not refuse the offer and collect protective benefits. As Arbitrator Seidenberg reasoned, an employee must expect to have some disruption in his working life as the result of a merger. The New York Dock benefits were intended to shield employees from the most severe of these consequences, the loss of a job or a substantial amount of one's income. But New York Dock is not intended to protect an employee from every change precipitated by a merger, including in this case moving to another location to accept a comparable job.

Therefore the Committee concludes that if Claimant Edgar had been offered a comparable job in Omaha, and she refused the job, she may not claim New York Dock benefits. This conclusion applies to any other similarly situated claimant. Consequently, the other Claimants in this case, whose claims depend upon Claimant Edgar's case, also may not claim a loss if he or she refused a comparable job.

The remaining question in this case is whether Claimant Edgar was in fact offered a comparable job in Omaha. The Organization contends that the Carrier has not proven that she was offered a comparable job. The Carrier contends that she was and that the Organization's own records in this case establish that an offer was made.

The Committee concludes that the Parties have not provided sufficient factual evidence to reach a conclusion whether the Carrier made an offer of comparable employment. The Carrier

stated at the arbitration hearing that it considered this action as one to decide only the general question of whether an employee who is offered comparable employment may nevertheless claim benefits under New York Dock. Therefore the Carrier declined to put into evidence all of its evidence concerning the factual situation which gave rise to this claim.

In the instant case there remain two factual issues crucial to the final resolution of this dispute: 1) Was a job offered to Claimant Edgar? and 2) If so, was the job comparable to the job from which she was displaced?

Nevertheless the Parties have indicated that they wish not to have the Committee decide these factual issues, at least initially. The issue as presented to the Committee is framed in general terms. Therefore, the Committee will decide only the general issue of whether an employee offered comparable employment may be considered dismissed or displaced, and not the specific factual issues of whether these Claimants are entitled to benefits under the Committee's decision. The Committee shall remand the determination of this fact issue(s) to the Parties for resolution within the above-detailed finding and conclusion of this Committee.

AWARD

The question is answered in the negative. An employee who has been offered comparable employment may not be considered a displaced or dismissed employee.

Richard D. Meredith
Carrier Member

William R. Miller
Employe Organization Member

Lamont E. Stallworth,
Neutral Member

Dated this 27th day of February, 1989.

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