

Arbitration Proceedings pursuant :
to Article I, Section 4 of the :
New York Dock Conditions as stat- : AWARD AND DECISION
ed in ICC Finance Docket No. :
30,000 issued October 20, 1982 :
..:

Parties Railroad Yardmasters of America
and
Union Pacific Railroad Company
Missouri Pacific Railroad Company

Background The parties selected the Undersigned
to be the Arbitrator on March 21, 1983 to determine the provi-
sions that should be included in an implementing agreement
that would provide an appropriate basis for selecting and as-
signing the yardmaster forces operating in the Omaha Yards of
the Missouri Pacific, and the yardmaster forces operating in
the Omaha and Council Bluffs Yards of the Union Pacific in the
course of effecting an ICC approved consolidation of these sev-
eral yards into a single combined terminal operation.

The Organization raised a threshold question as to whe-
ther it was appropriate for the arbitration proceedings to be
progressed in view of the fact that the subject of yardmaster
representation on the Union Pacific property was currently be-
ing litigated in the federal courts.

As hereinafter set forth, the Arbitrator ruled that it
was proper to proceed with the substantive aspects of the dis-
pute in view of the fact that the Union Pacific had dealt with

and was dealing with the RYA as the appropriate bargaining agent of the yardmasters.

The chronology of events involved in this dispute is:

On February 14, 1983 the Carriers served notice on the Organization of its wish to effect a consolidation of the Missouri Pacific and the Union Pacific yardmaster operations being performed at Omaha and Council Bluffs into a single combined operation controlled by the Union Pacific and under the Union Pacific Schedule Agreement rules.

The initial bargaining session was convened on February 23, 1983 with the Carriers presenting substantive proposals in furtherance of the objectives of their February 14, 1983 Notice. The Organization took the position that it could not negotiate an implementing agreement unless the Union Pacific recognized its representatives as "first class" representatives in the same way as it did other employee representatives on the property. It added that this recognition could be evidenced by the Up issuing a formal statement stating that the RYA was the recognized bargaining agent of the yardmasters and by the UP releasing to it the dues it had collected but not forwarded to the RYA since the National Mediation Board had issued a certification to another yardmaster organization, but which NMB action had been restrained by a federal district court. The Carriers' response was that the RYA's requests regarding formal recognition and union dues collection were not proper subjects to raise in a New York Dock arbitration proceeding.

On March 3, 1982 the parties met and discussed, inter alia, the concept of "controlling carrier". The Organization wanted the Carriers to agree to pay Union Pacific rates at Omaha Council Bluffs and Kansas City, but to have the Missouri Pacific Schedule Agreement apply at Kansas City and Omaha/ Council Bluffs and MP rates and schedule rules would apply at Kansas City.

The Organization also raised the issue of Bridge Dispatchers and Yardmaster training. The Carrier objected to considering the first issue because it was extraneous to this arbitration proceeding and moreover, it was a subject that was being considered a public law board on the UP property.

On March 16, 17, 18, 1983, the parties met and discussed a number of subjects. The principal focus was on seniority, with the Organization stressing the acceptance of the "prior rights" principle, with the Carriers favoring the dovetailing of seniority. At the March 16 session, the Organization again asserted that the Carrier's February 14, 1983 Notice could not be negotiated until the issues of representation and dues collection were settled. At the March 17 meeting the Carriers set forth their reasons why the "prior rights" concept was not an appropriate method of dealing with the seniority issue. The Organization persisted in seeking to get an agreement on the representation and dues matters. Despite offers and counter offers on these subjects, no agreement could be reached and negotiations broke off. On March 18 the parties commenced discus-

sions which resulted in the establishment of the New York Dock Conditions arbitration machinery.

On April 18, 1983 the Arbitrator met in Omaha with the parties in interest. Prior to this meeting, and in preparation thereof, the Carriers presented the Arbitrator with their pre-hearing Submission dealing both with the history of the negotiations as well as the Carriers' substantive position on the disputed issues. The Organization's Submission, while it related briefly to the history of negotiations, stressed its procedural position, namely, that it was inappropriate to arbitrate this dispute while the issue of representation was being litigated in federal appellate courts. The Organization also emphasized the untenable financial position it was being maneuvered into by the UP refusing to transmit to it the dues it was collecting from yardmasters. The Carriers reiterated that the matters that the Organization persisted in raising were matters that had to be resolved in other fora.

At the conclusion of the April 18, 1983 arbitration hearing, the Arbitrator directed the parties to continue to engage in good faith bargaining for twenty days, because it was evident to him that the parties had not bargained, except superficially, over the core issues relating to the selection and rearrangement of forces incident to the operation of a single combined terminal. The Arbitrator instructed the parties to engage in good faith bargaining until they reached agreement, but this bargaining period would not extend beyond May 9, 1983. On April 18, 1983 the Arbitrator issued an Interim Award to this effect.

On April 19, 1983 the Organization petitioned the Arbitrator for leave to submit a Supplemental Submission for implementing the terminal consolidation.

On May 4, 1983 both parties notified the Arbitrator that they had convened on April 19, May 2 and 3, 1983 but were unable to reconcile their differences and were at impasse. The Carriers also objected to the Organization being granted permission at this time to file a Supplemental Submission, and it maintained that the Arbitrator should proceed to draft an Implementing Agreement based on the record made at the April 18, 1983 hearing. On the same day, the Organization renewed its request for permission to file a Supplemental Submission.

On May 6, 1983, the Arbitrator issued an Award denying the Organization's request, because he found that the Organization had persisted in holding to its procedural position throughout the proceedings, and that it would be inappropriate now to allow the Organization to present a substantive position after its procedural position had been rejected.

Since the parties were unable to negotiate voluntarily an Implementing Agreement, the Arbitrator has promulgated such an Agreement which is Attachment "A" to this Decision and Award.

We also make the following conclusionary Findings in explanation of the major provisions of the attached Supplemental Agreement:

(1) We find it inappropriate, in drafting an Implementing Agreement pursuant to the New York Dock Conditions, to give

consideration to such unrelated matters as bargaining agent recognition and union dues collection. The first matter is exclusively within the jurisdiction of the National Mediation Board and the second has to be decided in a forum other than this one.

(2) We find that the ICC has declared in Finance Docket 30,000 that the controlling carrier concept shall be applicable, when it held that Omaha/Council Bluffs yards were to be operated by Union Pacific as a Union Pacific single controlled terminal, as a consolidated common point. This concept is not now open to question or contest by the Organization. We find further that, consonant with this concept, is this single terminal can be operated under Union Pacific wage rates and schedule rules. Also consonant with this concept is that Missouri Pacific Yardmasters may be transferred to the Union Pacific RR and function under the Union Pacific Schedule Agreement and wage rates.

(3) While we find impressive the Carriers' arguments in favor of dovetailing into a single seniority roster for a single integrated terminal, nevertheless, we conclude, that we should accept the Organization's plea that the constructed seniority roster reflect and recognize the "prior rights" of affected employees. Acceptance of prior rights here would recognize the dominant and established role that UP yardmasters have long occupied in the Omaha and Council Bluffs yards.

We find that therefore it would be appropriate to desig-

nate UP employees who, prior to the consolidation, worked west of the River as "OH" employees and UP employees who have worked east of the River as "CB" employees. Missouri Pacific yardmasters should be also treated and designated as employees who worked west of the River.

We find that Yardmaster positions should be designated either "OH" or "CB" assignments based on where a preponderance of the work was performed.

We find that there should be no prior rights designation to yardmasters who acquire seniority after the date of the consolidation.

A copy of the consolidated seniority roster for the Omaha/Council Bluffs Terminal, embodying these principles, is attached hereto as Attachment "B".

(4) We find with regard to Protective Benefits and Obligations thereunder, that the New York Dock Conditions as prescribed by the ICC in its Finance Docket No. 30,000 shall apply to those employees directly affected by the transfer and consolidation of the Terminal.

The attached Implementing Agreement (Attachment "A") contains the specific details pertaining to "test earnings", the affect of unemployment compensation as well as other earnings on the prescribed allowances.

The Implementing Agreement also contains the prescribed Monthly Form to be used to calculate benefits and allowances for "Dismissed" and "Displaced Employees". See Attachment "D".

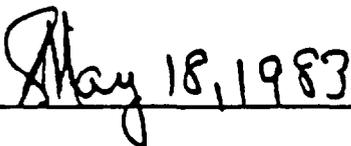
(5) With regard to Initial Assignments we find that all employees on the integrated single seniority roster (Attachment "B") shall be afforded the opportunity to bid simultaneously in accordance with the requisite provisions of the UP Schedule on all yardmaster positions in the Omaha/Council Bluffs Terminal. The bulletining and assignment of these positions shall be administered in such a manner so as to make the effective date of these assignments concurrent with the effective date of the consolidation of the Terminal.

(6) We find that service credits shall be accorded to all Missouri Pacific employees who transfer to the Union Pacific in accordance with the Implementing Agreement. These MP employees shall be treated for Agreement purposes as though their MP service was performed on the Union Pacific Railroad.

AWARD: In order to effect these Findings and related cognate matters, and to carry out the purposes and intent of the New York Dock Conditions, the parties shall adopt and execute the Attached Implementing Agreement.
(Attachment "A").



JACOB SEIDENBERG, New York
Dock Conditions Arbitrator



May 18, 1983

A G R E E M E N T

Between

UNION PACIFIC RAILROAD COMPANY
MISSOURI PACIFIC RAILROAD COMPANY

And

RAILROAD YARDMASTERS OF AMERICA

The Interstate Commerce Commission (ICC) approved, in Finance Docket No. 30,000, and selected subdockets 1 through 6, the merger of Union Pacific Railroad Company (UP), Missouri Pacific Railroad Company (MP), and Western Pacific Railroad Company (WP), effective December 22, 1982. The ICC, in its approval of the aforesaid Finance Docket, has imposed the employe protection condition set forth in New York Dock RY. -Control - Brooklyn Eastern District Terminal 354 ICC 399 (1978), as modified at 360 ICC 60 (1979) (New York Dock Conditions) in FD 29430.

Therefore, to effect consolidation of (1) all MP yardmaster's functions now being performed at Omaha, Nebraska, (2) all UP yardmaster's functions now being performed at Omaha, Nebraska, and (3) all UP yardmaster's functions now being performed at Council Bluffs, Iowa, into a single, combined terminal operation controlled by UP with all work performed under the applicable UP schedule rules,

IT IS AGREED:

ARTICLE I - PURPOSE:

Effective on or before June 15, 1983, (1) all MP yardmaster's functions now being performed at Omaha, Nebraska, (2) all UP yardmaster's functions now being performed at Omaha, Nebraska, and (3) all UP yardmaster's functions now being performed at Council Bluffs, Iowa, will be consolidated into a single combined terminal operation with all work being performed under the applicable UP Schedule Agreement.

ARTICLE II - SENIORITY:

(a)(1) On the effective date of the consolidation provided herein, the names and seniority dates of all yardmasters appearing on the seniority rosters identified in Article I above will be dovetailed into a new single terminal seniority roster which will result in the elimination of the three seniority rosters mentioned above

(a)(2) Although there will be a single terminal seniority roster said roster will recognize and acknowledge prior rights of respective UP and MP employees for service rendered prior to date of consolidation, as herein set forth

(a)(3) Union Pacific employees east of the Missouri River will receive the designation "CB" on the consolidated roster.

(a)(4) Union Pacific employees west of the Missouri River and MP employees transferring to the Union Pacific will receive the designation "OH" on the consolidated roster.

(a)(5) Employees acquiring yardmaster right subsequent to the date of consolidation will not get a prior rights designation.

(b)(1) Each UP yardmaster position will be given a designation "CB" or "OH" based on the preponderance of the work of the assignment, which will be determined by whether the greater amount of the work is east of the Missouri River "CB" or west of the Missouri River ("OH").

(b)(2) The employee having the letter designation corresponding to the position designation will have prior rights to that position over those employees with a different designation or without a letter designation.

(c) A copy of the consolidated seniority roster with prior rights designation is attached as Attachment "B".

(d) The following "NOTE" is added to Rule 3(1) of the UP Agreement:

"The phrase 'yardmasters promoted to terminal superintendent or other official or supervisory positions with the company' shall include service as an official with either Union Pacific Railroad Company or Missouri Pacific Railroad Company."

ARTICLE III - INITIAL BULLETINS:

In order to accomplish the initial assignment of the employees holding seniority on the new consolidated seniority roster, there will be an advertisement and assignment of Omaha/Council Bluffs Terminal yardmaster positions as provided in Rule 6(d) of the UP Agreement in such manner that the effective date of the assignments will be simultaneous with the effective date of the consolidation herein provided. (All employees on the newly consolidated roster provided herein may bid for the positions advertised.)

ARTICLE IV - QUALIFICATIONS:

Any employe involved in the consolidation herein provided, whose new assignment requires performance of duties on a geographic territory not familiar to him, will be given full cooperation, assistance and guidance in order that the employe's qualifications therefor shall be accomplished as quickly as possible.

ARTICLE V - SERVICE CREDIT:

MP employes transferred to UP pursuant to this agreement will be treated for agreement purposes as though their service on MP had been performed on UP.

ARTICLE VI - PROTECTION BENEFITS AND OBLIGATIONS:

General

(a) Employees directly affected by this transfer and consolidation will be subject to the protective benefits of the New York Dock conditions as prescribed by the Interstate Commerce Commission in Finance Docket No. 30,000. It is also understood there shall not be any duplication or compounding of benefits under this Agreement and/or any other agreement or protective arrangement. A copy of the New York Dock conditions is attached as Attachment "C".

(b)(1) The test period average for compensation of yardmaster employes directly affected by this transfer and consolidation will include the "total" earnings of the employe during the test period, i.e., the earnings both in the yardmaster craft and in any other craft in which the employe has secondary seniority will count toward the test period average.

(b)(2) Any yardmaster employe receiving a protective allowance as a result of this transfer and consolidation must exercise all seniority rights to secure the position yielding the greatest amount of compensation, i.e., the employe must exercise either yardmaster seniority or secondary seniority so that the greatest amount of compensation will result.

Dismissed Employe

(c) Each "dismissed employe" shall provide the Carrier with the following information for the preceding month in which he is entitled to benefits no later than the tenth day of each month on a form provided by the Carrier:

(1) The day(s) claimed by such employe under any unemployment insurance act.

(2) The day(s) each such employe worked in other employment, the name and address of the employer and the gross earnings made by the "dismissed employe" in such other employment.

(d) In the event a "dismissed employe" is entitled to unemployment benefits under applicable law but forfeits such unemployment benefits under any unemployment insurance law because of failure to file for such unemployment benefits (unless prevented from doing so by sickness or other valid causes) for purposes of the application of Subsection (c) of Section 6 of Attachment "C", he shall be considered the same as if he had filed for, and received, such unemployment benefits.

(e) If the "dismissed employe" referred to herein has nothing to report under this Article account not being entitled to benefits under any unemployment insurance law and having no earnings from any other employment, such employe shall submit, within the time period provided for in Paragraph (c) of this Article VI, the appropriate form stating "Nothing to Report".

(f) The failure of any "dismissed employe" referred to in this Article VI to provide the information required in this Article VI shall result in the withholding of all protective benefits during the month covered by such information pending Carrier's receipt of such information from the employe.

(g) The dismissal allowance shall cease prior to expiration of the employe's protective period in event of the employe's resignation, death, retirement, termination for justifiable cause, failure to return to service upon recall or failure to accept a position pursuant to Article I, Section 6(d) of Attachment "C".

Displaced Employe

(h) Each "displaced employe" shall provide the Carrier with the information requested on a form provided by the Carrier. The form shall be submitted no later than the tenth day of the month following the month for which benefits are claimed.

(i) The failure of any "displaced employe" referred to in this Article VI to provide the information required in this Article VI shall result in the withholding of all protective benefits during the month covered by such information pending the Carrier's receipt of such information from the employe.

Form

(j) A copy of the "Monthly Claim Form" to be used by both "dismissed" and "displaced" employes is attached as Attachment "D".

ARTICLE VII - SAVINGS CLAUSES:

(a) Where the rules of the UP/RYA Schedule Agreement conflict with this Agreement, this Agreement shall apply.

(b) Should any error or omission concerning the consolidated seniority roster be discovered, the parties may make the necessary correction without penalty to either party.

Signed at Omaha, Nebraska, this _____ day of _____
1983.

FOR THE RAILROAD YARD-
MASTERS OF AMERICA:

FOR THE UNION PACIFIC
RAILROAD COMPANY:

R. L. Ryba
General Chairman

R. D. Meredith
Director of Labor Relations

FOR THE MISSOURI PACIFIC
RAILROAD COMPANY:

A. J. Crosthwait
General Chairman

O. B. Sayers
Director of Labor Relations

RAILROAD YARDMASTERS OF AMERICA

NEBRASKA DIVISION

YARDMASTERS AND ASSISTANT YARDMASTERS

<u>PRIOR RIGHTS DESIGNATION</u>	<u>NAME</u>	<u>SENIORITY' DATE</u>
CB	ONEILL JR., A.L.	06 05 53
CB	CANNIA, T.J.	12 25 56
O	PLYMALE, J.B.	08 05 60
O	GILLEN, M.F.	09 22 61
CB	MOON, R.L.	01 01 62
CS	GAPPA, R.	01 19 62
CB	FUNK, E.K.	03 16 63
CB	MAIN, R.E.	11 16 63
O	GERBER, E.D.	08 28 64
CS	NIELSEN, M.M.	04 23 65
CE	THRAEN, A.C.	08 08 66
O	CANNIA, S.C.	08 22 66
CB	HASSLER, A.L.	10 19 66
O	HOMAN, W.M.	11 30 66
O	STRATTON, G.T.	08 01 69
O	KERSIGO, G.F.	01 26 70
O	WHEELER, E.J.	08 22 70
O	HRABOVSKY, G.E.	10 04 70
O	HEGARTY, JR., D.R.	01 28 71
CB	RYBA, R.L.	03 20 71
CS	MATTER, D.D.	07 28 72
CB	SHUDAK, S.F.	07 28 72
CB	BOWEN, D.A.	07 28 72
O	BUXTON, G.F.	12 21 72
O	RINGO, R.E.	05 19 73
O	GERMAR, J.L.	07 01 73
CB	WALLING, G.A.	12 05 73
O	ANGLIM, L.J.	04 07 74
CB	RYBA, S.E.	06 14 74
O	CONNER, N.	09 01 74
CB	NETTLES, E.W.	03 05 76
O	LUKOWSKI, R.J.	07 09 76
CB	BAKER, G.I.	06 28 78
CB	NIELSEN, J.W.	08 13 78
O	CAMPBELL, C.P.	12 17 78
O	SCHWAGER, P.A.	07 18 79
O	JARRELL, P.J.	07 20 79
CB	RYBA, J.A.	08 09 79
CB	SWEENEY, J.	08 18 79
O	CHAMBERS, A.Y.	02 22 80