In the Matter of Arbitration :

between

CSX TRANSPORTATION, INC. (FORMER CHESAPEAKE AND OHIO RAILWAY COMPANY)	:	Pursuant to Section 11 of New York Dock protective conditions prescribed under ICC Finance Docket 28905
and	:	
UNITED TRANSPORTATION UNION	:	
and		
BROTHERHOOD OF LOCOMOTIVE ENGINEERS	:	

APPEARANCES:

CSX: H. S. Emerick, Director of Labor Relations
G. F. Leif, " " " "

RF&P: W. E. Griffin, Jr., Director of Personnel and Labor Relations

UTU: R. S. Bujdoso, General Chairman(also representing BLE)
R. K. Sargent, Secretary, General Committee
J. R. Townsend, Local Chairman

OPINION AND AWARD

On September 25, 1980, the ICC in Finance Docket No. 28905, approved the application of CSX to acquire control of the railroad subsidiaries of Chessie System, Inc. and Seaboard Coast Line Industries, as the surviving partner in a merger with Chessie and SCLI, the subsidiary rail carriers to remain as separate corporate entities. One of the railroads owned by Chessie was the C&O.

CSX also acquired control of Richmond, Fredericksburg and Potomac Railway (RF&P) by virtue of the fact that Chessie and

SCLI each owned 40 percent of Richmond-Washington Company, a non-carrier holding company which owned 65.9 percent of the voting stock of RF&P.

As part of its order in Finance Docket No. 28905, the ICC imposed the so-called New York Dock Conditions for the protection of employees. Paragraph 4(a) of those conditions provides that "each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or replacement of any employees, or rearrangement of forces, shall give at least ninety (90) days' written notice of such intended transaction" to the interested employees and their representatives, after which negotiations and, if necessary, arbitration shall take place. Paragraph 4(b) provides that "no change in operations, services, facilities or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered."

In April, 1986, Carrier rerouted certain overhead traffic from west of Clifton Forge that had previously moved on the Mountain, Piedmont and Washington subdivisions of C&O (the so-called western corridor) to move over the James River and Rivanna subdivisions of C&O (the so-called eastern corridor) to Richmond, where it was then routed via RF&P to Washington. As a result of the changed routing, the last remaining yard assignment at Charlottesville was discontinued and there was a reduction in road service assignments on the Mountain and Washington subdivisions. The Organization maintained that the rerouting was a transaction as defined in the New York Dock Conditions and required the notice specified in Paragraph 4(a). The Carrier disagreed and the parties thereafter agreed to submit the following two questions to this arbitration:

> "1. Is the Carrier's rerouting of their overhead traffic formerly handled on their Mountain, Piedmont and Washington Sub-divisions between Clifton Forge, Virginia, Doswell, Virginia and Washington, D. C., to a less power intensive route using their James River and Rivanna Sub-divisions between Clifton Forge and Richmond, where it is delivered to and/or received from The Richmond, Fredericksburg and Potomac Railroad for final handling to/from Washington, D.C., a 'transaction' as contemplated by the Labor Protective Conditions to be imposed pursuant to ICC Finance Docket 28905?"

2. If the answer to the foregoing is in the affirmative, is the Carrier required to serve proper notice and commence negotiations for an implementing agreement which shall provide, among other things, for the selection of forces from all employes involved on a basis accepted as appropriate as contemplated by Section 4 of the 'New York Dock' protective conditions?"

"Transaction" is defined in Paragraph 1(a) of the New York Dock Conditions as "any action taken pursuant to authorizations of this Commission on which these provisions have been imposed."

The issue is whether the "action" - in this case, the diversion of traffic - was taken because C&O and RF&P came under the common control of CSX as a result of ICC Docket 28905, as alleged by the Organization; or whether the action was an independent decision of C&O for reasons not related to the ICC authorization, not planned by or participated in by CSX, and not taken in coordination with RF&P, as alleged by the Carrier.

There is no significant factual dispute. Both sides agree that a substantial amount of traffic was diverted or rerouted from C&O's mountainous western corridor from Clifton Forge to Doswell and/or Washington, where it interchanged with RF&P. to its water-level eastern corridor from Clifton Forge to Richmond, there to be interchanged to the RF&P for delivery to Washington or Possum Point. There is also agreement that the reason for the change was conservation of fuel and greater efficiency of locomotive usage. As stated by the Organization, the most commonly used locomotive, a General Motors GP-35, could handle only 1350 tons over the mountain route, but could handle 3,300 tons over the water-level route. As stated by Carrier, three six-axle locomotives (SD-30s) were required to move 9000 tons of coal (the usual tonnage of a Possum Point train) on the mountain route, while one locomotive could handle double that amount on the water-level route.

The Organization argues that the changed routing, more efficient and economical or not, was not and never would have been made when the RF&P and C&O were competing carriers and not part of the CSX family. It is axiomatic that carriers try to haul all the traffic they can over their own tracks; there was no incentive for C&O to route traffic via RF&P from Richmond to

Washington rather than route it over its own western corridor until both it and RF&P became part of CSX by virtue of ICC Docket 28905. The Organization argues that this very kind of increased efficiency was contemplated by the ICC in its order, which stated: "Under the CSX plan, the parent company will develop overall corporate strategy and operation planning and coordination. Rail subsidiaries will execute policies developed at the top with the goal of maximizing systemwide profitability." At other places in the report, the Commission stated that the CSX system would reroute traffic internally to promote efficiency and reduce costs, and that the proposed consolidation and control would strengthen RF&P by increasing the number of movements over its lines.

The Commission also stated:

> "While many of the service benefits are at least theoretically possible without the consolidation, we cannot ignore the incentive that exists when carriers are under common control. There is a limit to what two independent railroads will agree upon in service improvements. Each railroad generally seeks to obtain its own long haul, to maximize its own earnings, and to be in charge of a movement. As we noted, these considerations inhibit the establishment of cooperative services between railroads."

The Organization also refers to the issuance of certain omnibus tariffs as an indication that traffic was routed for the benefit of the CSX's "community of interest" rather than for the operating efficiency of any single subsidiary railroad.

From all of this, the Organization argues that it must be concluded that the C&O action in rerouting traffic from its own lines to the RF&P must have come about because of the combining of C&O and RF&P as part of the CSX which was authorized by the ICC in Docket 28905. The Organization concedes that the rerouting could have been done by C&O before the "marriage", but that the motivation for the action when it was actuallyaccomplished, was the "marriage".

The Carrier contends that the rerouting of traffic involved here was the result of changing business conditions, could have been accomplished before the ICC order approving the creation of the CSX family, did not require and was not dependent upon any

authorization by the ICC and was not taken in concert or coordination with CSX or RF&P but was simply a decision by C&O to interchange traffic with RF&P at a different point as a matter of C&O self interest.

Carrier points out that it has interchanged with RF&P for many years and could have rerouted its traffic as it did in this case at any time before Docket 28905 without ICC or other authorization. The decision to do so in 1986 was not related to the CSX authorization and was not due to any policy decision made at CSX level or shared in by CSX or RF&P, any omnibus tariffs filed by CSX or any coordination of operations, equipment, facilities or services between the C&O and RF&P, which operate as separate and independent carriers for interchange purposes despite both belonging to the CSX family. The decision was made because in the spring of 1986, various budget constraints and the cost of locomotive fuel oil caused the Carrier to make numerous changes throughout its system, including rerouting traffic as necessary over less power intensive lines to conserve fuel and for other operating considerations. Carrier asserts that there have been various transactions and coordinations brought about under the authorization of ICC 28905, which have been recognized as transactions and handled as such under New York Dock Conditions; however, the rerouting in this case was not related to that authorization and should not be held to be a transaction thereunder.

"Transaction" has been held in numerous awards and interpretations to have a meaning similar to "coordination" as that word is used in the Washington Job Protection Agreement. "Coordination " is there defined as:

> "A joint action by two or more carriers, whereby they unify, consolidate, merge or pool in whole or in part their separate railroad facilities or any of the operations or service previously performed through such separate facilities."

Other than the fact that RF&P is a subsidiary carrier of CSX, as C&O is, there is no evidence that RF&P acted jointly with C&O to bring about the rerouting which gave rise to this dispute. Nor is there evidence that CSX exercised its overall control over both subsidiaries to bring about the rerouting as part of a plan to benefit the CSX community. Statements by RF&P and C&O

representatives are to the contrary. In essence, the Organization's case is based upon inference: Since an expressed purpose of the ICC in approving CSX control in Docket 28905 was to bring about increased efficiency and reduced costs, any rerouting of traffic from C&O to RF&P which accomplishes those purposes must of necessity depend upon and flow from the ICC authorization. Put another way, since C&O and RF&P are both subsidiaries under the control of CSX, any rerouting of traffic from C&O to RF&P must of necessity be the result of joint action.

A review of the submissions and awards submitted by the parties clearly establishes that something more than inference is necessary to support a conclusion that the rerouting here constituted a transaction. The parties cited two quite recent awards involving CSX and subsidiary carriers. The first, cited by the Organization, is a November 2, 1987 award by an Arbitration Board under Finance Docket No. 21160; it held that a diversion to B&O of traffic formerly received in interchange from the L&N by C&O at the Cincinnati gateway and handled by C&O to Toledo, to be handled by B&O over its trackage to Toledo, was a transaction. But that case involved important factual elements lacking in this case. In the first place, Docket 21160 approved control by C&O over B&O, which were the two carriers directly involved in the diversion. Second, both carriers received traffic in interchange at Cincinnati and had trackage from Cincinnati to Toledo. Third, it was conceded that both carriers, acting together, encouraged and solicited shippers to use the B&O route in preference to the C&O route. On those facts, the Arbitration Committee found that "absent the control sanctioned by Finance Docket No. 21160, such diversion of traffic from one railroad to another would not have been cooperatively carried out by the two carriers." The record in the instant case simply does not support a similar finding that absent the control by CSX over C&O and RF&P sanctioned by Finance Docket No. 28905, the rerouting by C&O and interchange with RF&P at Richmond would not have been carried out by the two carriers. The admitted joint action by B&O and C&O in the Cincinnati-Toledo case is lacking here with respect to C&O and RF&P, and the rerouting here was not entirely over the tracks of RF&P but substantially over other tracks of C&O before delivery in interchange with RF&P, interchange which was not dependent upon grant of control over C&O and RF&P to CSX. The cited award thus does not support the Organization's position here.

The other recent CSX award, Docket 191 of the Section 13 Disputes Committee, dated December 31, 1987, was cited by Carrier and involved a claim by the Carmen's Organization that a transfer of switching work from Seaboard System Railroad's Collier Yard in Petersburg, to RF&P's Acca Yard at Richmond, which caused a loss of five Collier Yard positions and the establishment of four new Acca Yard positions, was a coordination of the two yards without providing the notice and protective benefits required by the Washington Job Protection Agreement. In denying the claim, the Committee said: "There is insufficient evidence showing that this intraline change of the location for classifying cars was planned and implemented by both the Carrier and the RF&P. Simply put, if a diversion of traffic is not a product of joint action, the change is not a coordination."

While the facts in that case are different, the principle is sound. There is insufficient evidence in the case at hand to show that the rerouting was planned and implemented by both the C&O and the RF&P, or by CSX. Since it is not established by substantive evidence, as contrasted with mere inference, that the rerouting was a product of joint action, taken pursuant to the authorization of CSX control in Docket 28905, the rerouting was not a transaction within the meaning of Paragraph 1(a) of the New York Dock Conditions.

AWARD

Question 1 is answered in the negative.

Question 2 is moot.

H. Raymond Cluster
Arbitrator

May 26, 1988