In the Matter of Arbitration Between United Transportation Union And Grand Trunk Western Railroad Company	FINDINGS AND AWARD

QUESTION AT ISSUE:

Which employees of the Grand Trunk Western Railroad Company are entitled to be certified as being adversely affected as a result of the abolishment of Train 410/411, effective October 8, 1985.

BACKGROUND: On January 15, 1988, an Arbitration Board was convened pursuant to Section II, New York Dock Conditions (NYD). The Board was chaired by the undersigned. Because the parties could not agree on the specific wording of the issue to be adjudicated by that Board, it was framed by the Neutral Member as follows:

> Did the diversion of rail traffic that came about as a result of the abolishment of Train 410/411, on October 8, 1985, constitute a "transaction" as defined in Article I, Section 1(a) of the New York Dock Conditions?

Subsequent, the Neutral found that the abolishment of Train 410/411 on October 8, 1985 did constitute a "transaction". However, with respect to the determination of which employees, if any, were entitled to be certified as being adversely affected, the matter was remanded to the parties for disposition, pursuant to Section 4 of the New York Dock Conditions.

Following a number of meetings and an exchange of a series of letters between the parties, without reaching substantive agreements on the key issues in dispute, a meeting was convened by the Neutral on August 4, 1989. At that meeting, it was agreed that the parties would provide submissions by October 23, 1989 and that the undersigned would serve as the sole Arbitrator and issue an Award with respect to the stated issue. It also was agreed that the undersigned would base the decision on the record established for the January 15, 1988 Arbitration Board as well as the record assembled subsequent to the holding issued by that Board and the parties' Executive Board meeting held on August 4, 1989.

CONTENTIONS AND FINDINGS: In arriving at this Award, I have thoroughly reviewed and considered the total record before me, beginning with the material assembled for the hearing held on January 15, 1988, including the various holdings and governmental documents relied upon by both parties.

The triggering event for this claim occurred on October 8, 1985 when the Carrier issued Bulletin No. 237 which served to abolish

Train 410/411. The Organization has consistently asserted that all DTSL employees" were adversely effected under the New York Dock Conditions, meaning a total of seventy-two (72) of the Carrier's employees. Such a claim was properly rejected by the Carrier on the basis of a reasonable construction of NYD Conditions as supported by past holdings of arbitral authority in this industry. Specifically, it has been held by numerous arbitral Awards that it is the employee's initial obligation to "specify the pertinent facts relied upon" to show that he or she has been adversely affected by a "transaction". This threshold burden is generally met if information, such as the following is furnished: (1) name and job held (including location when displaced (2) the job (including location) obtained following displacement, (3) t pertinent effective dates under (1) and (2), and (4) specific data or facts that explain or establish the alleged cause of the claimed displacement. While each case may well be different, in essence, the Claimant must furnish sufficient information to establish a reasonable basis for the Carrier to act or respond. A claim for "all" employees does not meet the necessary initial burden borne by the Organization. However, the matters at issue are now properly before me for final disposition.

Some of the seventy-two cases or claims have controlling common facts. This commonality lends itself to grouping them together and disposing of them as a group. The first grouping consists of those claims on which the parties and the Neutral are in agreement that the employees are entitled to protective benefits because they were either displaced or furloughed as a result of the abolishment of Train 410/411 This group consists of sixteen (16) Claimants who are:

Anson	Jaque	Miller	Ullom RD, Jr.
Barbara, Joe	Laraby	Palmer J., Jr.	Ullom RW, Jr.
Bilger	Leonard	Strawser	Wester
Buder	Lockwood	Tovall	Worley

The next significant group of Claimants consists of a group of nine (9) people. The common identifier among them is that they were al hired in 1985, about three years after New York Dock conditions were imposed by the Interstate Commerce Commission (ICC) on August 27, 1981 and after the merger of the DTSL Railroad into the GTW Railroad, and

that they were all furloughed prior to the abolishment of Train 410/411. Most recently the ICC, in its decision of November 1, 1989 in Great Northern Pacific & Burlington Lines, Inc.-Merger Great Northern Railway, Finance Docket No. 21478 (Sub No. 11) reaffirmed prior court and arbitra decisions which have held on matters such as this that employees hired after a merger are not entitled to NYD protection. The ICC in its decision and other bodies in their holdings have generally reasoned that employees employed after the merging of work forces are hired by the new, merged Carrier. Therefore, because this condition was known to these employees and because an extension of protective benefits would run counter to one of the major reasons for mergers, namely anticipated economic advantages, these employees would not be entitled to receive NYD protection. In view of the foregoing and on the basis stated above, the following Claimants are not entitled to protective benefits and their claims are denied:

Bartaway	Fortner	Jankowski
Emeigh	Harold	Moore
Foley	Hughes	Trout

The next grouping of employees consists of the Engineers. The Carrier contends that claims of this group of employees are not properly before me. It argues that the Engineers' claims were originally progressed by the UTU-E's General Chairman. Subsequent to his handling of these claims, the Brotherhood of Locomotive Engineers (BLE) has assumed the authority to handle the Engineers' claim. Because it contends the BLE's General Chairman is not a party to these proceedings, proper authority has not been conveyed to me to render a decision. The Organization mainly contends that the current BLE General Chairman, in his letter of September 22, 1989, has authorized the progression of the Engineers' claims. I find the Organization's arguments not without some merit. However, because the recognized Agent for the Engineers is the BLE, I conclude that a decision on the claims of the following Engineers would not be proper in this forum and they are disposed of on that basis:

Doncoes, W.	Larnhart	Carroll	Chilcutt
Young	Suzor	Doncoes, J.	Highfill
Campbell	Wilczynski	Cannon, Sr.	Berger
Harlow	Shepard	Gaynier	Lamb

Before addressing the remaining thiry one (31) claims, it is appropriate to briefly discuss the basic principles applicable to NYD claims. The underlying axiom is that only employees who are adversely affected as a direct result of a "transaction" are certified. Therefore a direct causal link must be established between the claimed adverse effect and the "transaction" alleged to have given rise to it. The mere fact that the adverse effect followed implementation of the "transaction" in time sequence or that the Claimant was working at a location or on a seniority district where "transaction" related changes (such as bumps) took place is not sufficient. In this respect, while each case must be judged on its own merits, a multitude of other causes can have an uncovered but nonetheless equally adverse impact on a Carrier's work force. These uncovered causes include a decline in business; action taken under schedule agreements covering the Claimant's craft or another craft; return of other employees from leave of absence; seasonal changes in operation; emergency and/or disaster work stoppage; technological, operational or organizational changes; physical disqualification; changes in manufacturing requirements and statutory or regulatory change (such as the FRA regulations).

A considerable body of court and arbitral decision have evolved (many cited by the Parties to this Arbitration) which today formulate the framework and the tests that are applied to protective claims. Among these are Amtrak Arb. Comm. 23-11, UTU v. ICG, Ref. J. Seidenberg (November 11, 1979), which in pertinent part held that:

> "We find that the prevailing and almost unanimous weight of arbitral authority is that mere loss or reduction in earnings per se does not render or place an employee in the status of a 'displaced employee'. An employee must prove that his regular job was abolished as a result of the discontinuance of railroad passenger service, or that he was displaced from his regular job in a direct and immediate chair of displacements resulting from the discontinuance of passenger service. A remote or tangential effect of the discontinuance, albeit adverse, would not qualify a person for a displacement allowance."

Also, NYD Arb. Comm., MM&P v C&O, Ref. Robert M. O'Brien (march 4, 1985) in pertinent part stated:

> "This Arbitration Committee subscribes to the reasoning pronounced by other Arbitration Committees.... that loss of earnings, and/or abolishment of positions, by themselves, do not entitle employees to the labor protection benefits set forth in New York Dock. Rather, it must be shown that there existed a causal nexus between a 'transaction' and the adverse impact experienced by employees claiming the protective benefits established by the New York Dock conditions."

Applying the foregoing tests and principles to the remaining cases, I find that the following eight (8) Claimants remained on the same train assignments that they held prior to the October 8, 1985 abolishment of Train 410/411:

Doran	Reid, G.	Upham
Durfey	Ritchey	Vesey
Kunasz	Swinehard	

Claimants Swinehart, Ritchey and Upham were involved in bumps to different jobs for a period of six days (October 9, 1985, Bulletin 2296 to October 15, 1985, Bulletin 2298). However, they, in essence, then retained the same assignments that they held prior to October 8, 1985.

While it appears that these eight Claimants earned less following the abolishment of Train 410/411, there is insufficient evidence to show that it was caused by that Train's abolishment. The claims of these eight Claimants, therefore, are denied.

The next group of Claimants remained on one of the Extra Boards, although, in some instances early in 1986, some were assigned different duties, such as Flagman or they were furloughed. The Claimants in this group are:

Barbara, Jr.	Kirk	Poitinger
Bellamy	Kirkendall	Reid, C.
Dorner	Knaggs	Rochowiak
Duncan	Lewandowski	Ruetz
Goeselin	Palmer, Sr.	Taylor
Gragg	Pierce	

Clearly, with the exception of Palmer, Sr., who throughout retained his "number one" position on the Yard Extra Board, all of the remaining sixteen (16) Claimants in this category lost their preabolishment position on their respective Extra Boards. In some instances, such as Lewandowski, Ruetz and Knaggs' claims, the employees were eventually furloughed.

However, a lower ranking on the Extra Board does not per se establish an adverse effect. After close review of each claim, I conclude that if the abolishment had an effect on the Claimants, it was tangential and that causes other than the abolishment were mainly responsible for whatever changes occurred in their employment status.

The next group consists of Baxter and Sullivan who have in common the fact that they were furloughed the next day after Train 410/411 was abolished. The Carrier attributes their furlough to its right to exercise managerial discretion in reducing the Extra Board. However, the issue is not whether the Carrier may reduce its Extra Board, but whether its reduction and the subsequent furlough of Baxter and Sullivan came about because Train 410/411 was abolished. Baxter, Sullivan and Worley were furlough by means of Bulletin 2296, October 9, 1985. I find no substantial distinction to separate these three Claimants. In fact the parties actually agree that Worley has been affected by the abolishment. Therefore, the Baxter and Sullivan claims are sustained.

The last two Claimants are Dusseau, who, of his own choice, took an assignment on the Conductors' Extra Board and Weikinger, who is on the disabled list. I find after applying NYD tests that both of these claims must be denied.

AWARD

As specified in the Findings. The Carrier is directed to implement the claims which have been sustained herein within sixty (60) days from the date of this Award. It will be presumed by the undersigned that this Award is received in the Offices of the Carrier within five days from the date shown below unless substantial evidence is furnished to the contrary.

Eckehard Muessig
Neutral

Dated: Feb 7, 1990