

ARBITRATION COMMITTEE

In the Matter of the)	
Arbitration Between:)	
)	
TRANSPORTATION-COMMUNICATIONS)	Pursuant to Article 1,
INTERNATIONAL UNION,)	Section 11 of the New
)	York Dock Conditions
Organization,)	
)	
and)	I.C.C. Finance Docket
)	No. 30,000
)	
UNION PACIFIC RAILROAD)	Case No. 3
COMPANY,)	Award No. 3
)	
)	
Carrier.)	

Hearing Date: March 27, 1990
Hearing Location: Sacramento, California
Date of Award: June 26, 1990

MEMBERS OF THE COMMITTEE

Employees' Member: J. L. Gobel
Carrier Member: L. A. Lambert
Neutral Member: John B. LaRocco

QUESTION AT ISSUE

Is clerical employe R. Tefft entitled to New York Dock protection as a result of a displacement in 1986?

Carrier File No. 891734
Organization File No. R-15-1334-172

OPINION OF THE COMMITTEE

I. INTRODUCTION

In September, 1982, the Interstate Commerce Commission (ICC) approved the merger and consolidation of the Union Pacific Railroad Company (UP), the Missouri Pacific Railroad Company (MP) and the Western Pacific Railroad Company (WP). [ICC Finance Docket No. 30000.] To compensate and protect employees affected by the merger, the ICC imposed the employee merger protection conditions set forth in New York Dock Railway-Control-Brooklyn Eastern District Terminal, 360 I.C.C. 60, 84-90 (1979); affirmed, New York Dock Railway v. United States, 609 F.2d 83 (2nd Cir. 1979) ("New York Dock Conditions") on the UP, MP and WP pursuant to the relevant enabling statute. 49 U.S.C. §§ 11343, 11347.

This Committee is duly constituted by a letter agreement dated January 25, 1990. At the Neutral Member's request, the parties waived the Section 11(c) time limit for issuing this decision.¹

II. BACKGROUND AND SUMMARY OF THE FACTS

On May 14, 1986, the Carrier notified the Organization, pursuant to Section 4 of the New York Dock Conditions, of the Carrier's intent to consolidate MP crew dispatching functions, timekeeping tasks and administrative support work performed at Kansas City with similar functions performed by UP clerical employees at Omaha. The parties signed Implement Agreement No.

¹ All sections pertinent to this case appear in Article I of the New York Dock Conditions. Thus, the Committee will cite only the particular section number in this Opinion.

29 governing the transaction on July 16, 1986. Attachment A to Implementing Agreement No. 29 listed the clerical positions to be abolished at Omaha upon execution of the transaction. Among the jobs slated for abolishment was Clerk T. M. Beals' Crew Dispatcher position. When the transaction occurred in November, 1986, Clerk Beals exercised his seniority to a Work Order Clerk position occupied by Clerk J. C. Zybert. Clerk Zybert exercised his seniority to displace Claimant from his Property Analyst position on November 14, 1986 and Claimant, in turn, displaced junior clerical employee S. E. Moore on November 18, 1986. The Carrier did not provide Claimant with a calculation of his test period average earnings under the New York Dock Conditions. Claimant, who had a monthly protected rate of \$2,326.51 under the amended February 7, 1965 Job Stabilization Agreement, did not file for New York Dock benefits. Claimant opted for New York Dock protective benefits when he transferred to St. Louis on January 26, 1988 under a subsequent implementing agreement.

In the meantime, during 1987, the Organization progressed a claim on behalf of Clerk Brewer to a New York Dock Section 11 Arbitration Committee sitting with this Referee. On March 1, 1988, the Committee held that an employee affected by a chain of displacements traceable to the abolition of a position due to a New York Dock transaction must be accorded protective status under the New York Dock Conditions.

On August 24, 1989, the Organization filed the instant claim seeking New York Dock protection for Claimant retroactive to his November 14, 1986 displacement.

The sole issue in this case is whether Claimant timely initiated a claim for New York Dock protective benefits arising out of the November, 1986 transaction.

III. THE POSITIONS OF THE PARTIES

A. The Organization's Position

The doctrine of laches is inapplicable to this case since Claimant did not unreasonably delay the filing his claim and, even he had, any dilatoriness on Claimant's part did not prejudice the Carrier.

On this property, a New York Dock Arbitration Committee has ruled that an elapsed time of four years between the date of adverse affect and the initiation of a grievance did not bar a claim. TCU v. UP; NYD § 11 Arb. (Stallworth, 11/26/88). Indeed, there is a landmark decision that laches does not extinguish a claim filed under the Oregon Short Line Conditions because employees, even by their procrastination, cannot waive their rights grounded in federal law. UTU v. SPT; OSL § 4 Arb. (Fredenberger, 9/26/86).²

When Claimant was displaced in November, 1986, the Carrier applied the novel, but incorrect theory that only the immediate incumbent of a job abolished as the result of a transaction was entitled to New York Dock protection. The Carrier's faulty interpretation of the New York Dock Conditions was rejected in the Brewer case. The Brewer decision triggered Claimant's

² Like the Oregon Short Line Conditions, a federal statute mandated the ICC to promulgate the New York Dock Conditions.

realization that he had been entitled to New York Dock protective benefits as of November, 1986. Claimant timely filed this claim after the Brewer decision.

Lastly, the Carrier cannot invoke the equitable doctrine of laches because it comes to this Committee with unclean hands. The Carrier deliberately misled Claimant into believing that he was not eligible for New York Dock protective status and further failed to provide Claimant with his test period average earnings in November, 1986. The Carrier, not Claimant, is responsible for any delay in the filing of this claim. Moreover, the Carrier has not suffered any prejudice even if the claim was not instituted in a timely fashion inasmuch as Claimant's requested remedy covers only the thirteen months between the November, 1986 transaction and the January, 1988 transaction.

B. The Carrier's Position

The doctrine of laches can bar a protection claim. RED v. C&WI; Appdx. C-1 Arb. (Dolnick, 1/25/73). In this case, Claimant did not file a claim for New York Dock benefits until thirty-three months after his displacement from the Property Analyst position. During this time, the Carrier accorded Claimant his protected rate under the February 7, 1965 Job Stabilization Agreement. Claimant accepted those benefits without any complaint. While the Carrier emphatically denies that it told Claimant that he was not entitled to New York Dock protection, the mere fact that the Carrier did not provide him with test period average earnings would not prevent Claimant from grieving inasmuch as Clerk Brewer timely filed a claim for New York Dock

benefits. Also, even if Claimant was awaiting the outcome of the Brewer case, he never explained why he delayed filing this claim for an additional eighteen months after the Arbitration Committee issued the Brewer decision.

The delay prejudiced the Carrier. If it had known that Claimant wanted to elect New York Dock protection, it could have compelled him to perform extra work to earn additional compensation to equal his monthly New York Dock displacement allowance. An employee cannot retroactively claim New York Dock benefits at any time. Under the Organization's theory, an employee could go back six years, annul his job stabilization agreement protection and then claim New York Dock benefits depriving the Carrier of any opportunity to maximize the employee's earnings.

IV. DISCUSSION

The New York Dock Conditions do not contain an express time limitation for filing claims for displacement and dismissal allowances. BRS v. B&O; NYD § 11 Arb. (Peterson, 2/28/87). BRC v. BN; NYD § 11 Arb. (Marx, 8/30/84). However, an employee's unreasonable delay in progressing a claim for protective benefits which operates to prejudice the Carrier, is barred under the doctrine of laches. CR v. IBEW; NYD § 11 Arb. (Seltzer, 12/16/85). RED and C&WI; Appdx C-1 Arb. (Dolnick, 1/25/73). The Neutral Member of this Committee, in BRAC v. N&W; 4/7/65 Agreement Arb. (LaRocco, 7/1/86), defined the doctrine of laches and justified its application to protective claims as follows:

Even in the absence of express time limits, the doctrine of laches operates to bar a claim which is filed beyond a reasonable time period and prejudices the opposing party. The purpose of the doctrine is to prevent stale claims. Allowing old, stale claims to perpetually fester hardly promotes stable and predictable railroad labor-management relations. As stated above, a delay, even an unreasonable delay, is insufficient to invoke the laches defense. The Carrier must also demonstrate that Claimant's procrastination operated to its prejudice.

In RED v. C&WI, Arbitrator Dolnick declined to apply laches to a claim which was delayed for fifteen months following the carrier's initial denial because the petitioning party engaged in alternate, affirmative steps to attempt to resolve the claim. Thus, the carrier was on continuing notice that the claim was alive. However, Arbitrator Dolnick clearly confirmed that laches was a defense available to the carrier. He simply found that the carrier was not prejudiced by the delay. The UTU v. SPT case decided by Referee Fredenberger only intimated that laches may not be an appropriate defense in a dispute brought under Section 4 of the Oregon Short Line Conditions. This claim does not fall within the compulsory interest arbitration provisions of Section 4 of the New York Dock Conditions. This is an ordinary Section 11 grievance, and thus, laches may be applicable.

Claimant procrastinated by sitting on his rights for an unreasonable period of time. He pursued no alternate efforts to procure New York Dock protective status leading the Carrier to conclude that Claimant wished to retain protection under the amended February 7, 1965 Job Stabilization Agreement. Claimant waited thirty-three months before filing a claim for New York

Dock protection. Unlike the case decided by Referee Dolnick, Claimant evinced no early intent that he was pursuing a claim under the New York Dock Conditions. On the contrary, Claimant not only enjoyed protection under the Job Stabilization Agreement but he also attained New York Dock protective status from a subsequent transaction long before filing the instant claim. Even if Claimant was waiting for the outcome of the Brewer case, he still failed to initiate a claim for an additional eighteen months. Claimant never justified this delay.

Claimant's delay in bringing this claim prejudiced the Carrier because it cannot retroactively act to minimize the amount of Claimant's displacement allowances. Furthermore, the Carrier detrimentally relied on Claimant's apparent manifestation that he desired continued Job Stabilization Agreement protection. Although the Organization asserted that the Carrier deceived Claimant into thinking that he was not entitled to New York Dock protection, the Organization has not brought forward any evidence to support its bare assertion. The record is void of any evidence showing the Carrier surreptitiously concealed Claimant's potential right to New York Dock protective status.

Finally, in TCU v. UP, NYD § 11 Arb. (Stallworth, 11/26/88), the Arbitration Committee rejected the Carrier's attempt to impose a strict ninety day filing period, following an initial displacement, for an employee to file for New York Dock benefits. Nonetheless, the Arbitration Committee observed that laches may be a valid defense. It simply declined to impose a standard filing period, since, as we discussed above, Section 11 of the

New York Dock Conditions contains no fixed timed limit for initiating a claim.

This claim is stale. Due to Claimant's unreasonable delay which prejudiced the Carrier, this claim is barred by laches.


AWARD AND ORDER

The Answer to the Question at Issue is No.

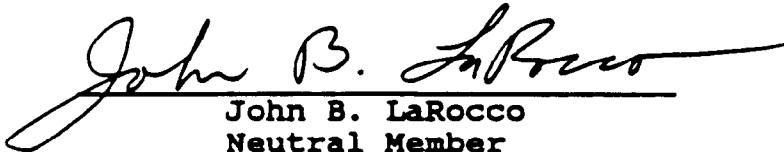
DATED: June 26, 1990



J. L. Gobel
Employees' Member



L. A. Lambert
Carrier Member



John B. LaRocco
Neutral Member