Arbitration Pursuant to Article I, Section 4 of the employee protective conditions set forth in New York Dock Railway - Control - Brooklyn Eastern District Terminal, 360 ICC 60 (1979) and Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc. 354 ICC 605 (1978) as modified by Mendocino Coast Railway Inc. - Lease and Operate - California Western Railroad 360 ICC 653 (1980)

PARTIES	UNITED TRANSPORTATION UNION	)	
		)	
TO	AND	)	DECISION
		)	
DISPUTE	ILLINOIS CENTRAL RAILROAD	)	
	INDIANA RAIL ROAD COMPANY	)	

QUESTION AT ISSUE:

What terms and conditions under Article I, Section 4 of the New York Dock and N&W - BN - Mendocino Conditions shall apply to the transactions authorized by the I.C.C. and its decisions in Finance Docket Nos. 31472 and 31485?

BACKGROUND:

On September 27, 1989, Indiana Rail Road Company (IRRC) and Illinois Central Railroad Company (IC) filed related petitions with the Interstate Commerce Commission (ICC). In Finance Docket No. 31472, the Carriers sought an exemption for IRRC to acquire two (2) connected segments of IC rail line between MP X109.0 at Sullivan, Indiana and MP B160.0 at Newton, Illinois and MP B204.3 near Browns, Illinois. In Finance Docket No. 31485, IRRC sought to acquire trackage rights over the IC between MP X155.0 at Newton, Illinois and the Wye connecting tracks to the Central Illinois Public Service Company facility at MP X160.0 at Liz, Illinois and to assume the IC's existing trackage rights over Indiana Hi-Rail Corporation's line

between MP B204.3 at Browns, Illinois and MP B215.5 at Grayville, Illinois. Eventually, both Finance Dockets were consolidated.

On October 18, 1989 the ICC initially granted the Carriers' petition in Finance Docket No. 31485.

On October 23, 1989, the IC issued a Notice to Employees advising of the Carriers' filings with the ICC. The notice further advised that the transactions would result in the abolishment of a number of positions, including five engineers and eleven trainmen, and that any employee adversely affected would be entitled to the protective conditions in New York Dock Railway - Control - Brooklyn Eastern District Terminal, 360 ICC 60 (1979) applicable to the acquisition and Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, 354 ICC 650 (1978), as modified in Mendocino Coast Railway, Inc. - Lease and Operate, 360 ICC 653 (1980) applicable to the trackage rights proceeding.

As provided in Article I, Section 4 of the Conditions the IC and IRRC met with representatives of the Organization for the purpose of negotiating an implementing agreement. However, negotiations were unsuccessful, and the parties invoked the arbitration procedures of Article I, Section 4. The parties selected the undersigned as Neutral Referee. Hearing was held in the matter on March 6, 1990 in Jackson, Mississippi.

The ICC's initial Decision in Finance Docket No. 31485 was reversed by an Administrative Law Judge. However, on August 7,1990 the ICC issued a final Decision in both Finance Dockets reinstating its initial Decision in Finance Docket No. 31485 and granting the Carriers' petition in Finance Docket No. 31472. The ICC imposed the employee protective conditions anticipated in IC's notice of October 23, 1989.

FINDINGS:

At the outset the Organization raises a jurisdictional objection to this proceeding. The Organization maintains that inasmuch as the ICC did not issue its decision in FD 31472 until after the Carrier's October 23, 1989 notice such notice cannot be effective for purposes of Article I, Section 4. For the same reason, urges the Organization, the hearing in this matter on March 6, 1990 was premature and ineffective for purposes of Article I, Section 4. This Neutral Referee cannot agree.

At the hearing in this matter the Carrier represented that it was a well-established practice on this property for the Carrier and Organizations representing employees who will be affected by a transaction to negotiate an implementing agreement pursuant to Article I, Section 4 of the Conditions in anticipation that the ICC will impose employee protective conditions upon the transaction. The Organization did not contradict the Carrier's assertion or furnish evidence that such practice did not exist. It seems consistent with such practice that if no implementing agreement results after thirty days of negotiation one or the other of the parties may invoke the arbitration procedures of Article I, Section 4 even though the Commission has not actually issued the decision imposing labor protective conditions including the terms of Article I, Section 4 of the applicable conditions. Whatever merit the Organization's jurisdictional argument may have on properties where such a practice does not exist, this Neutral Referee must conclude that in light of the practice on this property the Carrier's October 23, 1989 notice, the subsequent negotiations for an implementing agreement, and the proceedings

and decision in this case are all appropriate and effective for purposes of Article I, Section 4 of the Conditions.

Essential to the determination of the appropriate terms and conditions of an implementing agreement under Article I, Section 4 to be applicable to these transactions is an understanding of the nature of the transactions. In this case that portion of the IC line which IRRC will acquire is presently operated by the IC on a marginal basis. In the recent past the IC has found it increasingly more difficult to operate the line at a level of service necessary to retain and/or increase the number of rail customers along the line and return a reasonable profit to the Carrier. However, the IRRC believes it can operate the line profitably but only if it is allowed to do so by utilizing its own employees and following employment practices which differ radically from those in place on the IC. IRRC operates its railroad with employees who are not represented for purposes of collective bargaining and who are not subject to any collective bargaining agreement. Moreover, the rigid craft demarcations existing on the IC do not exist on the IRRC, and the employees of the latter company are expected to perform many functions which if performed on the IC would cut across several craft lines. The IRRC plans to perform the work on the IC lines without hiring any new employees including IC employees whose positions are abolished as a result of the transaction. The IRRC has taken the position that as a condition of consummation of the transaction there may be no decision rendered or pending by the ICC, arbitrators or any court which might affect IRRC's employment practices or terms and conditions of employment or its operation of the rail line after closing of the transaction.

Analysis of the terms and conditions proposed by the Carriers and the Organization to be applicable to these transactions reveals that conditions proposed by the Carriers differ radically from those proposed by the Organization. Under the Carrier's proposal IRRC would not be required to employ any IC employee affected by the transactions and should the IRRC offer employment to any affected IC employee that employee would be treated as a new hire subject to the terms and conditions of employment dictated by IRRC with none of the rights and benefits of employment with IC, including the terms and conditions embodied in any applicable collective bargaining agreement on the IC, to transfer with the employee. Additionally, the IC would be responsible for the costs of any labor protection for affected employees, including indemnifying IRRC for any costs it may incur. The terms and conditions proposed by the Organization, would afford affected IC employees employment with IRRC under the terms and conditions specified in applicable collective bargaining agreements on the IC.

Article I, Section 4(a) of the Conditions provides in pertinent part that:

> [E]ach transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this Section 4.

Any decision rendered by a Neutral Referee pursuant to Article I, Section 4 must effectuate this provision of the Conditions.

The Carrier's October 23, 1989 notice specifically states that it anticipates the abolishment of several engineer and trainmen positions.

Accordingly, the transactions ". . . may result in a dismissal or displacement of employees . . ." within the meaning of Article I, Section 4. It follows that a decision in this case must ". . . provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in (this) particular case . . . ."

The strongest argument in support of the conditions proposed by the Organization is that they are based upon the well-established principles that employees adversely affected by a transaction should have the opportunity to follow their work and should suffer no diminution in compensation and benefits as a result of the transaction. By contrast the strongest argument of the Carrier is that if the conditions proposed by the Organization are imposed in this proceeding the transaction will not be consummated in light of IRRC's insistence that it operate the IC line with its own employees under wages, hours and working conditions set by IRRC. Thus, the threshold issue in this proceeding becomes whether the implementing arrangement which results from this proceeding should contain a provision requiring IRRC to employ or offer employment to any affected IC employee.

In determining this threshold question as well as any other arising under Article I, Section 4 of the Conditions a Neutral Referee is bound and must be guided by the relevant pronouncements of the ICC as to the meaning and scope of the Conditions including the authority of a Neutral Referee under Article I, Section 4. In Brandywine Valley R.R. Co. - Purchase - CSX Transp., Inc., Lines in Florida, 5 I.C.C.2d. 764 (1989) the I.C.C. held that under Article I, Section 4 while the seller and purchaser of a line of railroad were both required to negotiate with affected employees and the

organizations representing them concerning the effects of the transaction upon such employees, that obligation did not require the purchasing Carrier to accept the collective bargaining agreements in place on the selling Carrier or to bargain with the representatives of the selling Carrier's employees over the terms and conditions of those agreements. The ICC approved an arrangement under Article I, Section 4 whereby employees of the selling Carrier would transfer to the purchasing Carrier but would work under the terms and conditions of employment in effect on the purchasing Carrier. The ICC made clear that a Neutral Referee under Article I, Section 4 had the authority to effectuate such a result where to do so would implement the transaction approved by the ICC. In the same decision the ICC reaffirmed previous holdings that a Neutral Referee under Article I, Section 4 is not restricted in his latitude by the Railway Labor Act, 45 U.S.C. §§151, et seq. The ICC made similar pronouncements in CSX Corp. - Control - Chessie System, Inc., and Seaboard Coast Line Industries, Finance Docket No. 28905 (Sub.-No. 23), Oct. 3, 1989 and Maine Central RR., et al. - Exemption, Finance Docket No. 30532, Sept. 13, 1985.

However, none of the ICC decisions or any Commission authority cited by the parties in this proceeding deals with the situation where the purchasing Carrier is unorganized for purposes of collective bargaining, has no collective bargaining agreements in place, does not utilize the traditional craft demarcations in its work operations and has vowed not to consummate the transaction if it is required to take into its employee ranks affected employees from the selling Carrier. It is in light of these

circumstances this Neutral Referee must determine whether to impose such a requirement upon IRRC.

Although IRRC employees will perform the work on the IC line formerly performed by IC employees, the transfer of which will result in the dismissal of several IC employees, affected IC employees would not be able to follow their work if they transferred to IRRC. IC employees after transferring would be blended into the work force of IRRC which performs a variety of work across traditional craft lines. Accordingly, it is impossible to say what portion of the work transferred from IC to IRRC, if any, could be performed by affected IC employees who transferred. Thus, in order to transfer affected IC employees to perform even a portion of their work it would be necessary to create terms and conditions applicable to their employment which would prevent them from being dismissed at will by IRRC, require the creation of some sort of seniority system to determine who among the employees of IRRC and the transferring IC employees would obtain positions with IRRC and who would be without work and necessitate imposition of some system forcing IRRC to assign IC transferees to specific work on the line formerly operated by the IC. Additionally, IC employees transferring to IRRC would have to receive substantially higher wages and fringe benefits than IRRC employees in order to protect the IC transferees from being placed in a worse position with respect to their employment. In the final analysis it would be necessary as a practical matter to impose upon IRRC significant terms and conditions of the collective bargaining agreements applicable to affected employees on the IC. This seems contrary to the ICC's pronouncements in the foregoing cases.

Finally, and perhaps most significantly, the IRRC has made clear that the imposition of such conditions as would be necessary to effectuate transfer of affected IC employees would cause IRRC to refuse to consummate the transaction for reasons of business economies. This Neutral Referee flatly rejects the proposition that a Carrier or Carriers may effectively dictate the terms and conditions of an implementing arrangement under Article I, Section 4 by refusing to consummate the transaction unless such conditions are to the Carrier's or Carriers' liking. Nevertheless, this Neutral Referee must take cognizance of the fact that the IC line involved is marginal and that if the IC cannot effectuate the transaction in this case the line will become a candidate for abandonment with attendant loss of rail service to the public. In Ex Parte No. 392 (Sub. - No. 1) Class Exemption For Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810, 813 (1985) the ICC said in pertinent part:

> Transfer of a line to a new Carrier that can operate the line more economically or more effectively than the existing Carrier serves shipper and community interests by continuing rail service, and allows the selling railroad to eliminate lines it cannot operate economically. Transfer before a financial crisis (with attendant plans for abandonment) helps assure continued viable service.

This Neutral Referee must conclude that under the circumstances of this particular case the terms and conditions of the implementing arrangement required by Article I, Section 4 should not include a requirement that the IRRC offer affected IC employees employment. It follows that the terms and conditions proposed by the Organization which would effectuate such a result or relate thereto should not be part of the arbitrated implementing

arrangement. Rather, the Neutral Referee finds that the terms and conditions proposed by the Carrier pertaining to this issue meet the requirements of Article I, Section 4 and should be adopted.

The Neutral Referee believes that the foregoing conclusion is buttressed by the fact that other labor organizations representing employees who will be affected by the transaction in this case have consummated agreements with the Carrier containing the same terms and conditions as the Carrier proposes in the instant case. Moreover, the Organization in this case executed an agreement with the Carrier containing identical terms as the Carrier proposes in this case with respect to another transaction similar to the one involved herein.

The Organization and the Carrier also are at odds over provisions of the arbitrated implementing arrangement under Article I, Section 4 pertaining to benefits provided in the Conditions other than under Article I, Section 4. Notably the Organization proposes a "comparable housing" provision for affected IC employees who are required to change their place of residence. The Organization also seeks credit for purposes of vacation, personal leave and other benefits based on years of service for prior service with another railroad. Additionally, the Organization seeks a provision which may best be described as a "reopener" which would allow the Organization to invoke the procedures of Article I, Section 4 to modify the arbitrated implementing arrangement in the event the IRRC changes its operations from those contemplated in the Carriers' October 23, 1989 notice or their filings with the ICC.

The Neutral Referee agrees with the Carrier that the foregoing provisions are inappropriate for inclusion in the terms and conditions of the arbitrated implementing arrangement. Such terms and conditions would expand significantly the benefits of the Conditions. The ICC consistently has rebuffed attempts to do so. See Norfolk Southern Corporation - Control - Norfolk & Western Ry. Co. and Southern Ry. Co., 366 I.C.C. 171 (1982) and cases cited therein. It follows that if the ICC, which is the author and ultimate interpretor of the Conditions, has so ruled a Neutral Referee acting under Article I, Section 4 in the stead of the ICC may not expand upon the Conditions. Neutral Referees have so ruled in numerous decisions. See UTU and Illinois Central Gulf RR., Dec. 19, 1980 (Kasher, Neutral Referee). Southern Ry. Co., et al. and BRAC, July 19, 1984 (LaRocco, Neutral Referee), Gilford Transp. Industries Cos. and American Train Dispatchers Assn., Aug. 6, 1985 (Sickles, Neutral Referee) and Southern Ry. Co. and Illinois Central RR. Co. and United Transportation Union, May 2, 1988 (Harris, Neutral Referee).

The terms and conditions proposed by the Organization would constitute significant changes in the Conditions. Requests for such changes must be addressed to the ICC. A Neutral Referee under Article I, Section 4 has no jurisdiction to grant a request for such changes. Accordingly, the terms and conditions proposed by the Organization will not be included in the arbitrated implementing arrangement.

The Organization contends that certain issues dealt with by Questions and Answers included by the Organization in its proposal for

terms and conditions must be addressed and adopted in this proceeding. Once again this Neutral Referee cannot agree. Analysis of those Questions and Answers reveals that they constitute interpretations of the Conditions. Whatever effectiveness those questions and answers may have had if they were included in a voluntary implementing agreement reached by the parties under Article I, Section 4, in the absence of such agreement they must be addressed to an Arbitration Committee under Article I, Section 11 of the Conditions. They are not appropriate for inclusion in the arbitrated implementing arrangement resulting from this proceeding.

This Neutral Referee believes the same is true with respect to the Organization's request for certification of particular employees who will be affected as the result of the transaction. The question of whether a particular employee has been affected by the transaction is one for determination by an Arbitration Committee under Article I, Section 11 of the Conditions in the context of a particular claim. Accordingly, the arbitrated implementing arrangement in this case will not contain a certification provision.

Attached hereto and made a part hereof is this Neutral Referee's Determination of the terms and conditions of the arbitrated implementing arrangement which will be applicable to the transaction in this case. It is intended that this Determination dispose of all issues arising out of or related to this proceeding.

Wm. E. Fredenberger, Jr.

William E. Fredenberger, Jr.
Neutral Referee

DATED: August 8, 1990

ARBITRATED IMPLEMENTING ARRANGEMENT
OR AGREEMENT
between
ILLINOIS CENTRAL RAILROAD
INDIANA RAIL ROAD COMPANY
and their employees
represented by
UNITED TRANSPORTATION UNION

WHEREAS, the Indiana Rail Road company has filed a Verified Petition (ICC Finance Docket No. 31472), seeking an exemption for the acquisition of two segments of Illinois Central Railroad Company's rail line, the first a segment between MP X109.0 at Sullivan, Indiana, and MP X155.0 at Newton, Illinois, the second, a segment between MP B160.0 at Newton, Illinois and MP B204.3 near Browns, Illinois; and

WHEREAS, the ICC has imposed the employee protective conditions as set forth in New York Dock Railway Control - Brooklyn Eastern District Terminal, 360 ICC 60 (1979); and

WHEREAS, the Indiana Rail Road Company has filed a related Verified Notice of Exemption (ICC Finance Docket No. 31485) invoking the trackage rights class exemption for the acquisition of trackage rights over Illinois Central's line between MP X155.0 at Newton, Illinois and the wye connecting tracks to the Central Illinois Public Service Company facility at MP X160.0 at Lis, Illinois (a distance of five miles) and for the assumption of the Illinois Central's existing trackage rights over Indiana Hi-Rail Corporation's line between MP B204.3 at Browns, Illinois and MP B215.5 at Grayville, Illinois (a distance of 11.2 miles) and

WHEREAS, the ICC has imposed the employee protective conditions set forth in Norfolk and Western Railway Co. - Trackage Rights - BN, 354 ICC 650 (1978), as modified in Mendocino Coast Railway, Inc. - Lease and Operate, 360 ICC 653 (1980), and

WHEREAS, pursuant to Article I, Section 4 of the protective conditions the Carriers have notified their employees of their intent to consummate this transaction and the parties hereto desire to provide a method of implementing the transaction,

THEREFORE, it is hereby mutually agreed as follows:

1. The line to be acquired by the Indiana Rail Road will become part of their existing railway and will be manned and operated by employees of the Indiana Rail Road.

2. Indiana Rail Road's operation over territory acquired through the acquisition or assumption of trackage rights will be manned and operated by employees of Indiana Rail Road.

3. IC employees whose positions are abolished will remain with the IC and will exercise their seniority in accordance with the agreement.

4. The New York Dock II protective conditions will be applied for the protection of all employees of the carriers signatory hereto adversely affected by the purchase described herein.

5. N&W (Mendocino) protective conditions will be applied for the protection of all employees of the carrier signatory hereto adversely affected by the trackage rights transaction described herein.

6. This agreement will be effective upon approval of the transactions by the ICC and will fulfill the requirements of Article I, Section 4 of the protective conditions.

AGREEMENT
between
ILLINOIS CENTRAL RAILROAD
and its employees represented by the
UNITED TRANSPORTATION UNION

This refers to the agreement Implementing the sale of a portion of the Illinois Central to the Indiana Rail Road Company identified in ICC Finance Docket 31472 and related trackage rights transaction identified in ICC Finance Docket 31485.

Pursuant to the imposition of the Protective Conditions, attachment "A," in these transactions the parties have agreed to the administration of the conditions as follows:

SECTION 1. SCOPE

This Agreement will cover all employees represented by the United Transportation Union, who are displaced or dismissed, either directly or by subsequent exercise of seniority, as a result of the sale.

SECTION 2. CHANGE OF RESIDENCE.

A. Any move required in excess of 30 miles from the point of employees' on and off-duty point shall constitute a change in residence.

B. It is understood that displaced employees required to move to continue employment, shall have the unqualified right to choose the positions they are qualified to perform which their seniority entitles them to, whether or not a change in residence is involved. Any change in residence as a result of such exercise of seniority will be considered as required under the conditions entitling the employees to the benefits of Sections 9 and 12.

SECTION 3. DISPLACEMENT AND DISMISSAL ALLOWANCE.

The displaced employee or dismissed employee allowance shall be determined by dividing by thirteen total compensation received and total time for which the employee was paid during the last twelve months preceding the transaction in which he performed compensated service, to produce the employee's average four-weeks compensation and average four-week time paid for during the test period. The allowance so determined shall be adjusted to reflect subsequent general wage increases.

SECTION 4. ADMINISTRATION

A. ADJUSTMENT PERIOD. An adjustment period shall be a four-week period encompassing two (2) two-week pay periods for which a displaced or dismissed employee may file c[illegible] for benefits

as provided in this agreement. The initial adjustment period and subsequent adjustment periods shall be determined as follows:

(1) For a displaced employee, the first adjustment period shall commence with the first pay period immediately following the date of such employee's displacement as a result of a transaction.

(2) For a dismissed employee, the first adjustment period shall commence with the first pay period immediately following the date such employee is deprived of employment as a result of a transaction.

B. DISPLACED EMPLOYEES.

(1) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules or practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a displacement allowance equal to the difference between the compensation received by him in an adjustment period in the position in which he is retained and the average four-week compensation received by him in the test period in the position from which he was displaced.

(2) If a displaced employee's compensation in his retained position is less in any adjustment period in which he performs work than his average four-week compensation to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of voluntary absences to the extent he was not available for service equivalent to the average four-week time paid for in the test period, but if in his retained position he works in an adjustment period in excess of his average four-week time paid for in the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position.

(3) If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position he elects to retain, he shall thereafter be treated as occupying the position he elects to decline.

(4) The potential earnings of yard and/or road assignments will be posted in $50.00 increments by the Carrier to be used as a guide for employees to evaluate seniority and compensation. Such information will be only for the guidance of protected employees and will not be construed as a guarantee that any assignment will earn the amounts specified. The principles in Question and Answer 8 of Attachment B to the May 9, 1973 Merger Agreement apply.

(5) The displacement allowance shall cease prior to the expiration of the protective period in the event of a displacer employee's resignation, death, retirement or dismissal for justifiable cause.

C. DISMISSED EMPLOYEES

(1) A dismissed employee shall be paid a dismissal allowance for each adjustment period as determined by Section 3 and Section 4(a)(2) of this agreement and continuing during his protective period.

(2) The dismissal allowance of any dismissed employee who returns to service with the company shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to the benefits of a displaced employee under Section 3 and Section 4(B) of this agreement.

(3) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined earnings in an adjustment period in such other employement, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount of which the dismissal allowance is based. For each adjustment period for which a dismissed employee makes claim, the employee shall furnish the company, along with the claim form hereinafter provided for, the earnings he received in employment other than with the company and the benefits received.

(4) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure without good cause to return to service after being notified in accordance with the working agreement, or failure without good cause to accept a comparable position which does not require a change of residence, for which he is qualified and eligible with the company after being notified, if his return does not infringe upon employment rights or other employees under a working agreement.

D. FURNISHING ALLOWANCE - CLAIM FORM - TIME LIMIT

(1) An employee who is of the belief that he/she is either a displaced employee or a dismissed employee and who files written request, with the Superintendent will be furnished a statement of test period earnings displacement allowance or dismissal allowance as the case may be.

(2) Employees filing claims for Dismissal or Displacement allowances shall do so on the claim form to be provided by the company. The claim form shall be submitted in duplicate by the employee to the designated division offices, who shall date and initial one copy of the form and return it to the employee promptly, in a period not exceeding ten days. Claims not filed within ninety (90) calendar days following the last week of the month for which claim is made will be barred, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims. If claims are to be disallowed or modified, the employee will be notified in writing, with the reasons indicated, and with a copy to the Local Chairman. Claims which are timely filed and which are not disallowed or modified within ninety (90) calendar days after receipt shall be considered valid and granted, but this shall not be considered as a precedent or waiver of the contentions of the company with respect to other similar claims. Claims which are disallowed and modified need not be handled with the Superintendent, but instead may be appealed directly by the General Chairman to the Director of Labor Relations, such appeal to be made within ninety (90) calendar days after date of the letter of declination to the employees. If the Director does not deny the claim within ninety (90) calendar days after receipt, it shall be considered valid and settled accordingly. Failure of the General Chairman to appeal or of the Director to deny the claim within the specified time shall not constitute a precedent or waiver of contentions as to other similar claims. If a claim is denied by the Director, it may be submitted, within a period of one year from the date of denial, to a Special Board of Adjustment as provided in the Railway Labor Act, as amended. Such one year period may be extended by agreement.

SECTION 5. ELECTION OF PROTECTION

A. Nothing in this agreement shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under any existing job security or other protective conditions or arrangements. How-

ever, if a protected employee is otherwise eligible for protection under both this agreement and some job security or other protective conditions or arrangements, such employee shall elect between protection under this agreement and protection under such other arrangement and, for so long as he continues to be protected under the agreement which he so elects, he shall not be entitled to any protection or benefit (regardless of whether or not such benefit is duplicative) under the arrangement which he does not elect. However, after expiration of the arrangement he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of his protective period under that agreement.

B. An employee entitled to select between the benefits under this agreement and such other protective arrangement to which he may also be entitled shall make such selection within thirty (30) days after the date he is furnished his test period compensation statement required in Section 4(D)(1)

SECTION 6.

Carrier will, upon request, provide employees who are displaced as a result of the sale, including those who are involved in the chain of displacements the positions he can hold at other terminals in accordance with his seniority.