In the Matter of Arbitration

CSX Transportation, Inc.	)	
	)	New York Dock Protective
vs	)	Conditions
	)	
Sheet Metal Workers International Association	)	ICC Finance Docket 30053 (Mayes)/28905
	)	

Question

Is Sheet Metal Worker H. F. Mayes, who transferred from Louisville, Kentucky to Huntington, West Virginia on September 1, 1987 entitled to a separation allowance pursuant to Section 7 of the New York Dock Conditions as a result of being furloughed on November 16, 1988?

Background

The Interstate Commerce Commission (ICC) issued a decision in Finance Docket 28905 on September 25, 1980 whereby it approved control by CSX Corporation of rail carriers which were subsidiaries of the Chessie System, Inc. and of the Seaboard Coastline Industries, Inc. By so doing the ICC imposed protective conditions for employees working for these corporations as set forth in New York Dock Railway Control - Brooklyn Eastern District, 350 I.C.C. (1979). The latter are now generally known in the railroad industry as the New York Dock Conditions. After additional filings with the ICC (Finance Docket 30053) which included the Louisville and Nashville Railroad Company (L&N) in 1982, as well as merger of this carrier with the Seaboard

Coastline Railroad Company (SCL) later in that same year, all of these merged and combined transportation companies assumed, in 1986, the corporate name of CSX Transportation, Inc. (CSXT).

Closure of the South Louisville Shop

In February of 1987 the Carrier served notice of its intent to close the South Louisville heavy repair facility and transfer the work formerly done there on the former L&N to the former C&O's Huntington Locomotive Shop at Huntington, West Virginia. The notice, originally sent out to the thirteen Organizations representing employees at South Louisville on February 9, 1987, in accordance with provisions found in Article I, Section 4(a) of New York Dock, was amended in detail by second notice dated February 27, 1987. That Notice stated, in pertinent part, the following:

> "...the heavy repair shop of CSX Transportation, Inc. at South Louisville Shop, Louisville, Kentucky will be closed and that locomotive heavy repair work will be transferred to the Chesapeake and Ohio Railway Company's Huntington Locomotive Shop, Huntington, West Virginia and coordinated with such work presently being performed at Huntington under the C&O Shop Crafts Agreement".

The transfer was to take place in varying stages and was to begin about June of 1987 and be completed in about one year. A similar notice was issued with respect to coordinations and transfer of work to shops at Corbin, Kentucky and Waycross,

Georgia, but these are not of concern to this Committee dealing with the specifics of this case before it.

The Implementing Agreement

An Implementing Agreement was signed between the Carrier and this craft in May of 1987 which dealt with various aspects of transfers by members of this craft to both Huntington and Corbin. Again, the applicability of this Agreement, as well as its sidebar letters, pertinent to this case only apply to Huntington. This Agreement contains a variety of provisions and it is part of the record. Of interest here is that it stated a schedule of when positions at Huntington would be bulletined prior to the transfer of work, that employees would have the opportunity to bid on the positions and that such would be done in accordance with position held by bidding employees on the seniority roster. If there were insufficient bidders to fill the Huntington positions, they would be assigned to employees at South Louisville in reverse seniority order. If members of the craft did not want to bid on the Huntington positions they could take a voluntary separation in accordance with provisions of sidebar letter No. 6 attached to the Implementing Agreement. Certain provisions of this sidebar letter are of sufficient importance with respect to details of this case to require that they be reproduced verbatim in the deliberations of this

Committee and they state the following, in pertinent part:

.....

1. Voluntary separation allowances will be offered to SMW-represented employees who are regularly assigned to positions in the South Louisville Shop pursuant to the following terms and conditions.

2. Employees referred to in Section 1 above desiring to be considered for a voluntary separation allowance shall submit application on a form, copy attached, to be provided by the Carrier no later than five (5) calendar days prior to the advertisement of positions in connection with the first phase of this transaction.

   .....
   .....

3. Effective with the implementation of each separate phase of this transaction, applicants for voluntary separation allowances shall be awarded the available voluntary separation allowances at that particular time in seniority order; however, if there are not sufficient voluntary employees for the separations available from the list of those who applied, then employees who initially applied for voluntary separations will be required to accept the voluntary separations in inverse seniority order.

4. The amount of voluntary separation allowance offered to employees will be $38,000 and eligible employees who are at least 57 years of age (or who will become age 57 within the calendar year in which voluntary separation allowance is available) will also receive special insurance provided by the Company along the lines of that currently provided eligible employees under Travelers Insurance Company.....

5. Voluntary separation allowances will be paid within thirty (30) days from the date the employee is notified of the award.....

6. Applications for voluntary separation allowances shall be irrevocable. When applications are awarded, the payment of any separation allowance granted pursuant to the terms of this Agreement will be contingent upon the affected employee executing a voluntary resignation agreement and release form.

7. The maximum number of separations authorized by this Agreement is the difference between the number of positions abolished at South Louisville and the number established at the location(s) to which the work is being transferred.

.....

For various reasons, the Claimant was not one of the Sheet Metal Workers taking a voluntary separation allowance immediately after the coordination, but rather exercised seniority to transfer to Huntington from South Louisville. He thus became subject to provisions and protections of the Implementing Agreement of 1987 dealing with displacement allowances, and by that fact was also subject to Section 5 of New York Dock which deals likewise with Displacement Allowances. Under the Implementing Agreement the Claimant received, as a displaced employee, moving allowance assistance, an allowance as percent of the value of his home, and a guaranteed Test Period Average (TPA) guarantee. The latter protection terminates in August of 1993. The Claimant worked at Huntington as a Sheet Metal Worker until November 16, 1988. On that date the Claimant and thirty-four (34) other Sheet Metal Workers were furloughed at Huntington. This was part of a larger force reduction by the Carrier which included system-wide, sixty-eight (68) members of his craft, as well as the furlough of members of other crafts including the electrical workers and machinists who were represented by their respective Organizations. The day after he was furloughed the Claimant sought protections under Section 7 of New York Dock by means

of the following correspondence to the Carrier. For the record this correspondence is included in toto in the record and conclusions of this Committee:

.....

"I, H.F. Mayes 182940S.M.W., being transferred from the South Louisville shops, Louisville, Kentucky to Huntington Locomotive shops, Huntington, W.V. on September 1, 1987 under agreement 9-103-87 Implementing Agreement between CSX Transportation, Inc. and the Chesapeake and Ohio Railway Company and their employees represented by the Sheet Metal Workers' International Association do hereby seek under the protection of the New York Dock Agreement Appendix III # 7 separation allowance in accordance with Section 9 of the Washington Job Protection Agreement of May 1936..."

The contention by the Carrier, prior to the furlough of the Claimant at Huntington, was that force reductions which were taking place were not related to the coordination and transfer of work from South Louisville to this and other locations, but that the force reduction was due to a decline in business. Whether that is true or not is not before this Committee and this question, in fact, as referenced a bit later in this Decision, was submitted to another Committee for examination. That Committee concluded that the force reductions at Huntington and the original transaction which took place at South Louisville were not under aegis of cause and effect and that the furloughed Sheet Metal Workers at Huntington did not, therefore, have New York Dock protections. The Sheet Metal Workers to that case were fellow workers of the Claimant to this case. Because

the particular theory proposed by the Claimant here relative to his proposed protections under New York Dock diverged from the one proposed in that earlier case cited in the immediate foregoing, he was not part of the class action.

Pertinent Language from New York Dock

The Claimant went to Huntington as a displaced employee under Section 5 of New York Dock. After working there about fourteen (14) months, he filed for protections under Section 7 of New York Dock and effectively sought to resign and receive a lump sum separation allowance as outlined in the Implementing Agreement, pertinent sidebar letter, which has already be cited in the foregoing. As noted, the Claimant attempted to do so the day after he was furloughed by the Carrier which alleged drop in business. The language of New York Dock applicable to this case is the following:

> Section 5.
>
> Displacement Allowance - (a) So long after a displaced employee's displacement as he is able, in the normal exercise of his seniority rights under existing agreements, rules and 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 monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.
>
> Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his

displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period), and provided further, that such allowance shall also be adjusted to reflect subsequent general wage increases.

.....

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

Section 6.

Dismissal Allowances - (a) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the transaction. Such allowance shall also be adjusted to reflect subsequent general wage increases.

.....

Section 7.

Separation Allowance - A dismissed employee entitled to protection under this appendix, may, at his option within 7 days of his dismissal, resign and (in lieu of all other benefits and protections provided in this appendix) accept a lump sum payment computed in accordance with Section 9 of the Job Protection Agreement of May, 1936.

Position of the Parties

After the Claimant filed for a separation allowance under Section 7 of New York Dock the issue arose with respect to whether he had filed his request with the proper Carrier officer. Such procedural point is not determinative of the outcome of the Committee'd Decision in this case and is treated accordingly. In denying the request, however, the Carrier's Director of Labor

Relations responded as follows:

> "Investigation reveals that Mr. Mayes was identified as an affected employee during the Louisville - Huntington transfer, and as a result he was eligible for either a dismissal allowance or a displacement allowance; however, at the time he was affected Mr. Mayes elected to transfer to Huntington and has a guarantee of $2,456.48 which expires August 31, 1993.
>
> "Subsequent to his transfer to Huntington, Mr. Mayes was furloughed and then requested a separation, for which he was ineligible, as he had already made his election at the time he was affected by the Louisville - Huntington transfer. Under the transfer Mr. Mayes was identified as a displaced employee, permitted to transfer, and provided a guarantee; he cannot now elect to be a dismissed employee under the ...implementing agreement".

In later correspondence the Carrier advises the Organization that with respect to this case it had "not met (the) burden of proof that the Claimant was furloughed because of any coordination, consolidation or transfer of work,.." and that contentions related to causal nexus between the Claimant's furlough at Huntington and the South Louisville-Huntington transaction are without foundation in evidence.

In reponse to these reasons provided by the Carrier for denying the separation allowance requested by the Claimant the Organization argues as follows. First of all, the Organization argues that the Claimant originally went to Huntington as a "displaced employee" and was not, therefore, "entitled to separation allowance" in 1987 at the time of his transfer. But when he was furloughed after the time spent in Huntington he became then a "dismissed employee" and at that time was eligible for Section 7 protections under New York Dock. As the Organization put it:

> "Mr. Mayes was not eligible for a separation allowance until his furlough of November 16, 1988....(and)... (w)hatever money might have been offered to Mr. Mayes before his transfer to Huntington, it in no way was a separation allowance as so understood by New York Dock".

In final correspondence to the Carrier before this case was ultimately brought to arbitration, the General Chairman of the Organization states the following:

> "Mr. Mayes never had a choice of being dismissed or displaced when he went to Huntington from Louisville.... If (the Carrier) disagrees (with this) I challenge the Carrier to show where or how Mr. Mayes could have had a dismissal allowance afforded him when he left Louisville...".

Findings

The argument that the furlough of the Claimant in November of 1988 was proximately caused by the transaction of South Louisville-Huntington which started in 1987 has already been dealt with on this property, with other Claimants who were fellow Sheet Metal Workers of this Claimant. This Committee has closely studied the conclusions and rationale of the Arbitration Committee's Decision issued June 6, 1990 in Sheet Metal Workers Robert Cecil et al. and does not find the conclusions of that Committee to be in palpable error. That Decision, based on arguments found in considerable arbitral precedent, concluded by reference to such precedent that:

> "Before an employee is entitled to benefits...there must be a reasonably direct causal connection between the transaction and the injury sustained; in other words the transaction must be the proximate cause of the injury...If an employee is dismissed or displaced for reasons not connected with the transfer he is not entitled to the benefits".

Applying such "standards" to the facts of the situation at Huntington after the transfer from South Louisville the Committee concluded that the Organization "failed to meet its burden of persuasion in (that) case". Since the Claimant to this case falls in exactly the same parallel situation as the Claimants to that earlier case, the conclusions of this earlier arbitration Decision apply equally to him.

That having been established, the Committee in this case must now turn to a slightly different line of offense used by the Organization here. By its reasoning, the Organization implies that the Claimant always wanted to be a "dismissed" employee, even at South Louisville with benefits of Section 7 of New York Dock which accrue to such status, but he effectively never had the chance. The Organization does not deny that the Claimant was a "displaced employee" in 1987. Of course, such cannot be denied since documentation clearly before the Committee in the record shows that Claimant's place on the seniority roster behind fellow Sheet Metal Worker Pierson and before H.D. Cheatham as one of the employees involved in the transfer from South Louisville to Huntington. According to the Carrier in arguments before the Neutral Member of this Committee, there were no dismissals at South Louisville among this craft. The employees involved took benefits either under Section 5 or Section 7. The Claimant to this case fell under Section 5. Why? Because of Section 7 of the Implementing Agreement. The Claimant's place on the seniority roster did not permit him to avail himself of Section 7 New

York Dock privileges. The question before this Committee, which is the precise one proposed by the Organization now, is whether the Claimant can change from Section 5 to Section 7 New York Dock protections after he had opted for the prior one and then suffered furlough for reasons which might well be viewed as beyond the aegis of both the Carrier and the Organization? In other words, can the Claimant engage in a variant of double-dipping because of changed circumstances at Huntington which led to his furlough? The answer to that is that the language of New York Dock, as well as that of the Implementing Agreement, do not permit such double privileges.

Section 7 of New York Dock clearly references "dismissed" employees. But only in the context of a transaction. Under the South Louisville-Huntington transaction, the Claimant opted for "displaced" status. Unfortunately, the Claimant's choices, at the time of the transaction, were limited. But this limitation cannot serve as grounds for going beyond the perimeters of what all employees under both the New York Dock and the Implementing Agreement enjoyed when the transaction took place in the first place in 1987, and into 1988. At the time of the transaction the Claimant, as a displaced employee, garnered and up to the time of his furlough at Huntington, was garnering certain financial benefits with respect to moving costs, housing allowance, and a TPA guarantee. When the benefits of his displacement status temporarily ceased because of his furlough the Claimant had no rights under language of either New York Dock or the Implementing

Agreement to then arbitrarily change his status.

It is clear from the language of New York Dock that an employee becomes, at the time of a transaction, either a displaced or a dismissed employee. An employee cannot become both in whole or in part. Likewise the benefits accruing to one and the other status is "either/or". To conclude otherwise, in the estimation of this Committee, would completely break down the logic of New York Dock, and practically speaking would produce what arbitral precedent in this industry calls the "pyramiding" of benefits (See, for example, Public Law Board 2224, Award 3). The Carrier has proffered to this Committee a number of earlier Decisions dealing with duplication of benefits, including PLB 2224, Award 3 cited in the immediate foregoing. These have been studied carefully by the Neutral Member of this Committee and while the facts of those cases (as well as the particulars of the arbitrarion arrangements) differ, the basic principle involved in this case with respect to "pyramiding", "duplication" or what we have called here "double dipping" with respect to benefits under protective agreements is upheld. Suffice it for this Committee to cite as additional support of its conclusions here the Decision, in part, reached by the Committee in Denver Union Terminal vs. Brotherhood of Railway, Airline and Steamship Clerks in 1973 which dealt with a situation sufficiently parallel with the instant one to provide reasonable guidance. Relative to one of the issues dealt with by that case it was concluded, in

pertinent part, that:

> "...were (the Committee) now to find that, in addition to these displacement allowances, the (Claimants) are also entitled to the separation allowance that they would have been paid had they been able to opt for and had opted for it, we would be finding in effect that they are to receive more in benefits than the separation allowance....

Decision

On basis of the record as a whole, the Committee must conclude that the answer to the Question posed to it must be answered in the negative: Sheet Metal Worker H. F. Mayes is not entitled to a separation allowance pursuant to Section 7 of the New York Dock Conditions as a result of being furloughed on November 16, 1988.

For the Arbitration Committee

Edward L. Suntrup, Neutral Member

Robert H. Melotti
Carrier Member

Richard P. Branson
Employee Member

Date: November 12, 1990

Baltimore, Maryland