ARBITRATION BOARD

In the Matter of the Arbitration Between:	)	
TRANSPORTATION-COMMUNICATIONS INTERNATIONAL UNION,	)	Pursuant to Article I, Section 11 of the New York Dock Conditions
Organization,	)	
and	)	
CSX TRANSPORTATION, INC.	)	
Carrier.	)	OPINION AND AWARD

Hearing Date: August 28, 1990
Hearing Location: Jacksonville, Florida

MEMBERS OF THE BOARD

Employees' Member: W. M. Flynn
Carrier Member: J. P. Arledge
Neutral Member: John B. LaRocco

QUESTION AT ISSUE

1. Did Carrier violate Article I, Section 5, of the "New York Dock" Conditions when beginning January, 1988, it denied H. R. Wetherington a monthly displacement allowance?

2. If the answer to the above is in the affirmative, shall Carrier, beginning January, 1988 and each subsequent month, be required to pay Mr. Wetherington a monthly displacement allowance as provided by "New York Dock" Conditions?

Carrier File No. 6-(89-943)
Organization File No. SCL-14.324(7)

OPINION OF THE COMMITTEE

I. INTRODUCTION

The Carrier is a large rail system consisting of the former Seaboard System Railroad [including the Louisville and Nashville Railroad and the Seaboard Coast Line Railroad (SCL)], the Baltimore and Ohio Railroad, and the Chesapeake and Ohio Railway. To protect employees affected by the various acquisitions and mergers, the Interstate Commerce Commission imposed the employee protective 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 Carrier pursuant to the relevant enabling statute. 49 U.S.C. §§ 11343, 11347.

This Arbitration Committee is duly constituted under Section 11 of the New York Dock Conditions.[1] At the Neutral Member's request, the parties waived the Section 11(c) forty-five day time limitation for issuing this decision.

II. BACKGROUND AND SUMMARY OF THE FACTS

During 1987 and 1988, the Carrier consolidated its train and engine crew calling functions. It transferred crew dispatching work from numerous field offices to a centralized Crew Management Center (CMC) in Jacksonville, Florida. The Carrier commenced the

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[1] Since all the sections pertinent to this case appear in Article I of the New York Dock Conditions, this Committee will only cite the particular section number.

consolidation by initially transferring crew calling work and crew callers from former SCL points to Jacksonville, also an SCL point, under the auspices of an implementing agreement negotiated pursuant to Article III of the amended Job Stabilization Agreement. More particularly, on July 22, 1987, the Carrier notified the Organization of its intent to relocate crew dispatching work from Tampa, a point on SCL Seniority District 8, to Jacksonville, a location on SCL Seniority District 7. Claimant moved with the crew calling work and, when he started performing service at the Jacksonville CMC on September 28, 1987, Claimant's seniority was dovetailed into District 7 in compliance with the implementing agreement.

In January, 1988, Claimant was displaced from his CMC position. He elected to exercise his seniority to bump a junior employee from a position in Tallahassee, Florida, although Claimant could have claimed several District 7 positions in Jacksonville.

As the Carrier gradually progressed toward centralizing its crew dispatching functions at the CMC, a dispute developed between the Organization and the Carrier over whether or not the entire consolidation constituted a New York Dock transaction. Without prejudice to either party, the Carrier and the Organization resolved their disagreement in Side Letter No. 1 attached to a New York Dock Implementing Agreement effective April 12, 1988. The third and fourth paragraphs of Side Letter No. 1, dated March 17, 1988, provide:

> This will serve to confirm, however, that without prejudice to the position of either party and with the understanding that this disposition will not be cited in the handling of any other matter whatsoever, the Carrier is agreeable to granting those employee previously affected by the implementation of these operations the option of electing "New York Dock" employee protective benefits and conditions, in lieu of those employee protective conditions presently applicable.
>
> In connection with above this confirms our understanding and agreement that SCL clerical employees previously affected by the transfer of crew dispatching work from SCL District Nos. 4, 5, 6 and 8 to District No. 7 at Jacksonville, Florida will be afforded New York Dock protective benefits retroactive to the date of the transfer of work from the respective specific locations.

In Side Letter 3, appended to the same Implementing Agreement, the parties established new Seniority District No. 26 exclusively encompassing employees at the CMC. District No. 26, which became effective April 1, 1988, was carved out of District 7 and will endure for a minimum of three years.

On December 12, 1988, the Carrier sent Claimant an election of protective benefits form. A few days later, Claimant selected New York Dock benefits. His monthly protective entitlement amounted to $3,432.76.[2]

III. THE POSITIONS OF THE PARTIES

A. The Organization's Position

The language of Side Letter 1 is clear and unambiguous. Side Letter 1 unequivocally extended New York Dock protective coverage, without exception, to all employees affected by the transfer of crew dispatching work. Claimant was clearly affected

[2] Claimant's test period average earnings included a substantial amount of overtime compensation.

inasmuch as he moved from Tampa to Jacksonville. In doing so, he relinquished his District 8 seniority and assumed a position in the CMC, at the time, part of District 7. The Carrier now wishes to add a condition to Side Letter 1 which would restrict the coverage of New York Dock conditions to those employees who remained in the CMC. Side Letter 1 does not contain any such limitation and this Committee lacks the authority to add to the terms of the Implementing Agreement.

Since Claimant was entitled to New York Dock benefits under Side Letter 1 and because the Carrier's consolidation of the CMC constituted a transaction, his protective period does not terminate until either the expiration of six years or the occurrence of one of the events listed in Section 5(c) of the New York Dock Conditions. Exercising his seniority to another position on his seniority district as a result of a displacement is not among the events specified in Section 5(c).

If the Carrier is concerned that Claimant's earnings will never exceed his guarantee, the Carrier's remedy is to offset his New York Dock benefits to the extent permissible under Section 5(b) rather than arbitrarily terminating Claimant's protective status.

B. <u>The Carrier's Position</u>

When they formulated Side Letter 1, the parties intended to extend New York Dock protection only to CMC employees. Stated differently, the parties did not intend for employees who, of their own volition, left positions at CMC to gain access to New York Dock protective benefits because such employees were not

truly harmed by the consolidation of crew dispatching work. The purpose of Side Letter 1 was to insulate employees performing crew dispatching functions from any adverse consequences flowing from the consolidation. Claimant not only left the CMC, but he also voluntarily exercised his seniority to a faraway point despite being able to displace to several Jacksonville positions where he could maximize his earnings. If Claimant had remained in the CMC, he would, in all probability, have earned more compensation each month than his New York Dock monthly protective guarantee.

The Carrier mistakenly sent Claimant a notice asking him to select from among various protective arrangements, including the New York Dock Conditions. This inadvertent error is insufficient to impose on the Carrier the onerous burden of paying Claimant lucrative protective benefits for six years. Certainly, the election of benefits form was not tantamount to a binding contractual obligation.

In sum, if this Committee awards Claimant benefits under the New York Dock Conditions, Claimant will gain a windfall even though he was not detrimentally affected by a New York Dock transaction and any reduction in earnings he suffered subsequent to January, 1988, is traceable solely to his voluntary seniority move to Tallahassee.

IV. DISCUSSION

Before we may consider extrinsic evidence such as the intent of the parties, this Committee must examine the express language

utilized by the drafters of Side Letter 1. The language patently covers all employees transferring into the CMC and conversely, the language does not even suggest that any employees transferring to the Jacksonville CMC would be precluded from electing benefits under the New York Dock Conditions. The fourth paragraph of the Side Letter specifically refers to the transfer of crew dispatching work from SCL District No. 8 to District 7. Since Claimant transferred with the work from Tampa to Jacksonville, he conformed to the only express condition set forth in Side Letter 1. Also, in the fourth paragraph of Side Letter 1, the parties provided for the retroactive application of protective benefits knowing some employees had transferred to the CMC before the creation (on April 1, 1988) of District No. 26. The Carrier is improperly urging this Committee to add a proviso to Side Letter 1 which denies an employee access to New York Dock benefits if the employee left the CMC before April 1, 1988. If the parties had wished to include only those employees still remaining in the CMC on the effective date of Seniority District 26, they could have easily written such a restriction into Side Letter 1. The words "so long as the employee remains in the CMC" do not appear in Side Letter 1. This Committee may not add to or rewrite the provisions of Side Letter 1. Since the language in Side Letter 1 is clear and unambiguous, we must give effect to its express terms without inquiring into any extrinsic circumstances.

The Organization rightly points out that absent the occurrence of an event enumerated in Section 5(c) of the New York

Dock Conditions, Claimant has a continuing entitlement to a displacement allowance for the duration of his protective period.

Next, the Carrier fears that Claimant may reap a windfall. According to the Carrier, Claimant's New York Dock guarantee will far exceed his earnings derived from the Tallahassee position.[3] However, the Carrier has not brought forward any evidence showing that Claimant was aware that he would receive a New York Dock displacement allowance when he exercised his seniority to Tallahassee. Claimant exercised his seniority in January, 1988, which was more than two months before the parties extended New York Dock benefits to employees transferring into the CMC. As of January, 1988, the Carrier took the position that the transfer of crew calling work from Tampa to Jacksonville was not a New York Dock transaction. The record does not contain any evidence that Claimant manipulated his job moves to vest himself with New York Dock protection.[4]

There is a substantial dispute between the parties concerning the proper method of calculating Claimant's monthly displacement allowance. Their disagreement centers on what monies the Carrier may offset against the Claimant's allowance. Section 5(b) of the New York Dock Conditions permits the Carrier to treat Claimant as occupying an available position "...which

[3] The amount of Claimant's displacement allowance is irrelevant to his protective status. We already decided Claimant was entitled to New York Dock benefits pursuant to Side Letter 1.

[4] There is some doubt that, even if the Carrier had amassed evidence showing that Claimant exercised his seniority with the motive of obtaining a windfall, the Carrier's equitable argument would overcome the unequivocal language of Side Letter 1.

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 voluntarily elects to retain. The Carrier submits that inasmuch as Claimant voluntarily bid out to Tallahassee from the CMC, the Carrier may hold a CMC position against Claimant. On the other hand, the Organization asserts that Claimant is no longer able to exercise seniority into the CMC with the advent of new Seniority District 26. This Committee is not empowered to decide the amount of displacement allowance, if any, due to Claimant. The issues presented to this Committee are narrowly framed. We are relegated to deciding whether or not the Carrier improperly denied Claimant a monthly displacement allowance. Moreover, the issue of what position the Carrier may treat Claimant as occupying was not thoroughly briefed by the parties. Since the issue was not joined in the submissions, the parties obviously wanted to address the issue only if this Committee first decided (which it now has) that Claimant was entitled to New York Dock protective benefits beginning on the date the Carrier transferred crew dispatching work from Tampa to Jacksonville.

AWARD

1. The Answer to the First Question at Issue is Yes.

2. The Answer to the Second Question at Issue is Yes.

DATED: Dec 12, 1990

W. M. Flynn
Employees' Member

J. P. Arledge
Carrier Member

John B. LaRocco
Neutral Member