

ARBITRATION PURSUANT
TO ARTICLE I, SECTION 4
OF THE NEW YORK
DOCK CONDITIONS

PARTIES	UNION PACIFIC RAILROAD COMPANY)	
)	
TO	AND)	DECISION
)	
DISPUTE	BROTHERHOOD RAILWAY CARMEN OF THE)	
	UNITED STATES AND CANADA)	

QUESTION AT ISSUE:

How do Apprentices and Upgraded Mechanics who transfer to DeSoto and are dovetailed onto the Apprentice or Helper seniority rosters acquire a Journeyman seniority date in view of the different Agreements involving Apprentices and Helpers?

HISTORY OF DISPUTE:

By decision of October 20, 1982 in Finance Docket No. 30000 the Interstate Commerce Commission (ICC) authorized the merger of the Union Pacific RR. Co. (UP), the Missouri Pacific RR. Co. (MP) and the Western Pacific RR Co. (WP) effective December 22, 1982. The ICC imposed the protective conditions enunciated in New York Dock Ry.-Control-Brooklyn Eastern District Terminal, 354 ICC 399(1978) as modified by 360 ICC 60(1979) (New York Dock Conditions).

By letter of June 30, 1988 the Carrier served notice pursuant to Article 1, Section 4 of the New York Dock Conditions that it would transfer certain mechanical department forces and work then being performed at the Carrier's Omaha shops at Omaha, Nebraska on the old UP system to shops at DeSoto, Missouri, Palestine, Texas and North Little Rock, Arkansas on the old MP system. Included among the forces and work to be transferred were

forces represented by the Organization and the work they performed.

Further pursuant to Article 1, Section 4 the Carrier and the Organization entered into an implementing agreement on August 30, 1988 to become effective on September 1, 1988 providing in pertinent part that seniority would be dovetailed for those employees transferring from the Omaha shops to any of the three locations specified in the Carrier's notice. However, the parties could not agree what journeyman's seniority would be accorded to apprentices and helpers who transferred and thereafter qualified as journeymen. They agreed to arbitrate the issue when it arose and to modify the implementing agreement to conform to the arbitration award.

Apprentices L. W. Elliott and H. E. Benavente and Helper L. D. Phillips who were working at the Omaha shops submitted bids for jobs at DeSoto, Missouri. No helper or apprentice working at Omaha bid a position at any other location specified in the Carrier's notice. The three named transferees were dovetailed onto the respective apprentice and helper rosters at DeSoto.

The transfer of the three named individuals raised the issue of what journeyman seniority date eventually would be accorded them. The UP agreement applicable at the Omaha shops and the MP agreement applicable at DeSoto contain different provisions for apprentices and helpers to attain a journeyman seniority date. Accordingly, the transfer of the three named individuals triggered the parties' previous agreement to arbitrate the issue.

The parties pursuant to Article 1, Section 4 of the New York Dock Conditions framed the question at issue and selected the undersigned as

neutral referee. A hearing was held in Reno, Nevada. The parties waived the time limit for rendering a decision specified in Article 1, Section 4(3).

FINDINGS:

At the outset it is appropriate to note that it is the function of a neutral referee under Article 1, Section 4 of the New York Dock Conditions to determine the conditions which will apply to any rearrangement of forces made necessary by a transaction. In this particular case the neutral referee must craft a rule to determine journeyman seniority for the carmen apprentices and helpers transferring from Omaha to DeSoto. As noted above the parties have agreed that Sections 4(a) and 7 of the parties' implementing agreement will be amended accordingly.

On the MP an agreement of January 31, 1973 accorded apprentices a journeyman seniority date after they completed 732 days training or worked as a mechanic for that period of time, retroactive 732 days. However, a subsequent agreement on the MP of September 17, 1980 provided that employees hired as apprentices after that date would receive a journeyman seniority date after training or working as a mechanic for a total of 757 days without retroactivity. Under the foregoing agreements helpers on the MP attained a journeyman carman's seniority date by working the requisite number of days as a mechanic, but helpers never received retroactivity. On the UP agreements of August 30, 1977 provided that both apprentices and helpers would attain a journeyman carman's seniority date after working as a mechanic or training for 732 days which date would be retroactive to

include days lost due to vacation, jury duty and personal and bereavement leave.

Distilled to its essence the question presented by the dispute in this case is whether the three transferees should attain a journeyman carman's seniority date under the UP agreements or the MP agreements. If they do so under the UP agreements all will serve a training or working period of 732 days and will receive limited retroactivity whereas MP employees must serve 757 days and receive no retroactivity. Accordingly, the transferees would receive a journeyman seniority date ahead of MP apprentices and helpers with lengthier service. If, on the other hand, the transferees attain a journeyman carman's seniority date under the MP agreements the results would be substantially different. L. W. Elliott would be subject to the January 31, 1973 agreement and, accordingly, would attain a journeyman date after completion of 732 days apprenticeship or working as a mechanic with 732 days retroactivity. However, H. E. Benavente would be subject to the September 17, 1980 agreement and thus would have to serve 757 days apprenticeship or work as a mechanic in order to receive his seniority date, and there would be no retroactivity. As a helper L. D. Phillips would have to work 732 days as a mechanic in order to attain journeyman status and would receive no retroactivity.

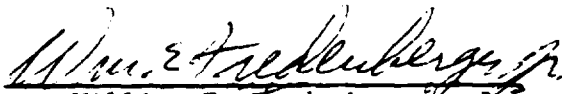
It is a fundamental principle that employees affected by a transaction should not be placed in a worse position with respect to their employment as a result of the transaction. The mere fact that seniority of UP and MP carman forces (journeyman, apprentices and helpers) is dovetailed is likely to result in a situation where at least some employees will be

placed in a worse position with respect to their relative standing on the seniority rosters. Such a result is inevitable in a transaction of this nature.

However, the goal of this proceeding should be to attempt to devise a solution to the problem which will result in the least amount of adverse effect upon the fewest number of employees.

If the transferees are subject to the MP agreements MP employees will be significantly disadvantaged by the fact that apprentice Elliott would receive 732 days retroactivity upon attaining journeyman status. Additionally, apprentice Benavente and helper Phillips would be disadvantaged by losing limited retroactivity applicable under the UP agreements. While it is true that MP employees will be disadvantaged somewhat if the transferees attain a seniority date under the UP agreements, by comparison any such disadvantage would seem to be substantially less than if the transferees attain seniority under the MP agreements. Additionally, if the transferees attain seniority under the UP agreements then the situation is no different than if the transaction had occurred at a time after the transferees had attained a journeyman seniority date.

Accordingly, attached hereto and made a part of this Decision is the determination which answers the question at issue.


William E. Fredenberger, Jr.
Neutral Referee

Dated: February 1, 1991

DETERMINATION

Apprentices and helpers transferring from Omaha, Nebraska to DeSoto, Missouri and dovetailed onto the apprentice and helper seniority rosters at DeSoto will acquire a journeyman seniority date in accordance with the agreements of August 30, 1977 between the Union Pacific Railroad Company and the Brotherhood Railway Carmen of the United States and Canada.