

ARBITRATION COMMITTEE

In the Matter of the)	
Arbitration Between:)	
)	
UNITED TRANSPORTATION)	Pursuant to Article I,
UNION,)	Section 11 of the New
)	York Dock Conditions
Organization,)	
)	
and)	I.C.C. Finance Docket
)	No. 31088
ILLINOIS CENTRAL RAILROAD,)	
)	Case No. 3
Carrier.)	Award No. 3
)	

Hearing Date: August 2, 1991
Hearing Location: Sacramento, California
Date of Award: September 30, 1991

MEMBERS OF THE COMMITTEE

Employees' Member: Bruce Wigent
Carrier Member: J. S. Gibbins
Neutral Member: John B. LaRocco

STATEMENT OF THE CLAIM

Claim that R. A. Williams is entitled to New York Dock protective benefits as a result of the Birmingham Line Sale.

OPINION OF THE COMMITTEE

I. INTRODUCTION

On May 9, 1991, the Interstate Commerce Commission (ICC) permitted the Illinois Central Railroad (Carrier) to sell 199 miles of its track running between Fulton, Kentucky and Haleyville, Alabama, to the Southern Railway (SOU). The purchase price was approximately \$38 million. Simultaneous with the line sale, the ICC granted the Carrier permission to discontinue 81 miles of trackage rights over the SOU and the Burlington Northern Railroad Company between Haleyville and Birmingham, Alabama. The ICC concurrently approved the SOU's acquisition of bridge trackage rights over the Carrier's line between Fulton and Centralia, Illinois, a distance of approximately 154 miles. These three transactions will be collectively referred to as the Birmingham Line Sale. [ICC Finance Docket No. 31088.]

To protect employees affected by SOU's purchase of the Fulton to Haleyville line, the ICC 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. To protect employees affected by the SOU's acquisition of trackage rights over the Carrier (to Centralia), the ICC imposed the employee protective conditions set forth in Norfolk and Western Railway - Trackage Rights - Burlington Northern, 354

I.C.C. 605 (1978); as modified by Mendocino Coast Railway, Inc. - Lease and Operate, 360 I.C.C. 653 (1980) on the Carrier. To protect employees affected by the Carrier's abandonment of trackage rights between Haleyville and Birmingham, the ICC imposed employee protective conditions set forth in Oregon Short Line Railroad Co. - Abandonment - Goshen, 360 I.C.C. 91 (1979) on the Carrier. Since these three separate employee protective conditions contain virtually identical provisions and because the sale was the predominant transaction, this Committee will refer only to the provisions of the New York Dock Conditions.

This Committee is duly constituted under Section 11 of the New York Dock Conditions in accord with a Letter Agreement dated May 29, 1991.¹ All interested parties were given proper notice of the hearing held on August 2, 1991. Under Section 11 of the New York Dock Conditions and Article III of the Arbitrated Implementing Agreement formulated under Section 4 of the New York Dock Conditions, this Committee has jurisdiction over the dispute and the parties herein.

The Birmingham Line Sale became effective on June 28, 1988.

II. BACKGROUND AND SUMMARY OF THE FACTS

Just five days before the Carrier sold the Birmingham Line, Claimant exercised his seniority to a Flagman's position on the freight pool service between Memphis, Tennessee, and Paducah,

¹ Inasmuch as all sections pertinent to this dispute appear in Article I of the New York Dock Conditions, this Committee will only cite the particular section number.

Kentucky (MP/PM). Two days later, on June 25, 1988, Claimant moved to the NC assigned freight pool service (Trains CN5/NC6) between Memphis and Fulton, Kentucky. On June 28, 1988, the day of the sale, Trainman D. E. Mays displaced Claimant, who exercised his seniority back to the Flagman's job in the MP/PM pool. D. E. Mays had been displaced at Jackson, Tennessee, a location on the Birmingham Line, and thus, Claimant was in the chain of displacements flowing from the transaction. In lieu of returning to the MP/PM pool, Claimant stayed in the NC Pool Service. He held sufficient seniority to roll J. E. Whitely, a junior employee in the MP/PM Pool. [See Award No. 5.] On July 1, Claimant was again displaced and he elected to exercise his seniority to another Flagman's turn in the MP/PM pool. For some unknown reason, Claimant voluntarily vacated his Flagman's position in the MP/PM pool on July 11, 1988, and marked up on the Brakemen's Extra Board.

When his earnings later dropped below his guarantee, Claimant filed for New York Dock protective benefits.

III. DISCUSSION

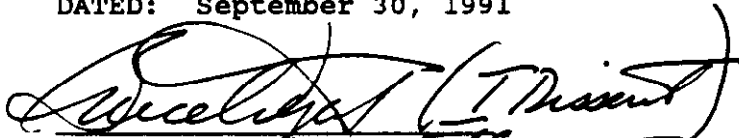
The facts in this case are similar to the facts underlying this Committee's Award No. 1. When D. E. Mays displaced Claimant on June 28, 1988, Claimant could have retained a position in the CN5/NC6 pool. Since Claimant was able to obtain a position with compensation equal to or greater than the compensation of the position from which he was displaced, Claimant was not placed in a worse position with respect to either his compensation or the

rules governing his working conditions. Moreover, it appears that Claimant initially passed over a Flagman's position on the MP/PM pool which paid more, on an hourly basis, than the NC pool. After a second displacement, Claimant returned to the MP/PM Pool but a short while later he went to the extra board. In conclusion, any loss of earnings was traceable to this voluntary seniority move. For the reasons more fully set forth in Award No. 1, we must deny this claim.


AWARD AND ORDER

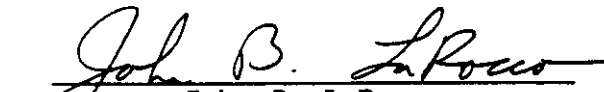
Claim denied.

DATED: September 30, 1991


Bruce Wigent
Employees' Member

attached to
Case #1


J. S. Gibbins
Carrier Member


John B. LaRocco
Neutral Member