

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. 4
Carrier.)	Award No. 4
)	

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 C. F. Smith 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

Claimant held a Flagman's position in regular freight pool service, working out of Centralia, Illinois, until June 26, 1988. On that date, Claimant voluntarily vacated the flagging job and obtained a Flagman's job handling Turn No. 1 on Piggyback Trains 50 and 51 running between Centralia and Cairo, Illinois. Two

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.

days later, a senior employee displaced Claimant, who then bumped a junior employee from the PB Turn No. 2 Flagman's position in the same assignment. The senior employee who had displaced Claimant had lost his job due to the elimination of trains stemming from the Birmingham Line Sale.

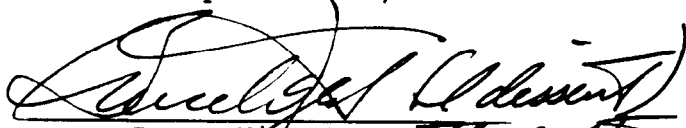
III. DISCUSSION

The facts in this case are similar to the facts underlying this Committee's Award No. 1. Although Claimant was in the chain of displacements flowing from a New York Dock transaction, he was able to obtain a position with earnings equal to or greater than the compensation of the position from which he was displaced. Indeed, Claimant stayed as a Flagman, working the same trains in precisely the same service. Thus, he was not placed in a worse position with respect to either his compensation or the rules governing his working conditions. For the reasons more fully set forth in Award No. 1, we must deny this claim.

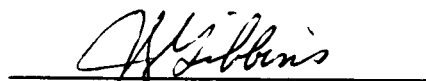
AWARD AND ORDER

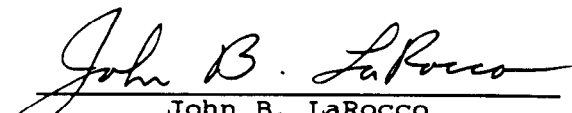
Claim denied.

DATED: September 30, 1991


Bruce Wigent
Employees' Member

*attached to
Case #1*


J. S. Gibbins
Carrier Member


John B. LaRocco
Neutral Member

ICC FINANCE DOCKET
No. 31088
ORGANIZATION DISSENTING OPINION
CASES 1, 3, 4, & 5

In the Matter of the
Arbitration Between:

UNITED TRANSPORTATION
UNION

and

ILLINOIS CENTRAL RAILROAD

In the instant case the the Carrier sold 199 miles of its line to the Southern Railway. This transaction is referred to as the Birmingham Line Sale.

To protect the employees who stood to be affected by the transaction the ICC imposed employee protective conditions as set forth in New York Dock-Control-Brooklyn Eastern District Terminal, 360 I.C.C. 60, 84-90.

Coincident with the transaction certain assignments were abolished and claimant was in the direct line of displacements occasioned by the transaction. Subsequently he requested a calculation of his monthly displacement allowance and the request was refused based upon the Carrier's contention that at the time of the displacement claimant did not mark to the highest paying assignment permitted by his seniority.

Thus the issue was joined and was ultimately brought to this arbitration board and wrongly decided.

One can not work with the arbitration process for very long without receiving awards that are displeasing. It is to be expected. But this case goes way beyond displeasing. So far that the Organization must file a written dissent in order that anyone reading these awards be immediately aware of our outrage.

In shamelessly adopting the ridiculous position of the Carrier in this case the so-called protective conditions imposed by the ICC to protect employees from the unfavorable

consequences of a transaction have been arbitrarily confiscated from a large class of employees who are adversely affected by the transaction. In so doing this Arbitration Board has strayed completely from the intent of ICC protective conditions.

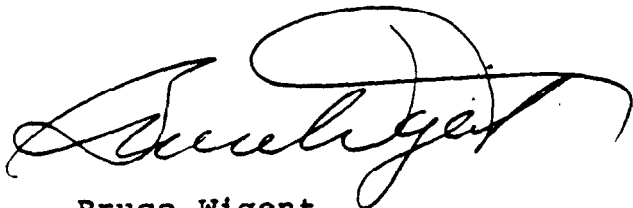
Properly applied all employees in the chain reaction of bumps occasioned by the transaction are identified as affected. They then apply for calculation of the amount of their displacement allowance. The Carrier rates the jobs as to anticipated earnings and employees are charged with the earnings of the highest paid job that their seniority entitles them to work. If an employee makes less than his guarantee he is adversely affected. In the event an employee chooses not to work this assignment he is charged only with the earnings of that job. But he is not completely barred from collecting anything if his earnings fall short of his guarantee amount.

There is a good reason for this. Even the most sophisticated are unable at the time of the transaction to predict the impact of a transaction. Therefore ICC protective conditions wisely provide a method to identify affected employees at the time of the transaction with the extent of the impact to be measured as the effects of the transaction become evident.

Under the scheme put forward by the Carrier and eagerly adopted by the majority of the Board in this case an employee displaced at the time of the transaction is expected to be clairvoyant and accurately guess what is the highest paying job. If he guesses wrong the entire purpose to the ICC protective conditions are voided.

Such an interpretation carries ICC protective conditions a long ways toward being useless to the very employees who are suppose to be protected. It only imposes a duty upon the Organization to pursue lost causes with the only beneficiaries, that elite and well paid few called upon to arbitrate these disputes.

It is hoped that as employees continue to pursue this obligatory type of arbitration we take care to select arbitrators more aware and more neutral.

A large, stylized handwritten signature in dark ink, appearing to read 'Bruce Wigent', is written over the typed name and title.

Bruce Wigent
Vice President
United Transportation Union