

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. 5
Carrier.	)	Award No. 5

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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 J. E. Whitely 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.<sup>1</sup> 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

On June 28, 1988, the day of the Birmingham Line Sale, Claimant held a regular Brakeman assignment in the through freight service pool between Memphis, Tennessee, and Paducah,

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<sup>1</sup> 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). The next day, Claimant voluntarily vacated the Brakeman's position and exercised his seniority to a Brakeman's position in the NC through freight pool, a lower paying job, between Memphis and Fulton, Kentucky. On July 4, 1988, Trainman J. W. Lee, displaced Claimant as a result of the Birmingham Line Sale. Claimant immediately exercised his seniority to a Brakeman's position on another turn in the NC Pool. Subsequently, on July 15, 1988, Claimant voluntarily marked up on the Brakemen's Extra Board at Memphis.

Claimant filed applications for his protective guarantee for various adjustment periods between April, 1989 and October, 1990.

### 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 emanating from a New York Dock transaction, he was able to obtain an identical position with precisely the same pay rate in exactly the same pool. Therefore, Claimant was not placed in a worse position with respect to either his compensation or the rules governing his working conditions. Any reduction in Claimant's compensation subsequent to July 15, 1988 was traceable to Claimant's voluntary decision to mark up on the extra board. 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

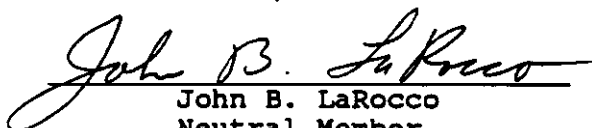


Bruce Wigent  
Employees' Member

*attached to  
Case #1*



S. S. Gibbins  
Carrier Member



John B. LaRocco  
Neutral Member