PUBLIC LAW BOARD NO. 5108

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION (C&T)

-and-

UNION PACIFIC RAILROAD COMPANY

Award No. 8
Case No. 8

STATEMENT OF CLAIM:

Claim of G. A. Haggard for New York Dock protection as a result of the implementation of the UP/MKT Agreement of November 1, 1989.

FINDINGS:

On May 13, 1988, the Interstate Commerce Commission (ICC), in Finance Docket No. 30,800, approved the acquisition of the Missouri-Kansas-Texas Railroad Company (MKT) and the Oklahoma, Kansas and Texas Railroad Company (OKT) by the Union Pacific Railroad Company (UP). New York Dock Conditions were imposed by the ICC. The Carrier served notice on the UTU on June 3, 1988 of its intent to effect the merger of the MKT into existing Union Pacific operations. Negotiations for an implementing agreement began on June 20, 1988. And such an agreement was reached on August 25, 1989. The merger took place on November 1, 1989.

The Claimant, Mr. G. A. Haggard, contends that he is entitled to New York Dock protective benefits as a result of this November 1, 1989 merger transaction.

On October 31, 1989, the day prior to the implementation of the

UP/MKT Merger, Mr. Haggard held an assignment on the extra board in Fort Worth. Subsequent to the merger, on November 1, 1989, Mr. Haggard was assigned to the extra board in Fort Worth.

The New York Dock Conditions define a displaced employee as follows:

> (b) "Displaced employee" means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

Because Mr. Haggard held the same position both before and after the transaction he cannot be considered a "displaced employee" as a result of the merger and as such he is not entitled to the benefits he seeks. Mr. Haggard was not placed in a worse position with respect to his compensation and rules governing his working conditions.

Mr. Haggard was erroneously certified by the Carrier as being adversely affected. However, once the mistake was discovered Mr. Haggard was removed from the list of employees with protected status. The Board recognizes the distress that this action caused Mr. Haggard, however, there is no legal basis to require the Carrier to continue his certification as being adversely affected. The Organization's arguments based on "estoppel" and "laches" are devoid of merit. No cases were cited whereby an arbitration panel has ever required a carrier to continue an employee's erroneous certification or benefits based on these arguments. We have considered all of the other contentions made by the Organization and we must conclude that no basis exists to find that Mr. Haggard is entitled to protection. We must deny this claim.

AWARD

Claim denied.

David P. Twomey
Chairman and Neutral Member

W. E. Biedenharn, Jr.
Organization Member

G. A. McIntosh
Carrier Member

DATED: Sept/Oct 1992