In the Matter of the Arbitration between:	Pursuant to Article I, Section 4 of the New York Dock Conditions
CONSOLIDATED RAIL CORPORATION AND MONONGAHELA RAILWAY COMPANY, Carriers,	ICC Finance Docket No. 31875
and	
UNITED TRANSPORTATION UNION(E), Organization.	**OPINION AND AWARD**

Hearing Date: September 24, 1992
Hearing Location: Pittsburgh, Pennsylvania
Date of Award: October 29, 1992

JOHN B. LaROCCO
ARBITRATOR
928 Second Street, Suite 300
Sacramento, California 95814-2278

STIPULATED ISSUES IN DISPUTE

(1) Does the Referee have the authority under New York Dock to determine whether the Conrail or the MGA Schedule Agreement will apply on the consolidated operation.

(2) If the answer to question (1) is yes, subsequent to the consolidation of the Monongahela Railway Company operations into Consolidated Rail Corporation, will the collective bargaining agreements applicable to Locomotive Engineers and Locomotive Firemen formerly employed by Monongahela Railway Company be:

(a) the collective bargaining agreements governing rates of pay and working conditions of Locomotive Engineers and reserve engine service employees on Conrail; or

(b) the collective bargaining agreements applicable to the employees on the Monongahela Railway Company prior to the consolidation?

OPINION

I. INTRODUCTION

On October 10, 1991, the Interstate Commerce Commission (ICC) approved the Consolidated Rail Corporation's application to merge the Monongahela Railway Company (MGA) into the Consolidated Rail Corporation (Conrail).[1] Consolidated Rail Corporation-Merger-Monongahela Railway, I.C.C. Finance Docket No. 31875 (Decision dated October 4, 1991). To compensate and protect employees affected by the merger, the ICC imposed the employee merger protection 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 Conrail and the MGA pursuant to the relevant enabling statute. 49 U.S.C. §§ 11343, 11347.

This arbitration is conducted pursuant to Section 4 of the New York Dock Conditions.[2] Pursuant to an agreement memorialized by an August 27, 1992 letter, the Carriers and the Organization appointed the undersigned as Arbitrator in this matter and stipulated to the issues in dispute which appear on the title page of this Opinion.

Both parties filed lengthy prehearing submissions. The Arbitrator entertained oral argument during the September 24, 1992 hearing. At the Arbitrator's request, the parties waived the thirty

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[1] The term "Carriers" in this Opinion refers to the MGA and Conrail.

[2] All sections pertinent to this case appear in Article I of the New York Dock Conditions. Thus, the Arbitrator will only cite the particular section number.

day time limitation, set forth in Section 4(a)(3) of the New York Dock Conditions, for issuing this Award.

II. BACKGROUND AND SUMMARY OF THE FACTS

The MGA, which consists of 162 miles of track in Pennsylvania and West Virginia, was, for many years, jointly owned by Conrail, the Pittsburgh and Lake Erie Railroad (now the Three Rivers Railroad) and, one of the predecessor companies of CSX Transportation, Inc. Ninety-nine percent of MGA's revenue traffic is generated from coal hauling originating at coal fields along MGA's line. In 1990, MGA interchanged eighty-three percent of its coal traffic with Conrail. Besides connecting with Conrail at the north end of West Brownsville, the MGA interchanges with the former Pittsburgh and Lake Erie Railroad at Brownsville Junction and with the CSX at Rivesville, West Virginia.

The MGA is divided into two divisions, west and east. Both divisions meet at Brownsville, Pennsylvania the northernmost point on the MGA. The east division follows the Monongahela River south to Fairview, West Virginia while the west division runs from Brownsville southwesterly through Waynesburg, Pennsylvania to Blacksville, West Virginia.

In 1990, Conrail purchased 100% of the MGA stock and on August 14, 1990, the ICC approved Conrail's application to acquire the MGA. Consolidated Rail Corporation-Control Monongahela Railway Company, ICC Finance Docket No. 31630 (Decided on August 14, 1990) Although the ICC imposed the New York Dock Conditions to protect any employees adversely affected by the acquisition, the Conditions were never

triggered since Conrail did not commence integrating the MGA into Conrail until after the October, 1991 merger.

Pursuant to written notice issued under Section 4 of the New York Dock Conditions, the Carriers notified the Organization, on July 3, 1992, of their intent to consolidate, unify, and coordinate all the facilities and operations of the MGA into the Conrail. The Carrier's notice contemplated that Conrail would completely subsume the MGA, that is, there would no longer be any MGA operations, services, or facilities. In sum, the MGA, as presently constituted, would go out of existence because the entire MGA would accrete into Conrail.

At a meeting held on May 13, 1992, the Carriers presented the Organization with a detailed explanation of the impending consolidation. To fully understand the breadth of the operational changes and the effect of these changes on MGA Engineers, the Arbitrator must initially relate how trains are currently operated over the MGA. Coal producers located along the MGA place car orders with the Conrail. Conrail train and engine crews deliver a train of empty cars to the MGA-Conrail interchange point at West Brownsville, Pennsylvania. MGA train and engine crews report to duty at Brownsville and thus, the empty coal trains frequently sit idle for up to three hours at Brownsville while the MGA crew members are reporting to their on duty point, and being transported to West Brownsville. The MGA crew operates the empty train to the coal producer for loading. Since all MGA crew members are compensated at yard rates, as if they are performing yard service, another MGA crew must relieve the

first crew during the loading operation to avoid paying costly overtime compensation to the first crew. The second crew completes the loading process and operates the train back to West Brownsville where it is interchanged with the Conrail. Under the Carriers' proposed consolidation every facet of current train operations will change substantially. The new on and off duty point for all crews will be Waynesburg, Pennsylvania, a more centralized point than Brownsville. Conrail will run empty trains, originating at either Conway Yard in Pittsburgh or Conemaugh Yard at Johnstown, through West Brownsville to either Waynesburg on the west division or Maidsville on the east division (apparently, crews reporting to duty at the new crew base at Waynesburg will be transported to Maidsville, which is reasonably close to Waynesburg). Since crews will take over the empty trains at Waynesburg, the Carriers predict that a single crew can deliver the empty train to the coal producer, load and return it to Waynesburg within eight hours. Moreover, the Carrier optimistically forecasts that some crews may be able to make two or more turns to some mines.

In addition to a substantial alteration in how trains will operate over the former MGA, many, if not all MGA support activities, will be integrated into similar activities performed on Conrail. Thus, supervision, train and crew dispatching, customer service, and other administrative functions will be totally integrated into Conrail's system wide or regional facilities which presently perform identical functions.

The parties met on May 27, 1992, to discuss the terms and conditions of a New York Dock implementing agreement. According to the Organization, MGA Engineers negotiated with the Carriers for only about thirty minutes because most of the day was spent on negotiations between the Carriers, and MGA Conductors and Trainmen.[3] Despite the short bargaining session, the Carriers and Organization, thereafter, reached a tentative agreement on all issues surrounding the Carriers' proposed consolidation of MGA operations into Conrail, except, the two issues presented to the Arbitrator. The parties deadlocked on whether the MGA Engineers should come under the collective bargaining agreement applicable to Locomotive Engineers on Conrail or remain under the MGA scheduled engineers' agreement.[4] The Carriers served the July 3, 1992 formal notice, under Section 4 of the New York Dock Conditions, to invoke arbitration. Throughout the handling of this dispute on the property, the Organization reserved the right to raise the threshold issue of whether or not this Arbitrator has the authority to determine which collective bargaining agreement will apply to the MGA Engineers subsequent to the coordination.

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[3] Negotiations between the United Transportation Union (C&T) and the Carriers were fruitful. On July 2, 1992, the UTU(C&T) and the Carriers entered into a New York Dock implementing agreement, which among other things provided that the Conductors and Trainmen would be placed under the collective bargaining agreement in effect between Conrail and the UTU(C&T). The MGA agreement applicable to Conductors and Trainmen was terminated.

[4] In anticipation of reaching an arrangement whereby the MGA engineers would come under the agreement applicable to Conrail locomotive engineers, Conrail and the Brotherhood of Locomotive Engineers entered into an implementing agreement, dated September 18, 1992, to cover the consolidation of train operations. The implementing agreement, permits MGA engineers to be governed by the agreement applicable to locomotive engineers on Conrail, and provides that Conrail Engine Service Seniority District E will be expanded to include the entire MGA property.

III. THE POSITIONS OF THE PARTIES

A. The Carriers' Position

The United States Supreme Court and the ICC have both interpreted the Interstate Commerce Act to permit an arbitrator to abrogate a collective bargaining agreements on rail properties effecting an ICC authorized merger.

The Interstate Commerce Act exempts Carriers from all laws necessary to carry out a merger transaction. 49 U.S.C. § 11341(a). In Norfolk Western Railway v. American Train Dispatchers, 111 S.Ct. 1156 (1991), the United States Supreme Court adjudged that the statutory exemption extends to all laws including a railroad's bargaining and agreement obligations under the Railway Labor Act. Recently, consistent with the Supreme Court's ruling, the ICC decided that a collective bargaining agreement cannot impede a railroad's implementation of an approved transaction. CSX Corporation-Control-Chessie System Inc. and Seaboard Coast Line Industries, 8 I.C.C. 2d 715 (1992). Thus, the ICC has firmly ruled that not only are arbitrators free to change provisions of collective bargaining agreements where those provisions impede an authorized merger but also, because the arbitrator is an extension of the ICC, the arbitrator is actually under a duty to abrogate collective bargaining agreements which impair implementation of a transaction. Norfolk Southern Corporation-Control-Norfolk and Western Railway and Southern Railway, 4 I.C.C. 2d 1080 (1988). Therefore, the MGA Schedule

Agreement must give way to the Carrier's necessity to effectuate the transaction.

Continuation of the MGA Schedule Agreement would not just impede, but would defeat the entire merger. The Scope Rule in the MGA agreement prevents Conrail engineers from manning trains beyond the current interchange point at West Brownsville. Unlike the Conrail collective bargaining agreement applicable to Engineers, the MGA agreement does not provide a reasonable and feasible method for the Carrier to establish a new terminal. Thus, Conrail would have to retain the inefficient West Brownsville terminal, more than 25 miles from the proposed Waynesburg crew base. Similarly, under the Carriers' proposed operational arrangement, all engineers will report to Waynesburg, regardless of whether the engineer will be operating on the east or west division, yet the MGA agreement calls for maintenance of extra lists at both South Brownsville and Maidsville. The MGA agreement continues to recognize the craft and class of firemen and so displaced engineers can presumably hold riding firemen positions.[5] On Conrail, the firemen's craft has been eliminated and in its stead, the UTU(E) and Conrail created the reserve engine service employment program. To establish interdivisional service on the MGA, the Carriers' must follow the negotiation and arbitration provisions of Article IV of the October 31, 1985 National Agreement. An arbitrator could impose conditions so onerous that Conrail would be precluded

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[5] There are 32 active Engineers on the MGA. Conrail proposes that MGA Engineers be governed by the collective bargaining agreement covering Conrail Engineers and that those employees listed on the MGA Firemen Roster, when not working as Locomotive Engineers, would be governed by the agreement between Conrail and the UTU(E) which covers the reserve engine service craft.

from instituting interdivisional service from Conway yard to Waynesburg. Under the Conrail agreement, if certain conditions are met, Conrail may unilaterally institute interdivisional service. Clearly, the Carriers could not achieve the goals of the transaction if the MGA agreement remains in effect. Therefore, concomitant with his ICC delegated authority, the Arbitrator must place the MGA Engineers under the applicable Conrail agreements.

Under the controlling carrier principle, the Conrail agreement applicable to Locomotive Engineers should apply to MGA Engineers subsequent to the transaction because MGA work and operations will have been completely integrated into Conrail. Railway Yardmasters of America and Union Pacific Railroad, NYD § 4 Arb. (Siedenberg; 5/18/83). Conrail, not the MGA, will operate all trains over the former MGA property. All MGA operations will cease. Conrail will not just be the controlling or dominant Carrier but the sole Carrier. Employees who are transferred to a controlling carrier, as part of a merger must leave their old collective bargaining agreement behind. Norfolk and Western Railway-Exception-Contract to Operate Trackage Rights, (Decided June 27, 1989). I.C.C. Finance Docket No. 30582 [Interstate Railroad Company]. The MGA Agreement becomes obsolete with the advent of consolidated operations totally controlled by Conrail.

The Carriers alternatively argue that even if the New York Conditions, as interpreted by the ICC, do not mandate abrogation of the MGA agreement, it cannot survive on the merged system because the

Locomotive Engineers' contract on Conrail is the only permissible labor contract covering the craft of engineers on Conrail. The ongoing propriety of a single agreement applicable system wide to all Conrail Engineers is preserved by the status quo provisions of the Railway Labor Act. The Northeast Rail Service Act of 1981 carried forward, as Section 708(A), the provisions of the Regional Rail Reorganization Act of 1973, as amended, which appeared in Section 504(D). These provisions provide for one collective bargaining agreement system wide for each certified craft on Conrail. The Conrail Privatization Act of 1986, placed the one system wide agreement per craft provision within the status quo of the Railway Labor Act. Retaining the MGA agreement would establish more than one agreement for the same craft, on Conrail, in direct contravention of statutory law. None of the statutes permit multiple labor contracts covering the same craft in the event of a merger. If the Organization wishes for the MGA Engineers' agreement to survive, it must change the status quo through Section 6 of the Railway Labor Act.

In summary, the Carriers urge the Arbitrator to exercise his delegated authority to provide that the New York Dock implementing agreement contain a provision that the MGA Engineers will henceforth come under the applicable collective bargaining agreements between Conrail and its craft of Locomotive Engineers and Reserve Engine Service Employees.

B. The Organization's Position

The Organization questions whether or not an arbitrator adjudicating disputes under Section 4 of the New York Dock Conditions, has the authority to abrogate existing collective bargaining agreements unless the Carriers first exhaust the negotiation procedures mandated by the Railway Labor Act. Rather, the Arbitrator is limited to fashioning an implementing agreement which provides for a fair and equitable rearrangement of forces. Furthermore, Section 2 of the New York Dock Conditions preserves existing collective bargaining agreements.

In Brotherhood Railway Carmen v. Interstate Commerce Commission, the Court of Appeals for the District of Columbia Circuit decided that the statutory exemption in the Interstate Commerce Act did not empower the ICC to override collective bargaining agreements. 880 F.2d 562 (D.C. Cir. 1989). Early arbitration decisions issued under Section 4 of the New York Dock Conditions determined that arbitrators may not simply eradicate collective bargaining agreements. Norfolk and Western Railway Company and Railway Yardmasters of America, NYD § 4 Arb. (Sickles 12/30/81). Norfolk and Western Railway/Illinois Terminal Railroad and Brotherhood of Locomotive Engineers, NYD § 4 Arb. (Zumas; 2/1/82)

Conrail failed to show that it is necessary to apply its own work rules across the MGA territory. When feasible, employees in coordinated territories must continue to be governed by their own work

rules. Chesapeake and Ohio Railway/Baltimore and Ohio Railway and United Transportation Union, NYD § 4 Arb. (Cluster; 8/7/85).

Even if this Arbitrator has the authority to abrogate the MGA agreement, the absence of the MGA agreement would undermine an orderly selection of forces. Trying to equitably divide work between Conrail Engineers and MGA Engineers will be chaotic without the MGA agreement.

Since the MGA and the Organization recently renegotiated the MGA agreement, the Carriers obviously realized that leaving the MGA agreement intact would hardly impede the impending consolidation. Stated differently, if the MGA agreement is such an obstacle to the institution of consolidated and merged operations, the Carriers should not have negotiated a new schedule agreement back in March, 1992. Even though the Carriers have not shown that retention of the MGA agreement would thwart the establishment of consolidated operations, the Organization is willing to negotiate with the Carriers over existing rules in the MGA agreement to the extent that the rules might impinge on the institution of efficient consolidated operations. Changes in agreement language to accommodate specific operational problems can be negotiated without violently destroying the MGA agreement. The selection of forces should be done with as little intrusion into collective bargaining agreements as possible. Burlington Northern Railroad and United Transportation Union, MCC § 4 Arb. (Vernon; 3/29/91).

MGA Engineers would endure tremendous monetary hardship if they are placed under the agreement applicable to Conrail Locomotive

Engineers. In several respects including a higher reduced crew differential, the compensation for MGA Engineers in the MGA Schedule Agreement is greater than the compensation afforded to Conrail Engineers. Also, transferring the on and off duty point to Waynesburg will also cause personal hardships for many employees who have purchased residences based on reporting to work in Brownsville.

The Organization concludes that the Arbitrator lacks the authority to nullify the MGA agreement and, alternatively, and assuming that the Arbitrator holds such authority, the Arbitrator should retain the MGA agreement for current MGA Engineers.

IV. DISCUSSION

In 1991, the United States Supreme Court definitively resolved the decade long dispute over whether or not the ICC and arbitrators, who fashion implementing agreements under Section 4 of the New York Dock Conditions, had the authority to change, alter, or abrogate existing collective bargaining agreements. In Norfolk and Western Railway Company v. American Train Dispatchers/CSX Transportation Inc., v. Brotherhood Railway Carmen, the Court unequivocally ruled that Section 11341(a) of the Interstate Commerce Act permits the ICC and New York Dock arbitrators to exempt railroads from existing collective bargaining agreements to the extent necessary to carry out ICC approved transactions. 111 S.Ct. 1156 (1991).

The Court observed:

> "Our determination that § 11341(a) supersedes collective-bargaining obligations via the RLA as necessary to carry out an ICC approved transaction makes sense of the consolidation provisions of the Act, which were designed to

promote "economy and efficiency in interstate transportation by the removal of the burdens of excessive expenditure." Texas v. United States, 292 U.S. 522, 534-535, 54 S.Ct. 819, 825, 78 L.Ed. 1402 (1934). The Act requires the Commission to approve consolidations in the public interest. 49 U.S.C. § 11343(a)(1). Recognizing that consolidations in the public interest will "result in wholesale dismissals and extensive transfers, involving expense to transferred employees" as well as "the loss of seniority rights," United States v. Lowden, 308 U.S. 225, 233, 60 S.Ct. 248, 252, 84 L.Ed. 208 (1939), the Act imposes a number of labor-protecting requirements to ensure that the Commission accommodates the interests of affected parties to the greatest extent possible. 49 U.S.C §§ 11344(b)(1)(D), 11347; See also New York Dock Railway-Control-Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979). Section 11341(a) guarantees that once these interests are accounted for and once the consolidation is approved, obligations imposed by laws such as the RLA will not prevent the efficiencies of consolidation from being achieved. If § 11341(a) did not apply to bargaining agreements enforceable under the RLA, rail carrier consolidations would be difficult, if not impossible, to achieve. The resolution process for major disputes under the RLA would so delay the proposed transfer of operations that any efficiencies the carriers sought would be defeated. See, e.g., Burlington Northern R. Co. v. Maintenance Employees, 481 U.S. 429, 444, 107 S.Ct. 1841, 1850 95 L.Ed.2d 381 (1987) (resolution procedure for major disputes "virtually endless"); Detroit & T. S. L. R. Co. Transportation Union, 396 U.S. 142, 149, 90 S.Ct. 294, 298, 24 L.Ed.2d 325 (1969) (dispute resolution under RLA involves "an almost interminable process"); Railway Clerks v. Florida East Coast R. Co., 384 U.S. 238, 246, 86 S.Ct. 1420, 1424, 16 L.Ed.2d 501 (1966) (RLA procedures are "purposely long and drawn out"). The immunity provision of § 11341(a) is designed to avoid this result.

"We hold that, as necessary to carry out a transaction approved by the Commission, the term "all other law" in § 11341(a) includes any obstacle imposed by law. In this case, the term "all other law" in § 11341(a) applies to the substantive and remedial laws respecting enforcement of collective-bargaining agreements. Our construction of the clear statutory command confirms the interpretation of the agency charged with its administration and expert in the field of railroad mergers. We affirm the Commission's interpretation of § 11341(a), not out of deference in the face of an ambiguous statute, but rather because the Commission's interpretation is the correct one." 111 S.Ct. 1165, 1166

After the Supreme Court handed down its decision, the ICC, as it had done several times in the past, determined that arbitrators working under the delegated authority of the ICC, may write implementing agreements which exempt approved transactions from the Railway Labor Act and collective bargaining agreements subject to the Railway Labor Act. CSX Corporation-Control-Chessie System Inc., and Seaboard Coast Line Industries, 8 I.C.C. 2d 715 (1992). In that decision, the ICC expressly commented on the standard for determining whether or not the statutory exemption should be applied to a particular transaction. The ICC wrote:

> "Furthermore, the "necessity" predicate is satisfied by a finding that some "law" (whether antitrust, RLA, or a collective bargaining agreement formed pursuant to the RLA) is an impediment to the approved transaction. In other words, the necessity predicate assures that the exemption is no broader than the barrier which would otherwise stand in the way of implementation. It constrains the breadth of the remedy, not the circumstances under which it applies. 8 I.C.C. 2d 715, 721-722 (1992).

The ICC has thus decided that collective bargaining agreements must yield to the extent that the agreement provisions are impediments to carrying out an approved transaction.[6]

As the Organization points out, several arbitration decisions issued under Section 4 of the New York Dock Conditions in the early 1980's, found that, in view of the language in Section 2 of the Conditions, collective bargaining agreements must be preserved even if continuation of the agreements rendered it is infeasible for a

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[6] Since the Arbitrator derives his authority from the ICC, the Arbitrator must strictly follow the ICC's pronouncements.

railroad or to realize the benefits (or efficiencies) of the transaction. However, the U.S. Supreme Court's holding, which overruled the D.C. Circuit Court of Appeals decision cited by the Organization, leaves no doubt that Section 4 prevails over Section 2.

Therefore, this Arbitrator is vested with the authority to decide the second question at issue, that is, whether the MGA Locomotive Engineers should remain under the MGA agreement or be placed under the agreement applicable to Conrail's Locomotive Engineers.

In this case, the Carriers presented overwhelming evidence that retention of the MGA agreement would effectively block the establishment of consolidated train operations and thus, completely undermine the ICC approved merger. Under the proposed consolidated operation, the prior distinction between MGA operations (and its employees) and Conrail operations (and its employees) will not just become blurred, but, rather, will be totally eliminated. MGA Engineers will be fully integrated into the Conrail system. They will no longer be identifiable (except to the extent that the Engineers might hold equity, preferential or prior rights over trains operating on the former MGA property).[7] Operations over Conrail and the former MGA will be homogenous. There will not be any interchange between Conrail and the MGA, because, pursuant to the ICC's authorization, they will henceforth constitute one railroad.

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[7] The MGA Engineers will also be identifiable for purposes of dispensing New York Dock protective benefits.

The absence of separate and distinct MGA train operations militates against retaining the MGA agreement. The Carriers persuasively pointed out that the MGA agreement could operate in numerous ways to effectively bar the institution of merged operations. As part of its approval of the merger, the ICC permitted the Carriers to initiate operational efficiencies, based on economies of scale and improved equipment utilization, to better serve the coal producers along the MGA line. Leaving the MGA agreement intact would certainly prevent the Carriers from changing existing equipment utilization and the present rail traffic patterns. The MGA agreement could bar a Conrail Engineer from operating on the former MGA property, prohibit the establishment of a centralized crew base, and require the Carriers to duplicate many administrative functions already performed by Conrail. Contrary to the Organization's argument, this not a situation where only one or two MGA agreement provisions are hindering specific aspects of the Carrier's operating plan. Rather, because this merger involves the complete integration of the MGA into Conrail, the totality of the circumstances compel a total abrogation of the MGA agreement. Stated differently, it is impossible to accommodate the transaction by amending a few rules in the MGA agreement. Retaining even a residue of the MGA agreement will impede the impending transaction since the agreement, in and of itself, would maintain the MGA as a separate railroad property which is anathema to the complete integration of operations.

Conrail is the controlling Carrier in the merger and thus, it is most appropriate to place MGA Engineers under the Agreement applicable to Locomotive Engineers on Conrail. Southern Railway-Purchase-Illinois Central Railroad Line, 5 I.C.C. 2d 842 (1989). Complete integration of train operations makes it unwieldy for MGA Engineers to carry any portion of the MGA agreement with them to Conrail. Imposing multiple agreements on the former MGA territory would render the coordination not just awkward but would thwart the transaction.

The Conrail agreement governing Conrail's Engineers differs from the MGA agreement. The Organization asserts that the level of total compensation in the Conrail agreement is below the level of total earnings accruing to Engineers under the MGA agreement. Assuming that the Organization's monetary calculations are correct, the ICC imposed the New York Dock Conditions on the Carriers for the specific purpose of protecting employees who suffer a wage loss as a result of changes in operations stemming for the merger. The amount of compensation which MGA Engineers are currently receiving will be included in their test period average earnings. Subsequent to the introduction of consolidated operations, if a former MGA Engineer does not earn compensation equivalent to the Engineer's test period average, because of a merger related change in operations, the Engineer will be afforded a displacement allowance in accord with Section 5 of the New York Dock Conditions. In conclusion, the protective provisions of the New York Conditions are designed to protect employees from being placed in a worse position with respect to their compensation.

To reiterate, this Arbitrator has the authority, under Section 4 of the New York Dock Conditions, to determine which schedule agreement will apply to MGA Engineers following the coordination and, the Arbitrator rules that, the MGA Engineers must be placed under the collective bargaining agreements applicable to Locomotive Engineers and Reserve Engine Service Employees on Conrail.

AWARD AND ORDER

1. The answer to the first stipulated issue in dispute is Yes.

2. The answer to the second stipulated issue in dispute is the collective bargaining agreements governing rates of pay and working conditions of Locomotive Engineers and Reserve Engine Service Employees on the Consolidated Rail Corporation.

Dated: October 29, 1992

John B. LaRocco
Arbitrator

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