

In the Matter of Arbitration between

Transportation-Communications
International Union

-and-

Union Pacific Railroad Company

OPINION
AND
AWARD

New York Dock
Conditions

J.F. McCartney claim

The parties' prehearing submissions were received on or before December 8, 1992. Hearing was held in San Diego, CA on December 8, 1992. Attending in addition to the undersigned board members were Brian P. Whitacre, Vice General Chairman, TCU; and Dean D. Matter, Senior Director Labor Relations, Non-Ops, UP. Final summary was presented at the hearing and thereafter the record was closed.

ISSUE

Does the terminology "...[reimbursement] by the railroad for any loss suffered in the sale of his home for less than its fair value...", as specified in Article I, Section 12(a)(i) of the New York Dock Conditions, require the Carrier to reimburse the Claimant, Mr. J.F. McCartney, in the amount of six thousand five hundred thirty-five dollars (\$6,535.00) for sales commissions, closing fees, inspection fees, points and other related closing costs incurred in conjunction with the sale of his home in Longview, Texas?

BACKGROUND OF THE DISPUTE

Claimant J.F. McCartney was an employee affected by one of the transactions and covered by the implementing agreements arising from the UP-MP-WP merger. In order to retain his position he was required to transfer to St. Louis, MO, and thus to sell his home in Longview, TX. In August, 1990, he was offered an election of benefits and opted to receive the benefits of NYDC (Car.Ex.D,p.2).

Article I, Section 12 of the New York Dock Conditions (NYDC) deals with "Losses from home removal" and the first sentence of I.12. (a)(i) provides, "If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the railroad for any loss suffered in the sale of his home for less than its fair value."

Claimant's home in Longview, TX was appraised at \$70,000 and was listed for sale at that price. A purchaser offered \$69,000, the Carrier approved the sale at that price, and later reimbursed McCartney for \$1,000 (Car.Exs.C,G). Thereafter a claim was raised on McCartney's behalf for \$6,535.00, the total of costs McCartney incurred for sales commission, loan discount, title insurance, and other fees and charges--what are often referred to as "closing costs"--that are deducted from the net amount received by a home seller. (Org.Ex.G). The Carrier refused this claim (Org.Ex.H), and the dispute is now brought by the parties to arbitration in accordance with Article I, Section 11 of the NYDC.

DISCUSSION

The ICC's New York Dock Conditions providing for labor protective plans in railroad transactions incorporate by repeated reference and follow the language of the Washington Job Protection Agreement (WJPA) of 1936. Hence it is not surprising that the issue here has come before railroad arbitration boards before. The problem is that the precedents go both ways.

The Organization contends that the crucial words are that the

Carrier is obligated to reimburse Claimant for all "loss suffered" in the sale forced upon him by the transaction. It contends the Carrier's emphasis on "fair market value" is misplaced, and that the focus here should instead be on "net return" to the seller. In support of this view, it cites a Public Law Board award involving its predecessor union, the BRAC, which held that in such a forced home sale the employee was entitled to be protected against all his equity loss and required the carrier to reimburse him for closing costs (Org.Ex.M). Another Board involving the same carrier and organization followed this precedent (Org.Ex.N). The Organization contends these are the better-reasoned awards.

The Carrier contends that the Claimant was offered two options, a lump sum \$15,000 payment or NYDC, selected the latter and was compensated fairly and properly according to precedent. It cites several Public Law and other Board awards that have held that closing costs of the type sought here are not a "loss" within the meaning of WJPA or NYDC.

I have carefully considered each of the predecessor awards cited by the parties that deal with this same issue and language, whether they arose under Section 11 (a)(i) of the Washington Job Protection Agreement or Section I.12 (a)(i) of the New York Dock Conditions. I conclude that the better-reasoned awards as well as the basic logic of the situation itself do not support the Claimant's request for reimbursement for closing costs.

The primary award relied on by the Organization (Org.Ex.M), emphasized that the carrier there had refused to purchase the home

and that this fact alone forced the seller to accrue closing costs. A second award between the same parties found the first "not palpably erroneous." (Org. Ex. N). No carrier refusal to purchase is involved here, without regard to its relevance.

More importantly, I cannot conclude that closing costs attendant upon the sale of a home represent a "loss" from its "fair value." Some closing costs of the kind in issue here--sales commissions, closing fees, inspection fees, points, and the like--are almost invariably present and chargeable against the seller of a home. Hence whenever anyone, either Mr. McCartney or his heirs, sought to obtain the \$70,000 fair market value of his home they would only receive the agreed-upon price less the closing costs. Put another way, the "fair value" of a home and the amount that will be received by the seller whenever it is sold are not the same thing, the latter invariably being the smaller.

Here McCartney received a \$69,000 offer from the purchaser of his house and \$1,000 to make up the difference from the Carrier. In combination they represented its "fair value." The fact that he received less than this total amount was always going to be the case whenever he sold the house, and is not an amount the Carrier is required under NYDC to make up.

AWARD

The claim of J.F. McCartney for \$6,535.00 for sales commissions, fees, and related closing costs incurred in conjunction with the sale of his home in Longview, Texas, is denied.



J.L. Gobel

Int'l. Vice President
Transportation-Communications
International Union



A.T. Olin

Assistant Director
Labor Relations, Non-Ops
Union Pacific Railroad Company



Charles M. Rehms, Referee

Dated: December 30, 1992