ARBITRATION COMMITTEE

In the Matter of the Arbitration between:	)	Pursuant to Article 1, Section 11 of the New York Dock Conditions
UNITED TRANSPORTATION UNION	)	
Organization,	)	I.C.C. Finance Docket No. 30000
and	)	
UNION PACIFIC RAILROAD COMPANY,	)	
Carrier.	)	
	)	**OPINION AND AWARD**

Hearing Date: July 1, 1993
Hearing Location: Sacramento, California
Date of Award: August 27, 1993

MEMBERS OF THE COMMITTEE

Employees' Member: J. L. Easley
Carrier Member: L. A. Lambert
Neutral Member: John B. LaRocco

QUESTION AT ISSUE

Is the Organization barred under the Doctrine of Laches from arbitrating claims for moving allowances made by trainmen R.L. Shankel, R.E. Porter, and L. Chapman, for losses sustained from home removal on July 24, 1987 (under New York Dock Labor Protection Conditions)?

OPINION OF THE COMMITTEE

I. INTRODUCTION

In September, 1982, the Interstate Commerce Commission (ICC) approved the merger and consolidation of the Union Pacific Railroad Company (UP), the Missouri Pacific Railroad Company (MP) and the Western Pacific Railroad Company (WP). [I.C.C. Finance Docket No. 30,000.] 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 UP, MP and WP pursuant to the relevant enabling statute. 49 U.S.C. §§ 11343 and 11347.

At the neutral member's request, the parties waived the Section 11(c) time limit for issuing this decision.[1]

II. BACKGROUND AND SUMMARY OF THE FACTS

The issue herein involves claims made by three different claimants who previously resided at Oroville, California. For purposes of the Question at Issue, the claims have been consolidated.

A. Claimant Chapman

Sometime in early 1987, Claimant Chapman filed for a dismissal allowance as a consequence of having been cutoff the Oroville, California extra board on September 4, 1985. Subsequently, Claimant Chapman went to work at Portola, California. In September 1988, Claimant Chapman filed a claim for losses associated with his change in residence, and more specifically, on the sale of his Oroville home.

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[1] Most sections pertinent to this case appear in Article 1 of the New York Dock Conditions. Thus, the Committee will only cite the particular section number, unless the section is part of a different article.

The Carrier denied the claim on November 3, 1988, on the basis that Claimant Chapman had failed to identify a transaction as required by Section 11(e) of the New York Dock Conditions.[2]

B. Claimant Porter

Claimant Porter last worked in Oroville on July 22, 1984. In early 1988, he filed for a displacement allowance contending that he had been cut from the Oroville working list due to a relaxation of D. T. & I. conditions on the Beiber Line, that is, the rail line connecting the former WP with the Burlington Northern Railroad. On September 14, 1988, Claimant Porter filed a claim for losses for home removal under Article 4 of the New York Dock Conditions. With this claim, he asserted that he was cutoff off the Oroville extra board on July 24, 1987.[3] When the Carrier received Claimant Porter's home removal claim in early October, 1988, it subsequently denied the claim on the basis that Claimant Porter had failed to identify a transaction as required by Section 11(e) of the New York Dock Conditions.

C. Claimant Shankel

Claimant Shankel filed a house removal claim which the Carrier received on or about January 5, 1988. On February 8, 1988, the Carrier denied the claim on the basis that the elimination of the D. T. & I. Conditions did not trigger employee protection.

[2] In the meantime, the Carrier also denied Claimant's request for dismissal allowance on April 10, 1987 contending that the Oroville extra board had been reduced because the Carrier had abolished a Fiber Optic work train at Oroville due to a decline in business.

[3] The record is unclear and vague about Claimant Porter's work history at Oroville.

D. Claims Handling

In early January, 1989, the Local Chairman wrote the Carrier a lengthy dissertation about the three claims but the former General Chairman did not appeal the Carrier's denial of the three claims.

On February 7, 1992, the current General Chairman appealed the three home removal loss claims on behalf of Claimants Chapman, Porter and Shankel. The current General Chairman vigorously argued that Claimants' loss of work opportunities at Oroville and the consequential losses on the sales of their homes (they were compelled to move to other points to perform compensated service) was inextricably related to the UP's 1982 acquisition of the WP. The Carrier defended the claims on the basis that the reduction in the Oroville trainmen's board was due to a decline in business and any reduction in traffic caused by the elimination of the D. T. & I. Conditions do not entitle affected employees to benefits under the New York Dock Conditions.

When the current General Chairman appealed the claims, the Carrier invoked the equitable doctrine of laches contending that the claims had not been promptly appealed and progressed to an arbitration tribunal under Section 11 of the New York Dock Conditions. The parties have placed this threshold issue before the Committee.

If the claims are barred by laches, the claims have forever expired. On the other hand, if laches is inapplicable to these cases, the Organization will be free to progress the claims to a Section 11 tribunal and the Carrier will be free to raise, without prejudice, its defenses on the merits of the claims.

III. THE POSITIONS OF THE PARTIES

A. The Organization's Position

The Organization raises two points. First, while there may have been a slight delay in progressing the claims, the delay was not long enough to invoke the equitable doctrine of laches. The delay did not harm the Carrier in any fashion. Second, the Carrier failed to timely advise the Claimants that they were entitled to protective benefits under Article 4 of the New York Dock Conditions.

B. The Carrier's Position

During 1988, the Carrier declined all three claims. Yet, neither the Claimants nor the Organization appealed the denials until February, 1992. More than three years elapsed between the denials and the current General Chairman's improvident attempt to resuscitate the stale claims. The Carrier was prejudiced by the delay because it is no longer able to find documentation in its files outlining the circumstances surrounding the reduction in manpower on the Oroville extra board in the mid-1980s. Thus, the claims have expired under the doctrine of laches.

IV. DISCUSSION

The time limits in the applicable working agreement are not binding on claims progressed under Section 11 of the New York Dock Conditions. *Brotherhood Railway Carmen v. Norfolk and Western Railway,* WJPA § 13 Committee (1/14/86; Peterson). Although there are not any express time limits in Section 11 of the New York Dock Conditions, either party may invoke the equitable doctrine of laches where one party fails to assert a right for an unreasonable length of time and the delay prejudices the opposing party. *Transportation-Communications International Union v. Union Pacific Railway Company*, NYD § 11 Arb. (Rehmus; 12/30/92).

An employee's unreasonable delay in progressing a claim for protective benefits which prejudices the Carrier is barred under the doctrine of laches. *Transportation Communications International Union v. Union Pacific Railway Company*, NYD § 11 Arb. (6/26/90; LaRocco).

In *BRAC v. Norfolk and Western,* 1965 Merger Agreement Arbitration (LaRocco, 7/1/86), this Referee explained the underlying policy of the laches doctrine. "The purpose of the doctrine is to prevent stale claims. Allowing old, stale claims to perpetually fester hardly promotes stable and predictable railroad labor-management relations. As stated above, a delay, even an unreasonable delay, is insufficient to invoke the laches defense. The Carrier must also demonstrate that Claimant's procrastination operated to its prejudice."

The delay between the denials and the current General Chairman's appeals was three years and three months. Although Claimants received denial letters during the calendar year 1988, neither they nor the Organization further handled the matter until the current General Chairman belatedly attempted to resurrect what had already become stale claims. Claimants procrastinated by sitting on their rights for an unreasonable period of time.

The delay prejudiced the Carrier since it is no longer able to competently defend itself on the merits due to a dissipation of evidence. Because of the unreasonable delay, the Carrier rightly concluded that Claimants had abandoned their claims. Litigating their claims at this late date would be unfair to the Carrier because it no longer has possession of documentary evidence which, in its view, would show the real reason why Claimants were cut from the Oroville extra board.

Finally, Claimants did not offer any valid excuse for the lengthy delay. Contrary to the Organization's assertion, the record reflects that the Claimants were fully apprised of their rights

under the New York Dock Conditions inasmuch as they initiated claims for home removal losses.

In summary, the doctrine of laches permanently bars these claims.

AWARD AND ORDER

The Answer to the Question at Issue is Yes.

Dated: August 27, 1993

John B. LaRocco
Neutral

J. L. Easley
Employees' Member

L. A. Lambert
Carrier Member

[C:UTU-UP2.AWD]