BEFORE AN
ARBITRATION COMMITTEE ESTABLISHED
UNDER ARTICLE I, SECTION 11 OF THE
NEW YORK DOCK EMPLOYEE PROTECTIVE CONDITIONS

PARTIES TO DISPUTE	AMERICAN TRAIN DISPATCHERS ASSOCIATION AND CSX TRANSPORTATION, INC.	AWARD NO. 1 CASE NO. 1

ORGANIZATION'S STATEMENT OF CLAIM:

Claim of Train Dispatcher D. W. Sasser for 15% of the market value of his residence, uner the Real Estate Expenses option contained in Side Letter No. 1 Agreement dated August 15, 1989.

CARRIER'S QUESTION AT ISSUE:

Under the circumstances prevalent herein, is the Carrier required to allow Claimant D. W. Sasser a second settlement for real estate benefits on the same residence?

STATEMENT OF CLAIM:

On May 18, 1989 CSX Tranpsortation, Inc. (Carrier or CSXT) pursuant to the authority granted by the Interstate Commerce Commission (ICC) in Finance Docket Nos. 28905 (Sub.-No. 1) and related proceedings, 30053, 31033 and 31106 served notice under Article I, section 4(a) of the labor protective conditions set forth in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock Conditions) upon the American Train Dispatchers Association (ATDA or Organization) of its intent to transfer and coordinate train dispatching functions performed at various locations throughout the property to Jacksonville, Florida. The parties entered into

negotiations as provided in Article I, Section 4(a) of the New York Dock Conditions, and on August 15, 1989 the parties entered into a Memorandum Agreement implementing the transaction. On the same date the parties executed Side Letter No. 1 to the Memorandum Agreement providing optional relocation allowances to employees transferring to Jacksonville as a result of the transaction and thus having to change their place of residence. Among those allowances was "15% of the fair market value of residence" to be paid to a transferring employee electing not to sell his or her residence.

At the time the Carrier served its May 18, 1989 notice Claimant was working as a Train Dispatcher in Raleigh, North Carolina and residing in Nashville, North Carolina in a home owned by Claimant. On February 22, 1990 Claimant transferred to Jacksonville, Florida. In connection with that transfer Claimant elected certain relocation benefits including 15% of the fair market value of his residence. On June 30, 1990 Claimant executed a request for real estate appraisal in connection with the election of the 15% benefit. By letter of July 3, 1990 the Carrier denied Claimant's request for the 15% benefit on the ground that in connection with Claimant s transfer from Rocky Mount to Raleigh, North Carolina in 1983 Claimant had received 15% of the appraised value of the same residence ($4,800) and had released the Carrier from further obligation regarding that residence.

The Organization grieved the Carrier's action. The Carrier denied the grievance. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the parties could not resolve the dispute, and the parties

invoked the arbitration procedures of Article I, Section 11 of the New York Dock Conditions pursuant to which this Committee was created and heard the dispute. The time specified in Article I, Section 11 for this Committee to render its decision was extended by the parties.

FINDINGS:

Emphasizing that Claimant transferred from Raleigh, North Carolina to Jacksonville, Florida as a result of the transaction and that Claimant therefore was required to change his residence, the Organization argues that Claimant was entitled to the 15% of market value benefit contained in Side Letter No. 1 to the August 15, 1989 Memorandum Agreement. The Organization further argues that the prior payment by the Carrier of the 15% benefit on the same residence is no bar to the payment sought here because the first payment and the releases executed by Claimant in connection therewith applied to a completely different transaction.

The Carrier bases its rejection of the 15% payment upon the language of the September 8, 1987 release executed by Claimant in return for payment by a predecessor Carrier to Claimant of 15% of the fair market value of his residence at that time, the same residence involved in this case, in connection with the transfer of Claimant's work from Rocky Mount to Raleigh, North Carolina. The release specifically states that the Carrier ". . . is willing to make such payment provided it be released by the Employee from further obligation to him, insofar as any loss suffered by the Employee in the

sale of his home is concerned. . . ." The release further states in pertinent part that:

> . . . The said Employee hereby releases, relinquishes and discharges any and all claims, demands or causes of action which the Employee had, has or may have against Seaboard System Railroad, Inc., its predecessors, successors or assigns, by reason of any loss which the Employee may suffer in connection therewith, or otherwise.

In our opinion the language of the release is clear and specific. In return for the 15% payment the predecessor Carrier and its successors, including the Carrier in this case, were released from any further obligation in connection with the sale or disposition of the particular residence occupied by Claimant at the time he signed the release. Inasmuch as that is the same residence with respect to which Claimant seeks the 15% payment in this case, we believe the release extinguishes any obligation on the Carrier to make such payment.

We are well aware that, as stated in the release, it was generated by the transfer of dispatching work in 1983 from Rocky Mount to Raleigh, North Carolina. We understand the Organization's argument that the release should be interpreted so as to apply only to that transaction and not to the one generating the dispute in this case. However, as the arbitral authority relied upon by the Carrier strongly indicates, language such as that contained in the release has been interpreted consistently as barring further or future Carrier

obligations with respect to the particular subject matter of the release.

The Organization argues that if the parties intended to restrict the 15% payment at issue in this case as urged by the Carrier they would have so specified in the August 15, 1989 Memorandum Agreement and/or Side Letter No. 1. However, the Carrier in rebuttal argues vigorously, and quite logically, that the language of the release as well as the May 4, 1983 Memorandum Agreement applicable to the transfer of dispatching work from Rocky Mount to Raleigh relieved the Carrier from any further obligation with respect to the particular residence upon which it paid the 15% of fair market value. Thus, from the Carrier's point of view, there was no need to clarify in the 1989 agreement an economic benefit already available to the Carrier.

The Organization emphasizes that had Claimant sold his residence when his work was relocated from Rocky Mount to Raleigh and purchased another residence, unquestionably the Carrier would be obligated to pay the 15% of fair market value sought by Claimant in this case. However, as the Carrier points out, Claimant in fact did not sell his residence in 1983. Had he done so the Carrier would not have continued to bear the potential obligation to pay further benefits on that residence. In the instant case inasmuch as Claimant retained ownership of his home the Carrier maintained a continuing potential liability for repeated payments of the 15% of fair market value option as the Organization would interpret and apply the relevant agreements and releases. It is just such continuing liability

on the Carrier's part that the language of the release executed in connection therewith appears to have been fashioned to eliminate.

In the final analysis we can find no support for the position that Claimant is due a payment of 15% of fair market value on his existing residence under Side Letter No. 1 to the August 15, 1989 Memorandum Agreement.

AWARD

The Organization's claim is denied.

The Carrier's Question is answered in the negative.

William E. Fredenberger, Jr.
Chairman and Neutral Member

Michael Nicoletti
Carrier Member

H. E. Mullinax
Employee Member

I DISSENT

DATED:

Oct. 4, 1993