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. 2 CASE NO. 2

ORGANIZATION'S QUESTION AT ISSUE:

Whether Train Dispatcher C. E. McAbee was adversely affected as a result of implementation of the January 9, 1988 Memorandum Agreement, and thereby entitled, under Section 10(a) of said agreement, to the protective benefits of the New York Dock Conditions.

CARRIER'S QUESTION AT ISSUE:

Should Mr. C. E. McAbee be considered a 'displaced' or 'dismissed' employee as these terms are defined by the 'New York Dock Protective Conditions' as a result of the consolidation of train dispatching functions at Jacksonville, Florida?

HISTORY OF DISPUTE:

On July 28, 1970 Claimant established seniority as a Train Dispatcher in the dispatching office in Akron, Ohio then operated by a predecessor to CSX Transportation, Inc. (Carrier or CSXT). On August 1, 1970 Claimant secured a nonagreement supervisory position with the Carrier, and thereafter Claimant held various official positions with the Carrier. In 1990 Claimant was working at Baltimore, Maryland as an Applications Consultant with Chessie Computer Services, Inc. a subsidiary of the Carrier. At all times during which Claimant worked nonagreement positions he continued to maintain and accrue seniority

as a Train Dispatcher under agreements between the Carrier and the American Train Dispatchers Association (ATDA or Organization).

On April 27, 1990 the Carrier terminated Claimant as an Applications Consultant with Chessie Computer Services, Inc. On the same date Claimant informed the Carrier of his intention to exercise his Train Dispatcher seniority to a position in the Carrier's Centralized Train Dispatching Office in Jacksonville, Florida.

Previously the Carrier had notified the Organization it planned to centralize all train dispatching functions throughout the system in Jacksonville, Florida pursuant to authority granted the Carrier by the Interstate Commerce Commission (ICC) in Finance Docket Nos. 28905 (Sub.-No. 1) and related proceedings, 30053, 31033 and 31108 subject to the condition for the protection of employees set forth in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979)(New York Dock Conditions). As provided in Article I, Section 4 of the New York Dock Conditions the parties negotiated and entered into an implementing agreement pertaining to the transaction on January 9, 1988. Side Letter No. 11 to that agreement provides in pertinent part:

> A list will be prepared showing the names, seniority dates, and seniority district of all train dispatchers holding official and excepted positions, on leave of absence, and on disability retirement. Such train dispatchers may elect to transfer their seniority to the Centralized Train Dispatching Office at Jacksonville, or to remain on their pre-existing seniority district roster, at the time they return from their status of promoted, on leave, etc. Protected train dispatchers in

Jacksonville will not be deprived of protective benefits as the result of such individuals exercising seniority in the Jacksonville Centralized Office.

When Claimant was terminated from his nonagreement position on April 27, 1990 no Train Dispatcher positions existed in Akron, Ohio. Such positions existed only in Jacksonville, Florida. Claimant elected to transfer his seniority to Jacksonville.

On June 21, 1990 Claimant inquired of the Carrier as to whether he would be allowed the benefits of various protective agreements applicable to the transfer of dispatching work from Akron to Jacksonville. On June 28, 1990 the Carrier informed Claimant that inasmuch as at the time the dispatching work was transferred Claimant had occupied a nonagreement position not involved in the transfer of the work he was not entitled to any protective benefits applicable to the transaction and that Side Letter No. 11 to the January 9, 1989 implementing Agreement provided only for the exercise of seniority.

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 dispute could not be resolved, and the parties submitted the matter to arbitration under Article I, Section 11 of the New York Dock Conditions. The dispute has been placed before this Committee. The time specified in Article I, Section 11 for this Committee to render its decision was extended by the parties.

FINDINGS:

The Organization bases its position in this case upon Section 10(a) of the January 9, 1988 Implementing Agreement which provides in pertinent part that "[E]mployees adversely affected as a result of the implementation of this agreement will be entitled to the protective benefits of the New York Dock Conditions. . . ." The Organization contends that Claimant was adversely affected by the centralization of dispatching work at Jacksonville, Florida, the transaction which was the subject of the January 9, 1988 Implementing Agreement, inasmuch as no dispatching jobs existed in Akron, Ohio when Claimant was terminated from his nonagreement position. Had the transaction not taken place, the Organization emphasizes, Claimant could have exercised seniority to a dispatcher's position in Akron. Instead, Claimant was forced to exercise his seniority to a dispatcher's position in Jacksonville. Thus, the Organization urges, Claimant was adversely affected by the transaction.

The claim in this case is governed by the burden of proof provisions of Article I, Section 11 of the New York Dock Conditions. Those conditions have been interpreted consistently as requiring that the Organization or Claimant establish a rational or causal nexus between the transaction which is subject to the New York Dock conditions and the alleged adverse effect. See UTU v N&W Ry. Co., Award No. 1, Aug. 29, 1986 (Peterson, Neutral) and BRAC v So. Ry. Co., Oct. 25, 1984 (Peterson, Neutral). Both cases stand for a

proposition that where at the time of a transaction an employee does not occupy a position directly affected by the transaction, in this case a dispatcher's position in Akron, Ohio the work of which was transferred to Jacksonville, Florida, such employee cannot show or establish a rational or causal nexus sufficient to sustain a claim under Article I, Section 11 of the New York Dock Conditions.

In the N&W award Claimants were furloughed employees who argued that as a result of the transaction there would be no positions for them to occupy when they returned from furlough. In the Southern case the Claimant occupied a nonagreement position which the Carrier apparently abolished as a consequence of the transaction. In both cases there was no rational or causal nexus established sufficient to satisfy the burden of proof under Article I, Section 11 of the New York Dock Conditions.

We find the foregoing arbitral authority instructional and persuasive with respect to the dispute in this case. Claimant lost his nonagreement position apparently as a result of unsatisfactory performance. The loss of that position in no way was related to the centralization of train dispatching work in Jacksonville, Florida. The situation in which Claimant found himself with respect to the unavailability of dispatching work at Akron, Ohio on April 27, 1990 is analogous to the position of the furloughed employees in the N&W arbitration decision noted above. The lack of work at Akron and the necessity to exercise seniority to a dispatcher's position in Jacksonville in order to obtain work was simply too tangential and

indirect an effect to satisfy the burden of proof under Article I, Section 11 of the New York Dock Conditions.

Moreover, as the Carrier emphasizes, Side Letter No. 11 to the January 9, 1988 Implementing Agreement specifically deals with employees in Claimant's situation. The Side Letter affords such employees the right to exercise seniority to positions in Jacksonville to the extent such exercise does not impair the rights of protected Train Dispatchers in Jacksonville. The parties obviously contemplated the situation in which Claimant found himself on April 27, 1990 and determined to afford such employees limited protection as set forth in Side Letter No. 11. Claimant seeks more, but applicable agreements do not afford Claimant the benefits he seeks.

In the final analysis we must find that there is no contractual basis for the Organization's position in this case.

AWARD

Both Questions are answered in the negative.

William E. Fredenberger, Jr.
Chairman and Neutral Member

Michael Nicoletti
Michael Nicoletti
Carrier Member

H. E. Mullinax
Employee Member

DATED: Oct. 4, 1993