IN THE MATTER OF ARBITRATION

Parties to Dispute

Rio Grande Industries, Inc., SPTC Holding Inc. and the Denver & Rio Grande Western Railroad Company - Southern Pacific Transportation Company	)	New York Dock Article I (4) ICC Fin. Docket 32000
vs	)	
Brotherhood of Locomotive Engineers - ATDD Division	)	

Before

Edward L. Suntrup, Arbitrator

Appearances

For the Company

Wayne M. Bolio	-	Assistant General Counsel, SP
William E. Loomis	-	Dir. of Labor Relations, SP
Ray M. Winkenbach	-	Sen. Manager of Labor Relations, SP
Bruce Feld	-	Sen. Manager of Labor Relations, SP

For the Union

Michael S. Wolly	-	Zwerdling, Paul, Leibig, Kahn, Thompson & Driesen, Counsel for BLE-ATDD
Dean Bennett	-	Vice President, BLE-ATDD
Richard W. Ford	-	General Chairman, BLE-ATDD, SP-W
David W. Volz	-	General Chairman, BLE-ATDD, SP-E

Background

On December 3, 1993 the company issued a Notice in accordance with Section I (4.)(a) of the New York Dock Protective Conditions. That Notice read as follows.

> This will constitute the required 90-day written notice served pursuant to New York Dock conditions, Section I (4)(a) as imposed by the ICC Finance Docket 32000, of the intent of Southern Pacific Transportation Company (Western and Eastern Lines), Denver Rio Grande and

Western Railroad Company and St. Louis Southwestern Railway Company to consolidate train dispatching functions in Denver, Colorado. The purpose and effect of the transaction is to coordinate all dispatching functions in a single location to provide, in conjunction with the Transportation Services Center and the consolidated Customer Services Department, integrated and efficient train dispatching functions for the Carrier's rail lines. This work will then be performed in Denver, Colorado under the Agreement between the D&RGW and the Dispatchers' Steering Committee, and the rules and terms and conditions of employment applicable in Denver on the D&RGW.

It is anticipated the dispatcher positions in Roseville and Houston will be consolidated in Denver as result of this transaction, and that employees will be transferred to Denver. Effective upon completion of the transaction, it is anticipated that all dispatcher positions in Houston and Roseville will be eliminated. Should an employee be adversely affected as a result of this transaction, the conditions for the protection of employees enunciated in New York Dock Railway - Control Brooklyn Eastern District; 360 ICC 60 (1979), designated as New York Dock conditions, will be applicable.

Therefore, this 90-day written notice is hereby given pursuant to ICC Finance Docket 32000, New York Dock conditions, Section 4(a), which provides 'such railroad contemplating a transaction which is subject to these conditions and may cause the dismissal, displacement of any employee, or rearrangement of forces, shall give at least ninety (90) days written notice of such intended transaction' for the benefit of the employees who may be affected.

That Notice was issued in accordance with provisions of New York Dock Conditions which are cited here for the record, in pertinent part.

Article I (4.) Notice and Agreement or Decision

(a) Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days' written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending

registered mail notice to the representatives of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes to be affected by such transaction, including an estimate of the number of employees of each class affected by the intended changes. Prior to consummation the parties shall negotiate in the following manner.

Within five (5) days from the date of receipt of notice at the request of either the railroad or representatives of such interested employees, a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotiations shall commence immediately thereafter and continue for at least thirty (30) days. Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this section 4. If at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment in accordance with the following procedures:

> (1) Within five (5) days from the request for arbitration the parties shall select a neutral referee and in the event they are unable to agree within said five (5) days upon the selection of said referee then the National Mediation Board shall immediately appoint a referee.
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> (2) No later than twenty (20) days after a referee has been designated hearing on the dispute shall commence.
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> (3) The decision of the referee shall be final, binding and conclusive and shall be rendered within thirty (30) days form the commencement of the hearing of the dispute.
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> .....

(b) No change in operations, services, facilities, or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered.

On December 3, 1993 company's management also met with the

President, one of the Vice Presidents, and other officials of the BLE-ATDD. In that meeting company's management verbally notified those officials of the intended consolidation of dispatcher work to Denver. One of the company's Labor Relations' Directors also wrote, on that date, to the BLE-ATDD's General Chairmen located in Texas and California, in accordance with provisions of Article 1 (4) of New York Dock as cited above, that the Roseville and Houston dispatching facilities would be shut down and the work transferred to Denver.[1] On December 4, 1993 the company posted an Employee Bulletin explaining, among other things, that "...it is anticipated that these relocations (related to the transaction) would take place during the summer of 1994."

Negotiation Impasse & Arbitration Option

The parties conducted negotiations in accordance with the provisions of Article 1 (4.) of New York Dock and were unable to arrive at an implementing agreement within the time-lines stated therein. Accordingly, they opted for arbitration. The instant arbitrator was chosen by the parties to hold a hearing, gather evidence, and issue an Award. The date of the hearing was set for March 25, 1994. Locale which was acceptable to all parties concerned was the premises of the company's offices located in San Francisco, California.

Pre-Hearing Arbitral Rulings

Prior to the arbitration hearing, counsel for the union

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[1]One of these Chairmen had, in fact, been at the December 3, 1993 meeting with company's management when the proposed coordination was orally discussed.

requested that the arbitrator rule on a number of issues in order that the union could "...prepare for the upcoming arbitration...". After the arbitrator requested clarification, by counsel, of the issues at bar, and after permitting the company to also present its point of view on this request to produce, the arbitrator ruled on the matters in question on March 12, 1994.

The arbitrator rejected the union's request that the company produce economic facts which may have served as basis for the company's having undertaken the consolidation in the first place. The rationale for this ruling was that Article 1 (4.) of New York Dock does not provide an arbitrator with the authority to second-guess management's decisions with respect to coordinations and transactions. Since such was so, there was no need to introduce economic facts of the type requested, into the record.

The union also raised the issue of the pertinent union contract which would cover the dispatchers at Denver, Colorado after the coordination and asked the arbitrator to rule on this matter. The union raised this issue for the obvious reason that it had been addressed by the company's original December 3, 1993 Section I (4.) Coordination Notice to the BLE-ATDD, and elaborated on by the company on that same date when it sent out a concurrent memo to all pertinent employees working in the Roseville,

California and Houston, Texas train dispatching centers.[2] Although the arbitrator had no information on this at the time of the pre-hearing rulings, both sides had also included labor agreement coverage as a tentative provision in their implementing agreement proposals and counter-proposals to each other during negotiations prior to going to arbitration.[3] The arbitrator issued a preliminary ruling on this matter prior to the hearing. In that ruling he stated that it was his view that he had no authority under Article 1 (4.) to resolve the issue of which collective bargaining agreement would be the proper one dispatchers at the Denver consolidated dispatching center. During and after the hearing the BLE-ATDD requested that the arbitrator reconsider this ruling. In view of the importance of this issue it will be addressed again in this Award by the arbitrator, not only in the light of the pertinence, if any, of a subsequent NMB ruling on representation of dispatchers on the SPL, but also because the arbitrator now has a full record before him which was not the case when the pre-hearing ruling was made.

The arbitrator then issued preliminary rulings on other pre-

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[2]Union Ex. H, @ p. 2. The company was very explicit on this issue in that memo. The language it used is cited here for the record.

> "Upon transfer to Denver, employees (i.e. Dispatchers) will no longer be represented by the ATDA union but will be represented by the Dispatchers Steering Committee which won an election conducted by the (NMB) replacing ATDA on 8/20/85...". (In July of 1993 the ATDA merged with the BLE & is referred to here in the record more correctly as BLE-ATDD).

[3]See Union Ex. I & J; Carrier Post-Hearing Exs. 5, 7 seq.

hearing matters raised by the parties with respect, for all practical purposes, to the arbitrability of issues subject to this forum under York Dock Conditions @ Article I (4.). Given information available at that time, however, the arbitrator added the proviso that he could not "...properly rule on these matters in toto until the arbitration hearing itself..." had been held and he had a full record before him.

The Jurisdictional Issue[4]

At the hearing, which took place as scheduled, counsel for the BLE-ATDD raised a threshold issue which neither the arbitrator nor the company had been apprised of prior to that time. That issue dealt with whether an arbitration hearing on an implementing agreement at Denver for the dispatchers should proceed under provisions of New York Dock @ Article I (4.) or whether, since a March 21, 1994 ruling by the NMB,[5] protections for dispatchers at Denver might not more properly be negotiated under the June, 1966 Agreement. The latter had originally been negotiated between the old ATDA, and the SPT and the D&RGW, respectively, when the latter

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[4]The jurisdictional question here deals with the proper provisions under which this arbitration forum should proceed. Such, of course, cannot be confused with the jurisdictional issue of which collective bargaining contract should properly cover the Denver Dispatchers after the coordination.

[5]That NMB ruling is discussed in the separate Award on the jurisdiction question raised by the BLE-ATDD and details related thereto need not be reiterated here. That ruling will be addressed later in this Award, however, when the arbitrator deals with labor contract(s) covering the Denver dispatchers after the coordination. The NMB ruling is found in: National Mediation Board, 21 NMB No. 44. NMB Case No. R-6165 & NMB Case No. R-6273 (NMB File No. C-6356) issued March 21, 1994. That ruling also deals with a Yardmasters/ TCU issue which is not pertinent to the instant case.

were both autonomous railroads as well as members of the National Railway Labor Conference (NLRC). The arbitrator issued a bench decision on this matter at the hearing. He ruled that the June, 1966 Agreement was not applicable to this proceeding. Further, in response to a request by counsel for the BLE-ATDD, the arbitrator has subsequently issued a written opinion on this same issue. That opinion is found in a separate Award, issued on the same date as the instant Award, which deals specifically with this particular jurisdictional question raised by the BLE-ATDD at the March 25, 1994 hearing. In that separate Award the arbitrator reaches the same conclusion that he did in his bench decision which was issued at the hearing.

What Collective Bargaining Agreement Should Cover the Dispatchers at the New Dispatching Center at Denver, Colorado After the Coordination: Is this Issue Properly Before This Board?

Beginning with the Notice by the SPL to the BLE-ATDD in December of 1993, through the negotiations by the parties in an attempt to come up with an implementing agreement for the Dispatchers in Denver per the coordination, up to and including this arbitration, a persistently thorny issue has remained which is endemic to the facts of this case and which is not uncommon to Dock Article 1 (4.) arbitrations. And that issue is: what collective bargaining contract should cover the SPL Dispatchers in Denver as the coordination there proceeds at the new dispatching center?

Position of the Parties

At the time of issuance of the Notice by the SPL under New York Dock @ Article 1 (4.), the company's position on this matter

was clear. The coordinated Dispatchers off the SP-W and SP-E would be covered by the labor contract which the D&RGW has had with the DSC since 1985. The DSC had been certified by the NMB on August 20, 1985.[6] Effective September 1, 1985 a document was drawn up by the Chief Transportation Officer of the D&RGW which dealt with the following issues: employees covered, bulletining of positions, vacations, sick leave allowance, salary, benefits coverage, and discipline.[7] In its negotiations with the BLE-ATDD over an implementing agreement the SPL had consistently held that the DSC-D&RGW labor agreement should be the binding one on all Dispatchers at the consolidated train dispatching center in Denver. The language suggested by the SPL in implementing agreement negotiations with the BLE-ATDD on this issue is unambiguous. That language, stated here for the record, is the following:

> "The current rules and working conditions applicable to train dispatchers represented by the Dispatchers Steering Committee in Denver, Colorado shall be the applicable collective bargaining agreement in the consolidated train

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[6] National Mediation Board (12 NMB No. 102, Case No. r-5537).

[7] See Carrier Post Hearing Ex. 4. Counsel for the BLE-ATDD has consistently criticized the status of this document as a labor contract. Apparently on grounds that the document does not have the signatures of the labor organization and the management representatives which is common procedure in most collective bargaining forums. The arbitrator is neither disposed, nor does he believe it is his role, in this case, to deal with such issue. The DSC has never stated that the document is not a contract, and the SPL has consistently stated that it is one. The arbitrator has no choice, nor any authority, to do other than accept this at face value.

dispatching center in Denver, Colorado."[8]

The SPL has never stated that the BLE-ATDD labor contracts currently in existence at SP-W and SP-E would go out of existence. Rather, it has argued that it did not propose any "...changes to existing agreements...". Evidently, the factual consequence of such position is that the BLE-ATDD Agreements on the SP-W and SP-E, while continuing to exist, would have no dispatchers to cover. The dispatching operations at Roseville and Houston were to be closed.[9] While arguing that it did not wish to make any change in existing agreements, the SPL has also argued, concurrently, that existing agreements are not portable under a New York Dock Article 1 (4.) Notice. In so doing it cites inter alia, the 1987 N&W, Southern v. ATDA (herein called: "SOC"), and the 1988 Southern Railway, Illinois Central Railroad v UTU (herein called: "Hayleyville") cases and accompanying New York Dock Article 1 (4.) arbitration Awards.[10] In those Awards, the arbitrator ruled that when employees are coordinated off one railroad to another the collective bargaining agreement left behind does not travel with those being transferred. In the 1987 "SOC" case the ATDA,

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[8]This language is taken from the SPL's proposal to the BLE-ATDD on February 8, 1994 which was the last formal bargaining session between the parties. See inter alia, company Pre-Hearing Ex. 7 @ p. 1 (Section 1: (b)).

[9]To the extent that such language makes sense, they would be "empty" agreements, or existent agreements with no employees to cover.

[10] The former Award, referred to sometimes as the "SOC" or System Operations Center case, and the latter, referred to sometimes as the "Hayleyville Case" (Arbitrator: R. Harris) are found in Carrier Pre-Hearing Appendices 8 & 10.

predecessor to the BLE-ATDD in the instant case, argued that the N&W contract should travel with it to Atlanta on the Southern property where employees performing power distribution were non-represented. The arbitrator rejected such argument on a number of grounds, including the one which stated that New York Dock Protections "...(go) to individual employees, not to their collective bargaining representatives..." The arbitrator also noted that to permit the transfer of the N&W agreement to Atlanta would have involved the resolution of a representation issue, in that case, which is reserved only to the NMB.[11] In the "Hayleyville" case, the United Transportation Union (UTU) argued unsuccessfully before the same arbitrator that when employees were coordinated off the ICC to the Southern property the UTU-ICC agreement should have been portable. The UTU argued, in that case, on basis of provisions found in Article 1 (2.) of New York Dock. These were rejected by the arbitrator too. The latter based his conclusions on the 1985 ICC Maine Central Railroad case (Finance Docket No. 30532). Although, the arbitrator concludes, in "Hayleville", that Maine Central "...did not state specifically that the inconsistencies between Article I, Sections (2.) and (4.) of New York Dock Conditions are to be resolved in favor of Section (4.), that conclusion is inescapable."[12]

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[11] The arbitrator states, in that Award, that "The NMB has exclusive jurisdiction over representation matters." Appendix 8, @ 15. Of interest here, since that issue is raised, is that the NMB has already done its duty in Denver with respect to that question on the SPL in its March 21, 1994 ruling.

[12] "Halyeville" @ pp. 12-13 (Carrier Appendix 11).

In short, the SPL argues that the arbitrator has no authority to rule that the BLE-ATDD agreement off the SP-E and SP-W are portable to Denver. In its Reply Submission the company reiterates what it had argued more extensively in its earlier Submission and Brief to the arbitrator which is that: "...it does not view the Article 1 (4.) process as addressing broader issues of collective bargaining....". What should the instant forum limit itself to? The SPL states that it should be the following:

> "The task before this Board is merely to provide an implementing agreement that allows the Dispatching Center to become operational with as little disruption and inefficiency as possible, and with a means to achieving the positive benefits in such an operation."

Lastly, the SPL argues that it would be improper to apply NLRA successorship doctrine to this case since there is no precedent, coming either from the courts, or the ICC, to apply such doctrine to the RLA.[13]

In its final proposal before this arbitration forum on an implementing agreement for the Denver dispatchers the company states the following about a Denver collective bargaining agreement, which is cited here for the record. It proposes that the implementing agreement should state:

> "The current rules and working conditions applicable to train dispatchers in the Denver, Colorado office shall be the applicable collective bargaining agreement in the consolidated train dispatching center in Denver,

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[13]See Carrier Appendices 13 & 14 RLEA v. Wheeling & Lake Erie Railway & Norfolk & Western Railway (Civil Action No 90-0597-A), U.S. District Court for the Eastern District of Virginia, Alexandria Division, July 11, 1990.

Colorado."[14]

The BLE-ATDD, like the company, held from the time that the December 3, 1993 Notice was issued under New York Dock Article I (4.) until negotiations over an implementing agreement reached an impasse, that a collective bargaining agreement for the consolidated Denver dispatchers was a negotiable item as part of the implementing agreement. The BLE-ATDD just had a different view of which agreement(s) should apply to the consolidated dispatchers in Denver. Although the company disputes that this written document was ever presented to its negotiators at the February 8, 1994 negotiating session, the BLE-ATDD presents that written set of proposals, with amendments, to the arbitrator in this forum as its

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[14]See company's Post-Hearing Ex. 17. Section 1 (B). This proposal at first reading appears to be a pure tautology which states that the applicable agreement shall be the applicable agreement, when the question of an "applicable" agreement is precisely the issue at stake. The insertion of the adjective, "...current..." as modifier of "...rules and working conditions..." in the first part of the sentence, however, permits construction of that sentence to mean that the SPL still thinks that the DSC-D&RGW agreement is the one which should cover all dispatchers in the new Denver dispatching facility. It is clear from the SPL's submission that it believes that the BLE-ATDD, because it now has full representation rights over all SPL dispatchers, must use as basis the DSC-D&RGW agreement in Denver for any Section 6 filing. That position can be compared with the SPL's original position which states that DSC is the Denver bargaining agent, not the BLE-ATDD. The SPL states that "...the determination of the NMB in its single carrier ruling does not impact any of the issues presently before the Board...". This cannot be accepted at face value here since the SPL, because of that ruling, has changed its final proposal on Section 1 of the Implementing Agreement. As an addendum, and in what it calls a show of good faith, after the SPL argues that the BLE-ATDD ought use only the DSC-D&RGW contract in Denver as basis for a new, negotiated labor agreement, the SPL lists issues it deems pertinent to negotiations in Denver with the BLE-ATDD after a Section 6 filing takes place. See company Post-Hearing Brief @ 3-5; 39-42 & Post-Hearing Ex. 22.

last offer on an implementing agreement.[15] Of interest here is only that aspect of the proposals which addresses the question of collective bargaining contract for the dispatchers in Denver. For the record, the BLE-ATDD have proposed in negotiations, and continue to propose before this arbitration forum, the following.

> "The current SP/ATDA (Western Lines) Agreement(s) shall remain applicable to positions relocated from Roseville to Denver, the SP/ATDA (Eastern Lines) Agreement(s) shall remain applicable to positions relocated from Houston to Denver, until such time as the parties fulfill their commitment to reaching a single agreement.
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> "Should a single working agreement be reached prior to the relocation train dispatchers' seniority will be dovetailed into a single seniority roster. Should two or more dates be the same, the standing on the roster will be determined by (1) length of service with the company, (2) age, or (3) lottery between those involved."[16]

The BLE-ATDD diverges from the stated, if not real, position of the company by proposing that this New York Dock forum resolve not only the issue of an implementing agreement, but also the issue of the proper collective bargaining agreement(s) which ought to apply to the dispatchers at Denver, as part of such implementing agreement.

The BLE-ATDD argues that it would be improper to abandon any agreement now in force for the Roseville and Houston dispatchers as these dispatchers move to Denver under the proposed coordination since a January 1, 1991 Agreement signed by the General Chairmen of the Eastern and Western Lines and company representatives contemplated such a consolidation and made allowances for it in the

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[15]See BLE-ATDD Post-Hearing Brief @ 1 referring to that document.

[16]BLE-ATDD Pre-Hearing Exhibit I.

intent of the language contained in that Agreement. Pertinent language of that agreement, according to the BLE-ATDD include but is not limited to the following:

> In the Carrier's letter dated May 16, 1989[17]...the parties agreed to review rates of pay and negotiate a single working agreement to cover the dispatcher offices in Roseville and Houston. To date, no action has been taken to reach that objective. The parties are committed to reaching an agreement, including consolidated rates. It is therefore, agreed:
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> > 1. The parties shall commence the process of negotiating a single working agreement covering both Roseville and Houston. The agreement will establish uniform working conditions for both offices.
> >
> > 2. .....
> >
> > > (b) Rates of pay as set forth in Attachment A are in consideration of current and future consolidations and restructuring of Southern Pacific Lines train dispatching offices.[18]

This particular agreement was a variant on the national agreement reached that year, at the company's request, because of the

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[17]Which is found in BLE-ATDD Exhibit S. Therein one of the company's Senior Labor Relations' Managers writes, in pertinent part:

> "The current consolidation of the dispatching offices (in Roseville & Houston) will result in two offices on the Southern Pacific from which trains will be dispatched. Upon the completion of the consolidation, it will be the goal of the Carrier and the Organization to reach a single labor agreement covering both of these offices.
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> "In conjunction with the negotiation of a new, single agreement, the parties will review the status of national negotiations in which the parties are currently engaged, and how such national negotiations or new single agreement affects the adjustments of rates of pay."

[18]See BLE-ATDD Exhibit Z.

economic conditions of the SP.

The BLE-ATDD argues then that after the move to Denver by the dispatchers all will be in a new facility, irrespective of whether they come off the SP-E, SP-W or the D&RGW, since One Corporate Center, which will house the dispatching center, was purchased in 1994 after the Notice of consolidation in December of 1993. The logical thing to do is to consolidate them all under either a new agreement to be negotiated, or at the very least, the SP-W Agreement.[19] According to counsel for the union: "...the simple fact is that there is no agreement in place at the new facility because it is just that, a new facility...It is not a D&RGW facility, it is a (SPL) facility...".

The BLE-ATDD then argues that traditional labor law principles dictate that employees in given collective bargaining units should bring their same contractual protections with them is such units are relocated to new sites.[20]

Given the position of the BLE-ATDD as outlined above its position on the Article 1 (2.)(4.) issue comes as no surprise. If Article 1 (4.), in pertinent part, states the following:

(4.)

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[19] The..."ATDD is willing to accept the application of the Western Lines Agreement to all of the transferring dispatchers" (Emphasis in original).See BLE-ATDD Post Hearing Brief @ 24, fn. 15.

[20]These arguments are cited in passing because they are presented by counsel. Whether, in fact, however, NLRA Section 8 precedent is applicable to a case such as this need not be addressed here since the arbitrator is in a position to reasonably frame conclusions on the issues raised herein without reference to such discussion.

> "...a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix...."

And if Article (2.) states the following:

> (2.)
>
> "The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (Including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes."

Then, according to the BLE-ATDD, the dispatchers cannot be moved to the new dispatching center in Denver without their current level of protection from their agreements being preserved.

Ruling

The BLE-ATDD refers to the facts of the instant case as having sui generis status. In comparing precedent cited by both parties, and with the full record before him, the arbitrator believes that such designation is not without foundation. Such is so for a number of reasons. At present, the union which has full representation rights for all dispatchers on the SPL, and consequently for the new dispatching center in Denver, is the one with contracts off the SPT property to which the December, 1993 Notice was directed. On the other hand, the labor organization with a contract for dispatchers off the D&RGW has lost representation status for those employees in view of the recent March 21, 1994 ruling by the NMB. Thirdly, it appears clear from the record that while the company issued a Notice to coordinate the Roseville and Houston dispatchers to Denver, the fact is that the dispatchers from all three current

dispatching points will be coordinated to a totally new dispatching center in Denver. As a matter of fact, as the BLE-ATDD points out, all three groups will be starting at a totally new facility when the dispatching center become operative. There has never been a labor contract covering dispatchers at the new Denver dispatching center because the facility, known as One Corporate Center, where the dispatching center will be located, had not existed prior to One Corporate Center's purchase by the SPTC in March of 1994.

The company's last proposal on an implementing agreement is that the dispatchers have labor contract protections when the coordination takes place at the new dispatching center in Denver which is that of the DSC-D&RGW labor agreement.[21]

The arbitrator is far from convinced, on basis of the record before him, that sustaining the company's position on this matter would produce reasonable, harmonious labor results as all of the SPT's dispatchers are coordinated from their present points to Denver and as the D&RGW dispatchers are moved from their current location in Denver to the new center. To sustain the company's position in these matters would not "...allow the Dispatching Center (at Denver) to become operational with as little disruption...as possible...", to cite the company's own language

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[21]The union argues that all three of the dispatcher groups will be effectively coordinated because the D&RGW dispatchers will also be moved from their current Denver facility to the new Denver dispatching center. The company discounts this argument. The question, however, can be reasonably raised: does it make a difference if the dispatchers are moved two miles, or two thousand miles? Or put otherwise: is this case about geography, or is it about a coordination of all of SPL dispatchers to a new facility? Obviously, it is about the latter.

with respect to objectives to be achieved by means of an implementing agreement. The company's position would effectively put all of the current SPT dispatchers, irrespective of what point they come from when they move to Denver, under a labor arrangement originally applicable to some 10 to 15% of all SPL's dispatchers, and which was negotiated (if that is what happened, which is never really clear) by a labor organization which is not the one which now has the franchise to negotiate for any of SPL's dispatchers. It is true, as SPL states, that a Section 6 can be filed as soon as the BLE-ATDD wishes. But until a new labor agreement is negotiated at the Denver dispatching center, and despite all parties' good faith on this point, that may well take a long period of time under Section 6. In the meantime, the SPL suggests that all dispatchers fall under a contract which the BLE-ATDD argues is either no contract at all,[22] and/or which was negotiated for a minority of the dispatchers at a location which is not even the dispatching location where the new dispatching center will be. For the arbitrator to conclude that this is the proper route would lead, in his estimation, to extreme labor instability. It would also lead, as a matter of strategic advantage, to a major collective bargaining plus for the SPL as a mere side-effect of its coordination of dispatchers to Denver despite good faith promises by the company about a future contract which have been made before, but are not properly before, this forum and which, yet on the other hand, have not been tested in an actual Section 6 set of negotiations.

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[22]Which argument is not accepted by the arbitrator. See supra.

To accept the SPL's arguments before this forum would be tantamount to nullifying the labor agreements which it has negotiated with about 85 percent of its dispatchers, with the collective bargaining agent which now represents one hundred per cent of its dispatchers, in favor of an agreement which it has with the other 15 percent under an arrangement with a collective bargaining agent which has lost any and all representation rights.

Indeed, as a matter of logic it might be noted that while the SPL argues, on the one hand, that Article I (4.) of Dock forecloses any conclusions on labor contract issues of the type addressed in Article I (2.), SPL neverthless argues in favor of the BLE-ATDD using the DSC-D&RGW agreement as basis for negotiating a new, single agreement after filing a Section 6 and that reference to the DSC-D&RGW contract be incorporated into the implementing agreement in Section 1, at least elliptically, as stated in the foregoing.[23] SPL even outlines, in its new Section 6 Exhibit, what it would find amenable as amendments "...to incorporate into the former DSC

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[23]There can be no other interpretation given to the phrase: "...the current rules and working conditions applicable to train dispatchers in the Denver, Colorado office..." (company Post-Hearing Ex. 17, Section 1 seq. as outlined earlier). The SPL argues that "...neither the NMB, nor this Board, should become enmeshed in issues of collective bargaining which remain to be resolved between the parties in the future..." (See Post Hearing Brief @ p. 3). This Board cannot avoid such entanglement since both parties propose that the coordinated dispatchers in Denver be covered by different collective bargaining agreements. What the SPL is apparently referencing here is that this Board cannot be party to amendments to whatever agreement(s) are found to be applicable at Denver as they are hammered into a single agreement after a Section 6 filing. Certainly, such negotiations are neither the business of this Board and/or of the NMB.

Denver agreement via the negotiation process."[24]

Beyond the conclusions which state that it would be unreasonable to have the DSC-D&RGW agreement cover all of the dispatchers at Denver when they move to the new dispatching center, there is other information of record which supports the conclusion that sustaining the company's position in these matters would produce an effect which is contrary to the stated, mutual intent of the majority of the parties themselves involved in the coordination. Such mutuality of understanding existed prior to the December, 1993 Notice which was filed by the company and this can be documented.

First of all, the SPT dispatchers' 1991 Eastern Lines' Agreement dealing with rates of pay, at least, unambiguously states, in referencing future consolidations, of which the contemplated move to Denver is certainly one, that such: "rates ...are in consideration of current and future consolidations and restructuring of Southern Pacific Lines train dispatching offices...". The December, 1993 Notice precisely addressed such future consolidation and restructuring, slightly less than three years after the language cited above was framed. The arbitrator cannot justifiably conclude that this language is without meaning. Secondly, the parties set as objective the achievement of one agreement for dispatchers off the SPT as early as 1989. At that time, the company stated to the union, also in unambiguous language, that it was the "...goal...(of both)...to reach a single

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[24]See company Post-Hearing Exhibit 22.

labor agreement covering both of these offices (Roseville & Houston)...". That goal had never been reached, for various reasons, but the final consolidation of all dispatchers in the new Denver dispatching center makes such goal now not only a meaningful, logical objective, but the only thing that it is reasonably practicable for the parties to do. It is simply not tenable to conclude that the SPL will not have a single labor agreement with the dispatchers in Denver in the future and all parties to this arbitration know that. Further, the goal of a potential single agreement is enhanced because, unless there is some act of god in the near future to which this arbitrator is not privy, the recent NMB ruling provides the BLE-ATDD with representation rights for all dispatchers now working on the SPL, including those working on the D&RGW, and it can reasonably be opined that one, future labor agreement would cover the latter group also.

In view of the foregoing there is insufficient basis for the arbitrator to conclude here, as he did earlier in a pre-hearing ruling, and at that point without benefit of a full record, that the SP-E Agreement, and the SP-W Agreement as well, since it is intricately tied in with the latter, ought not continue to cover the Roseville and Houston dispatchers off the SPT as they are coordinated to the new Denver dispatching center until these agreements are combined into a single agreement, which latter objective the parties had set for themselves prior to the coordination. Even though the dispatchers to the DSC-D&RGW

Agreement are now represented, by administrative fiat, by the same union as those off the SPT, the arbitrator cannot find any reasonable basis to conclude, here, that the D&RGW dispatchers ought not also remain covered under their own DSC-D&RGW agreement[25] until their collective bargaining status is settled.[26]

All three agreements shall, therefore, be applicable to the new dispatching center in Denver. All three agreements shall continue to the cover the dispatchers that they have in the past. The SPL has already indicated that it wishes to proceed this forthcoming year with bargaining matters with the BLE-ATDD in an expeditious manner. The instant ruling will provide it and the BLE-ATDD with the occasion to do so on basis of agreements already existent which can be amended and/or condensed into one agreement as the parties see fit according to the objectives of unity set forth already by the SPT and the ATDA some five years ago.

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[25]Nor that the BLE-ATDD ought not inherit this agreement as one of the three to be used as basis for negotiating a single agreement by consolidating/amending it in conjunction with the SP-E and SP-W agreements into one agreement. Such conclusion is consistent with BMWE vs Guilford Transportation Industries, Inc (1992) cited the company in Post-Hearing Ex. 20.

[26]Contract portability arguments are simply not pertinent to the instant case in view of the reasoning developed here. Their application would lead to the non-tenable conclusion that none of the dispatchers' agreements should be portable to the new Denver dispatching center, and consequently, that the dispatchers would lose all labor agreement protections until a new, single agreement would be negotiated and ratified. Further, New York Dock Article I (2.) language would become totally meaningless if the dispatchers lost all contract protections, as a side effect of the coordination, during the hiatus between their move to the new dispatching center and the event of a new labor contract.

After studying the reasoning found in ICC's Maine Central (Finance Docket No. 30532) issued in 1985, as well as Article I, Section (4.) arbitration Awards issued thereafter which deal, as this one does, with the relationship between consolidations arising from an ICC order and the Railway Labor Act, the arbitrator is not convinced that the facts of the instant case would do other than uncomfortably fall under the shadow of principles and legal conclusions laid out in some of the above. It was not uncommon for arbitrators to conclude, prior to 1985, as they plainly construed the language found in Dock which was before them at Article I, Section (2.), that this Section was intricately related to Section (4.), and that the language of Section (2.) literally means what it says. Pertinent here is the language which addresses: "...and/or existing collective bargaining agreements or otherwise[27]..." which is found in Article (2.), as well as the language of Article I (4.) which refers to reaching agreement in an implementing agreement "...with respect to the terms and conditions of this appendix..." which pre-1985 arbitrators[28] concluded must obviously include also the Article I (2.) language since it was part of the appendix. It is an inescapable conclusion, in the instant case, that Article I (2.) here has application, by reference, since the parties themselves state, as noted earlier, their desire to extend applicability of agreements to later consolidations, as well as the

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[27]Which would even cover the DSC-D&RGW document which the BLE-ATDD has argued is not a (conventional) labor agreement anyway.

[28]Some later changed their minds on basis of ICC Maine Central (1985).

desire to mesh agreements into one.

While being informed by arbitral precedent after 1985 that the ICC does not specifically state that inconsistencies between Article I, Sections (2.) and (4.) are to be resolved in favor of Section (4.), as the company here would argue, we are nevertheless advised by some arbitral precedent that such "...conclusion is inescapable...".[29]. Even if such were so, strong arguments could be made here that any inconsistencies which may exist between Sections (2.) and (4.) of Article I, applicable to the vast majority of dispatchers involved in the instant case, are less than obvious.[30]

An Implementing Agreement for the New, Denver Dispatching Center

Positions of the Parties: Discussion

The issue of what collective bargaining agreement(s), if any, shall cover the dispatchers off the SP-E, SP-W and the D&RGW in the

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[29]See company Pre-Hearing Exhibit 10.

[30] There are legal arguments and conclusions associated with the history of Dock Article I (2.)/(4.) issue(s), the ICC Maine Central Railroad Co. case, and arbitration conclusions emanating therefrom which merit further reflections but which cannot be resolved here. Suffice it to mention what appears to be the curious, legal conclusion that an ICC Order may supersede collective work place protections for employees covered by provisions of a federal labor statute (RLA); that New York Dock Conditions provide protections to individual employees, which they certainly do, but not to collective bargaining representatives when the latter are inextricably bound to labor contracts outlined in Article I (2.); that Article I (2.) explicitly addresses "...existing collective bargaining agreements...", yet Maine Central appears to obfuscate any meaning which that language might have, if its interpretation according to some arbitrators is correct, and so on.

Denver dispatching center until a single collective bargaining agreement is reached between the representative for the dispatchers and the SPL is ruled on in the preceding section of this Award. Such will be taken into account by the arbitrator when final draft of an Implementing Agreement is presented.

Preamble of the SPL's last proposal refers to the rearrangement, transfer and consolidation of dispatching forces from Houston and Roseville "...into the existing train dispatching office in Denver, Colorado...". Such rendition of facts may have been correct at the time of the Notice of consolidation in December of 1993. But such is no longer correct since March of 1994. As noted in the foregoing, the record sufficiently establishes that a more proper rendition of the facts of the situation is that the Dispatchers off the SP-E and the SP-W will not be transferred and consolidated into an existing train dispatching office in Denver, but rather that the SP-E, SP-W and the D&RGW Dispatchers shall all cumulatively be consolidated in a new dispatching center which is being set up in a totally new facility purchased by the SPTC in March of 1994, some three months or so after the original transaction Notice was issued to the SP-E and SP-W Dispatchers. These facts will be taken into account by the arbitrator when a final draft of the implementing agreement is presented.

The company argues that the BLE-ATDD attempts to support its position with respect to certain substantive items it wishes in a Denver Implementing Agreement by citing as reference other Implementing Agreements as precedent. The company is specifically

referring to Implementing Agreements signed between the ATDA and railroads merged into the SPL as result of Notices issued from March 1, 1988 through January 10, 1989.[31] The company's argument that each of these prior agreements, however, cannot serve as precedent because of a disclaimer in each of those agreements, to that effect, is accepted by the arbitrator.[32]

The company reiterates in all arguments and documentation provided to the arbitrator on this case that in its view this New York Article I (4.) forum ought to limit itself to the narrow issues of "...seniority and selection of forces' concerns...". [33] The SPL proposes, before this Board, its last offer in Article I (4.) negotiations, [34] plus amendments. In its Post-Hearing Brief it explains that there are still certain issues in its proposal for an Implementing Agreement before this Board which may go beyond its

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[31]See Pre-Hearing BLE-ATDD Exs. L through O.

[32]Pertinent language in each of these four Agreements, which reads the same in every one of them, reads as follows:

> "The provisions of this Memorandum of Agreement have been designed to address a unique situation. Therefore, the provisions of this Memorandum of Agreement and Letters of Understanding attached were made without prejudice to the position of either party and will not be cited as a precedent in the future by either party."

Found on signature page of all Agreements cited by the BLE-ATDD in Pre-Hearing Exs. L through O.

[33]Arguendo, the issues of a labor contract at Denver having already been dealt with by the arbitrator in the foregoing.

[34]See BLE-ATDD Ex. J.

stricto dicto view of what Article I (4.) requires but nevertheless it is able to "live with" certain provisions in order to expedite matters and get an Implementing Agreement in place.[35] According to the SPL, it has deleted Sections 4(a)&(b), 7(d) and 9 (in totality) proposals from it final negotiation position and presents this to the Board for consideration. Section 4(a)&(b) deals with Houston & Roseville dispatchers' separation allowance benefits under Article I (7.) of New York Dock and details with respect to how the monies are to be received, etc.; Section 7(d) deals with advances of lump sums for dispatchers electing to relocate; and Section 9 deals with parking privileges for dispatchers working various shifts once at the Denver dispatching center.[36] The comparison of the two proposals in question also show change in language in Section 1 as noted earlier by the arbitrator. The company argues that the following issues should be excluded from an implementing agreement.

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[35]At the hearing the arbitrator addressed the issue of a "door having been opened during negotiations over various items in an implementing agreement" which might provide passage for including those same items in an arbitrated agreement. The SPL has responded, which the BLE-ATDD has not denied, that it did go beyond what was considered narrow Article I (4.) items in negotiations in order to get an agreement, and avoid arbitration. As a further gesture, as noted, the SPL has included in its final offer items which go beyond what it thinks are strictly required per a New York Dock arbitration. See company Post-Hearing Brief @ p. 22.: "There is no doubt that the Carrier proposed, during negotiations, substantive terms different than New York Dock. There is nothing in Article I (4.) that precludes the parties from voluntarily agreeing to a substantive set of benefits in addition to those specifically required by Appendix III."

[36]See company's Post-Hearing Brief @ pp. 8-9; Exhibit 17.

(1) Parking. This is not an Article I (4.) issue. Further, no other employees at Denver have parking privileges. (BLE-ATDD Side Letter 6)

(2) Ban on Realignment of Train Dispatcher Territories Without Involvement of the Action Council. This is not an Article I (4.) issue. This is a managerial prerogative not related to assignment & selection of forces. The company argues that this would "handcuff" it from "...making certain positive initiatives inherent in the transaction...". (BLE-ATDD Side Letter 13)[37]

(3) A Thirty (30) Day Training/Qualification Period. This is not an Article I (4.) issue. This is a managerial prerogative. Further, the company has suggested a $5,600 train waiver sum which it interprets as simply a stipend. (BLE-ATDD Side Letter 10)

(4) Fencing Arrangement. A One Year Ban On Displacements Or Bumping. This would place restraints on the company to assign forces, under a bumping or displacement situation, for a period of one year after first assignment of a dispatcher at the Denver dispatching center. According to the company, such constraint would create a "...logistical nightmare..." SPL argues that this is a specific job right issue which is not covered by New York Dock at Article I (4.) or any other agreement in effect "whether it be DSC or ATDD..."[38] The method of selection of forces ought be dealt with by dove-tailing the seniority roster. (BLE-ATDD Side Letter 2)

(5) A Penalty Assessed the Company On Monetary Benefits If the Transaction Is Not Completed By April 1, 1995. This issue is not properly an Article I (4.) one.[39]

The final position of the BLE-ATDD on an implementing agreement before this Board is the last proposals which it offered orally to the SPL during the last round of Article I (4.)

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[37]Also see BLE-ATDD Pre-Hearing Submission @ pp. 24 seq. & BLE-ATDD Exs. Q & V inter alia. on the Action Council and Memorandum Agreements relative to this Council.

[38]See company Post-Hearing Submission @ p. 24.

[39]See BLE-ATDD Pre-Hearing Submission @ pp. 25 seq. under title of Issue No. 12.

negotiations which were held on February 8, 1994, with amendments.[40] To this effect, counsel for the BLE-ATDD explains as follows:

> "In this arbitration the union is willing to accept an implementing agreement which omits the following provisions from that last proposal (orally offered on 2-8-94): Sections 4, 5, 6 & 8, and Side Letters 4, 7, 8, 11, 12, 14 --- provided that the agreement recites that the precise provisions of New York Dock apply to those incidents of the transaction not otherwise specifically addressed in the agreement (i.e. moving expenses, losses from home removal)."

The amendments represent the following deletions from the BLE-ATDD's last bargaining proposal. They are, in pertinent part, the following.

> (1) Section 4. Separation Allowance issues dealt with under Article I (7.) of New York Dock.
>
> (2) Section 5. Moving Expenses issues dealt with under Article I (9.) of New York Dock.
>
> (3) Section 6. Loss for Home Removal dealt with under Article I (12.) of New York Dock.
>
> (4) Section 8. Lump Sum Payments/Moving Expenses.
>
> (5) Side Letter No. 4. Deleted in conjunction with Section 4 above.
>
> (6) Side Letter No. 7. Deleted in conjunction with Section 5 above.
>
> (7) Side Letter No. 8. Delete letter addressing protections under Article 7 of SP-W Agreement.
>
> (8) Side Letter No. 11. Delete training waiver in lieu of cited sum.
>
> (9) Side Letter No. 12. Delete cited allowance for dispatchers displacing to Denver over term of two years.
>
> (10) Side Letter No. 14. Delete 2% monetary benefit to be

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[40]See BLE-ATDD Pre-Hearing Ex. I & Post-Hearing Brief @ p. 1

provided to dispatchers if transfer of forces to Denver have not be completed by April 1, 1995.

Findings

Arbitral findings here will address the following.

(1) Those issues raised by the parties which are New York Dock issues but not subject to Article I (4.). Detailed exceptions applicable to the Implementing Agreement are noted per proposals by the parties.

(2) Those issues raised by the parties which are not subject to an arbitrated Implementing Agreement.

(3) Those issues raised by the parties which may properly belong in an arbitrated Implementing Agreement to cover the coordination of Train Dispatchers to SPL's new, Denver, Colorado dispatching center.

Issues Raised by the Parties Which Are New York Dock Issues Not Subject to Article I (4.)

For all SPL Train Dispatchers displacing to the SPL's new, dispatching center in Denver, Colorado: the issue of displacement allowances shall be covered by Article I (5.) of New York Dock Conditions; the issue of separation allowances shall be covered by Article I (7.) of New York Dock Conditions; the issue of moving expenses shall be covered by Article I (9.) of New York Dock Conditions with exceptions/amendments as contained in the Implementing Agreement; and the issue of loss for home removal shall be covered by Article I (12.) of New York Dock Conditions with exceptions/amendments as contained in the Implementing Agreement. The first three issues cited above are subject, in individual cases, to arbitration procedures as outlined in Article I (11.) of those same New York Dock Conditions.

Issues Raised by the Parties Which Are Not Subject to An Arbitrated Implementing Agreement

The issues of parking privileges; the realignment of train dispatching territories per action of an Action Council; a thirty day training/qualification period; and a one year ban on displacement or bumping after first assignment of a Dispatcher in the SPL's new, Denver dispatching center are not Article I (4.) issues and must more properly be dealt with by the parties in some other forum.

The Implementing Agreement

The Implementing Agreement accompanying this Award takes into account the final proposals by the parties with respect to such an Agreement. These proposals and accompanying arguments have been presented by means of exhibits and briefs, and by means of arguments provided in arbitral hearing. In accordance with the instant Findings the Agreement outlined here shall apply to the Train Dispatchers who are being coordinated to the SPL's new, consolidated dispatching center at Denver, Colorado. Such Agreement further takes into account the SPL's observations and comments with respect to the need for the company to reach new productivity levels and a new posture of competitiveness, if it wishes to remain a continuing, viable railroad in the U.S. transportation industry.[41] As a matter of principle, it may be more salutary for parties to any negotiable employer-employee Agreement, whether

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[41] "The purpose of the consolidation of train dispatching functions is to address the service performance and customer satisfaction problems...(which the SPL is currently experiencing)...". See company's Post-Hearing Brief @ 7 inter alia.

under federal or state labor law(s), or under provisions such as those found in New York Dock, if they could mutually arrive at their own understandings on framing such an Agreement. The weight of the history of employer-employee relations in the railroad industry, and in other industries in the U.S. provides evidence to support such principle. Evidently, however, the parties concluded that there were sufficient complexities associated with the instant case that such was not possible. An arbitrated Implementing Agreement, therefore, for the Southern Pacific Lines and its Train Dispatchers, represented by the American Train Dispatchers Department of the Brotherhood of Locomotive Engineers, is found in Appendix I attached to this Award. That Agreement is incorporated herein as integral part. That Agreement shall govern the transaction involved in the Southern Pacific Lines' coordination of its Train Dispatchers to its new, Denver, Colorado dispatching center.

Award

The parties to this proceeding shall be bound by the conclusions outlined in the instant Findings, and by the Implementing Agreement which is integral part of this Award and which is attached hereto as Appendix I.

Edward L. Suntrup, Arbitrator

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Denver, Colorado

Date: 5-25-94

APPENDIX I

Arbitrated Implementing Agreement

between

Southern Pacific Lines

and

Train Dispatchers
Represented by
American Train Dispatchers Department
Brotherhood of Locomotive Engineers

MEMORANDUM OF AGREEMENT

between

Southern Pacific Lines (SPL)

and

American Train Dispatchers' Department
Brotherhood of Locomotive Engineers (BLE-ATDD)

This arbitrated Agreement provides for the rearrangement, transfer and consolidation of all of the Southern Pacific Lines' Dispatchers to the company's new, dispatching center at Denver, Colorado.

Section 1

(A) The rearrangement, transfer and consolidation of train dispatching forces will commence on or after April 1, 1994 and continue until fully implemented.

(B) The following three collective bargaining agreements shall remain in effect, and shall continue to cover the Dispatchers whom they covered prior to the coordination to the new, dispatching center at Denver, until the Southern Pacific Lines and the American Train Dispatchers' Department of the Brotherhood of Locomotive Engineers reach a single collective bargaining agreement to cover all Dispatchers at the new coordinated facility:

(1) Southern Pacific-American Train Dispatchers Association (Western Lines) Agreement (ATDA-SP-W Agreement);

(2) Southern Pacific-American Train Dispatchers Association (Eastern Lines) Agreement (ATDA-SP-E Agreement);

(3) Denver & Rio Grand Western-Dispatchers Steering Committee Agreement (DSC-D&RGW Agreement).

(C) All Train Dispatchers' seniority on the SPL will be dovetailed into a new, single, seniority roster. Should two (2) or more datas be the same, standing on the roster will be determined by: (1) length of service with the SPL, or with any present or former corporate railroad entity which has merged to form the SPL; (2) age; or (3) lottery between those involved.

Section 2

(A) Initial assignment of Train Dispatchers being transferred to the new, dispatching facility shall be by advertised Bulletin. Bulletins on all positions in Denver: (1) shall be posted at all locations where SPL Dispatchers currently work and/or; (2) shall otherwise be made available to all SPL Train Dispatchers. Vacancies occurring in the Denver dispatching center will be filled in accordance with seniority on the new, single, dovetailed seniority roster.

(B) An employee who currently holds seniority as a Train Dispatcher and who has been promoted within the company, or who occupies a full-time position with the union, or who has been on any other authorized leave of absence, and who returns to the train dispatching services as a Train Dispatcher, shall be allowed to follow the work of his or her former office to the new Denver dispatching center in accordance with their seniority on the new, single, dovetailed seniority roster. Such employees shall receive all permissible benefits which would accrue to Train Dispatchers, as of the date of this Agreement, under New York Dock Conditions, and under this Implementing Agreement, if they return to train dispatching services on the SPL within five (5) years from the date of April 1, 1994 except as follows: they shall be entitled to no New York Dock benefits under Article I (9.) and (12.). If disputes arise with respect to what other New York Dock benefits these employees returning to the Dispatchers' craft should receive, such disputes may be resolved by resort to the provisions of New York Dock Conditions, Article I (11.).

(C) Should the Company re-establish train dispatching offices in the territory encompassed by the SPL, Train Dispatchers remaining in the service of the Company as Train Dispatchers who are currently covered by the ATDA-SP-E and ATDA-SP-W Agreements, and who were required to relocate and did relocate under this Implementing Agreement, shall have the option to return to the location from which they relocated.

Section 3

(A) For purposes of this Agreement, the twelve (12) month period used for the calculation of test period average compensation and time paid set forth in Article I (5.)(a), second paragraph, of the New York Dock Conditions, shall be the following: April 1, 1993 through and including March 31, 1994.

(B) Representatives of the BLE-ATDD who were absent on any day during the test period from their regular train dispatching assignment, and representatives of the DSC who were absent on any

day during the test period from their regular train dispatching assignment prior to March 21, 1994, and who lost actual time therefrom in order to attend meetings or perform other union related functions will, for the purposes of calculating such test period averages, be considered as having performed service on such days. Further, such days shall also be included as qualifying time for other benefits such as vacations and so on.

Section 4

(A) Train Dispatchers working for the SPL who are subject to this Implementing Agreement shall, within one hundred (100) days of the retroactive date of this same Agreement, which is April 1, 1994, advise the Company in writing if he/she intends to relocate to the new, Denver dispatching center.

(B) The Company will furnish each individual Train Dispatcher covered by the ATDA-SP-E and ATDA-SP-W Agreements who indicates that he/she intends to relocate, an informational manual to assist in their relocation. Said manual will be furnished upon the Train Dispatcher's written notification of intent to relocate. Train Dispatchers under the DSC-D&RGW Agreement who already work in the Denver area shall receive no relocation benefits, of any kind, under this Implementing Agreement.

(C) The Company will also make arrangements to have a relocation company assist Dispatchers who are covered by the ATDA-SP-E and ATDA-SP-W Agreements obtain a place of residence in the Denver area. The agency will show the new resident such things as transit systems and local neighborhoods. The Train Dispatcher will be advised of a specific person at the relocation company to contact.

Section 5

(A) In the event that there is more than one employee in a household entitled to benefits under New York Dock Conditions, Article I (9.) and (12.), who is covered by either the ATDA-SP-E or the ATDA-SP-W Agreements, or any other company policy, there will be no duplication of payments. The employee not receiving the stated benefits, however, will be entitled to seven (7) days' lost wages, and a two hundred dollar ($200.00) meal allowance. Lost wages and meal allowance payments shall be made to said emplyees by the Company within thirty (30) days of reception of meal receipts by the company from the employee.

(B) In the event that a residence of a Dispatcher who is covered by either the ATDA-SP-E or ATDA-SP-W Agreement is jointly owned with someone other than the Train Dispatcher and his/her spouse, the provisions of this Agreement will only apply to that portion of the residence owned by the Train Dispatcher.

Section 6

(A) Train Dispatchers under the ATDA-SP-E and ATDA-SP-W Agreements who are involved in the transition to the new, Denver dispatching center, and who therefore perform service at the Denver center in advance of the consolidation, will be allowed expenses sufficient to cover their travel costs and reasonable living expenses. Payment for lodging in Denver will be paid through direct billing to the company.

(B) During the period of time the Company requires a Train Dispatcher covered by the ATDA-SP-E or ATDA-SP-W Agreements to remain in his/her former office, after the Train Dispatcher has vacated his/her former residence and established a permanent residence in Denver, the Train Dispatcher will be allowed reinbursement for his/her own reasonable out-of-pocket expenses.

(C) If the intended move by a Dispatcher covered by the ATDA-SP-E or ATDA-SP-W Agreements to the new, Denver dispatching center is not made on the designated date, after the Dispatcher and/or his or her dependents have vacated their residence or commenced moving, the Company shall provide suitable lodging and reasonable and necessary expenses for the individual Train Dispatcher and his or her dependents. It is understood by all parties that reasonable delays may take place, beyond the control of the Company and/or the Dispatcher, and that dates for intended relocations may change after residences have been vacated. Expenses shall continue to be paid by the company on a day to day basis, for a reasonable period of time, until the employee is released to proceed to his or her new location in Denver.

(D) It is understood that the transfer date for Dispatchers covered by the ATDA-SP-E and ATDA-SP-W Agreements may be subject to change or may be different for each individual Dispatcher. Such date may be extended without penalty to the Company provided the Dispatcher in question has not formalized arrangements to vacate residence or has not commenced moving.

Section 7

A Train Dispatcher working for the SPL shall cease to be protected by this Implementing Agreement in case of his or her disability, resignation, death, dismissal for cause in accordance with current applicable rules, or currently applicable or future applicable collective bargaining agreement(s), or failure to accept employment in another craft, or failure to accept employment as provided in the currently applicable or future collective bargaining agreement(s).

Section 8

This Agreement constitutes an arbitrated Implementing Agreement. Except as specifically modified by this Agreement, all terms and conditions contained in New York Dock Conditions for the protection of Train Dispatchers who are currently covered by the ADTA-SP-E, ATDA-SP-W, and DSC-D&RGW Agreements, are incorporated herein and shall apply to all Train Dispatchers who become adversely affected as result of the consolidation of SPL's train dispatching offices to the new, Denver dispatching center.

Section 9

The provisions of this Implementing Agreement address a specific and unique situation. Its provisions shall not serve as precedent in the future by any party.

Section 10

All provisions contained in this Implementing Agreement shall be retroactive to April 1, 1994.

Denver, Colorado

Dated: May 25, 1994