

**ARBITRATION PROCEEDING
UNDER NEW YORK DOCK IMPLEMENTING AGREEMENT
SIGNED AUGUST 17, 1991**

In the Matter of the Arbitration between:

CSX TRANSPORTATION, INC.

and

OPINION AND AWARD

**AMERICAN TRAIN DISPATCHERS
DEPARTMENT OF THE
INTERNATIONAL BROTHERHOOD
OF LOCOMOTIVE ENGINEERS**

Date of Hearing: May 5, 1997
Place of Hearing: Jacksonville, Florida
Date of Award: May 21, 1997

PETER R. MEYERS, Chairman and Neutral Member
360 East Randolph Street
Suite 3104
Chicago, Illinois 60601
312-616-1500

APPEARANCES

N. B. Grissom, Carrier Member
CSX Transportation
Employee Relations
6735 Southpoint Drive S. J670
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J. W. Parker, Employee Member
Vice President, ATDD/BLE
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Introduction

By notice dated July 8, 1991, CSX Transportation, Inc. (hereinafter "the Carrier"), informed the American Train Dispatchers Department of the International Brotherhood of Locomotive Engineers (hereinafter "the Organization") of its intent to transfer and coordinate train dispatching functions performed at Rainelle, West Virginia, to the Centralized Train Dispatching Center at Jacksonville, Florida. The parties negotiated a *New York Dock* Implementing Agreement, which was dated August 17, 1991.

Claimant Dennis D. Gwinn was employed by the Carrier as a train dispatcher, and he was transferred from Rainelle, West Virginia, to a position at the Centralized Train Dispatching Center in Jacksonville. In March 1994, after a lengthy absence from duty due to medical problems, the Claimant was medically disqualified from working as a train dispatcher, and he returned to duty as a general clerk in Rainelle, West Virginia. The Organization filed a claim on Claimant Gwinn's behalf, contending that the Carrier improperly denied Claimant a displacement allowance, pursuant to the protective benefits of the *New York Dock* Implementing Agreement.

This matter was processed, without resolution, through the contractual grievance procedure, then came to be heard, pursuant to Article I, Section 11, of the *New York Dock Conditions*, before the CSX-ATDD Arbitration Committee, Peter R. Meyers, Neutral Member, on May 5, 1997, in Jacksonville, Florida. The parties also filed written briefs in support of their respective positions.

Question at Issue Posed by the Carrier

Should Mr. D.D. Gwinn, who was medically disqualified from train dispatcher service, have his *New York Dock* displacement allowance reinstated?

Questions at Issue Posed by the Organization

Did Carrier violate the protective conditions of the *New York Dock* provisions when it denied Claimant D.D. Gwinn his displacement allowance subsequent to being medically disqualified to work as a train dispatcher? If so, is Carrier required to compensate the Claimant with his monthly displacement allowance retroactive to the time he was available for train dispatching service and occupied a train dispatcher's position?

Relevant Contract Provisions

NEW YORK DOCK CONDITIONS

APPENDIX III

Labor protective conditions to be imposed in railroad transactions pursuant to 49 U.S.C. 11343 et seq. [formerly sections 5(2) and 5(3) of the Interstate Commerce Act], except for trackage rights and lease proposals which are being considered elsewhere, are as follows:

1. **Definitions.** - (a) "Transaction" means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed.

(b) "Displaced employee" mean an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

(c) "Dismissed employee" means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee who position is abolished as a result of a transaction.

(d) "Protective period" means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, provided, however, that the protective period for any particular employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the railroad prior to the date of his displacement or his dismissal. For purposes of this appendix, an employee's length of service shall be determined in accordance with the provisions of section 7(b) of the Washington Job Protection Agreement of May 1936.

...

5. Displacement allowances - (a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreement, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

...

11. Arbitration of disputes. - (a) In the event the railroad and its employees, or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, except sections 4 and 12 of this article 1, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee. Upon notice in writing served by one party on the other of intent by that party to refer a dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the committee and the members thus chosen shall select a neutral member who shall serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or the highest officer designated by the railroads, as the case may be, shall be deemed the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. Should the members be unable to agree upon the appointment of the neutral member within 10 days, the parties shall then within an additional 10 days endeavor to agree to a method by which a neutral member

shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days the neutral member whose designation will be binding, upon the parties.

(c) The decision, by majority vote, of the arbitration committee shall be final, binding, and conclusive and shall be rendered within 45 days after the hearing of the dispute or controversy has been concluded and the record closed.

(d) The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

Factual Background

The parties do not dispute the material facts in this case. On August 17, 1991, the parties entered into a *New York Dock* Implementing Agreement in connection with the Carrier's earlier notice to the Organization that it intended to transfer and coordinate train dispatching functions performed at Rainelle, West Virginia, to the Centralized Train Dispatching Center at Jacksonville, Florida. As part of the resulting coordination of train dispatching functions, the Claimant transferred from Rainelle to a guaranteed train dispatcher extra board position at the Centralized Train Dispatcher Center in Jacksonville on or about October 7, 1991; his seniority accordingly was transferred from the Rainelle Dispatchers' Seniority Roster to the Jacksonville Centralized Train Dispatcher Seniority Roster. The Claimant also was provided with relocation benefits, in accordance with the

terms of the Implementing Agreement. Moreover, the Claimant was notified that he would receive a *New York Dock* test period average guarantee in the amount of \$3,290.29 per month.

On July 18, 1992, the Claimant began a lengthy absence from duty due to medical problems. In early March 1994, while the Claimant still was off duty, his personal physician contacted the Carrier's Chief Medical Officer and advised that the Claimant could return to duty, but would have to be restricted to low-stress jobs. On March 28, 1994, the Claimant returned to work in the position of general clerk at Rainelle, West Virginia, in accordance with the medical restrictions.

In response to an inquiry from the Organization, the Carrier informed the Organization that because the Claimant had earned his *New York Dock* protection as a train dispatcher, the earnings of the dispatcher's position in Jacksonville, which he stood to work, were being held against his guarantee; the rate associated with that position exceeded the Claimant's guarantee. The Organization subsequently filed a claim on Claimant's behalf, seeking to have the Claimant's protective benefits retroactively reinstated.

The Organization's Position

The Organization contends that the record in this matter clearly establishes that the Claimant was working as a train dispatcher until medically disqualified by the Carrier. In addition, it is undisputed that since this medical disqualification, the Claimant has held the highest-rated position to which his seniority entitled him. The Union therefore asserts that the Claimant is entitled to the benefit of the protective provisions contained within

Appendix III of the *New York Dock Conditions*.

The Organization further asserts that the Carrier's contrary position is not on point and must be rejected. The applicable governing language clearly demonstrates that the instant claim has merit and is valid. The Organization contends that the claim should be sustained as presented.

The Carrier's Position

The Carrier contends that, for guarantee purposes, it properly treated the Claimant as occupying the higher-rated position of train dispatcher located at the Centralized Train Dispatching Center in Jacksonville, Florida. Claimant therefore is not entitled to any *New York Dock* monetary protection. The Carrier emphasizes that Article I, Section 1(b) of the *New York Dock Conditions* defines a "displaced employee" as one who is placed in a worse position as a result of a transaction. The Claimant's worsened position was not the result of a transaction, but rather a medical problem that precludes him from performing the duties of a train dispatcher.

The Carrier points out that the Claimant's personal physician determined that he could return to work only with restrictions limiting him to lower-stress jobs. The Carrier contends that the Organization's contradictory assertion, that it was the Carrier who medically disqualified the Claimant, is not factually correct. The Carrier points out, however, that it is immaterial who medically disqualified the Claimant, so long as that disqualification is valid. The record does not contain any evidence, nor has there been any contention, that the Claimant was or is medically qualified to perform the duties of a train

dispatcher.

The Carrier goes on to argue that the Claimant's worsened position clearly was the result of his medical condition, and not the Centralized Train Dispatching transaction. Claimant is not a "displaced employee" as that term is defined in the *New York Dock Conditions*. The Carrier asserts that the *New York Dock Conditions* are not intended to afford benefits to employees who, for reasons other than a transaction, earned less than their test-period average earnings. Although it is true that the Claimant did not intentionally make himself medically unable to perform his duties as a train dispatcher, it also is true that his inability to perform such service cannot be attributable to either the Carrier or the transaction.

✓ The Carrier points to other cases in which it has been held that when an employee occupies a worsened position as a result of a medical disqualification, the employee was not displaced as the result of an action by the Carrier or a "transaction" and should not be considered a "displaced employee." The Carrier maintains that under the Organization's theory, the Claimant would still be entitled to a protective allowance if he were completely disabled. Such a result would be absurd and completely contrary to the intent of the *New York Dock Conditions*.

The Carrier further asserts that the record reflects that it has informed the Organization that if the Claimant now is medically able to perform the duties of a train dispatcher, it would consider permitting him to return to a position at the Centralized Dispatching Center. The Carrier contends that its Question At Issue should be answered in

the negative.

Decision

This Committee has carefully reviewed all of the evidence and testimony in the record, as well as the written briefs submitted by the parties. As is typical of contract-interpretation disputes, the Organization bears the burden of proof here. The Organization is attempting to show that the Claimant is entitled to the protective benefits set forth in the *New York Dock* labor conditions. Appendix III, Article 11(e) of the *New York Dock Conditions* expressly provides that the Organization must make an initial showing that identifies the transaction and specifies the pertinent facts relating to the transaction upon which it relies. Essentially, the Organization must show that the Claimant was adversely affected by the transaction at issue and that he is entitled to the protective benefits of the *New York Dock Conditions* under the factual circumstances present in this case. To satisfactorily make this showing, the Organization must establish the existence of a relationship, or nexus, between the cited transaction and any proven adverse effect. Once the Organization successfully makes this showing, then the Carrier must defend itself against the claim by proving that factors other than the transaction affected the Claimant.

The record in this matter does show that a transaction, as that term is defined in the *New York Dock Conditions*, certainly did occur during or around the latter part of 1991, and that the Claimant transferred to a position as a train dispatcher at the Centralized Train Dispatching Center at Jacksonville, Florida, in October 1991, as part of the coordination of work that occurred as a result of that transaction. The record further shows that some

seven months after he was transferred to Jacksonville, the Claimant began an absence from duty, due to medical problems, that lasted not quite two years. There also is no dispute that the Claimant currently occupies a worsened position, in that since his March 1994 return to duty from those medical problems, he has held the position of general clerk in Rainelle, West Virginia, rather than working as a train dispatcher at the Centralized Train Dispatcher Center in Jacksonville.

The Organization apparently asserts that the Claimant's move to the position of general clerk constitutes a second "transaction," one that affected only the Claimant. There is no support, however, for the proposition that the Claimant was moved to the clerk position as a result of a "transaction," as that term is used in the *New York Dock Conditions*. Instead, the record in this matter conclusively demonstrates that the Claimant's transfer from the dispatcher position to the clerk position was not a "transaction." The sole reason for the Claimant's transfer was that his medical condition made it impossible for him to continue working as a train dispatcher. Although it is true that the Claimant did not make this move voluntarily, the Carrier is correct in its assertion that the Claimant's medical inability to perform the duties of a train dispatcher was not the result of any action by the Carrier or any transaction, whether the 1991 transaction involving the Centralized Train Dispatching Center in Jacksonville or some other transaction.

The Claimant simply cannot be considered a "displaced employee," as defined in the *New York Dock Conditions*. The Claimant's transfer from a dispatcher position to a clerk position, although it did have an adverse effect on the Claimant, was not the result of any

affirmative action by the Carrier; rather, the transfer occurred solely in response to the fact that the Claimant was medically disqualified, by both his own and the Carrier's physicians, from performing the duties of a dispatcher. Nor can the adverse effect on the Claimant's position be considered as the effect of any transaction; the adverse effect was caused by the Claimant's medical condition, and nothing else.

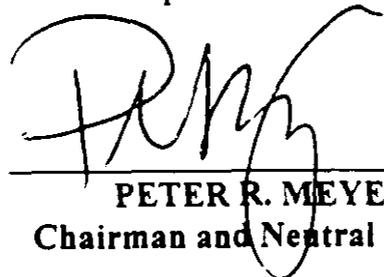
The Organization has been unable to show that there was any relationship between any "transaction," as that term is used in the *New York Dock Conditions*, and the adverse effect that the Claimant experienced because of his transfer from the dispatcher position to the clerk position. Because there is no such nexus, the Claimant is not entitled to the protective benefits of the *New York Dock Conditions* in connection with this transfer. Because there is no evidence that the Claimant was harmed by any transaction, there are no grounds for affording him any remedy under the terms of the *New York Dock Conditions*.

Award

The Question at Issue posed by the Carrier is answered in the negative.

The Questions at Issue posed by the Organization are answered in the negative.

The Claimant is not entitled to protective benefits under the provisions of the *New York Dock Conditions*.

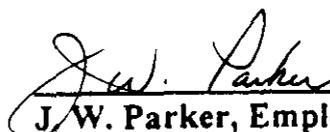


PETER R. MEYERS
Chairman and Neutral Member



N. B. Grissom, Carrier Member

5/29/97



J. W. Parker, Employee Member

6/4/97