ARBITRATION UNDER
MERGER PROTECTION AGREEMENT

Parties to Dispute:

Brotherhood of Maintenance of Way Employes :
:
and :
:
Illinois Central Gulf Railroad :

ARBITRATION COMMITTEE

Joseph A. Sickles	Neutral Member
J. S. Gibbins	Carrier Member
Hugh Harper	Employe Member

STATEMENT OF THE CASE

The parties were unable to resolve a dispute concerning the application of the 1972 Merger Protection Agreement and pursuant to Section 8 of that agreement the dispute was submitted to this Committee.

A hearing was held on September 30, 1985, in Chicago, Illinois, at which time all parties were represented and afforded full opportunity to present pertinent and material information; all of which has been considered.

QUESTION AT ISSUE

Whether an employee is required to bid on a higher rated position in order to receive protected benefits from the September 15, 1972, Merger Agreement?

STATEMENT OF FACTS

CLAIMANTS MILLER AND POINDEXTER

Claimant W. A. Miller established carpenter helper seniority on June 17, 1971. Claimant R. R. Poindexter established carpenter seniority on October 1, 1971. Those were the respective positions held by the Claimants on the date of the merger between Illinois Central Gulf and the Gulf, Mobile and Ohio Railroad in 1972. As employees

CLAIMANT HOPSON

Claimant Hopson established seniority as a Group C Machine Operator on March 26, 1971 and he held that position at the time of the merger. During the period of time from November 29 to December 31, 1983, he was only able to hold work as a Trackman - a lower rated position in the track subdepartment.

Between the date of the merger and November 1983 (when Claimant Hopson was forced to work the Trackman position), several employees junior to the Claimant bid on and were promoted to positions above Group C Machine Operator. Specifically, it appears that four less senior employees currently hold positions of Assistant Foreman or Foreman within the track subdepartment.

On behalf of all three Claimants, the Organization submitted claims for protective pay under the September 15, 1972 Meger Protection Agreement for time spent working in position lower than those held at the time of the merger.

The Claims of Poindexter, Miller and Hobson were submitted in January of 1984 and eventually denied by the Carrier's Director of Labor Relations in April. That declination was reaffirmed in September in a letter in which the Director stated that "since (the Claimant's) can be working in higher rated positions, (they are) not entitled to protective pay under the agreement."

POSITIONS OF THE PARTIES

ORGANIZATIONS POSITION

The Organization contends that under Appendix C of the Merger Protection Agreement, the Claimants are entitled to rates of Carpenter, Helper and Machine Operator while they occupy the Bridgemen positions. Appendix C reads in pertinent part:

> "Upon request, the New Company will furnish the Organizations, for any employee appearing on rosters in Appendix B, information respecting his normal rate of compensation."
>
> "Employees entitled to preservation of employment who, on the day prior to the consumation of the merger, hold regularly assigned positions shall not be placed in a worse position with respect to compensation than the normal rate of compensation for said regularly assigned position as of the date of

CARRIER'S POSITION

The Carrier bases its position on a different reading of Appendix C. The Carrier asserts that it applies this provision to these Claimants in the same manner it applies comparable language to other employees. Before any claim under Appendix C is approved, the Carrier determines the position that the employee would currently hold if he had exercised his seniority at every available opportunity since the merger. In this case, for instance, the Carrier has determined that the Claimants could be holding positions of Foreman or Assitant if they had exercised their seniority and progressed to these jobs as vacancies in higher levels occurred. Instead, junior employees successfully bid on higher level jobs and are receiving corresponding higher levels of compensation. Had the Claimant's exercised their rights they would now be earning what the junior employees are earning (and perhaps the junior employees would now be working at the lower positions). In any event, under the Carrier's reading of Appendix C, for purposes of determining whether protected compensation is owed, each employee is deemed to be holding the position which he would hold if he had exercised his seniority. Since the higher level position the employee is deemed to be holding will virtually always pay more than the position held at the date of the merger, the employee is not viewed as one who has been "placed in a worse position with respect to compensation. . ."

In support of this interpretation of the language of Appendix C, the Carrier submitted with its brief, the following:

1. The merger protection agreement between the Carrier and employees represented by the Brotherhood of Railway, Airline Clerks signed September 15, 1972;

2. The merger protection agreement between the Carrier and employees represented by United Transportation Union, signed May 9, 1973;

two other employee protection agreements negotiated at the time of the merger. For example, the agreement covering employees represented by United Transportation Union describes, in Section 3(h), the manner in which protected employees are to be compensated during adjustment periods:

> The first adjustment period will commence on the beginning of the first payroll period for former IC employees following the date of merger. . .and for purposes of determining whether, or to what extent, a protected employee has been placed in a worse position with respect to his compensation and total time paid for during the corresponding base period adjusted compensation, he shall be paid the difference. . .provided however, that in determining compensation in his current position, the employee will be treated as occupying the position producing the highest rate of pay and compensation to which his seniority entitles him under the working agreement and which does not require a change in his place of residence. However, while holding a position in a class of service in which he established his base period guarantees, an employee will not be charged with the earnings of a higher paying position in a class of service in which he did not establish his base period guarantee. (emphasis added).

It should be noted that in this provision, the term "current position" is used to describe the position of an employee after the merger.

In Section 4(a) of the ICG-BRAC agreement, the language is even more specific on this point:

> (a) In the exercise of seniority with the New Company a Protected Employee shall be expected to occupy an available position in his home zone rated equal to or in excess of his daily guarantee. If a Protected Employee fails to exercise his seniority rights to which he has the seniority and qualifications (or has been notified in writing that he has the fitness and ability to become qualified) which carries a rate of pay exceeding the rate of pay of the position he elects to retain, he shall thereafter be treated as occupying the position which he elects to decline. The New Company will notify a Protected Employee occupying a regular position rated at less than his guarantee of the availability of a higher rated regular position. (emphasis added).

Certainly, neither agreement quoted above is binding on the dispute in this case. However, these provisions are relevant in interpreting Appendix C in that the other merger agreements (1) are contemporaneous documents; (2) show an intent on the part of the Carrier that is consistent with the interpretations asserted here; and (3) illustrate the manner in which other merger protection plans have been implemented in other parts of the Carrier's operation.

AWARD

Claim denied.

Joseph A. Sickles
Chairman and Neutral Member

J. S. Gibbins
Carrier Member

Hugh Harper
Organization Member dissenting.

May 21, 1986
Date