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SERVICE DATE – NOVEMBER 18, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 28676 (Sub-No. 5)

GRAND TRUNK WESTERN RAILROAD – CONTROL –  
DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY AND  
DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY

(Arbitration Review)

Decided: November 17, 2005

On April 15, 2005, Arbitrator Thomas N. Rinaldo, acting under Article I § 11 of the New York Dock conditions,<sup>1</sup> issued a decision (the Rinaldo Award) denying a benefits claim made by Timothy W. Black and Thomas K. Sorge (Claimants). By appeal filed May 4, 2005 (as supplemented by letters dated May 14, 2005, and May 16, 2005), Claimants ask that the Rinaldo Award be vacated, and that they be awarded the “Extra Board” benefits to which they believe they are entitled.<sup>2</sup> By reply filed May 19, 2005, Canadian National Railway Company (CN) and its affiliate, Grand Trunk Western Railroad (GTW),<sup>3</sup> urge the denial of the appeal. For the reasons explained in this decision, we decline to overturn the Rinaldo Award.

#### MISCELLANEOUS PLEADINGS

In addition to the appeal filed by Claimants on May 4, 2005 (as supplemented by letters dated May 14, 2005, and May 16, 2005), and the reply filed by CN/GTW on May 19, 2005, the record in this proceeding includes several additional pleadings. Specifically, Claimants filed

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<sup>1</sup> New York Dock Ry. – Control – Brooklyn Eastern Dist., 360 I.C.C. 60, 87-88 (1979).

<sup>2</sup> The appeal was initially docketed as STB Finance Docket No. 33556 (Sub-No. 5), Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated – Control – Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company (Arbitration Review). By decision served May 12, 2005, the appeal was redocketed as STB Finance Docket No. 28676 (Sub-No. 5), Grand Trunk Western Railroad – Control – Detroit, Toledo and Ironton Railroad Company and Detroit and Toledo Shore Line Railroad Company (Arbitration Review).

<sup>3</sup> GTW is a wholly owned subsidiary of Grand Trunk Corporation (GTC), which is in turn a wholly owned subsidiary of CN.

additional pleadings on May 23, 2005, July 8, 2005, July 21, 2005, October 12, 2005, October 18, 2005, and October 20, 2005, and CN/GTW filed replies on May 31, 2005, July 19, 2005, July 26, 2005, and October 21, 2005. We will allow all of the additional pleadings into the record in this proceeding.

## BACKGROUND

The GTW/DT2 Transaction. In 1979, our predecessor agency, the Interstate Commerce Commission (ICC), approved an application for GTW to acquire control of the Detroit, Toledo and Ironton Railroad Company (DTI) and the Detroit and Toledo Shore Line Railroad Company (DTSL). See Norfolk & W. Ry. Co. – Control – Detroit, T. & I. R. Co., 360 I.C.C. 498 (1979) (GTW/DT2).<sup>4</sup> The “GTW/DT2 Transaction” authorized by that decision took place on June 24, 1980.

The 1979 Agreement. As a condition to its approval of the GTW/DT2 Transaction, the ICC required that GTW extend to all affected employees the protections embodied in an agreement (the 1979 Agreement) that had been negotiated between GTW and certain unions representing the employees of GTW, DTI, and DTSL, see GTW/DT2, 360 I.C.C. at 531-32, 537, including the Brotherhood of Railway Carmen (BRC).<sup>5</sup> As the ICC noted, the 1979 Agreement provided “attrition protection. That is, no reduction in force of employment shall occur other than principally by death, retirement, discharge for cause, or resignation.” Id. at 531. The pertinent provisions of the 1979 Agreement are summarized below.

Section 1 of the 1979 Agreement provides that the New York Dock conditions “shall be applied for the protection of the interests of employees” of GTW, DTI, and DTSL, “except as those terms and conditions are modified herein.”

Section 2(a) provides that all “protected employees” of GTW, DTI, and DTSL shall be certified as “adversely affected.” Section 2(b) specifies that all employees in the active employment of GTW, DTI, or DTSL on the date of GTW’s acquisition of DTI shall be “protected employees.” Section 2(c) provides that all other employees (“i.e., those on authorized leave of absence or furlough”) with an employment relationship with GTW, DTI, or DTSL on that date shall become “protected employees” as of the date they become actively (re)employed by their respective carrier employer.

Section 3 provides that the protective period shall be from the date the protected employee is certified as adversely affected until that employee qualifies for early retiree major medical benefits provided under a certain group policy, “except as otherwise provided in Article I, Section 5(c) and 6(d) of New York Dock.”

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<sup>4</sup> That decision denied an application filed jointly by the Norfolk and Western Railway Company and the Baltimore and Ohio Railroad Company to acquire control of DTI and DTSL and granted the competing application filed by GTW.

<sup>5</sup> BRC is now a “division” of the Transportation Communications International Union (TCU).

Section 6 of the 1979 Agreement defines the term “change of residence” as a transfer of an employee’s work location to a point that is located (1) either (a) more than 30 miles from the employee’s former work location or (b) more than 30 normal highway route miles from his residence and (2) farther from his residence than was his former work location.

Section 7 provides that “DTSL employees who are receiving dismissal allowances shall be obligated to accept a reasonably comparable position with the GTW or the DT&I which does not require a change in residence in order to maintain their protection hereunder.”

Section 8(a) provides that, in the event of a decline in railroad business in excess of 10% in any 30-day period, a reduction in forces may be made during that 30-day period below the number of employees entitled to preservation of benefits under the 1979 Agreement, to the extent of 1% for each 1% by which the decline in business exceeds 10%.

Section 11 provides that the 1979 Agreement will not become effective and the enhanced benefits provided under the 1979 Agreement (i.e., the additional benefits beyond the standard New York Dock benefits) will not apply to employees in a particular craft or class until the labor organization representing that craft or class reaches a single working agreement on GTW, DTI, and DTSL.

The 1981 Agreement. In September 1981, GTW/DTI<sup>6</sup> and BRC negotiated a single working agreement governing all BRC-represented employees on the combined GTW system. The 1981 Agreement consisted of several separate agreements, identified as Agreements B through H, which together were deemed to “constitute coming to agreement on a single Working Agreement which will be applicable to all Carmen employees of the G.T.W. and D.T.&I. Railroads represented by B.R.C.” Agreement F and Agreement H merit attention here.<sup>7</sup>

Agreement F is said to clarify that the “protected employees” entitled to automatic certification under the 1979 Agreement would be those Carmen who had an employment relationship with any of the constituent railroads on June 24, 1980, and a Carman seniority date prior to June 25, 1980, and that such automatic certification would become effective on September 23, 1981.<sup>8</sup>

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<sup>6</sup> DTSL was merged into GTW in 1981.

<sup>7</sup> The record compiled in this proceeding includes a copy of Agreement H, but not Agreement F or any other part of the 1981 Agreement. However, an affidavit submitted to Arbitrator Rinaldo (the “Kovacs Declaration,” dated January 29, 2005) includes a description of the 1981 Agreement in general and Agreement F in particular, and a copy of the Kovacs Declaration was included with the Claimants’ appeal. Our description of the 1981 Agreement and its Agreement F is taken from the Kovacs Declaration.

<sup>8</sup> The phrase “automatic certification” refers to the provision of the 1979 Agreement that provides that all protected employees “shall be certified as adversely affected.”

Agreement H contains a number of provisions that merit attention here. Section I(1) provides that Agreement H was designed to provide for expedited changes in services, facilities, and operations and for the orderly transfer of protected employees, work, and positions between the GTW and DTI railroads and within the two railroads. Section I(1) also provides that the GTW and DTI railroads will not be required to hire a new employee at any point for a position that is subject to the GTW/DTI-BRC Working Agreement at a time that a BRC protected employee who is qualified or has the fitness and ability to become qualified for such position is receiving protection compensation as a furloughed employee pursuant to the 1979 Agreement. Section I(1) further provides that a “protected employee” as used in “this Agreement” is one defined as such in the 1979 Agreement.

Section I(2) of Agreement H provides that work, positions and/or employees may be transferred to another seniority point. Section I(2) further provides that “[p]rior to any transfer 30-days (90 days if the transfer of employees requires a change in residence) written notice outlining the details of the transfer will be given to the employee and BRC and the procedure set forth” in Section I(2)(A)-(C) will be followed.

Section I(2)(A) sets out the procedure applicable when “position and work” are transferred. Section I(2)(A)(b) provides that, if no bids are received for the position, the Carrier may, at its option, assign to such position the junior protected employee at the location from which the work is being transferred. It also provides that, if such a protected employee has to change his residence, he will be given four options: (1) transfer with the work to the new seniority point, if such is the case; (2) transfer to an available job in his craft for which he is qualified at another point; (3) elect to take separation pay computed in accordance with Section 9 of the Washington Job Protection Agreement of May 1936 (WJPA);<sup>9</sup> or (4) take a furloughed status with suspension of all protective benefits but with rights and obligations to recall to service in his craft in accordance with existing schedule rules. Section I(2)(A)(c) provides that employees transferring to another point pursuant to Section I(2)(A)(b) will be entitled to moving benefits if change in residence is required and actually made.

Section I(2)(B) sets out the procedure applicable when work is transferred but positions are abolished. It provides that “[t]he regular assigned incumbent of a position that is abolished will be permitted to exercise his seniority at the point from where the work is being transferred.”

Section I(2)(C) sets out the procedure applicable when a portion of the work is transferred but the position remains at the same point. It provides that “[a] regular assigned incumbent of position from which a portion of work is being transferred will be entitled to exercise seniority or make a displacement as the result of the transfer of a portion of the work of the position.”

Section II(1) provides that any permanent vacancy at any point covered by the GTW/DTI-BRC Working Agreement un-filled through the seniority processes which would require the hiring of a new employee may be offered to those BRC furloughed protected

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<sup>9</sup> See CSX Corp. – Control – Chessie and Seaboard C.L.I., 6 I.C.C.2d 715, 778-93 (1990) (the WJPA).

employees at other points receiving protective compensation pursuant to the 1979 Agreement in reverse order of seniority date as a carman. Moreover, “such offer will first be made to those employees who could fill the position without requiring a change of residence.” Section II(1) further provides that those employees rejecting the offer will have their protective compensation payments suspended.

Section II(2) provides that, if the procedure set forth in Section II(1) does not result in the position being filled, then the position may be offered to those BRC furloughed protected employees at other points receiving compensation pursuant to the 1979 Agreement, in reverse order of seniority date as a carman, who would be required to change their residence. It further provides that an employee offered a position pursuant to Section II(2) will be given four options: (1) transfer to the new seniority point; (2) transfer to an available job in his craft for which he is qualified at another point; (3) elect to take separation pay computed in accordance with Section 9 of the WJPA; or (4) continue on a furloughed status with suspension of all protective benefits but with rights and obligations to recall to service in his craft in accordance with existing schedule rules.

Section II(3) provides that, if the vacancy is not filled by following the procedure in Section II(1) and Section II(2), the Carrier, at its option, may offer the vacancy to a non-protected employee with a seniority date prior to June 25, 1980, who has not yet become a protected employee.

Section II(4) provides that employees transferred to another point pursuant to Section II(2) or Section II(3) will be entitled to moving benefits if change in residence is required and actually made.

Section III provides that “change in residence” as used in “this Agreement” shall be as defined in Section 6 of the 1979 Agreement.

Section V(1) provides that “[t]his Agreement shall constitute the agreement referred to in Section 4(a) of Appendix III (New York Dock) that is required before changes can be made. Accordingly the provisions set forth herein shall substitute for the provisions set forth in Section 4(a) of Article I of New York Dock which Section shall be inapplicable.”

Section V(2) provides that “[t]his Agreement is intended to clarify conditions, responsibilities and obligations of protected employees. Nothing contained in this Agreement shall be construed to eliminate or reduce any existing conditions, responsibilities or obligations pertaining to protected employees as set forth” in any rule or agreement, including the 1979 Agreement, or in the New York Dock conditions.

The 1983 Agreement. In 1983, GTW/DTI and BRC negotiated an agreement “to provide a substitute in place of displacement and dismissal allowances for employees certified as adversely affected pursuant to” Section B of Agreement F of the 1981 Agreement. The 1983 Agreement modifies, as respects employees represented by BRC, the 1979 Agreement. Two changes merit attention.

Paragraph 1 of the 1983 Agreement provides that protected employees who would otherwise stand to be furloughed as a result of a reduction in force will, during their protective period, “be placed on an extra board for four consecutive days each calendar week, excluding rest days, and will be guaranteed a minimum of 7 hours at the straight time hourly rate of pay (including COLA) of a Carmen Welder employee for each of the four days.” A GTW-BRC “side letter” (dated March 25, 1983) notes that this placement of protected employees on an “extra board” is in lieu of furloughing them and paying them protection pay.

Paragraph 5 of the 1983 Agreement “abrogated” Section 8 of the 1979 Agreement, which had allowed GTW to make certain reductions in forces in the event of certain declines in railroad business.

The 1996 Agreement. In 1996, GTW<sup>10</sup> and BRC negotiated another agreement, but the record compiled in this proceeding contains neither a copy of the 1996 Agreement nor a description of its contents. The record does include, however, a copy of a “side letter” (Side Letter No. 2) to the 1996 Agreement, which merits attention here.

Side Letter No. 2 of the 1996 Agreement<sup>11</sup> confirms that the 1996 Agreement will not be used to deny any employees with a seniority date on or before January 10, 1996, “who become furloughed hereunder” the opportunity to participate in GTW-BRC labor protective agreements in the event that all or part of GTW is sold or leased and the standard labor protective arrangements imposed in rail mergers are not imposed by any federal board or agency. Side Letter No. 2 further clarifies that, if portions of “the current GTW” are sold or leased (with or without federally imposed protective conditions), the obligations under the 1979 Agreement (as amended) and the 1981 Agreement (as amended) will continue to apply to all BRC employees. Finally, Side Letter No. 2 includes an agreement by CN and GTC that, in the event that all of “the current GTW” is sold or leased and the standard labor protective arrangements imposed in rail mergers are not imposed by any federal board or agency, then, on the date of such a sale or lease, all BRC employees with a seniority date on or before January 10, 1996, will be eligible for certain benefits.

The CN/IC Transaction. In 1999, the Board approved the application for GTW’s parent railroad, CN, to acquire control of Illinois Central Railroad Company (IC). See Canadian National, et al. – Control – Illinois Central, et al., 4 S.T.B. 122 (1999) (CN/IC). The “CN/IC Transaction” authorized by that decision took place on July 1, 1999. As a condition to its approval of the CN/IC Transaction, the Board imposed the standard New York Dock conditions, augmented “so that employees who choose not to follow their work to Canada will not lose their otherwise applicable New York Dock protections,” CN/IC, 4 S.T.B. at 187 (¶ 8), “unless different conditions are provided for in a labor agreement entered into before the carriers make changes affecting employees in connection with the [CN/IC Transaction], in which case

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<sup>10</sup> DTI was merged into GTW in 1984.

<sup>11</sup> It should be noted that, in Side Letter No. 2, Carmen represented by BRC are referred to as “TCU Carmen.”

protection shall be at the negotiated level, subject to [Board] review to assure fair and equitable treatment of affected employees,” CN/IC, 4 S.T.B. at 177-78.

The 2001 Agreement. In 2001, GTW and BRC negotiated an agreement that includes, among other things, a signing bonus, a 1998-2004 pay schedule, a bereavement rule, and a 401(k) retirement savings plan eligibility rule.

Article IV(a) of the 2001 Agreement provides: “All employees who are in active service on April 9, 2001 will be retained in service as a carman unless or until retired, discharged for cause, or otherwise removed by natural attrition.”

Article IV(b) provides: “Employees may be required to relocate anywhere on the GTW or IC to retain the benefits of paragraph (a). Employees who are required to relocate will be entitled to the relocation benefits contained in the September 25, 1964 National Agreement, as subsequently amended.”

Article VII provides, in pertinent part: “All rules, agreements, provisions, conditions or practices, however established, which may conflict with this agreement are superseded by the provisions of this agreement.”

Abolishment of Carmen Positions at Lang Yard. On April 13, 2004, GTW notified each of the seven employees who occupied the position of Carman at GTW’s (formerly DTSL’s) Lang Yard in Toledo, OH – including the two Claimants here – that his position would be abolished effective at the end of his tour of duty on April 25, 2004. GTW notified each of those employees that he had four options: exercise his seniority to displace a “T carman”<sup>12</sup> at Flat Rock, MI; take a separation allowance to be computed in accordance with the WJPA; accept a transfer to fill a vacant Carman position at Flint, MI; or take a furlough at Lang Yard without protective benefits.

The two Claimants believed that they also had a fifth option: demand that an “Extra Board” be established at Lang Yard, and elect to be placed on that Extra Board starting April 26, 2004. Claimants advised GTW that they were exercising this option.

GTW rejected the notion that Claimants had such a right. GTW advised Claimants that, because they had not elected any of the other three options available to them, they would be treated as if they had elected the “furlough without benefits” option.

Claimants attempted to secure, from BRC, support for their claim that they had a right to elect an Extra Board option. BRC, however, declined to support Claimants. BRC was apparently of the opinion that GTW’s approach was correct and that Claimants did not have, and therefore could not choose to exercise, an Extra Board option.<sup>13</sup>

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<sup>12</sup> A “T carman” is apparently a “Temporary Carman.”

<sup>13</sup> A General Chairman of BRC indicated that he had “advised the employees[] Local Chairman that under the circumstances involved in this matter that [sic] there is no basis for a claim under the current controlling Agreement, or any other Agreements.” Rinaldo Award at 16.

The Arbitration. Claimants, acting without the support of BRC, took their claim against GTW to arbitration under Article I § 11 of the New York Dock conditions.<sup>13</sup> In the Rinaldo Award, entered on April 15, 2005, the claim was denied on three alternative grounds. See Rinaldo Award at 14-17. First, the arbitrator concluded that, because the Claimants were not represented by their union (BRC) in this matter, he could not rule on their claim. Second, he concluded that Claimants had not filed a proper formal claim. Finally, he found no merit to the Claimants' claim because he concluded that GTW's actions were consistent with New York Dock.

## DISCUSSION AND CONCLUSIONS

Standard of Review. Under Chicago & North Western Tptn. Co. – Abandonment, 3 I.C.C.2d 729 (1987) (“Lace Curtain”), aff’d sub nom. IBEW v. ICC, 862 F.2d 330 (D.C. Cir. 1988), we limit our review of arbitration awards “to recurring or otherwise significant issues of general importance regarding the interpretation of our labor protective conditions,” and, in the absence of an egregious error, we will not review issues of causation, the calculation of benefits, or the resolution of other factual questions. 3 I.C.C.2d at 736. Moreover, we generally will not overturn an arbitration award unless the award is irrational or fails to draw its essence from the labor conditions imposed by the ICC or the Board, or is outside the scope of those conditions. The Burlington Northern and Santa Fe Railway Company – Petition for Review of Arbitration Award, STB Finance Docket No. 32549 (Sub-No. 24), slip op. at 3 (STB served Sept. 25, 2002).

Overview. In this case, where the award was based on three independent grounds, the award could be overturned only if none of the three grounds survives the Lace Curtain standards. As discussed below, even though we have some concerns about at least one of the grounds relied upon by the arbitrator, we will not disturb the award because the third ground provides a sufficient basis for the award.

Union Representation. The arbitrator first concluded that Claimants could not invoke arbitration without BRC representing them. However, as the Board has previously made clear, in matters regarding claims for benefits under Board-imposed labor protective conditions, even if an individual employee is a member of a union, the employee may pursue arbitration without the joinder or consent of his or her union. See Rio Grande Industries, Inc., SPTC Holding, Inc., and The Denver and Rio Grande Western Railroad Company – Control – Southern Pacific Transportation Company (Arbitration Review), STB Finance Docket No. 32000 (Sub-No. 12), slip op. at 6 (STB served Sept. 19, 2002), rev’d on other grounds, Union Pacific R.R. v. STB, 358 F.3d 31 (D.C. Cir. 2004). See also Norfolk & W. Ry. Co. and New York, C & St. L. R. Co. Merger, 5 I.C.C.2d 234, 234-36 (1989) (employees, acting on their own, may seek ICC/Board review of an arbitral award).

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<sup>13</sup> See New York Dock, 360 I.C.C. at 87-88.

The Merits of the Claim. Under the standard New York Dock conditions, employees must accept positions that would require them to move or else lose their protective benefits. See, e.g., CN/IC, 4 S.T.B. at 164. The question presented to the arbitrator was whether the New York Dock conditions, as modified by the 1979 Agreement, the 1981 Agreement, and the 1983 Agreement, gave Claimants a right to demand placement on an Extra Board at Lang Yard.

Claimants contend that they are “protected employees,” as respects the GTW/DT2 Transaction, under Section 2 of the 1979 Agreement; that, as protected employees, they have been certified as “adversely affected” under Section 2(a) of the 1979 Agreement; that the positions offered to them at either Flat Rock or Flint would have required a “change of residence,” as defined in Section 6 of the 1979 Agreement; that, under Section 7 of the 1979 Agreement, as DTSL employees at the time of the GTW/DT2 Transaction, they are not required to accept a position that would require a change of residence in order to maintain protection; and that, under the 1983 Agreement and the side letter to that agreement, they are entitled to an Extra Board placement in lieu of a dismissal allowance.

The Claimants’ argument hinges on their interpretation of the effect of Section 7 of the 1979 Agreement. Section 7 provides that “DTSL employees who are receiving dismissal allowances shall be obligated to accept a reasonably comparable position with the GTW or the DT&I which does not require a change in residence in order to maintain their protection hereunder.” From that, Claimants infer that a DTSL employee receiving a dismissal allowance can reject a reasonably comparable position and continue to receive the dismissal allowance if the reasonably comparable position would require a change of residence as defined in Section 6 of the 1979 Agreement.

The arbitrator found, however, that Agreement H of the subsequent 1981 Agreement clearly contemplated that an employee receiving protection will lose that protection if he refuses to accept a reasonably comparable position, even if that position would require a change of residence. While Agreement H incorporates by reference (in Section III) the 1979 Agreement’s definition of “change of residence,” the term is used in Agreement H for different purposes: to determine how much advance notice must be given of a transfer of work, positions, and/or employees, see Section I(2); to determine the order in which certain employees are to receive offers of certain positions, see Sections II(1) and II(2); and to determine which employees are to receive moving benefits, see Section II(4). Claimants maintain that the right established in the 1979 Agreement to receive protection even after rejecting a reasonably comparable position had to have been carried over into Agreement H. They cite to Section V(2) of Agreement H, which provides that “[t]his Agreement is intended to clarify conditions, responsibilities and obligations of protected employees. Nothing contained in this Agreement shall be construed to eliminate or reduce any existing conditions, responsibilities or obligations pertaining to protected employees as set forth” in any rule or agreement, including the 1979 Agreement, or in the New York Dock conditions.

Claimants’ interpretation, however, is not the only available interpretation of the interplay of these provisions, and both of the parties to those agreements interpret them differently from the Claimants. BRC interprets Section 7 of the 1979 Agreement more narrowly, as protecting only those DTSL employees who were receiving dismissal allowances at the time

the 1979 Agreement took effect. See letter dated April 26, 2004 (addressed to James V. Waller from Michael Watkins, Timothy Black, and Thomas Sorge), at 1-2. Because neither Claimant was receiving a dismissal allowance when the 1979 Agreement took effect, neither would be entitled to the protection afforded by Section 7 under that interpretation. GTW contends that the 1979 Agreement was not effective until GTW and BRC negotiated the 1981 Agreement (see Section 11 of the 1979 Agreement); that the two agreements thus took effect together and must be read together, as if they were a single agreement; and that they have in fact been read as if they were a single agreement. According to GTW, Section 7 of the 1979 Agreement has never been interpreted as limiting GTW's right to "force transfer" Carmen pursuant to Agreement H of the 1981 Agreement.

Both BRC's and GTW's interpretations support the arbitrator's ruling. Thus, the award is not irrational.

Claimants suggest that whatever right GTW may have had to "force transfer" Carmen under Agreement H of the 1981 Agreement was abrogated by certain provisions of the 1983 Agreement. The arbitrator rejected this argument, see Rinaldo Award at 16-17, concluding that the 1983 Agreement merely modified the manner in which displacement or dismissal allowances would be paid to employees entitled to receive such allowances. This finding is also not irrational.

Claimants make a number of other arguments that are similarly unpersuasive. First, they suggest that, because all Carmen jobs at Lang Yard were abolished, they could not be transferred to non-DTSL locations. But there is no support for that argument in Agreement H.

Second, Claimants suggest that Agreement H does not apply to their situation (where none of the Carman work at Lang Yard was transferred) because each situation described in Section I(2) of Agreement H involves a transfer of the work. Claimants overlook the applicability of Sections II(1) and II(2) of Agreement H.

Third, Claimants suggest that past practice confirms their right to the benefits they claim, pointing to the establishment of an Extra Board at Port Huron, MI, when the Port Huron carshops were closed in October 1995. The document they submitted, however, gives no explanation of the reason for the establishment of that Extra Board and there is no way to tell if the circumstances were comparable.

Fourth, Claimants suggest that one of the four options offered to them – the option of exercising seniority to displace a "T carman" at Flat Rock – violates a rule that makes "bumping" a privilege, not a requirement. However, Claimants have provided no support for this assertion, and in any event it would not justify their decision not to accept a transfer to fill a vacant Carman position at Flint.

Fifth, Claimants suggest that their claim is buttressed by the 1996 Agreement's Side Letter No. 2. But it is difficult to see how Side Letter No. 2 is relevant, as its provisions apply only if GTW is sold or leased, which has not occurred. Moreover, no connection has been

shown between the apparent lease of the Port Huron carshops to PDS Rail Car Services Company and the abolishment of Carmen positions at Lang Yard.

Issues Not Properly Before Us. Claimants have raised various other issues that are not appropriate for consideration here. First, Claimants suggest that the abolishment of jobs at Lang Yard was a “transaction” for purposes of Article I § 4(a) of the New York Dock conditions, see New York Dock, 360 I.C.C. at 85, and as such could not be undertaken without a prior “implementing agreement.” However, the protections afforded by Article I § 4(a) are not granted to employees individually but rather collectively through their duly authorized representatives, and BRC has not argued that a prior implementing agreement was necessary.

Second, Claimants contend that, under Article I § 3 of the New York Dock conditions imposed in connection with the CN/IC Transaction, they cannot be deprived of rights they were given under the various agreements negotiated in connection with the GTW/DT2 Transaction, see New York Dock, 360 I.C.C. at 84-85, and that Article IV(b) of the 2001 Agreement, which provides that employees may be required to relocate anywhere on GTW or IC, violates that principle. However, neither GTW nor the arbitrator relied upon the CN/IC Transaction authorization or the 2001 Agreement.

Third, Claimants complain that they have been treated unfairly and represented inadequately by BRC, their authorized collective bargaining representative under the Railway Labor Act. We have no authority over such matters.

Fourth, Claimants suggest that certain other Carmen have been denied rights to which they were entitled. They include 13 Carmen whose positions at Battle Creek were abolished, another Carman (Michael Watkins) who was affected by the abolishment of positions at Lang Yard, and 36 Carmen who were furloughed from the PDS Rail Car Services Company. However, none of these grievances is properly before us here. The 13 Carmen with interests in the Battle Creek matter have not brought their grievances to this agency. Although Mr. Watkins has attempted to bring his grievance to this agency (see pleading filed July 8, 2005), he did not first submit his grievance to arbitration, as required. Two of the 36 Carmen with interests in the PDS matter (David R. Valdez and Timothy C. Dolan) have attempted to appeal their arbitration award (the Malin Award). However, that arbitration was apparently conducted under the Railway Labor Act, not under our New York Dock conditions. Nor would their appeal have been timely had it involved an arbitration under the New York Dock conditions, as it was not filed within the 20 days provided under 49 CFR 115.8.

Finally, we have no authority to settle a dispute over whether a former BRC official was wrongfully removed from office or a dispute over the payment to which Arbitrator Rinaldo is entitled for his services.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CN/GTW's requests that we strike the additional pleadings submitted by Claimants are denied, and CN/GTW's replies to such additional pleadings are accepted for consideration.
2. The Claimants' appeal of the Rinaldo Award is denied.
3. This decision is effective on the date of service.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary