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March 8, 2010

Via Electronic Filing

Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW, Suite 100
Washington, DC 200024

Re: Finance Docket No. 33556, Sub. No. 6

To Chief, Section of Administration:

Please find attached the electronically-filed Petition for Review of Arbitration Award of Petitioners Canadian National Railway Co., Grand Trunk Corp., Grand Trunk Western R.R., Co., Illinois Central Corp., Illinois Central R.R. Co., Chicago Central & Pacific R.R. Co., and Cedar River R.R. Co. (collectively, the "Carrier").

Pursuant to instructions received from your office earlier today, (i) the Board will create sub-docket number 6 to Finance Docket number 33556, (ii) prior filings by the Carrier in this matter (Request for Extension of Time filed on February 10, 2010, Certificate of Service filed on February 17, 2010, and Motion for Leave to Exceed Page Limit filed on March 4, 2010) and the Board's Order of February 18, 2010 granting the Carrier's Request for Extension of Time, all of which currently are assigned to sub-docket number 5, will be reassigned to sub-docket number 6, (iii) the initial filing fee of \$150.00 already has been paid with respect to sub-docket number 6, and (iv) the instant Petition for Review of Arbitration Award may be filed electronically.

Sincerely,



Robert S. Hawkins

Encl.

cc: Michael Wolly, Esquire (w/encl.) (via UPS Overnight Mail)
Joseph R. Mazzone, Esquire (w/encl.) (via UPS Overnight Mail)

SURFACE TRANSPORTATION BOARD

Finance Docket No. 33556 Sub. No. 6

**Canadian National Railway Co., Grand Trunk Corp. and Grand Trunk Western R.R., Inc.
– Control – Illinois Central Corp., Illinois Central R.R. Co., Chicago Central & Pacific
R.R. Co., and Cedar River R.R. Co**

PETITION FOR REVIEW OF AN ARBITRATION AWARD

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Cedar River R.R. Co.*

Dated: March 8, 2010

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SURFACE TRANSPORTATION BOARD

Finance Docket No. 33556

**Canadian National Railway Co., Grand Trunk Corp. and Grand Trunk Western R.R., Inc.
– Control – Illinois Central Corp., Illinois Central R.R. Co., Chicago Central & Pacific
R.R. Co., and Cedar River R.R. Co**

PETITION FOR REVIEW OF AN ARBITRATION AWARD

Canadian National Railway Co., (“CNR”) Grand Trunk Corp., and Grand Trunk Western R.R., Co. (“GTW”),¹ Illinois Central Corp., Illinois Central R.R. Co. (“IC”), Chicago Central & Pacific R.R. Co., and Cedar River R.R. Co. (collectively, “CN” or the “Carrier”), pursuant to 49 C.F.R. § 1115.8, request that the Surface Transportation Board (“Board” or “STB”) review the arbitration award rendered by Arbitrator Don A. Hampton under Article 1, § 4 of the *New York Dock* conditions (the “Hampton Award”, attached hereto as Exhibit A). The Hampton Award contains egregious errors, usurps the jurisdiction of the National Mediation Board (“NMB”) and raises issues of industry-wide significance, as follows:

1. The Arbitrator refused to allow the consolidation of train dispatching work of GTW and IC, thereby making it impossible for CN to achieve important efficiencies and safety improvements made possible by an STB-approved transaction, and relegating the Carrier to either (a) maintain separate dispatch centers or (b) merely co-locate the GTW and IC dispatchers in one place, but under separate agreements, work ownership rules, and seniority systems.

2. As the sole basis for the Arbitrator’s refusal to permit consolidation of the work, the Arbitrator reasoned that “The Carrier has not substantiated that efficiencies would be *non-*

¹ Prior to approval of the Control Transaction, the name of this entity was “Grand Trunk Western Railroad Incorporated.”

existent should the GTW roster be maintained and the ATDA Collective Bargaining Agreement remain in effect for those GTW Dispatchers transferring from Troy to Homewood.” Hampton Award, Exhibit A at 10 (emphasis supplied). By adopting this test, the Arbitrator contravened this Board’s *New York Dock* jurisprudence, and fashioned a new and fundamentally opposite rule of industry-wide importance, to wit, that unless a carrier can prove that *no* efficiencies can be achieved without consolidating work, employees are entitled to remain walled-off under separate collective bargaining agreements, work ownership rules and seniority systems. Under the Arbitrator’s proposed standard, carriers are permitted only to achieve the incidental efficiency of putting employees under one roof, but they must otherwise operate as they did as stand-alone railroads. The implications of this standard for the consolidation of work under STB-approved transactions, and the achievement of the efficiencies and public benefits of such transactions, are of industry-wide significance.

3. The Arbitrator created entirely new labor protective conditions, including mandatory severance allowances, rights to positions in other crafts and enhanced relocation benefits -- all of which are contrary to *New York Dock*. These novel protective conditions purport to relieve employees of their fundamental obligation to follow their work. Moreover, since the Arbitrator refused to allow the Carrier to *consolidate* work, and thereby reduce the number of employees needed to perform it, the Hampton Award deprives the Carrier of the necessary forces to staff the dispatching work because, absent consolidation, *all* of the Carrier’s dispatchers are necessary to perform the work.

4. The Arbitrator expressly purported to decide questions of representation of the Carrier’s train dispatchers, thereby usurping the exclusive jurisdiction of the NMB to decide representational issues.

STATEMENT OF THE CASE

The Control Transaction And Subsequent Acquisitions.² In Finance Docket No. 33556, this Board approved CNR's³ purchase of Illinois Central Corporation, Illinois Central Railroad Company (the "IC"), Chicago, Central & Pacific Railroad Company, and Cedar River Railroad Company (the "Control Transaction"), effective July 1, 1999, subject to the conditions for the protection of railroad employees described in *New York Dock Railway – Control – Brooklyn Eastern District Terminal*, 360 I.C.C. 60 (1979) ("*New York Dock*"). This purchase enabled the CN North American rail system to provide more efficient, reliable and competitive rail service from both coasts in Canada through to Chicago and Memphis and then to the Gulf Coast. See EJ&E Application at 17.⁴

An important rationale for the Board's approval of the IC transaction was the fact that the combined system would generate operating efficiencies. As in other STB-approved transactions, an essential public benefit supporting the transaction is the ability to perform the same transportation service safely, with fewer employees and more efficient use of equipment. In their Application for Board approval of the Control Transaction, the Applicants expressly set forth their plan to eventually relocate GTW's dispatching functions to Homewood, Illinois, and to

² The Railroad Control Applications referenced herein are extremely lengthy and are within the Board's possession, and so they are not attached to this petition. Referenced pages of the Applications were submitted as part of the arbitration record.

³ By way of background, CNR was incorporated in 1919 as one of Canada's two transcontinental railroads. Through CNR and its related entities, the CN system in the U.S. extends from the U.S.-Canada border, through CN's hub in Chicago, and generally southward through Memphis and to the Gulf Coast.

⁴ The EJ&E Application refers to the Railroad Control Application filed on October 30, 2007 in *Canadian National Railway Co. and Grand Trunk Corp. – Control – EJ&E West Co.*, Finance Docket No. 35087.

consolidate the dispatching work of GTW with that of IC in order to achieve these efficiencies and to optimize customer service and safety:

Applicants will need to consolidate these dispatching facilities and practices, in a manner that will best utilize Applicants' work forces to improve efficiency, maximize the opportunity for backup relief, and consequently optimize customer service and safety, in order to implement the Transaction. Section 10.2 of the Operating Plan describes the process through which ***Applicants will consolidate the three existing train dispatching facilities into IC's facility in Homewood. In order to achieve these changes and efficiencies, it will be necessary to bring these dispatching groups under a single collective bargaining agreement with a single seniority roster.***

IC Application at 214 (emphasis added).⁵

Consistent with the STB Application, the Labor Impact Statement submitted by the Applicants expressly identified the reduction in the number of dispatcher positions, and the resulting cost savings, as an efficiency made possible by the transaction. The Labor Impact Statement estimated that 12 of the then 31 dispatcher positions in Troy would be abolished. IC Application at 279. The remaining 19 Troy dispatcher positions would be transferred to Homewood. *Id.* Applicants calculated that the eventual complete integration of dispatching operations would result in "compensation savings of about \$2.8 million annually." *Id.* at 178.

In its decision approving the Control Transaction, the Board explicitly acknowledged the Carrier's intent to centralize dispatching in Illinois and, despite the requests of the American Train Dispatchers Association ("ATDA") for additional restrictions, imposed only the condition that dispatching functions not be consolidated in Canada without prior approval. *See Canadian Nat'l Ry. Co., Grand Trunk Corp. and Grand Trunk W. R.R. Inc. – Control – Ill. Cent. Corp., Ill.*

⁵ The IC Application refers to the Railroad Control Application filed on July 8, 1998 in *Canadian National Railway Co., Grand Trunk Corp. and Grand Trunk Western R.R. Inc. – Control – Illinois Central Corp., Illinois Central R.R. Co., Chicago Central & Pacific R.R. Co., and Cedar River R.R. Co.*, Finance Docket No. 33556.

Cent. R.R. Co, Chi., Cent. & Pac. R.R. Co. and Cedar River R.R. Co., Finance Docket No. 33556 (Service Date May 21, 1999) (“At oral argument, applicants stated that they intend to centralize dispatching in Illinois, not in Canada ...”).

Subsequent to the Control Transaction, CNR continued to make acquisitions to expand its service. In 2001, CNR, through Grand Trunk Corporation (“GTC”), acquired Wisconsin Central Ltd. and its affiliates (“WC”), which greatly expanded CN’s reach throughout Wisconsin and Michigan’s Upper Peninsula.⁶ In 2004, CNR (through GTC) acquired Duluth, Missabe and Iron Range Railway Company (“DM&IR”), with operations through the Minnesota Iron Range, and Bessemer and Lake Erie Railroad Company (“B&LE”), with operations through northern Ohio and western Pennsylvania.⁷ Most recently, CN (through GTC) acquired the Elgin, Joliet & Eastern Railway (“EJ&E”) in 2008. *See Canadian Nat’l Ry. Co. and Grand Trunk Corp. – Control – EJ&E West Co.*, Finance Docket No. 35087 (Service Date Dec. 24, 2008). EJ&E loops around Chicago, allowing trains to travel around, rather than through, central Chicago, and connects, for the first time, WC to GTW and IC trackage over CN lines. *See EJ&E Application at 22.*

In connection with each acquisition since the Control Transaction, Applicants reasserted their intent to consolidate the work of train dispatchers. *See, e.g., EJ&E Application at 234* (“CN intends to centralize the train dispatching functions to Homewood in a phased approach”);

⁶ The WC Application refers to the Railroad Control Application filed on April 9, 2001 in *Canadian National Railway Co., Grand Trunk Corp., and WC Merger Sub, Inc. – Control – Wisconsin Central Transportation Corp., Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Co., and Wisconsin Chicago Link Ltd.*, STB Finance Docket No. 34000.

⁷ The DM&IR Application refers to the Railroad Control Application filed on November 5, 2003 in *Canadian National Railway Co. and Grand Trunk Corp. – Control – Duluth, Missabe and Iron Range Ry. Co., Bessemer and Lake Erie R.R. Co., and The Pittsburgh & Conneaut Dock Co.*, Finance Docket No. 34424.

DM&IR Application at 174-75 (“dispatching and crew calling office may be combined with those in other CN locations, resulting in some job reductions ... once systems have been put in place to ensure proper coordination of train movements across CN and the GLT Railroads”); WC Application at 34 (“CN is upgrading its existing dispatching system to a new common system for operations over the former IC and GTW lines,” but noting that it did not intend to integrate the WC dispatchers, which utilized a different system -- and dispatched non-contiguous trackage -- for at least three years).

Consolidation of Dispatchers within the CN's U.S. Railroads. Since about 2004, CN has been consolidating its dispatching functions in a gradual, orderly process in the interest of safety, efficiency and customer service. CN initially consolidated the dispatching work into three locations, based on the territory dispatched and the compatibility of dispatching systems. In 2004-2005, the dispatching functions of DM&IR and Duluth, Winnipeg and Pacific Railway Company, previously located in Duluth, Minnesota and Pokegama, Wisconsin, respectively, were consolidated in Stevens Point, Wisconsin, as part of the dispatching functions performed by the existing WC dispatchers in Stevens Point.⁸ After the Applicants' acquisition of BL&E in 2004, B&LE's dispatching functions were consolidated in Troy, Michigan with the existing ATDA-represented GTW dispatchers at that location. Likewise, the dispatching functions performed by the EJ&E dispatchers were consolidated in Homewood with the IC dispatchers at that location in July 2009. Recently, the Carrier has begun the process of consolidating its three remaining dispatching centers into the Homewood Transportation Center. The Carrier announced in October 2007 that it would relocate the WC dispatchers then working in Stevens

⁸ The arbitration record evidence relating to CN's consolidation of the dispatching function is contained in two Declarations of Roger Frasure, submitted to the Arbitrator with the Carrier's post-hearing briefing and are attached hereto as Exhibit B.

Point, Wisconsin to Homewood.⁹ With the subsequent acquisition of EJ&E, the full consolidation of train dispatching functions into a single location has become both feasible and more critical. On the operations side, CN and the labor organizations representing its operating crafts have executed an agreement, known as the Chicago Coordination Agreement, providing for wide-ranging reciprocal trackage rights in the Chicagoland area. With this landmark agreement, CN has achieved the right to operate trains originating on any one of the traditional lines throughout the geographic region encompassed by the Chicago Coordination Agreement. The coordination of train dispatching in this same geographic area is both feasible and necessary in light of the integration of properties at the operational level.

The Proposed GTW-IC Dispatching Consolidation. Just a few months after the Control Transaction was approved by the STB, the ATDA bargained with GTW to obtain a temporary moratorium on the transfer of GTW dispatching work outside of the Troy area. GTW agreed to the ATDA's proposed temporary moratorium as part of a collective bargaining agreement, in part, because the then-existing differences in train dispatching systems in 1998 would have made it impossible to immediately achieve the efficiencies of merging the GTW and IC dispatchers. During the next round of collective bargaining in 2005, ATDA again sought an agreement to extend the commitment not to transfer the GTW dispatchers from the Troy area. However, GTW did not agree to ATDA's proposal, and ATDA was unable to obtain an extension of the "stay put" agreement.

In the years since the Board's approval of the Control Transaction, the IC and GTW dispatchers have been trained on and upgraded to common dispatching systems. Thus, with the

⁹ Because the WC dispatchers were not, at the time of their relocation, dispatching contiguous rail lines, the Carrier did not seek to consolidate their work at that time, but retained the option of doing so at a later point in time.

contractual “stay put” moratorium having expired, the Carrier is able to move forward with a true consolidation of dispatching work and achievement of the public benefits of the Control Transaction approved by this Board.

In February 2009, the Carrier determined that, in order to achieve dispatching-related efficiencies of the Board-approved Control Transaction, it would transfer GTW dispatching work currently performed in Troy to its Homewood Transportation Center, which currently houses all IC, WC, EJ&E and affiliated carriers’ dispatching employees. Because the Homewood office has been newly upgraded as the Homewood Transportation Center, it is substantially better equipped for dispatching functions than GTW’s existing facility in Troy. By consolidating the GTW dispatching functions in Homewood, the Carrier will save the occupancy expense of the Troy facility and obtain the efficiencies from unifying all U.S. dispatching groups under one roof, including combined managerial and information technology support.

More importantly, by truly integrating the work of the GTW and IC dispatchers, the Carrier will be able to achieve the substantial operating efficiencies and safety enhancements made possible by the Control Transaction. Contrary to a statement in the Hampton Award, the undisputed record shows that GTW and IC dispatchers are trained on and use the same dispatching equipment. Thus, consolidation of the GTW and IC dispatching work would promote safety and efficiency, as the combined employee group would be trained and fully qualified to dispatch trains operating over contiguous and largely overlapping territory in the Chicagoland area. This consolidation would result in a reduction of six (6) GTW dispatcher positions and would allow for better coordination of the dispatching territories that could not be achieved by mere “co-location” of the dispatchers in the same facility. The efficiencies gained from reorganization of the geographic scope of the existing “desks” include the elimination of at

least one dispatching desk, the flexibility to “backfill” from one desk to another in the event of unanticipated disruptions or fluctuations in demand, the reduction of the number of hand-offs between trains otherwise operating freely in the greater Chicagoland area, the combination of the separate dispatcher “extra boards,” and the enhanced availability of trained, qualified dispatchers to cover absences. It is undisputed that these efficiencies would occur only by truly consolidating the work of the GTW and IC dispatchers, not by merely co-locating them under one roof.

On February 3, 2009, in accordance with the provisions of Article I, § 4 of *New York Dock*, the Carrier posted notices in Troy and Homewood of its intent to reduce the number of dispatcher positions in Troy and to consolidate the remaining positions in Homewood under the ICTDA agreement.¹⁰ This notice stated:

To achieve the efficiencies of the acquisition, it is necessary to **consolidate** the train dispatching operation of the Grand Trunk Western (“GTW”) and the Illinois Central (“IC”) into one location. The **consolidation** will result in the abolishment of sixteen (16) GTW dispatcher positions at Troy, Michigan. Ten (10) dispatcher positions will be established at Homewood, Illinois. The reason for the **consolidation** is to provide increased efficiency and better utilization of the dispatchers at Homewood.

Emphasis added).¹¹ Concurrently, the Carrier advised the general chairmen of the ATDA and the ICTDA of the notice and promptly scheduled initial meetings to begin negotiations for an implementing agreement necessary to complete the transaction.

¹⁰ The arbitration evidence relating to the service of the Section 4 notice and the parties’ inability to reach a voluntary agreement is contained in the Declaration of Cathy Cortez, which is attached hereto as Exhibit C. Because there is no dispute that the parties were unable to reach a voluntary agreement, the attachments to Ms. Cortez’ Declaration are not included.

¹¹ The Carrier’s Section 4 Notice is attached hereto as Exhibit D.

It is undisputed that a voluntary implementing agreement was not reached within the time frame specified by *New York Dock*. On July 25, 2009, more than three months after the Carrier had presented its proposal for a voluntary implementing agreement to the ATDA, the ATDA provided a counter-proposal that included: a minimum of six (6) separation allowances to be awarded according to seniority and numerous financial demands not related to the selection and assignment of forces, such as a \$20,000 lump sum payout to each relocating dispatcher (in addition to the Carrier's relocation offer) and a 10% across-the-board pay raise for transferring dispatchers. More importantly, the ATDA demanded that the transferred dispatchers remain employees of GTW, maintaining their GTW seniority, and working under the ATDA's collective bargaining agreement with GTW. ATDA's position was that its members should remain in a "silo" despite their relocation, and that they should continue to dispatch separate territory based on GTW's historical boundaries.

The Carrier also sought to reach a voluntary implementing agreement with the ICTDA. On August 5, 2009, the Carrier and ICTDA held a meeting during which the ICTDA expressed a desire to remain neutral and to not participate in the Section 4 arbitration proceedings. On August 26, 2009, the ICTDA reiterated its position to remain neutral but proposed, in the alternative, that the parties adopt the same implementing agreement that the ICTDA had entered into with the Carrier on July 15, 2009 concerning the consolidation of dispatchers from EJ&E into the Homewood Transportation Center pursuant to a separate control transaction. On August 28, 2009, the ICTDA rescinded its alternative proposal.

Unable to reach a voluntary implementing agreement with either union, the Carrier circulated a revised proposal on August 27, 2009, containing the standard *New York Dock* terms. The Carrier's revised proposal focused on the selection and assignment of forces. It provided

that the sixteen (16) GTW dispatcher positions in Troy be abolished and that ten (10) IC dispatcher positions in Homewood be created. Consistent with *New York Dock*, the affected GTW dispatchers would have the option of applying for one of the newly-created Homewood dispatcher positions or exercising their seniority to transfer to another position. The Carrier proposed that the dispatchers transferring from Troy to Homewood be covered under the existing ICTDA agreement in effect at the Homewood Transportation Center because of the “controlling carrier” doctrine and the numerical superiority of the IC dispatchers. The Carrier proposed that the transferring dispatchers be credited with prior GTW service for vacation and benefits purposes, and have their seniority roster dovetailed with the existing IC seniority roster, with prior rights to the positions created as a result of the consolidation. The Carrier’s proposal assured that *New York Dock* protective benefits would be fully available for employees dismissed or displaced by implementation of the Control Transaction.

Because the Carrier was unable to reach a voluntary implementing agreement with the affected organizations, on July 29, 2009 the Carrier exercised its rights under Section 4 of *New York Dock* and initiated the arbitration process. On September 17, 2009, the arbitrator selection process was completed and Mr. Don A. Hampton was selected. Prior to and following the hearing, the parties briefed their positions, and the Hampton Award was issued on February 1, 2010.

Simply put, the Hampton Award makes it impossible for the Carrier to implement the STB-approved transaction or to achieve the efficiencies and public benefits made possible by the Control Transaction. First, the Arbitrator flatly refused to allow the Carrier to consolidate the work of the dispatchers, ruling that the Carrier was permitted only to *relocate* the employees -- but not to *coordinate their work*. The Arbitrator effectively ruled that the respective GTW and

IC dispatchers would remain in silos, thus rendering it impossible to reduce the number of dispatchers needed to perform the necessary work. Second, while the Arbitrator purported to allow a mere relocation of dispatching work, he created six (6) mandatory “buy out” options for the employees whose work could be transferred, and he purported to allow other dispatchers to take positions as clerks -- even though clerks are part of a separate craft or class and their union was not even a party to the arbitration.¹² Thus, the Arbitrator refused to permit the Carrier to take the step necessary to reduce the number of dispatchers (coordination of their work), and he created avenues for transferred GTW dispatchers to avoid relocation, such that the Carrier would have insufficient forces to perform the dispatching work if the Carrier tried to relocate it. Third, the Arbitrator imposed mandatory new protective conditions not drawn from *New York Dock*. These protective conditions included house-hunting allowances and relocation benefits in excess of those provided by *New York Dock*; the establishment of six separation allowances for GTW dispatchers who could choose not to relocate to Homewood; provisions for employees to take positions in other crafts or classes; displacement allowances for dispatchers who exercise existing seniority to clerical positions; and an indefinite recognition of the ATDA as bargaining representative of the GTW dispatchers. Finally, the Arbitrator purported to decide representational issues, ruling that the ATDA would continue to represent GTW’s dispatchers

¹² In creating the mandatory severance allowances, the Arbitrator appears to have assumed that the Carrier could reduce its complement of GTW dispatchers from sixteen (16) to ten (10) even though the Award prohibited CN from consolidating their work with IC. Paragraph 2 of the Arbitrator’s implementing agreement requires the Carrier to establish “at least ten (10) GTW Dispatcher positions at Homewood,” but paragraph 1 of the proposed agreement recognizes that sixteen (16) current positions at Troy will be abolished. While the Arbitrator’s Award fails to explain the rationale for creating six (6) mandatory buy-outs, the conclusion seems inescapable that the Arbitrator simply failed to account for the fact that a reduction in dispatchers would occur only if their work was consolidated with IC.

until “such time as a single agreement is reached covering all ATDA represented train dispatchers.” This Petition for Review followed.

ARGUMENT

I. Review Of The Hampton Award Is Appropriate Under The Board's *Lace Curtain* Standard.

The Carrier requests that the Board review the Hampton Award pursuant to the authority provided by 49 U.S.C. § 1115.8. Under the Board's well-settled standard, the Board will exercise its authority to review an arbitration award where the award raises “recurring or otherwise significant issues of general importance regarding the interpretation of our labor protective conditions.” *Chi. & N. W. Transp. Co. - Abandonment*, 3 I.C.C.2d 729, 736 (“*Lace Curtain*”), *aff'd sub nom. Int'l Bhd. of Elec. Workers v. IC C*, 862 F.2d 330 (D.C. Cir. 1988).

Upon exercising its review, this Board may overturn an arbitration award where it is “irrational, or fails to draw its essence from the labor conditions imposed by the [Interstate Commerce Commission (“I.C.C.”) or the Board, or is outside of the scope of those conditions.” *CSX Corp. - Control - Chessie Sys., Inc. and Seaboard Coast Line Indus., Inc.*, Finance Docket No. 28905, 2008 WL 686101, at *4 (Service Date March 14, 2008). *See also Burlington N. & Santa Fe Ry. Co. - Petition for Review of Arbitration Award*, Finance Docket No. 32549, slip op. at 3 (Service Date Aug. 16, 2000). In this regard, an arbitration award that misinterprets the *New York Dock* protective conditions should be reviewed by the Board and set aside in order to “protect the integrity” of the conditions. *Norfolk & W. Ry. and New York, Chi. & St. Louis - Merger, etc. (Arbitration Review)*, Finance Docket No. 21510 (Sub. No. 4), slip op. at 5-7 (Service Date July 27, 1993) (reversing arbitration awards that “fundamentally misinterpret and fail to draw their essence from” the protective conditions).

There can be no doubt that the questions raised in this Petition present “recurring or otherwise significant issues of general importance” warranting Board review of the Hampton Award. The Hampton Award represents a marked departure from established precedent and expansion of the role of arbitration at the expense of the Board's authority by deciding issues outside of the Arbitrator's jurisdiction, prohibiting the Carrier from undertaking a consolidation which was a significant part of the Board-approved Control Transaction and substantially expanding the labor protective conditions of *New York Dock*. In departing from established precedent, the Arbitrator took on new powers to create an unprecedented standard for overriding a CBA which stands in the way of a transaction by requiring the Carrier to establish that efficiencies would be “non-existent” if such override did not occur. Should the Hampton Award be allowed to stand, it will stand for the proposition that an Arbitrator can frustrate a consolidation of work integral to the public benefits of a Board-approved transaction simply because the Arbitrator feels that the Carrier should be satisfied with achieving the incidental efficiencies associated with mere relocation of that work. It will further stand for the proposition that an organization need only demonstrate that so long as a carrier may realize *some* efficiencies from an operational change not requiring override of a CBA, implementation of approved transactions requiring override of a CBA will not be not permitted. A failure to review these significant issues would permit individual arbitration panels to perpetually rewrite *New York Dock* and condition the implementation of control transactions on standards entirely of their own making. See *CSX Corp. - Control - Chessie Sys., Inc. and Seaboard Coast Indus. Inc. (Arbitration Review)*, Finance Docket No. 28905 (Sub-No. 28), 2 S.T.B. 554, 561 (Service Date Aug. 21, 1997) (permitting review where issues included the circumstances under which displacement allowances may be terminated where employee refused to work); *Union Pac.*

Corp., Union Pac. R.R. Co., and Missouri Pac. R.R. Co., - Control and Merger - Southern Pac. R. Corp., Southern Pac. Transp. Co., St. Louis Southwestern Ry. Co., SPCSL Corp. and the Denver & Rio Grande W. R.R. Co., Finance Docket No. 32760, slip op. at 3 (Service Date June 26, 1997) (finding that an issue related to switching healthcare providers “is reviewable because it involves an allegation that the arbitrator's decision exceeds the authority entrusted to him under our New York Dock labor conditions”).

II. The Hampton Award Misconstrues The *New York Dock* Conditions By Concluding That Because The Carrier Did Not Substantiate That Efficiencies From Mere Relocation Would Not Be Non-Existent, Consolidation Of The GTW And IC Dispatchers Into A Single Unit Shall Not Occur.

A. The Arbitrator exceeded his authority by precluding the consolidation of the GTW and IC dispatcher work.

The Arbitrator exceeded his authority by deciding that the Carrier could not consolidate the work of GTW and IC dispatchers in Homewood. The consolidation of work and the directly related efficiencies and cost savings are an integral component of the public benefits of the Control Transaction approved by this Board. The Arbitrator’s responsibility was to fashion an award that permitted achievement of the public benefits of the transaction, not to decide for himself whether such benefits should be achieved at all.

It is well-established that the “*exclusive authority* to examine, condition, and approve proposed mergers and consolidations of transportation carriers” is vested in the I.C.C., now the Board. *Norfolk & W. Ry. Co. v. ATDA*, 499 U.S. 117, 119-20 (U.S. 1991) (emphasis added). *See also* 49 U.S.C. § 11321(a). As used in this context, the transaction encompasses “two categories of transactions: the principal transaction approved by the [Board] (generally a consolidation or acquisition of control) and subsequent transactions that were directly related to and grew out of, or flowed from, the principal transaction (such as a consolidation of facilities, transfer of work assignments, etc.)” *CSX Corp. – Control – Chessie Sys. Inc. and Seaboard Coast Line Indus.*

Inc., Finance Docket No. 28905 (Sub No. 22), 1998 WL 661418 at * 13, (Service Date Sept. 25, 1998); *id.* at *19 (“[T]he approval of a principal transaction extends to and encompasses subsequent transactions that are directly related to, and fulfill the purposes of, the principal transaction.”). “As long as there is a reasonably direct causal connection between the [principal] transaction and the operational changes sought to be implemented, such operational changes are embraced within the principal transaction.” *Id.* (internal quotations omitted).

Integral to the Board’s approval was the conclusion that the Applicant carriers would achieve the efficiencies, and thus the public benefits, that could not be achieved by two stand-alone railroads. In the function of train dispatching (as in many other crafts), efficiencies can be achieved only when the work of two formerly separate groups of employees is consolidated, such that fewer employees are needed to perform the same work safely and efficiently. To rule otherwise would mean that arbitrators are free to undermine the public benefits of approved transactions by mandating that separate employee groups -- dispatchers, clerks, carmen, etc. -- can remain in silos forever, maintaining their separate historical work ownership rules, and prevent the efficiencies made possible only by true integration.

Although a simple relocation of the GTW dispatchers in Homewood may reduce some incidental overhead costs associated with maintaining separate physical locations (a result for which *New York Dock* is unnecessary), the critical additional efficiencies of the sort contemplated by the Board in the Control Transaction, such as the elimination of redundant positions and the ability to cross-train and cross-utilize dispatchers, arise only from the increasing operational flexibility gained by a genuine consolidation of the GTW and IC dispatching work. In the highly-competitive freight transportation industry, the costs savings derived from these efficiencies will be passed on to shippers, resulting in a benefit to the public.

Such cost savings associated with a reduction in positions performing particular tasks, such as train dispatching, has long been recognized as an important public benefit of Board-approved transactions:

Improvements in efficiency reduce a carrier's costs of service. This is a public transportation benefit because it results in reduced rates for shippers and ultimately consumers. The savings realized by CSXT can be expected to be passed on to the public because of the presence of competition. ... Moreover, increased efficiency and lower costs would enable CSXT to increase traffic and revenue by enabling that carrier to lower its rates for the service it provides or to provide better service for the same rates. While the railroad thereby benefits from these lower costs, so does the public.

CSX Corp. – Control – Chessie Sys. Inc. and Seaboard Coast Line Indus., Inc., Finance Docket No. 28905, Sub. No. 27, 1997 WL 392876, * 2 (Service Date July 1, 1997) (quoting *CSX Corp. – Control – Chessie Sys., Inc. and Seaboard Coast Line Indus., Inc.*, Finance Docket No. 28905 (Sub. No. 27), slip. op. at 13 (Service Date Dec. 7, 1995)). The elimination of redundant positions and the consolidation of previously-separate functions represent core efficiencies obtained through every rail merger. See *ATDA v. I.C.C.*, 26 F.3d 1157, 1165 (D.C. Cir. 1994) (“the very point of many [rail] mergers is to capture efficiencies from centralization of function”).

Furthermore, the Arbitrator’s award completely ignores the importance of consolidated train dispatching to the enhancement of safety and efficiency, both of which are fostered by a unified workforce and work rules. Within the Chicagoland area, trains operated by railroads controlled by the Carrier operate across the boundaries of the formerly separate properties. By consolidating the train dispatching workforce in this same area, as the Carrier proposed, there would be far fewer “hand offs” of trains from one dispatcher to another (based on historical borders), and thus improved safety and efficiency. The Arbitrator’s failure to recognize these important interests may be the result of his apparently mis-impression that GTW and IC use

different train dispatching equipment.¹³ In fact, GTW and IC already use the same dispatching equipment, as the undisputed record showed. Indeed, one of the reasons why the Carrier waited until 2009 to consolidate GTW dispatchers into Homewood was to allow time for both groups of dispatchers to become trained and proficient on the same upgraded dispatching equipment.

The Carrier's ability to obtain the public benefits of the Board-approved Control Transaction would be thwarted if the GTW dispatchers are restricted to dispatching trains only over the GTW lines and "walled off" through a separate collective bargaining agreement and seniority roster, as imposed by the Hampton Award. *See, e.g., Bhd. of Maint. of Way Employees v. Union Pac. R.R. Co.*, NYD § 4 Arb. (Meyers, Oct. 15, 1997) ("It is not possible to properly implement a system operation, and achieve the economies and efficiencies associated with such a consolidation, if a carrier and organization attempt to continue to operate under several collective bargaining agreements. Conflicting contractual provisions, differences in work rules, and basic problems of coordination between and across several collective bargaining agreements inevitably will cut into, and perhaps completely destroy, any possibility of achieving the efficient, coordinated, economical operation promised by a rail consolidation."). *Accord Norfolk & W. Ry. Co. v. Bhd. of R.R. Signalmen*, NYD § 4 Arb. (LaRocco, Feb. 9, 1989) ("Imposing multiple schedule agreements at the Roanoke facility would not just make the coordination unwieldy but would totally thwart the transaction"); *Conrail and Monongahela Ry. Co. v. Int'l Ass'n of Machinists & Aero. Workers*, NYD § 4 Arb. (Peterson, June 21, 1993) ("[T]o modify or amend the Conrail-IAM&AW Schedule of Rules Agreement to extend or preserve certain rights to former MGA employees would be to debase the principals of the basic understanding as to

¹³ Inexplicably, the Arbitrator stated that "in the future, with changing technology and enhanced training methods. . . what the Carrier envisions will not only be possible, but common." (Award at 10). However, the undisputed record evidence is that GTW and IC dispatchers already use the same train dispatching systems. There is no record evidence to the contrary.

which agreement would survive the merger, and tend to impede, rather than foster the economies and efficiencies of the merger...”).

B. The Hampton Award applied an incorrect standard in refusing to override the applicable CBAs, which is necessary to facilitate the Board-approved transaction.

1. The Arbitrator exceeded his authority by deciding that the Carrier must demonstrate that it can obtain *no* efficiencies from an alternate operational change in order to obtain an override of existing collective bargaining rights as necessary to implement a Board-approved transaction.

A rail carrier participating in a Board-approved transaction “is exempt from the antitrust laws and from all other law ... as necessary to let that rail carrier ... carry out the transaction...” *See Norfolk & W. Ry. Co. v. ATDA*, 499 U.S. 117, 128 (1991). The exemption from “all other law” includes the Railway Labor Act and permits the Board, or arbitration panels acting under Article I, Section 4 of *New York Dock*, to override the provisions of existing collective bargaining agreements as “necessary” to carry out the approved “transaction.” *Id.* This standard requires adjudicating forums to engage in a two-stage analysis to determine whether any law or a CBA may be overridden in connection with a Board-approved transaction. First, there must be a logical link or “nexus” between the changes sought and the Board-approved transaction. *United Transp. Union v. Surface Transp. Bd.*, 108 F.3d 1425, 1430 (D.C. Cir. 1997). Second, the transaction must yield a “transportation benefit to the public.” *Id.* at 1431. If the subsequent transaction is related to the underlying approved transaction, existing CBAs may be overridden when “necessary in order to secure to the public some transportation benefit flowing from the underlying transaction.” *CSX Corp. – Control – Chessie Sys. Inc. and Seaboard Coast Line Indus. Inc.*, Finance Docket No. 28905 (Sub No. 22), 1998 WL 661418 at *14, (Service Date Sept. 25, 1998) (quoting *RLEA v. U.S.*, 987 F.2d 806, 815 (D.C. Cir. 1993)). *See also ATDA v. I.C.C.*, 26 F.3d at 1165 (definition of *transaction* is broad and elastic).

Nowhere in this well-established standard, or the ample decisions interpreting it, has this Board articulated a requirement that a carrier seeking to carry out a transaction covered by the *New York Dock* conditions must demonstrate that it can obtain **no** efficiencies from an operational change that would not require override of the applicable CBAs. Indeed, to the contrary, this Board has expressly rejected imposing such a requirement upon carriers:

The fact that some of the efficiencies involved could have been achieved some other way is irrelevant. It is not our role to dictate to a carrier the business means it chooses to employ to achieve economies and efficiencies in its operations, provided that the carrier complies with the [Interstate Commerce Act].

Del. & Hudson Ry. Co - Lease and Trackage Rights - Springfield Terminal Ry. Co., Finance Docket No. 30965, slip op. at 29 (Service Date Sept. 25, 1998) (emphasis added). Furthermore, this Board has stated that the burden upon the carrier should not be heavy:

Arbitrators should not require the carrier to bear a heavy burden (for example, through detailed operational studies) in justifying operational and related work assignment and employment level changes that are clearly necessary to make the merged entity operate efficiently as a unified system rather than as two separate entities, if these changes are identified with reasonable particularity.

CSX Corp. – Control – Chessie Sys., Inc. and Seaboard Coast Line Indus., Inc., 3 S.T.B. 701 (1998) (citing *Fox Valley & W. Ltd. – Exemption Acquisition and Operation – Certain Lines of Green Bay and W. R.R. Co., et al.*, Finance Docket No. 32035 (Sub Nos. 2-6) (Service Date Aug. 10, 1995)). To require a carrier to prove that it could not obtain **any** efficiencies from some other operational change not requiring override of a collective bargaining agreement is precisely that type of high burden this Board does not obligate a carrier to satisfy.

Nonetheless, this standard is exactly the one to which the Arbitrator in the instant case held the Carrier: “The Carrier has not ***substantiated that efficiencies would be non-existent*** should the GTW Roster be maintained and the ATDA Collective Bargaining Agreement remain

in effect for those GTW Dispatchers transferring from Troy to Homewood.” Hampton Award, Exhibit A at 10. Instead of requiring the Carrier to show that the proposed override of the bargaining agreement was necessary to permit the consolidation of work made possible by this Board's approval of the Control Transaction, the Arbitrator required the Carrier to shoulder the Herculean task of demonstrating that the Carrier could achieve no efficiencies from alternate operating changes if the consolidation did not move forward. It is difficult to fathom under what circumstances a carrier could ever again complete a transaction requiring override if all an organization need show is that even a single efficiency could be attained without an override. To be sure, a carrier that wants to consolidate car or locomotive repair might save some real estate expense by “co-locating” two separate groups of “walled off” employees under one roof, each performing the same work as stand-alone railroads. But, that result has been squarely rejected by the Board. Such a result is counter to the fundamental premise of the *New York Dock* conditions, designed to allow the carrier to act in a manner to serve the public benefit, even if it requires override of a CBA, and to compensate affected employees.

2. The Arbitrator committed egregious error because the Carrier presented sufficient evidence to demonstrate that override of the applicable CBAs is necessary to facilitate the consolidation.

The Arbitrator committed egregious error by denying the Carrier the ability to consolidate train dispatching work, as made possible by this Board's decision, and to override the applicable CBAs as necessary to allow that transaction to proceed. Had the Arbitrator applied the standard articulated by the Courts and this Board, he would have come to the inescapable conclusion that the Carrier provided more than sufficient evidence to demonstrate that the consolidation of train dispatching work flowed directly from the Board's approval of the Control Transaction and that an override of the scope rules of the GTW-ATDA CBA is necessary to facilitate the consolidation made possible by the Board's decision.

As explained above, since at least the time of its application in the Control Transaction, the Carrier has planned to consolidate the work of the GTW and IC dispatchers in Homewood under a single collective bargaining agreement and a single seniority roster and because consolidation of the dispatching function is necessary to achieve fully the efficiencies of the Control Transaction. *See United Transp. Union*, 108 F.3d at 1431 (“[T]here is little point in consolidating railroads on paper if a consolidation of operations cannot be achieved. It is obvious that separate and distinct parts, operating separately and distinctly, will not generate the value of consolidation.”). There can be no doubt that the consolidation flows from the Board-approved Control Transaction.

It is equally obvious that what stands in the way of the Carrier consolidating the work of the GTW and IC dispatchers is the scope rule and other work ownership provisions contained in the CBA between GTW and the ATDA, limiting work on the GTW territory to GTW dispatchers. Without overriding those rules, IC dispatchers could not perform work on the GTW territory. The same is true of any work ownership claims under the ICTDA agreement. Therefore, the Carrier could not obtain efficiencies of the Control Transaction, such as the elimination of dispatcher positions made possible by the ability to “backfill” desks and combine extra boards.

Therefore, under applicable law and the undisputed facts, the Carrier has satisfied its burden to override the applicable CBA’s and consolidate the GTW and IC dispatchers in a single unit in Homewood, subject to the *New York Dock* protective conditions. The Arbitrator committed egregious error by concluding otherwise.

III. **The Hampton Award Exceeds The Authority Granted To The Arbitrator By Imposing Labor Protective Conditions On An Operational Change Not Covered By *New York Dock*.**

Under Article I, § 4 of *New York Dock*, an arbitration panel is authorized to impose an implementing agreement upon transactions that may result in the dismissal or displacement of employees or rearrangement of forces. The proposed consolidation of dispatchers from GTW and IC into a single unit in Homewood is such a transaction as it calls for the abolition of sixteen (16) GTW dispatcher positions in Troy, and the creation of ten (10) new dispatcher positions in Homewood under the ICTDA agreement, a net loss of six (6) dispatcher positions. However, the mere relocation of GTW dispatchers from Troy to Homewood without consolidation is not a transaction covered by the *New York Dock*. The same number of dispatchers will be required to service the GTW dispatch operations regardless of their physical location if the Carrier is not able to gain the efficiencies only available through consolidation, such as the ability to “backfill desks” and a combined extra board. Therefore, the formulation of an implementing agreement for such a relocation was in excess of the Arbitrator’s authority.

In essence, the Hampton Award crafted an implementing agreement for a simple operational change which was not presented to the Arbitrator. The notice posted by the Carrier giving rise to these proceedings explicitly and solely called for a consolidation, and referenced the utilization of dispatchers, not just the location of the dispatchers.

To achieve the efficiencies of the acquisition, it is necessary to ***consolidate*** the train dispatching operation of the Grand Trunk Western (“GTW”) and the Illinois Central (“IC”) into one location. The ***consolidation*** will result in the abolishment of sixteen (16) GTW dispatcher positions at Troy, Michigan. Ten (10) dispatcher positions will be established at Homewood, Illinois. The reason for the ***consolidation*** is to provide increased efficiency and better ***utilization*** of the dispatchers at Homewood.

Exhibit D (emphasis added). At no time did the Carrier seek to effectuate a relocation without a consolidation of the previously separate GTW and IC dispatcher units. The question of what, if any, protective conditions are applicable to a relocation of the GTW dispatchers without a consolidation was not a question posed to the Arbitrator. Therefore, the Arbitrator exceeded his authority by formulating an implementing agreement for an operational change the Carrier never sought to effectuate.

Furthermore, not only does the Hampton Award impose labor protective conditions on an operational change not covered by *New York Dock* which the Carrier never sought to effectuate, it also purports to require the Carrier to make the implementation agreement effective no later than March 1, 2010. Hampton Award, Exhibit A, Addendum at ¶ 17 (“This Agreement shall be effective no later than March 1, 2010.”). The Carrier is under no obligation to move forward with any consolidation or relocation of the GTW and IC dispatchers, let alone to do so by a date certain. See, e.g., *Union Pac. Corp., Union Pac. R.R. Co., and Missouri Pac. R.R. Co., - Control and Merger - S. Pac. R. Corp., S. Pac. Transp. Co., St. Louis Sw. Ry. Co., SPCSL Corp. and the Denver & Rio Grande W. R.R. Co.*, Finance Docket No. 32760, slip op. at 5 (Service Date Feb. 25, 2000) (“We are aware of no precedent under *New York Dock* that prohibits carriers from withdrawing implementation proposals after they have been put to arbitration, especially where, as here, the carrier expressly reserves the right to do so prior to the arbitration”). Therefore, the Arbitrator also exceeded his authority by purporting to order the Carrier to move forward with the proposed transaction and to make effective the implementation agreement no later than March 1, 2010.

IV. The Hampton Award Exceeds The Authority Granted To The Arbitrator By Deciding A Representation Question Within The Exclusive Jurisdiction Of The National Mediation Board.

The Arbitrator exceeded his authority by purporting to decide a question of representation, a matter within the exclusive jurisdiction of the NMB. The Arbitrator's blatant usurpation of the NMB's authority is laid bare by Paragraph 5 of the implementing agreement contained in the Hampton Award:

Employees transferring from Troy to Homewood under provisions of this Agreement ***shall remain subject to ATDA representation*** and all agreements, including all national agreements, in effect between the ATDA and GTW governing wages, rules and working conditions, subject to the modifications contained herein, ***until such time as a single agreement is reached covering all ATDA represented train dispatchers.***

(Emphasis added.)

It is well-established that neither the Board nor a *New York Dock* Section 4 arbitration panel has the authority to decide questions of representation. The NMB has exclusive jurisdiction over questions of representation, and the Arbitrator ignored this fundamental principle of law in his award. This Board has recognized that continued representation by a specific organization is not a right that must be preserved under *New York Dock*:

The unions argue that section 2 of *New York Dock* gives employees a right to retain their existing union representation. The coordination will require WM engineers, currently represented by the UTU, to work under the agreement that BLE negotiated with the B&O rather than their current agreement. ***The effect of our transactions on selection of union membership is under the jurisdiction of the National Mediation Board acting under the Railway Labor Act.... Therefore, we find that the issue of which union is to represent WM engineers or receive them as dues-paying members does not involve a right that must be preserved under section 2 of New York Dock.***

CSX Corp. - Control - Chessie Sys., Inc. and Seaboard Coast Line Indus., Inc., Finance Docket No. 28905 (Sub-No. 27), 1995 WL 717122 (Service Date Dec. 7, 1995) (emphasis added); see

also *Union R.R. Co. and Bessemer & Lake Erie R.R. Co. - Arbitration Review - United Steelworkers of Amer.*, Finance Docket No. 31363, slip op. at 8 (Service Date Dec. 17, 1998) (“And, to the extent [the organization] is seeking to raise an issue of representation, such issues can be resolved only by the NMB.”); *Fox Valley & W. Ltd. - Exemption Acquisition and Operation - Certain Lines of Green Bay & W. R.R. Co., Fox River Valley R.R. Corp. and the Ahnapee & W. Ry. Co.*, Finance Docket No. 32025 (Sub-No. 1), 1994 WL 705485, at * 4 (Service Date Dec. 19, 1994) (“We affirm our conclusion in Fox Valley II that the NMB has the exclusive jurisdiction over matters of representation.”). Numerous Section 4 arbitrators have reached the same conclusion. *See, e.g., Norfolk & W. R.y. Co. v. ATDA, NYD § 4 Arb. (Harris, May 19, 1987)* (approving the merger of ATDA-represented dispatchers into a group of non-agreement management dispatchers and holding that “[w]hatever rights the ATDA may have under the Railway Labor Act as an 'incumbent' bargaining representative are for determination by the National Mediation Board, not this panel.”); *RYA v. Union Pac. R.R. Co. & Missouri Pac. R.R. Co., NYD § 4 Arb. (Seidenberg, May 18, 1983)* (“We find it inappropriate, in drafting an Implementing Agreement pursuant to the New York Dock conditions, to give consideration to such unrelated matters as bargaining agent recognition and union dues collection. The first matter is exclusively within the jurisdiction of the National Mediation Board and the second has to be decided in a forum other than this one”).

There is a clear and significant difference between deciding which collective bargaining agreement will apply after a consolidation and which (if any) organization will represent the employees in the consolidated positions. The former is well-within the authority of this Board or a Section 4 arbitration panel, but the latter is not. In this case, the Carrier proposed that the collective bargaining agreement of the ICTDA should prevail because of the “controlling carrier”

doctrine and the numerical superiority of the IC dispatchers. But, regardless which agreement is selected, it is plain that the Arbitrator cannot decide questions of representation, which is exactly what Arbitrator Hampton purported to do. The willingness of the Arbitrator to trench upon the NMB's jurisdiction shows just how far afield this Award strayed.

V. The Hampton Award Exceeds The Authority Granted To The Arbitrator By Imposing Protective Conditions Which Diverge From And Exceed Those Authorized Under *New York Dock*.

New York Dock provides perhaps the most generous employee protection recognized by American law. During these challenging economic times, when mass layoffs and reductions in wages and benefits have become an everyday occurrence, *New York Dock* ensures rail employees affected by a Board-approved transaction (including all of the GTW dispatchers at issue in this case) receive six (6) years of protection, in addition to relocation benefits that appear exceedingly generous by today's standards. *See generally Morgan v. St. Joseph Terminal R.R. Co.*, No. 84-6150, 1984 WL 6288, at *5 (W.D. Mo. June 3, 1986) (“Outside the specialized area of regulated carrier law, this [acceptance of less than *New York Dock* benefits] would seem to be a reasonably generous result, assuming a merger that is intended to save expenses.”).

Prior to the arbitration, the Carrier's initial proposed implementing agreement contained a package of enhanced relocation benefits - above and beyond the normal *New York Dock* benefits - in an effort to secure a quick and amicable agreement that would permit the Carrier to implement the dispatcher consolidation and begin enjoying the efficiencies from the consolidation. Notwithstanding the offer of enhanced benefits, it became apparent in the course of bargaining that a voluntary implementing agreement could not be reached because ATDA insisted that its members be “walled off” from the IC dispatchers. Therefore, the Carrier was left with no realistic option but to return to a proposal consistent with the standard requirements of *New York Dock* and proceed to arbitration.

In such a situation, the ICC has recognized that the arbitration panel lacks the authority to impose protective conditions in excess of those prescribed by *New York Dock*:

We fashioned the *New York Dock* conditions to satisfy the level of employee protection mandated by § 11347. We have consistently recognized our authority to require a greater level of protection in any given case. ***It does not follow, however, that once we determine the appropriate level of protection, an arbitrator is free to impose a higher level. On the contrary, the arbitration panel's authority is derived solely from the New York Dock conditions themselves, and nothing in those conditions authorizes the arbitrator to expand the basic benefit structure prescribed by the Commission.*** Rather, it is the arbitrator's task to determine the appropriate application of conditions prescribed by the Commission. The proper forum for employees seeking a level of protection in excess of *New York Dock* is thus not in the arbitration of individual disputes but rather before this Commission where we consider the merits of the § 11343 transaction.

Norfolk S. Corp. - Control - Norfolk & W. Ry. Co. and S. Ry. Co., Finance Docket No. 29430 (Sub-No. 20), 4 I.C.C.2d 1080, 1087-88 (June 10, 1988) (emphasis added). Likewise, *New York Dock* arbitrators have consistently recognized that they lack the jurisdiction under Article I, § 4 to impose an implementing agreement providing benefits greater than the already generous benefits set forth in *New York Dock*. See *Norfolk & W. R.R. Co. v. Bhd. of R.R. Signalmen*, NYD § 4 Arb. (LaRocco, Feb. 9, 1989) (“[T]his Committee lacks the authority to provide the Organization with monetary benefits in excess of the minimum level set forth in the *New York Dock* conditions.”) (declining to include in the implementing agreement the organization's proposals relating to additional per diem benefits, real estate expense reimbursements and other relocation expenses); *Conrail and Monongahela Ry. Co. v. Int'l Ass'n of Machinists & Aero. Workers*, NYD § 4 Arb. (Peterson, June 21, 1993).

In the absence of an agreement by the parties for a voluntary implementing agreement, the arbitrator must follow the enumerated *New York Dock* provisions. However, the Hampton Award impermissibly jettisons the limitations of *New York Dock*, offering in Section 13 and

Attachment B to the Award a potpourri of “special options” all of which exceed the Arbitrator’s authority under *New York Dock*. This is not a case in which the arbitrator interpreted and applied benefits already available under *New York Dock* – the special options contained in the Award are categorically in excess of the normal *New York Dock* benefits.¹⁴ Examples of these “special options” are as follows:

House-hunting Allowances. Article I, § 9 of *New York Dock* allows employees reimbursement for actual moving expenses plus an employee's “actual wage loss, not exceeding 3 working days.” *New York Dock* makes no provisions whatsoever for “house-hunting trips”. However, well in excess of what *New York Dock* provides, Paragraph 13 of the implementing agreement contained in Hampton Award permits employees to elect “in lieu of any and all benefits provided by Sections 9 and 12” other “special options.” Hampton Award, Exhibit A, Addendum at ¶ 13. With respect to house-hunting, Attachment B(1) of the implementing agreement provides the GTW dispatchers with “four (4) days pay for the purpose of locating a residence in the Homewood area” and a one-time lump sum “bonus payment” in the amount of \$500 “to defray expenses associated with their home hunting” trip to the Homewood area. *Id.* at Addendum, Attachment B(1). Even in the most conservative interpretation of these provisions, the Arbitrator provides the GTW dispatchers with an extra day of pay over and above the 3 days of actual wage loss prescribed by the *New York Dock* conditions. There is no authority whatsoever for the Arbitrator to impose upon the transaction the excess house-hunting allowance contained in the Hampton Award.

¹⁴ If an arbitrator is permitted to award benefits in excess of *New York Dock*, rail labor will lack any incentive to reach a prompt, voluntarily implementing agreement. It is not unusual for rail carriers to offer enhanced benefits as an incentive to reaching a voluntary agreement, but if such enhanced benefits were interpreted as a new “floor” of labor protection, rail labor would always elect to proceed to arbitration in hopes of obtaining even greater benefits, thwarting the Board’s preference for voluntarily-negotiated implementing agreements.

Lump Sum Monetary Relocation Packages. Article I, § 12 of *New York Dock* provides employees with clear and concise protections to guard against losses related to relocation of his/her home - either “any loss suffered in the sale of his home for less than its fair value” or “all loss and costs in securing the cancellation” of a lease. *New York Dock*, 360 I.C.C. 60, at Appendix III. However, contrary to what *New York Dock* provides, the implementing agreement contained in Hampton Award permits employees to elect “in lieu of any and all benefits provided by Sections 9 and 12” other “special options” contained in Attachment B. Hampton Award Exhibit A, Addendum. Under the Hampton Award, employees who have sold their home in the Troy area and purchase in Homewood would become entitled to “an additional \$10,000” payable over a 15-month period. *Id.* Employees who elect to rent or lease in the Homewood area would be entitled to a “rent reimbursement” in the amount of “actual out-of-pocket costs of a rental accommodation, up to One Thousand Three Hundred Dollars (\$1,300) per month” for up to 2 years following relocation. *Id.*

The award of two (2) years of rent reimbursement does not derive from the *New York Dock* provision of costs incurred with canceling a lease which the employee was responsible for paying himself in the Troy area. To the contrary, as at least one arbitrator has noted, “[i]t is beyond the jurisdiction of an arbitration board, such as this, to award an increase in the prescribed moving allowance, absent authority of the parties to make a determination on such a matter.” *Conrail and Monongahela Ry. Co. v. Int'l Ass'n of Machinists & Aero. Workers*, NYD § 4 Arb. (Peterson, June 21, 1993); *see also Norfolk S. Ry. Co., et al. v. Bhd. of Maint. of Way Employees, et al.*, NYD § 4 Arb., at 11 (Fredenberger, Jan. 14, 1999) (rejecting the organizations' demand for separation allowances that would impermissibly expand the benefits of *New York Dock* and, in any event, would expose the carrier to undue expense).

Separation Allowances. *New York Dock* is intended to provide affected employees **willing to follow their work** with wage protection - not to result in a windfall for employees who choose not to work at all. Indeed, such trade-off is the “fundamental bargain” upon which *New York Dock* is premised:

The ICC has in the past referred to the fundamental bargain underlying the Washington Job Protection Agreement of May 1936 (WJPA), upon which the *New York Dock* Conditions are based, as being that ***an employee must accept any comparable position for which he or she is qualified regardless of location in order to be entitled to a displacement allowance.***

CSX Corp. - Control - Chessie Sys., Inc., and Seaboard Coast Line Indus., Inc. (Arbitration Review), Finance Docket No. 28905 (Sub-No. 28) (Service Date Sept. 3, 1997) (emphasis added).

To that end, *New York Dock* defines a dismissed employee as one who “as a result of a transaction is deprived 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 whose position is abolished as a result of a transaction.” *New York Dock*, 360 I.C.C. 60, at Appendix III. It is clear that “employees who refuse to transfer with available work are not considered 'dismissed employees' and therefore are not entitled to either a 'dismissal allowance' or a 'separation allowance' under the *New York Dock* conditions.” *Int'l Ass'n of Machinists & Aero. Workers and Guilford Transp. Indus.*, NYD § 4 Arb. (O'Brien, Feb. 2, 1987).

Yet that is exactly what the Hampton Award permits GTW dispatchers - those with the greatest ATDA seniority - to choose by applying for one of six separation allowances. In this regard, the award of a separation allowance to employees who choose not to work has no basis in the *New York Dock* protective conditions. *Cf. Atl. Richfield Co., et al. - Control - Butte, Anaconda & Pac. R.R., et al.* (Arbitration Review), Finance Docket No. 28490 (Sub-No. 1), slip

op. at 6-7 (Service Date Mar. 2, 1988) (arbitrator “misinterpreted the scope of labor protection imposed in the control proceeding” and therefore his award “failed to draw its essence from the conditions imposed by this agency”), *aff’d sub nom. Employees of Butte, Anaconda & Pac. Ry. v. U.S.*, 938 F.2d 1009 (9th Cir. 1991). There is no authority whatsoever for the Arbitrator to invent new protective conditions out of whole cloth, especially where, as here, the effect of the Arbitrator’s creativity is to relieve employees of the fundamental bargain -- the obligation to follow their work.

Furthermore, since the Arbitrator’s award refused to permit the carrier to consolidate the **work** of the dispatchers, the Carrier is unable to reduce its manpower requirements. Thus, the Arbitrator’s grant of separation allowances virtually guarantees that the Carrier will not have sufficient personnel to perform the work if it is relocated.

VI. The Impact Of The Hampton Award Is To Prevent The Carrier From Carrying Out Both the Board-Approved Transaction *and* the Relocation Envisioned By Arbitrator Hampton.

As a fundamental matter, a Section 4 arbitrator is charged with determining what, if any, laws or agreements need to be overridden to complete a transaction, and with fashioning an implementing agreement under *New York Dock* to get the transaction done. However, the implementing agreement imposed by the Arbitrator in the instant case makes it impractical for the Carrier to move forward with *any* action with respect to the dispatchers, let alone the consolidation that the Carrier sought to achieve.

By relegating the Carrier to carrying out only a relocation of the dispatchers and imposing an implementing agreement that allows dispatchers to either accept separation allowances or exercise seniority to the clerical craft and still remain eligible for displacement allowances, the Hampton Award erects insurmountable barriers to even the simple relocation of the work. The efficiencies which are gained from a relocation, as opposed to a consolidation, do

not allow for the Carrier to eliminate any dispatcher positions, only to reduce incidental overhead costs. The Carrier will need the same number of dispatchers to do the work on the GTW whether they are located in Troy or Homewood. Yet, the Arbitrator's award allows six (6) GTW dispatchers to elect a separation allowance, rather than relocate to Homewood, and allows other GTW dispatchers to exercise seniority to clerical positions and still receive displacement allowances -- eliminating any incentive to follow and protect dispatching work. Perhaps inadvertently, but no less surely, the Hampton Award makes it impossible for the Carrier to proceed. Dispatchers occupy a highly responsible position on the railroad and require months of training. By depriving the Carrier of the necessary forces to perform even "relocated" work, the Arbitrator committed egregious error.¹⁵

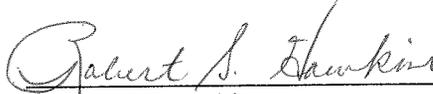
In short, as written, the Hampton Award renders the consolidation and even the relocation of dispatching work impossible, and imposes additional and significant costs upon the Carrier to carry out a simple relocation that does not unlock the majority of the efficiencies of the Board-approved Control Transaction. Such a result is counter to the entire scheme permitting the Board to approve transactions which result in greater operational efficiencies.

¹⁵ The cost of hiring several additional dispatchers to backfill positions vacated by GTW dispatchers who accept buy-outs or clerical positions clearly outweighs the marginal benefits obtained from decreased overhead, making it impractical to relocate the GTW dispatchers to Homewood.

CONCLUSION

For any and all of the foregoing reasons, the Board should review and set aside the Hampton Award.

Respectfully submitted,



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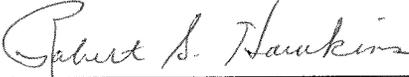
Dated: March 8, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of March, 2010, I caused to be served a true and correct copy of the Petition for Review of an Arbitration Award via electronic mail and UPS Overnight Mail upon the following:

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ROBERT S. HAWKINS

Exhibit A

**IN THE MATTER OF THE ARBITRATION BETWEEN
GRAND TRUNK WESTERN RAILROAD COMPANY and ILLINOIS
CENTRAL RAILROAD COMPANY
(Hereinafter referred to as the Carrier)**

and

**AMERICAN TRAIN DISPATCHERS ASSOCIATION
(Hereinafter referred to as ATDA)**

and

**ILLINOIS CENTRAL DISPATCHERS ASSOCIATION
(Hereinafter referred to as ICTDA)**

FINDINGS AND AWARD

Don A. Hampton, Arbitrator

Appearances

For the Carrier

Cathy Cortez, Senior Manager, Labor Relations
Robert S. Hawkins, Esq., Buchanan, Ingersoll & Rooney, P.C.

FOR THE ATDA

Michael S. Wolly, Esq., Zwerdline, Paul, Kahn, & Wolly, P.C.

FOR THE ICTDA

Joseph R. Mazzone, Esq.

Hearing Date: November 10, 2009

Hearing Location: Homewood, Illinois

STATEMENT OF FACTS

In Finance Docket No. 33556, the Surface Transportation Board (STB) approved the purchase of the Canadian National Railway Company (CN), Grand Trunk Corporation (GTC) and the Grand Trunk Western Railroad

Incorporated (GTW)(After the Control Transaction was allowed the name of GTW was changed to "Grand Trunk Western Railroad Company) Of the Illinois Central Corporation, Illinois Central Railroad Company (IC), Chicago, Central & Pacific Railroad Company (CCP) and Cedar River Railroad Company (CRR) (The "Control Transaction"), effective July 1, 1999, subject to the conditions for the protection of Railroad Employees described in New York Dock Railway – Control – Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979) ("New York Dock"). The purchase enables the Rail system to provide more efficient, more reliable, and more competitive rail service. The Acquisition also allows the consolidated rail carriers (Collectively referred to as the "Carrier") to respond directly to shipper requirements for improved rail infrastructure to handle the growing north south trade flows stimulated by NAFTA.

During the approval process for the merger the ATDA requested that the STD impose a condition to forbid transfer of train dispatcher responsibilities over domestic trackage to dispatchers in Canada without

certification from the FRA that the transfer without compromising safety. In its decision approving the Control Transaction, the STD explicitly acknowledged the Carrier's intent to centralize dispatching in Illinois.

In February of 2009, the Carrier determined that in order to achieve some of the efficiencies of the Transaction, it would be necessary to transfer GTW dispatching work currently performed in Troy, Michigan to Homewood, Illinois. Consolidating the Dispatching functions into the brand new transportation center, which is substantially better equipped and will achieve substantial savings by eliminating the need for its lease in Troy. The proposed consolidation finally brings together all U.S. dispatching groups under one roof, with associated efficiencies i.e. combined managerial and information technology support.

Such a transfer made it necessary to eliminate excess positions and transfer of dispatching work from Troy to Homewood.

POSITION OF THE PARTIES

While the Parties submitted to the Board detailed positions and voluminous supporting documentation on their positions this decisions will

cover all of these areas in brevity as the parties fully documented their respective positions to all concerned.

CARRIER:

A. The consolidation of work at a single reporting point is precisely the type of transaction that reasonably flows from, and is necessary to effectuate the efficiencies of, the STP – approved Control Transaction.

B. Because the parties complied with the notice and bargaining requirements of Article I. Section 4 of New York Dock, this Board properly has jurisdiction to impose an Implementing Agreement providing for the selection and assignment of forced for the consolidated Homewood dispatching operation.

C 1. The Carrier proposal should be imposed because it is fair and equitable and complies with the requirements of New York Dock.

2. The Carrier's proposed Implementing Agreement provides Full New York Dock protection to eligible Employees, including relocation assistance.

3. The Carrier's proposed Implementing Agreement properly places all dispatchers working at the Homewood Transportation Center, including the transferred GTW dispatchers under the ICTDA agreement in effect on the property.

D The Agreement proposed by the ATDA is excessive and beyond the jurisdiction of this Board.

1. The ATDA's demand to continue representing the GTW Dispatchers is beyond the jurisdiction of this Board.

2. The ATDA's demands for benefits in excess of those required by NEW York Dock are not a proper subject for Section 4 Arbitration.

ATDA

1. That employees willing to transfer to Homewood to work positions that dispatch trains over GTW trackage should be given priority over existing employees at Homewood to bid positions that perform those functions.

2. That employees transferring to Homewood should remain on a separate seniority roster of employees handling dispatching over GTW trackage.

3. That employees whose positions at Troy are abolished but who are not awarded positions at Homewood initially should retain rights to bid on vacancies that later occur at Homewood in positions dispatching trains over GTW trackage and be able to move to take those positions on the same

terms and conditions available to those GTW employees who successfully bid the positions initially.

4. That GTW Train Dispatchers who exercise their seniority to obtain a TCIU/GTW position should be considered eligible for a displacement allowance in accordance with Article I, Section 5 of New York Dock.

5. That the Carrier should provide employment assistance for the spouses of the relocating train dispatchers at no cost to the employee or spouse.

6. That the rates of pay in effect for GTW Train Dispatchers at the time of the relocation should be increased 10 percent (10%) in recognition of the increased cost of living in the Homewood area.

7. That GTW Employees should be allowed five (5) days with pay for the purpose of locating a residence in the Homewood area, with travel expenses associated with house-hunting trips paid by the Carrier.

8. That the Carrier should offer eight (8) separation allowances to Troy dispatchers as an alternative to their moving.

9. That ATDA employees who transfer to Homewood should be given the option of accepting Lump Sum monetary relocation packages in lieu of the moving and real estate provisions set forth in New York Dock Sections 9 and 12.

ICTDA

It is the position of the ICTDA that any award issued in this matter be limited to the issues and positions raised by the parties and contain no restrictive requirements, or orders upon the members of the ICTDA as regards their collective bargaining relationship with the Carrier.

DISCUSSION

This Board is tasked with resolving the issue of whether the Carrier is to be allowed to consolidate the work of GTW Dispatchers with the work of the IC Dispatchers. Such action would override the ATDA-GTW Collective Bargaining Agreement, including the elimination of Scope Rules limiting the GTW Dispatchers to dispatching trains over only the historic lines of the of the GTW. That the ATDA proposal would prevent the Carrier to achieve the efficiencies envisioned by the Control Transaction. The Carrier argues that such a merger would make it possible for the Carrier to immediately achieve the efficiencies of truly merging the GTW and IC Dispatchers. As the IC and GTW Dispatchers have already been trained on and upgraded to common dispatching systems there is no longer any rationale for merely moving the IC and GTW Dispatchers into a common building prior to actually intergrating their work. The Carrier then will immediately be able

to begin reassigning territories between the former GTW and IC desks, as necessitated by the Carrier's business needs.

The Carrier further argues that it is the ATDA who was primarily responsible for the delays in bargaining an implementing agreement as the ATDA continues to reject the core premise of the consolidation, and that there is no reason to believe that additional bargaining would result in a voluntary agreement. That it now rests on the Arbitrator to impose an implementing agreement providing for the selection and assignment of forces for the consolidated Homewood dispatching operation. That while the ICTDA has sought to remain neutral and because it is necessary for the Carrier to consolidate the work of the GTW and IC Dispatchers, IC Dispatchers will unavoidably be affected by the consolidation and the ICTDA is a necessary, if reluctant, party to this Section 4 arbitration proceedings. Because the ICTDA is not currently proposing a specific implementing agreement and has not espoused any strongly held position with to the consolidation other than its desire to remain neutral the Carrier has focused their arguments on the positions advanced by the ATDA. Of course the ICTDA will be bound by the implementing agreement imposed through these proceedings.

The ATDA argues that the Carrier did not bargain in good faith to reach an implementing agreement, that in fact, the Carrier reverted to regressive bargaining to tie the hands of the Arbitrator.

The ATDA avers that the Carrier is not merging the GTW and IC rail traffic control systems. Rather it is moving the GTW control system to a building at Homewood where IC and WC Dispatchers already work. When that happens all of the dispatchers will be under one roof, but they will not be running a single transportation system. Rather, the Carrier will continue to operate three (3) separate rail systems, only now they will be operated out of one facility.

Article I, Section 4 provides “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 that particular case and any reassignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this Section 4.” As it is evident that the transaction will result in employees being displaced or dismissed and forces being rearranged, so the Arbitrator must find an appropriated basis for the selection of forces and assignment of Employees to perform the GTW work being transferred to Homewood. The Arbitrator

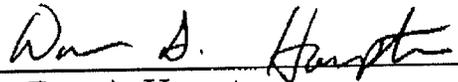
in his decision, must consider working agreement, seniority, prior rights and industry practices as he formulates his decision.

The Board at this time is unconvinced that it is a necessity to merge the duties of the GTW, IC, and WC Dispatchers to promote the efficiencies as envisioned by the Control Transaction. The Carrier has not substantiated that efficiencies would be non-existent should the GTW Roster be maintained and the ATDA Collective Bargaining Agreement remain in effect for those GTW Dispatchers transferring from Troy to Homewood.

There is no doubt that in the future, with changing technology and enhanced training methods that what the Carrier envisions will not only be possible, but common. On this issue the ATDA has been more convincing. The ATDA will be permitted to perform the duties at Homewood as they previously performed on territories covered by GTW Dispatchers.

In their correspondence and in arguments before the Board the parties seek to place blame in their inability to reach a bargained implementing agreement. While it is true the bargaining process left much to be desired, it is evident that the parties did make attempts with their proposals to reach an agreement. The Board will, using their proposals, craft one. This Implementing Agreement is attached as an Addendum to this decision and is

made a part of this decision. These Implementing Agreements are to resolve all outstanding issues and disputes raised by the parties in these proceedings.



Don A. Hampton
Arbitrator

DATED: February 1, 2010

ADDENDUM

IMPLEMENTING AGREEMENT

PARTIES TO AGREEMENT

**GRAND TRUNK WESTERN RAILROAD
COMPANY, ILLINOIS CENTRAL RAILROAD
COMPANY**

And

Their employees represented by:

**AMERICAN TRAIN DISPATCHERS ASSOCIATION
(ATDA)**

And

**ILLINOIS CENTRAL DISPATCHERS
ASSOCIATION**

WHEREAS, The Surface Transportation Board, in decision dated May 25, 1999 (STB Finance Docket No. 33556), approved the acquisition by Canadian Railway Company ("CNR"), Grand Trunk Corporation ("GTC"), and Grand Trunk Western Railroad Incorporated ("GTW") of Illinois Central Corporation ("I.C. Corp."), Illinois Central Railroad Company ("I.C."), Chicago, Central and Pacific Railroad Company ("CCP") and Cedar River Railroad Company ("CRRC") subject to the conditions for the protection of Railroad Employees described in New York Dock Railway -Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979)

And

WHEREAS, on February 3, 2009 the GTW served notice under ARTICLE I, Section 4 of the Protective Conditions of its intent to change operations as a result of the above transaction, and

WHEREAS, the parties to this agreement between the GTW and the ATDA on behalf of employees represented by the ATDA will establish procedures for the transfer of work and employees whose positions will be abolished on the GTW, and provides the necessary protection of affected employees.

As the ICTDA is not currently proposing a specific implementing agreement and has not espoused any strongly held position with respect to the consolidation other than its desire to remain neutral, the Arbitrator focused his decision on positions advanced by the Carrier and the ATDA. Of course all parties must be bound by this Tripartite Implementing Agreement.

1. On the effective date of this Agreement, sixteen (16) GTW Dispatcher positions, identified in Attachment "C", subject to the Agreement between the GTW and the ATDA will be abolished and the work they perform will be transferred to Homewood.

2. No less than Ten (10) days prior to the effective date of the Agreement, the GTW will post notice at Troy for at least ten (10) GTW

Dispatcher positions at Homewood to perform the work being transferred. Should additional positions be needed to perform such work, these positions shall be offered to those Troy dispatchers who are not part of the initial transfer of employees, as provided below.

3. GTW dispatchers must each (a) Submit their application for a position at Homewood, (b) accept a separation allowance as provided for in paragraph 12, or (c) state his/her intent to exercise seniority to another position under another Collective Bargaining Agreement under which he/she holds seniority (i.e. the GTW/TCIU Agreement), in writing, to the individual designated by the Carrier with copy to the Local Chairman, within five (5) days from date of posting. Employees must select their options in order of preference. Employee elections identified on their application will be considered **irrevocable**. Failure to submit application, or identify options, will result, in the employee being considered as having elected to exercise seniority under existing GTW/TCIU Agreements or otherwise accept a clerical position as provided in paragraph 4 below.

4. Assignments and awarding of positions shall be made in seniority order. In the event all positions provided in paragraph 2 are selected by dispatchers and not all separation allowances are claimed in accordance with paragraph 12, clerical positions, under the GTW/TCIU Agreement will be

made available to the remaining employees of the GTW/ATDA seniority roster. (See Attachment "C"). Employees who accept such clerical positions shall be considered displaced employees who retain rights to bid positions performing the dispatching work transferred to Homewood as such positions become available, and to transfer to such positions on the same terms and conditions applicable to those Troy Train Dispatchers who initially transferred to Homewood. They shall receive advance notice of such vacancies and be offered a minimum of ten (10) days in which to bid. Failure to submit a bid will result in the surrender of all rights under this Agreement.

5. Employees transferring from Troy to Homewood under provisions of this Agreement shall remain subject to ATDA representation and all agreements, including all national agreements, in effect between the ATDA and GTW governing wages, rules and working conditions, subject to the modifications contained herein, until such time as a single agreement is reached covering all ATDA represented train dispatchers.

6. Employees awarded positions created pursuant to Paragraph 2 will retain prior rights to those positions based upon their relative seniority standing as transferred. The rights will only be terminated in the event (1) The transferring GTW Employee successfully bids to another assignment

not covered by the ATDA –GTW agreements or, (2) The Employee resigns, retires, becomes disabled, is dismissed from service, or is promoted. Once a position established under paragraph 2 is no longer subject to prior rights under this agreement, it will, if necessary, be filled in accordance with the ATDA Agreement subject to paragraph 4. above.

7. The Employee protective benefits and conditions as set forth in the New York Dock Conditions (Attachment “A”) shall be applicable to this transaction. There shall be no duplication of benefits by an employee under this agreement or any other agreement or protective arrangement or protective agreement.

8. Any employee determined to be a “displaced” or dismissed employee as a result of this transaction, who is otherwise eligible for protective benefits and conditions under some other job security agreement, conditions or arrangement shall elect, in writing, within sixty (60) days of being affected between the protective benefits and conditions under such other arrangements. Such election will be given to the Carrier’s designated representative and the employee’s General Chairman. Should any employee fail to make an election of benefits during the period set forth in this paragraph, such employee shall be considered as electing the protective benefits and conditions of this agreement.

9. GTW Train Dispatchers shown in Attachment "C" who exercise their seniority to obtain a TCIU/GTW position shall be considered eligible for a displacement allowance in accordance with Article I, Section 5 of New York Dock. The Carrier shall provide the respective employee with the calculations used to determine his/her displacement allowance within thirty (30) days of assuming the Clerical position. The Carrier shall pay such displacement allowance in the first (1st) pay period of the month following the month in which a displacement allowance is due.

10. Nothing contained herein shall be construed as depriving any employee of any rights or benefits or eliminating any obligation which such employee may have under any existing job security or other protective conditions or arrangements, the employee shall elect between the benefits under New York Dock and similar benefits under such other arrangement and, for so long as the employee continues to receive such benefits under the provisions which the employee so elects, the employee shall not be entitled to the same type of benefit (regardless of whether or not such benefit is duplicative) under the provisions which he does not so elect; and, provided further, that after expiration of the period for which such employee to protection under that arrangement which the employee so elects, the employee may then be entitled under the other arrangement for the

remainder, if any, of the protective period under that arrangement. There shall be no duplication or pyramiding of benefits to any employee, and the benefits under New York Dock, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits.

11. In event any of the employees shown in Attachment "C" cannot hold a position under another GTW Collective Bargaining Agreement (i.e. TCIU/GTW), cannot receive a separation allowance as provided in paragraph 12, or cannot acquire a train dispatcher in Homewood, such employee shall be eligible for a dismissal allowance in accordance with Article I, Section 6 of New York Dock. The Carrier will shall provide the respective employee with the calculations used to determine his/her dismissal allowance within thirty (30) days of becoming a dismissed employee. The Carrier shall pay such dismissal allowance in the first pay period of each month.

12. There shall be at least six (6) separation allowances offered by the Carrier which shall be determined in accordance with Article I, Section 7 of New York Dock. Employees shall apply for a separation allowance in accordance with paragraph 3, which shall be awarded in seniority order. An employee awarded a separation allowance shall have the option to take it in

a lump sum, payable within thirty (30) days of the position being abolished in Troy, or having it spread equally over a certain number of months to reach age sixty (60). Should an employee choose to have the separation spread over a certain number of months to reach age sixty (60), the first payment shall be made in the first pay period following the abolishment of positions and he/she shall continue to receive health benefits in accordance with the same provisions as active employees for each month in which the separation allowance is received.

13. Employees that transfer from Troy to Homewood under the provisions of this Agreement may at their option and in lieu of any all benefits provided by Section 9 and 12, New York Dock conditions (Attachment "A"), be afforded special options as provided in Attachment "B". Such election shall be made at the time of transfer.

14. This Agreement shall constitute the required Agreement as stipulated in Article I, Section of the protective conditions, for the transfer of work indicated in the notice of February 3, 2009, The parties understand that in the future, other implementing agreements may be necessary to carry out the Financial Transaction set in STB Finance Docket 33556. The parties understand that such agreements are subject to notice, negotiation and possible arbitration under Article I, Section 4 of the New York conditions.

15. Any dispute arising out of this Implementing Agreement and the attachments will be handled by the General Chairman with the Officer of the Carrier designated to receive such claims and grievances for the Carrier. All unresolved disputes will be disposed of in accordance with the applicable provisions of New York Dock.

16. The provisions of this Implementing Agreement have been designed to address a particular situation. Therefore, the provisions of this Implementing Agreement and the Attachments are without precedent or prejudice to the position of either of the parties and shall not be referred to in any other case.

17. This Agreement shall be effective no later than March 1, 2010.

Signed this 1st day of February, 2010 at The Villages, Florida



Don A. Hampton
Arbitrator

w/Attachments

- A. New York Dock Conditions
- B. Relocation Benefits
- C. Troy ATDA Seniority Roster

ATTACHMENT "A"

NEW YORK DOCK PROTECTIVE CONDITIONS

Finance Docket No. 28250 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" means 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 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 whose 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.

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.

3. Nothing in this Appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under any existing job security or other protective conditions or arrangements; provided, that if an employee otherwise is eligible for protection under both this Appendix and some other job security or other protective conditions or arrangements, he shall elect between the benefits under this Appendix and similar benefits under such other arrangement and, for so long as he continues to receive such benefits under the provisions which he so elects, he shall not be entitled to the same type of benefit under the provisions which he does not so elect; provided further, that the benefits under this Appendix, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits; and, provided further, that after expiration of the period for which such employee is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of this protective period under that arrangement.

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.

(2) No later than twenty (20) days after a referee has been designated a hearing on the dispute shall commence.

(3) The decision of the referee shall be final, binding and conclusive and shall be rendered within thirty (30) days from the commencement of the hearing of the dispute.

(4) The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(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.

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 agreements, 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.

Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation

and average monthly time paid for in the test period), and provided further, that such allowance shall also be adjusted to reflect subsequent general wage increases.

If a displaced employee's compensation in his retained position in any month is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of his voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but if in his retained position he works in any month in excess of the aforesaid average monthly time paid for during the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position.

(b) If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for justifiable cause.

6. Dismissal allowances. - (a) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the transaction. Such allowance shall also be adjusted to reflect subsequent general wage increases.

(b) The dismissal allowance of any dismissed employee who returns to service with the railroad shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of section 5.

(c) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the railroad shall agree upon a procedure by which the railroad shall be currently informed of the earnings of such employee in employment other than with the railroad, and the benefits received.

(d) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure to return to service after being notified in accordance with the working agreement, failure without good cause to accept a comparable position which does not require a change in his place of residence for which he is qualified and eligible after appropriate notification, if his return does not infringe upon the employment rights of other employees under a working agreement.

7. Separation allowance. - A dismissed employee entitled to protection under this appendix, may, at his option within 7 days of his dismissal, resign and (in lieu of all other benefits and protections provided in this appendix) accept a lump sum payment computed in accordance with section 9 of

the Washington Job Protection Agreement of May, 1936.

8. Fringe benefits.- No employee of the railroad who is affected by a transaction shall be deprived, during his protection period, of benefits attached to his previous employment, such as free transportation, hospitalization, pensions, reliefs, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees of the railroad, in active or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

9. Moving expenses.- Any employee retained in the service of the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the transaction, and who within his protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects for the traveling expenses of himself and members of his family, including living expenses for himself and his family and for his own actual wage loss, not exceeding 3 working days, the exact extent of the responsibility of the railroad during the time necessary for such transfer and for reasonable time thereafter and the ways and means of transportation to be agreed upon in advance by the railroad and the affected employee or his representatives; provided, however, that changes in place of residence which are not a result of the transaction, shall not be considered to be within the purviews of this section; provided further, that the railroad shall, to the same extent provided above, assume the expenses, et cetera, for any employee furloughed within three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claims for reimbursement shall be paid under the provision of this section unless such claim is presented to the railroad within 90 days after the date on which the expenses were incurred.

10. Should the railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employe of benefits to which he otherwise would have become entitled under this appendix, this appendix will apply to such employee.

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 section 4 and 12 of this article I, 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.

(b) In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the railroad will be entitled to appoint

additional representatives so as to equal the number of labor organization representatives.

(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.

12. Losses from home removal.- (a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the railroad (or who is later restored to service after being entitled to receive a dismissal allowance) who is required to change the point of his employment within his protective period as a result of the transaction and is therefor required to move his place of residence:

(i) If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the railroad for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby. The railroad shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

(ii) If the employee is under a contract to purchase his home, the railroad shall protect him against loss to the extent of the fair value of equity he may have in the home and in addition shall relieve him from any further obligation under his contract.

(iii) If the employee holds an unexpired lease of a dwelling occupied by him as his home, the railroad shall protect him from all loss and cost in securing the cancellation of said lease.

(b) Changes in place of residence which are not the result of a transaction shall not be considered to be within the purview of this section.

(c) No claim for loss shall be paid under the provisions of this section unless such claim is presented to the railroad within 1 year after the date the employee is required to move.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee, or their representatives and the railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner. One to be selected by the representatives of the employees and one by the railroad, and these two, if unable to agree within 30 days upon a valuation, shall endeavor by agreement, within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the National Mediation Board to designate within 10 days a third appraiser

whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

ARTICLE II

1. Any employee who is terminated or furloughed as a result of a transaction shall, if he so requests, be granted priority of employment or reemployment to fill a position comparable to that which he held when his employment was terminated or he was furloughed, even though in a different craft or class, on the railroad which he is, or by training or retraining physically and mentally can become, qualified, not, however, in contravention of collective bargaining agreements relating thereto.
2. In the event such training or retraining is requested by such employee, the railroad shall provide for such training or retraining at no cost to the employee.
3. If such a terminated or furloughed employee who had made a request under section 1 or 2 of the Article II fails without good cause within 10 calendar days to accept an offer of a position comparable to that which he held when terminated or furloughed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such 10-day period, forfeit all rights and benefits under this appendix.

ARTICLES III, IV, AND V NOT REPRODUCED

ATTACHMENT “B”

ATTACHMENT B

In lieu of the benefits provided for in Sections 9 and 12 of the New York Dock conditions, employees who accept positions at Homewood may elect, at the time of their transfer, to accept one of the relocation packages as provided below. All transferring employees must select either relocation option (1) or (2), payments subject to taxation:

OPTION (1) GTW Employees who relocate their primary residence to the

Homewood area will receive:

After fifteen (15) working days	\$2,000
After sixty (60) working days	\$2,000
After six (6) months	\$2,000
After one (1) year	\$2,000
After fifteen (15) months	\$2,000

To qualify for the above payments, an employee must be in active service at Homewood at the time such payment is due.

GTW employees who relocate their primary residence and select the benefits of this Attachment at the time of their transfer will be entitled to an additional \$10,000 upon proof of sale, at fair market value, of their primary residence in the Troy area, and proof of relocation to a new primary residence within a reasonable distance of Homewood. To qualify for the benefits of this paragraph, relocation of primary residence, including both sale and relocation, must occur within two (2) years of the date of transfer.

OPTION (2) GTW Employees who rent in the Homewood area:

GTW employees who elect to rent or lease in the Homewood area, will be reimbursed for actual out-of-pocket costs of a rental accommodation, up to One Thousand Three Hundred Dollars (\$1,300) per month ("rent reimbursement"). This rent reimbursement is to be used solely for the accommodations that are necessary in order for the employee to hold a Dispatcher position to Homewood, Illinois and is not intended to, and cannot, be used for any other purpose, including but not limited to enrolling children in school, paying expenses for your present residence (or any other residence), or paying for any additional costs that might incur as a result of relocating.

1. Rent reimbursement includes only the following items: monthly rent; the cost of a basic cable plan; monthly gas (heat) bill; monthly electric bill; and parking at your residence.
2. Rent reimbursement will be provided for only those expenses actually incurred and only up to the amount provided for in paragraph 1. The employee must provide proof that you incurred the expense in a format acceptable to the Company prior to being reimbursed for any expense. Examples of acceptable forms of proof include a signed lease agreement, monthly utility bills issued by the service provider for gas, light, basic cable, and parking. The Company reserves the right to request the employee provide a receipt for proof that the expense has been paid.
3. This is a taxable benefit to the employee, which is subject to taxation as ordinary income. The Company has agreed to pay the taxes for the rent reimbursement to the extent that it is considered ordinary income and

subject to taxation. The employee will remain responsible for all other tax liability. All rent reimbursement and taxes paid by the Company will be reported on the employee's statement of earnings.

4. Rent reimbursement will be provided to the employee for a period of time not to exceed two (2) years, or when one of the following events occur, whichever is sooner: the employee ceases to incur such expense; the employee violates any term of this relocation package; the employee's employment with the Company ends, whether voluntarily or otherwise; or the employee voluntarily chooses to transfer to another position within the Company.
5. Rent reimbursement will be offset if two or more employees rent the same living space.

ATTACHMENT B(1)

GTW Employees shall be allowed four (4) days with pay for the purpose of locating a residence in the Homewood area. Said four (4) days may be split up for up to two (2) house – hunting trips and shall be scheduled in conjunction with the Employees rest days. In addition Employees will receive a one-time lump sum bonus payment in the amount of five hundred dollars (\$500) to defray expenses associated with their home hunting trip to the Homewood area.

Employees receiving the above benefits who do not relocate will have the above benefits deducted from any future earning or protective benefits.

ATTACHMENT “C”

ATTACHMENT C

	<u>Last Name</u>	<u>Initials</u>	<u>Seniority</u>
1.	Gebard	D.V.	4/19/1977
2.	Facknitz	E.A.	5/22/1977
3.	Campbell	L.P.	12/19/1981
4.	McAfee	M.L.	02/07/1987
5.	Mason	J.W.	11/30/1987
6.	Maidment	S.D.	1/14/1990
7.	Martenis	L.R.	06/02/1991
8.	Spring	M.S.	11/13/1991
9.	Plumley	T.R.	3/07/1993
10.	Maier	A.P.	10/19/1994
11.	Evans	T.D.	12/03/1994
12.	White	L.J.	6/05/1997
13.	Wery	N.D.	09/06/1997
14.	McDonough	K.E.	02/28/1998
15.	Cowgar	K.M.	03/05/1998
16.	Schott	J.F.	09/20/2000

Exhibit B

VERIFIED DECLARATION OF ROGER FRASURE

1. My name is Roger Frasure. I am employed as Senior Chief – Chicago Division by Grand Trunk Western Railroad Company (GTW), and together with its U.S. rail affiliates, the Carrier). I have been in that position for 12 years. In that capacity, I have personal knowledge generally of the Carrier's efforts to consolidate dispatching functions and, in particular, of the Carrier's current plan to consolidate the dispatching functions of the Grand Trunk Western Railroad Company ("GTW") and the Illinois Central Railroad Co. ("IC") in Homewood, Illinois.

2. The dispatching functions of the Duluth, Missabe & Iron Range Ry. Co. ("DM&IR") and the Duluth, Winnipeg and Pacific Ry. Co. (DWP) previously located in Duluth, Minnesota and Pokegama, Wisconsin, respectively, were consolidated in Stevens Point, Wisconsin, as part of the dispatching functions performed by the existing Wisconsin Central Ltd. ("WC") dispatchers in Stevens Point in 2004 and 2005. In both consolidations, the Carrier was able to negotiate voluntarily implementing agreements with the representatives of the affected dispatchers.

3. The dispatching functions of the Bessemer and Lake Erie R.R. Co. ("B&LE") were consolidated in Troy, Michigan along with the existing GTW dispatchers based in Troy shortly after the Carrier's acquisition of B&LE in 2004.

4. The dispatcher functions of the Elgin, Joliet & Eastern Ry. Co. ("EJ&E") were consolidated in Homewood, Illinois, with the work of the existing IC dispatchers in July 2009.

5. Recently, the Carrier has begun the process of consolidating its three remaining dispatching centers in Stevens Point, Troy, and Homewood, into the Carrier's Homewood Transportation Center. The Carrier announced in October 2007 that it would relocate the dispatchers then working in Stevens Point, Wisconsin to Homewood. At the time, the lines of the WC and the IC were not contiguous. As a result, the work of the WC dispatchers could not be combined feasibly with other railroads, and there was no benefit to be obtained from consolidating the work of the WC and IC dispatchers, as opposed to merely relocating the WC dispatchers to Homewood. Thus, the Carrier relocated the WC dispatchers to Homewood, but was unable to combine their work with that of the IC.

6. The Carrier and the labor organizations representing the Carrier's operating crafts have executed an agreement, known as the Chicago Coordination Agreement, providing for wide-ranging reciprocal trackage rights in the Chicagoland area. With this landmark agreement, the Carrier has the right to operate trains originating on any one of the traditional lines throughout the geographic region encompassed by the Chicago Coordination Agreement. However, while a train and engine crew now is able to operate a train from Battle Creek, Michigan to Griffith, Indiana, and on to either Memphis or Winnipeg, four separate dispatchers presently are required to assume responsibility for the train as it passes through each of the historic dispatching territories in the Chicago Terminal. This results in obvious operational inefficiencies that would be eliminated by consolidating the work of the Carrier's dispatchers under a single collective bargaining agreement.

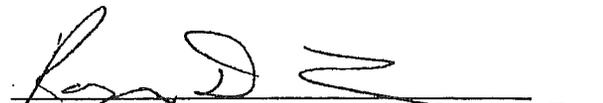
7. Once the work of the GTW and IC dispatchers is consolidated at Homewood, the Carrier will have the flexibility to reorganize the geographic scope of existing "desks," or teams of dispatchers assigned to dispatch trains over a particular geographic area, with the anticipated elimination at least one desk. Cross-training and eliminating restrictions tying the consolidated dispatchers to only the historical geographic boundaries of previously independent railroads will allow the Carrier the flexibility to "backfill" work from one desk to another in the event of storms, derailments, labor disputes affecting other carriers or other unanticipated circumstances, thereby protecting service and reducing costs.

8. The Carrier also currently maintains an "extra board," available to fill in as necessary, for each of the IC and GTW dispatcher groups. Following the consolidation of the GTW and IC dispatcher, the Carrier will be able to combine the two extra boards and enhance the availability of trained, qualified dispatchers to cover absences.

9. The consolidation of GTW and IC dispatching functions at Homewood will result in further efficiencies by eliminating the need for the Carrier to lease separate office space in Troy, Michigan and by permitting common management and information technology support functions.

10. Based upon the Carrier's recent review of its records, only two of the GTW dispatchers currently reside in Pontiac, Michigan. Although differences in wage and benefits plans between GTW and IC make a direct apples-to-apples comparison difficult, GTW dispatchers on balance will earn the same or more after they are consolidated with the IC dispatchers and working under the ICTDA agreement.

11. I have read the foregoing Verified Declaration, and I swear under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.


Roger Frasure

Dated: December 4, 2009

SECOND VERIFIED DECLARATION OF ROGER FRASURE

1. My name is Roger Frasure. I am employed as Senior Chief – Chicago Division by Grand Trunk Western Railroad Company (“GTW” and together with its U.S. rail affiliates, the “Carrier”). I have been in that position for 12 years. In that capacity, I have personal knowledge generally of the Carrier’s efforts to consolidate dispatching functions and, in particular, of the Carrier’s current plan to consolidate the dispatching functions of the GTW and the Illinois Central Railroad Co. (“IC”) in Homewood, Illinois.

2. When the Carrier acquired the IC in 1999, the IC dispatchers and GTW dispatchers utilized different traffic management and information systems that would have made it impossible to immediately realize the efficiencies of the IC acquisition by consolidating the work of the two dispatcher groups. Based in part on these difficulties, the Carrier reached an agreement with the representative of the GTW dispatchers, the American Train Dispatchers Association (“ATDA”), to not transfer the GTW dispatcher outside of the Troy area for a period of six years.

3. Since 1999, the IC and GTW dispatchers have been upgraded to use common traffic management and information systems. The IC dispatchers have been trained and converted to several systems previously used by the GTW dispatchers, such as the TGBO system, the SRS mainframe computer system, and the TOPC train performance managing system. Both the IC and GTW dispatchers also have been upgraded to the state-of-the-art TMDS Wabtec train tracking system. Now that the IC and GTW dispatchers are operating on common systems, the Carrier is able to consolidate the work of the two dispatcher groups.

4. In both the IC and GTW dispatching operations, technology is in place to allow the Carrier to perform workload studies to monitor if operations could be improved by redistributing territories between the existing desks. Based on ever-changing traffic densities along the Carrier’s rail lines, the Carrier periodically moves work among the existing desks. For example, the Carrier recently recalibrated territory assignments among dispatcher desks due to a decline in traffic related to the auto industry.

5. Once the IC and GTW dispatching operations are consolidated, the Carrier will be able immediately to begin reassigning territories between desks formerly designated as exclusively IC or GTW desks, as necessitated by the Carrier’s business needs. These reassignments of work will blur the distinction between former GTW dispatching work and former IC dispatching work.

6. The planned consolidation of GTW and IC dispatching work is likely to result in increased work opportunities for both groups of dispatchers. The Carrier will have the flexibility to assign excess traffic on the IC lines to dispatchers who previously dispatched trains exclusively over the GTW territory, and vice versa. The operational efficiencies and enhanced work opportunities anticipated by the Carrier would be eliminated if the GTW dispatchers were limited to dispatching trains only over the GTW lines or were otherwise walled-off from the IC dispatchers through a separate collective bargaining agreement or seniority roster.

7. I have read the foregoing Second Verified Declaration, and I swear under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.



Roger Frasure

Dated: December 18, 2009

Exhibit C

VERIFIED DECLARATION OF CATHY CORTEZ

1. My name is Cathy Cortez. I am employed as Senior Manager – Labor Relations by the Illinois Central Railroad Co. (“IC” and together with its U.S. rail affiliates, the “Carrier”). I have been in that position for 10 years. In that capacity, I have personal knowledge generally of the Carrier’s relations with the collective bargaining representatives of its employees, including the American Train Dispatchers Association (“ATDA”) and the Illinois Central Train Dispatchers Association (“ICTDA”), and, in particular, of the Carrier’s bargaining with the ATDA and ICTDA concerning the consolidation of the dispatching functions of the Grand Trunk Western Railroad Company (“GTW”) and the IC in Homewood, Illinois.

2. Four months after the Carrier’s acquisition of the IC was approved by the Surface Transportation Board, the Carrier and the ATDA executed a side letter on September 27, 1999 in which the Carrier agreed not to move the work of the GTW dispatchers outside of the Troy area for a period of six (6) years. During the next round of collective bargaining between the Carrier and the ATDA in 2005, the ATDA served a Section 6 notice, attached as Exhibit 1, seeking to extend the Carrier’s commitment not to transfer the GTW dispatchers from the Troy area. The ATDA was unable to obtain an extension of the “stay put” agreement in the parties’ most recent round of bargaining.

3. On February 3, 2009, the Carrier posted *New York Dock* Section 4 notices in Troy and Homewood informing affected employees of the Carrier’s intent to consolidate the GTW and IC dispatching groups in Homewood. Concurrently, the Carrier informed the general chairmen of the ATDA and ICTDA of its Section 4 notice and promptly scheduled initial meetings with both organizations.

4. The Carrier first met with the ATDA on February 5, 2009 in Troy and with the ICTDA on February 9, 2009 in Homewood. During these first meetings, the Carrier informed the organizations of the Carrier’s intent to consolidate the work of the IC and GTW dispatchers and even offered an example of one potential desk reorganization scenario that could be made possible by the consolidation.

5. Throughout its negotiations for a voluntary implementing agreement with the ATDA and ICTDA, the Carrier expressed its willingness to “work with the ATDA” but never equivocated with respect to the core purpose of the transaction, namely the actual consolidation of the GTW and IC dispatching work at Homewood, with both groups of dispatchers operating under a single collective bargaining agreement with a single seniority roster.

6. After the February 5, 2009 meeting with the ATDA, I promptly attempted to schedule a second bargaining session and provided the ATDA with multiple possible dates in February and March 2009. The ATDA was unable to provide any availability prior to April 15, 2009. I outlined the Carrier’s proposal to the ATDA orally in our February 5, 2009 meeting and agreed to provide a full written proposed implementing agreement in advance of our next meeting. As promised, I prepared and circulated the Carrier’s written proposed implementing agreement to the representatives of the ATDA on the morning of April 14, 2009. Attached as Exhibit 2 is a copy of the e-mail I sent transmitting the proposal to the ATDA. If the ATDA had

been willing to meet earlier than April 15, 2009, I would have provided the Carrier's draft implementing agreement in advance of such meeting.

7. During the April 15, 2009 meeting, the Carrier and the ATDA tentatively planned to conduct another bargaining session in early June. Unfortunately, on April 22, 2009, the ATDA cancelled the tentative June meeting. I immediately attempted to schedule a third meeting, by teleconference if possible. On June 12, 2009, the ATDA provided its availability for the requested conference call. The Carrier agreed to the ATDA's proposed time and the conference call was held on June 16, 2009. On June 23, 2009, the Carrier requested a further face-to-face meeting and offered very wide availability during the first two weeks of July. On July 15, 2009, the ATDA's Vice President responded as to his indefinite unavailability.

8. On July 25, 2009, the ATDA finally presented a counter-proposal to the Carrier via e-mail. The ATDA's draft agreement, which sought to maintain the transferred GTW dispatchers as GTW employees working under the GTW-ATDA collective bargaining agreement with GTW seniority, failed to acknowledge the fundamental nature of the Carrier's proposed consolidation. The Carrier initiated the arbitration process on July 29, 2009 but nevertheless insisted that the parties meet on August 4, 2009, as previously scheduled. The ATDA refused, claiming that it did not see any further value in meeting.

9. Currently, under the ATDA collective bargaining agreement, the GTW dispatchers are paid a uniform annual salary of \$74,894. Pursuant to the ICTDA collective bargaining agreement, dispatchers qualified on a desk earn a minimum of \$70,000 annually, which increases to a minimum of \$75,000 annually after one year of service. Because the Carrier's proposed implementing agreement credits the transferring GTW dispatchers with their prior GTW service for this purpose, each transferring GTW dispatcher will receive a salary increase following consolidation.

10. I have read the foregoing Verified Declaration, and I swear under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.


Cathy Cortez

Dated: December 18, 2009

Exhibit D



Labor Relations Department

17641 S. Ashland Avenue
Homewood, Illinois 60430

VIA HAND DELIVERY

February 3, 2009

Mr. M.H. Christofore
President
Illinois Central Train Dispatchers Association
17641 S. Ashland Avenue
Homewood, IL 60430

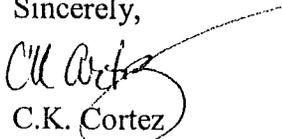
Mr. Christofore:

Enclosed is a self-explanatory notice that has been posted for the information of interested employees in connection with the acquisition of Illinois Central by Canadian National Railway (STB Finance Docket 33556).

We propose an initial meeting be held at 2p.m. on February 3, 2009, at our Homewood office located at 17641 S. Ashland Avenue in Homewood, Illinois, for the purpose of reaching the necessary implementing agreement.

Please advise if you are available to meet at the above time and location.

Sincerely,



C.K. Cortez

Senior Manager – Labor Relations

GRAND TRUNK WESTERN RAILROAD INCORPORATED
ILLINOIS CENTRAL RAILROAD COMPANY

Notice to Employees

February 3, 2009

The Surface Transportation Board, in a Decision dated May 25, 1999, approved the acquisition by Canadian National Railway Company ("CNR"), Grand Trunk Corporation ("GTC"), and Grand Trunk Western Railroad Incorporated ("GTW"), of Illinois Central Corporation ("IC Corp."), Illinois Central Railroad Company ("ICR"), Chicago, Central & Pacific Railroad Company ("CCP") and Cedar River Railroad Company ("CRRC") (Finance Docket 33556) subject to the conditions for the protection of railroad employees described in New York Dock Railway-Control-Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979).

The acquisition enables the rail system to provide more efficient, more reliable, and more competitive rail service. The acquisition also responds directly to shipper requirements for improved rail infrastructure to handle the rapidly growing north-south trade flows stimulated by NAFTA.

To achieve the efficiencies of the acquisition, it is necessary to consolidate the train dispatching operation of the Grand Trunk Western ("GTW") and the Illinois Central ("IC") into one location. The consolidation will result in the abolishment of sixteen (16) GTW dispatcher positions at Troy, Michigan. Ten (10) dispatcher positions will be established at Homewood, Illinois. The reason for the consolidation is to provide increased efficiency and better utilization of the dispatchers at Homewood.

Employees who are adversely affected by this transaction will be entitled to the employee protective conditions described in New York Dock Railway – Control – Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979).

This notice is served pursuant to Article I, Section 4 of the protective conditions.


C.K. Cortez

Senior Manager - Labor Relations



Labor Relations Department

17641 S. Ashland Avenue
Homewood, Illinois 60430

VIA FACSIMILE

February 3, 2009

Mr. J.W. Mason
General Chairman
American Train Dispatchers Association
4689 Hatchery
Waterford, MI 48329

Mr. Mason:

Enclosed is a self-explanatory notice that has been posted for the information of interested employees in connection with the acquisition of Illinois Central by Canadian National Railway (STB Finance Docket 33556).

We propose an initial meeting be held at 11:00 a.m. on February 5, 2009, at our Troy office located at 2800 Livernois Road, Troy, Michigan, for the purpose of reaching the necessary implementing agreement.

Please advise if you are available to meet at the above time and location.

Sincerely,

A handwritten signature in black ink, appearing to read 'C.K. Cortez', written over a circular stamp or mark.

C.K. Cortez
Senior Manager – Labor Relations

GRAND TRUNK WESTERN RAILROAD INCORPORATED
ILLINOIS CENTRAL RAILROAD COMPANY

Notice to Employees

February 3, 2009

The Surface Transportation Board, in a Decision dated May 25, 1999, approved the acquisition by Canadian National Railway Company ("CNR"), Grand Trunk Corporation ("GTC"), and Grand Trunk Western Railroad Incorporated ("GTW"), of Illinois Central Corporation ("IC Corp."), Illinois Central Railroad Company ("ICR"), Chicago, Central & Pacific Railroad Company ("CCP") and Cedar River Railroad Company ("CRRC") (Finance Docket 33556) subject to the conditions for the protection of railroad employees described in New York Dock Railway-Control-Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979).

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To achieve the efficiencies of the acquisition, it is necessary to consolidate the train dispatching operation of the Grand Trunk Western ("GTW") and the Illinois Central ("IC") into one location. The consolidation will result in the abolishment of sixteen (16) GTW dispatcher positions at Troy, Michigan. Ten (10) dispatcher positions will be established at Homewood, Illinois. The reason for the consolidation is to provide increased efficiency and better utilization of the dispatchers at Homewood.

Employees who are adversely affected by this transaction will be entitled to the employee protective conditions described in New York Dock Railway – Control – Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979).

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C.K. Cortez

Senior Manager - Labor Relations