

STB FD 33388 12-15-97 D 184826V3B 6/11

The Committee received pre-hearing submissions from both parties and it entertained extensive oral argument during the October 11, 1988 hearing. The parties elected to file post-hearing briefs which the Neutral Member received on or before December 7, 1988. At the Neutral Member's request, the parties waived the thirty-day time limitation, set forth in Section 4(a)(3) of the New York Dock Conditions, for issuing this decision.

## II. BACKGROUND AND SUMMARY OF THE FACTS

The NW operates a signal repair shop at Roanoke, Virginia. SR and CG employees perform shop signal repairs for their respective railroads at a shop located in East Point, Georgia. While SR and CG workers perform signal repairs under a common roof, the East Point shop is not a coordinated facility. SR signalmen (currently four) repair SR signal devices and are governed by the SR Schedule Signalmen's Agreement while a CG Relay Repairman (presently one position) performs repairs on CG signal mechanisms under the CG Signalmen's Agreement.

On April 13, 1988, the Carriers notified the Organization of their "...plan to coordinate the work performed by Central of Georgia and Southern Railway signal employees in the East Point, Georgia Signal Relay Repair Shops into the Norfolk and Western Signal Relay Repair Shop at Roanoke, Virginia." The Carriers estimated that the coordination would result in the elimination of two Signalmen positions. The Carriers will reap substantial savings and economic efficiencies by having all NW, SR and CG signal shop repair work performed at Roanoke. Besides the

economics of scale associated with the coordination, the Carriers will make more productive use of the NW's Roanoke shop which is much newer than the East Point facility and has ample capacity to absorb the influx of SR and CG shop signal repair work. The parties stipulated that the planned coordination was not expressly stated in the Carriers' application to the ICC in the 1982 control case.

The parties held three days of face-to-face negotiations.<sup>2</sup> They met on May 25-26, 1988 and June 30, 1988. At the initial conference, the Carriers proposed an Implementing Agreement which merely affirmed that the New York Dock Conditions would apply to employees dismissed or displaced due to the coordination. Either shortly before or at the June 30, 1988 meeting, the Carriers embellished their prior proposal by giving East Point workers an opportunity to follow their work to Roanoke; permitting those employees who transferred to Roanoke to retain their SR or CG seniority; providing that the seniority dates of CG or SR workers who go to Roanoke be dovetailed into the NW Eastern Region Signalmen's seniority roster; and promulgated a "prior rights" process for filling subsequent vacancies at the coordinated facility. Under the Carriers' prior rights proposal, subsequent vacancies on any Roanoke position occupied by a worker, who has transferred from the SR or the CG, would be advertised across th

<sup>2</sup> The Organization conducted negotiations with the Carriers but reserved the right to later raise its jurisdictional contention. In its April 27, 1988 letters replying to the Carriers' April 13, 1988 notices, the Organization asserted that Section 4 of the New York Dock Conditions was inapplicable to the transfer of shop signal repair work.

NS system. Employees from the vacating incumbent's seniority district would hold a preferential right to the vacancy. The process would apply to each successive vacancy but a position would lose its "prior rights" status if no employee from the incumbent's seniority district bid on and filled the vacancy.

Prior to the June 30, 1988 conference, the Organization proffered a proposed implementing agreement which not only incorporated the New York Dock Conditions but also contained terms covering a plethora of other subjects. The Organization's proposed implementing agreement included terms which would grant signal workers pecuniary benefits in excess of those prescribed in the New York Dock Conditions; preserve the applicability of SR, NW and CG scope rules to signal repair work performed at the Roanoke Shop (presumably based on the property where the work originated);<sup>3</sup> provide that CG and SR employees who move to Roanoke would continue to work under their present CG or SR Schedule Agreements; prohibit the Carriers from contracting out any work covered by the scope of any one of the three schedule agreements; force the parties to negotiate a contract to clarify the implementing agreement before the Carriers place the

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<sup>3</sup> Nonetheless, the Organization acknowledged that CG and SR signal repair work will be commingled with similar NW work at the coordinated facility. [TR 66, 81, 124] Consequently, the coordination will render it impossible to preserve these separate scope rules. The Organization further conceded that a Section 4 arbitration panel could write an implementing agreement which allows work to cross scope rule boundaries but the concession should not be construed as a relinquishment of the Organization's right to raise (in court) its fundamental argument that the ICC's New York Dock Conditions cannot abrogate, change, amend or delete any collective bargaining provision or any collective bargaining right. [TR 50, 90-91]



coordination into effect; automatically certify that all Roanoke signal shop workers are affected by the coordination and entitled to New York Dock benefits;<sup>4</sup> impose certain notice requirements on the Carriers; vest employees with benefits under other protective arrangements in lieu of New York Dock entitlements; and permanently allocate coordinated shop positions to the NW, SR and CG. The Organization also attached a Memorandum of Agreement to its proposal granting signal employees the exclusive right to perform all signal case wiring and/or fitting work although the Organization contends that current NW, SR and CG scope rules already cover such work. However, the Organization raised the signal case wiring issue for two reasons. First, two Public Law Boards adjudged that the NW's and SR's purchase of pre-wired signal cases did not violate the NW and SR scope rules. [See Public Law Board No. 2044, Award No. 4 (Van Wart) and Public Law Board No. 3244, Award No. 21 (Schienman)]. Second, the Organization successfully tied a similar Memorandum of Agreement

<sup>4</sup> At the arbitration hearing, the Organization explained that it did not intend to automatically certify all NW, CG and SR signal shop workers. Instead, the Organization wanted assurances from the Carriers that, if they were detrimentally affected now or in the future, Roanoke signal shop workers would have access to New York Dock benefits and any additional benefits contained in the implementing agreement. [TR 145-146] However, Section 2(a) of the Organization's proposed implementing agreement states that all named employees "...will be considered as adversely affected as a result of the implementation of the provisions of this Memorandum of Agreement...." The clear and unambiguous Section 2(a) language would establish an absolute presumption that all workers at Roanoke and East Point (even those who decline to follow their work) are adversely affected by the coordination. Nevertheless, the controversy is moot because the Organization realizes that only employees who are actually and adversely affected by the coordination are entitled to benefits.

to an April 14, 1987 New York Dock implementing agreement it negotiated (not arbitrated) with CSX Transportation, Inc.

While there is a factual conflict over whether or not the Carriers bargained in good faith, the parties concur that they each deemed the other's proposed implementing agreement unacceptable. Thereafter, the Carriers invoked interest arbitration pursuant to Section 4 of the New York Dock Conditions. The Carriers withdrew their second proposed implementing agreement and now ask this Committee to adopt an implementing agreement which is substantially similar to its original proposal. The Carriers' third proposal would permit East Point employees to bid on whatever new positions the NW established at Roanoke as a result of the coordination. (If the coordination will result in the elimination of two positions, the Carriers will only be creating three new positions at Roanoke. If SR and CG employees at East Point transfer to Roanoke, their seniority would be dovetailed into the appropriate NW seniority roster. The Carriers' third proposal does not contain the retention of seniority and prior rights provisions found in their second proposal. Arbitration under Section 4 of the New York Dock Conditions is not final offer arbitration and, thus, the Carriers are free to retract proposals that they made in the qui pro quo spirit of negotiations. The Carriers are not estopped from urging this Committee to adopt their third proposal as an implementing agreement to cover this transaction. On the other hand, the Organization petitions us to adopt its implementing agreement which we described in the preceding paragraph.

### III. STATEMENT OF THE ISSUES

This case raises three major issues:

1. Does this Committee have subject matter jurisdiction? Stated differently, is the Carriers' intended signal shop repair work coordination a transaction within the meaning of Section 1(a) of the New York Dock Conditions?

2. Did the Carriers negotiate in good faith with the Organization over the terms and conditions of an implementing agreement during the minimum thirty day bargaining period in accord with Section 4(a) of the New York Dock Conditions?

3. Assuming that this Committee has jurisdiction, what is the appropriate substantive content of an implementing agreement? An ancillary issue is whether transferring SR and CG employees will be governed by some or all the provisions of the SR or CG Schedule Signalmen's Agreements.

### IV. THE POSITIONS OF THE PARTIES

#### A. The Carriers' Position

Although the instant signal shop repair coordination was not mentioned in the Carriers' application in the control case, it is the type of post-acquisition coordination which the ICC anticipated that the Carriers might implement subsequent to the ICC's approval of the acquisition. The ICC implicitly condoned future transactions which enhance operational efficiencies. The Commission understood that the Carriers would "...realize a number of benefits related to coordination of shop and repair facilities...." 366 I.C.C. 173, 212. The ICC also observed that, "It is possible that further [employee] displacement may arise as

additional coordinations occur." [Brackets added for clarification] Id. at 230. In his November 26, 1980 verified statement, NW President Claytor informed the ICC that the Carriers might conduct future coordinations. The Organization quotes portions of the Carriers' application out of context. While the application suggested that the Carriers did not intend to coordinate signal work at Cincinnati, Ohio, they did not promise the ICC that they would never coordinate signal work elsewhere. In other railroad merger cases, the ICC has held that its approval in the control case extends to future coordinations which might reasonably be expected to flow from the original transaction. CSX-Control-Chessie and Seaboard Coast Line, F.D. 28905 (Sub-No. 22), ICC Decision issued June 25, 1988. [See also, NW/SR v. ATDA, NYD § 4 Arb. (Harris; 5/19/87); affirmed, Norfolk Southern Corporation-Control-Norfolk and Western Railway Co. and Southern Railway, F.D. 29430 (Sub-No. 20), ICC Decision dated May 24, 1988.] In the Union Pacific merger case, the ICC refused to condition future transfers of work on the carriers' attainment of the ICC's express approval following notice and an opportunity for hearing. Union Pacific Railroad-Control-Missouri Pacific Railroad, 366 I.C.C. 462, 622 (1982). The Organization admitted at the arbitration hearing that if the Carriers formally asked the ICC for authorization to coordinate the two signal shops, the ICC would summarily grant their request.

The Carriers sincerely attempted to reach a negotiated implementing agreement with the Organization. By providing signal employees on the CG and SR with prior rights, the Carriers



thought that its second proposal had addressed most of the Organization's concerns. Contrary to the Organization's allegation, the Carriers did not use this Section 4 arbitration proceeding as leverage to force the Organization to execute the Carriers' proposed implementing agreement. Similarly, the Carriers did not mislead the Organization into believing that the coordination encompassed solely relay repair work. The Carriers' April 13, 1988 notice indicated that all work performed by the East Point Signal Shop employees would be shifted to Roanoke. The Organization's bad faith bargaining charge is insulting. Out of 240 coordinations, the Carriers have had to resort to interest arbitration in only five instances. Due to the Organization's intransigence, a negotiated agreement was not possible in this particular case. The Organization broke off negotiations because the Carriers rightly refused to consider its Memorandum of Agreement which would bar the Carriers from purchasing prewired signal cases.

The Organization misunderstands the essence of this coordination. Following the movement of work from East Point to Roanoke, there will no longer be any CG or SR signal repair work. All signal shop repairs will be NW work. Since the work will be commingled, any device, regardless of whether it originated on the NW, SR or CG, will be repaired by an NW employee in the signal shop. The Carriers, not the Organization, design the parameters of the coordination and decide which property will perform shop signal repair work. Under the controlling carrier concept, the work is placed under the collective bargaining



agreement in effect at the location receiving the work. RYA v. MP/UP, NYD § 4 Arb. (Seldenberg; 5/18/83). Section 4 compels the parties to submit their disputes to binding interest arbitration so that the approved transaction can be consummated despite restrictions in existing collective bargaining agreements or employee rights under the Railway Labor Act. Denver and Rio Grande Western Railroad Company-Trackage Rights-Missouri Pacific Railroad Company, F.D. No. 3000 (Sub-No. 18), I.C.C. Decision dated October 19, 1983; Maine Central Railway Company, Georgia Pacific Corporation and Springfield Terminal Railway Company, Exemption from 49 U.S.C. 11342 and 11343, F.D. No. 30532, ICC Decision dated August 22, 1985. This Committee is absolutely bound to follow the ICC's pronouncement since it derives its authority from the Commission. United Transportation Union v. Norfolk and Western Railway Company, 822 F.2d 1114 (D.C. Cir. 1987). If SR and CG signalmen carried their respective schedule agreements with them to Roanoke, the Carriers would have to apply three separate pay, discipline, displacement and bidding provisions effectively nullifying any savings generated from the transaction. Of course, the Organization may handle the representation of the transferring employees as it sees fit but it cannot import the SR and CG Schedule Agreements to Roanoke.

The Carriers vehemently object to virtually every provision in the Organization's proposed implementing agreement. The Organization's proposals concerning signal case wiring and a ban on contracting out work are outside the ambit of negotiation and arbitration under Section 4 of the New York Dock Conditions.

These subjects do not concern the rearrangement of shop signal forces or the equitable selection of employees to perform the coordinated work. If the Organization wants to bargain about signal cases or subcontracting, it should serve a Section 6 notice under the Railway Labor Act. The Organization improperly seeks relocation expenses for transferring employees under Article XII of the January 12, 1982 National Signalmen's Agreement in lieu of less favorable expense reimbursements in the New York Dock Conditions because Article XII applies solely to intracarrier transfers. The Organization's implementing agreement designates each Roanoke shop position as an NW, SR or CG job. Such a provision serves to incorporate SR and CG seniority districts into the Roanoke Shop which is equivalent to carrying forward the CG and SR Schedule Agreements. The Organization is also half-heartedly attempting to dictate the number of positions the Carriers must maintain in the coordinated facility. The Organization is again invading management's prerogative to determine the parameters of the transaction. Moreover, the Organization's proposal is unworkable since whenever a displacement occurs, say on the SR, the SR employee could bump a Roanoke Shop worker compelling him to move to a faraway point on the SR system. Sections 5 and 11 of the Organization's proposed implementing agreement are unacceptable because they would require the parties to reach another contract before the Carriers could effectuate the coordination. There is no language in the New York Dock Conditions allowing the Organization to postpone implementation of the coordination once

an implementing agreement is negotiated or arbitrated. Side Letter No. 1 and Section 6 of the Organization's implementing agreement would grant employees per diem relocation and real estate benefits well beyond those specified in the New York Dock Conditions. Finally, the Organization's proposal raises a number of issues which are within the exclusive province of a Section 11 arbitration committee. Section 11 insures that current employees are protected should this coordination affect them sometime in the future.

While the Organization's implementing agreement is highly inappropriate, the Carriers' proposal presented to this Arbitration Committee conforms to the requirements of Section 4. The Carriers' implementing agreement contains an equitable method for filling new positions at the coordinated facility. It specifically permits current East Point employees to bid on the new Roanoke positions. Since their work is being moved to Roanoke, East Point Signalmen should have an opportunity to follow their work. The Carriers' prior rights provision included in their second proposed implementing agreement is unnecessary to achieve an equitable rearrangement of forces at the coordinated facility.

#### B. The Organization's Position

Inasmuch as the Carriers failed to specifically mention the combining of SR, CG and NW shop signal work in their ICC application, the intended coordination is not a transaction as defined in Section 1(a) of the New York Dock Conditions. Section 1(a) unambiguously stated that a transaction is an activity

"...taken pursuant to authorizations of this Commission...." Simply put, the ICC never approved the coordination of East Point Shop signal repair work into the NW's Roanoke facility. Absent a transaction, the Carriers may not invoke the New York Dock Conditions as a vehicle to change existing collective bargaining agreements. SSR v. BMW, NYD § 4 Arb. (Zumas: 8/20/83). In their application, the Carriers represented to the ICC that there would be no mass relocation of workers and that employee displacements would end about six months following the NS's acquisition of the NW and SR. The ICC, in its approval, confirmed that there would be "...no wholesale disruption of the carriers' work force...." 366 I.C.C. 173, 230. The Carriers further promised the ICC that, "No change in Southern's existing communications and signal facilities are planned." Id. at 204. SR President H. H. Hall, in his November 28, 1980 verified statement to the ICC, forecasted the complete coordination of NW and SR sales, finance, and public affairs offices but the NW and SR would otherwise continue to operate as separate entities. At the time of their application, the Carriers promulgated a table of positions to be transferred which notably makes no allusion to signalmen or signal repair shops. Based on the Carriers' representations, the ICC logically concluded that signal work would be unaffected by the acquisition. The CSX case relied on by the Carriers is of dubious validity since one Commissioner opined that the parties could not agree to vest a Section 4 arbitrator with subject matter jurisdiction. CSX-Control-Chessie and Seaboard Coast Line, F.D. 28905 (Sub-No. 22), ICC Decision



issued June 25, 1988 and dissenting opinion subsequently issued. It is ludicrous to characterize the coordination as a transaction arising under the 1982 control case because the Carriers served their notice more than seven years after the ICC's approval. It is equally ridiculous to imply that the Carriers originally intended to coordinate the signal shops back in 1982. Since they admittedly had no such intention, the ICC could hardly approve of the coordination by implication. Upon application, the ICC undoubtedly would authorize the signal shop coordination, but the Carriers must still abide by the ICC's admonition that "No chance or modification shall be made in the terms and conditions approved in the authorized applications without the prior approval of the Commission." [Emphasis added.] 366 I.C.C. 173, 255. Since an approved transaction has not materialized, the New York Dock Conditions are inapplicable.

Assuming, arguendo, that the Committee decides that the coordination is a New York Dock transaction, exercising jurisdiction over this dispute is premature because the Carriers' bad faith bargaining prevented the parties from conducting meaningful negotiations over the terms and conditions of an implementing agreement. The Carriers stubbornly refused to discuss the Organization's proposal. Instead, they gave the Organization an ultimatum: either capitulate and agree to the Carriers' proposed implementing agreement or arbitrate. The Organization views the New York Dock Conditions as the floor or starting point for negotiations. If the employees were entitled to the minimal benefits set forth in the New York Dock Conditions



and nothing more, there would be no reason for the ICC to mandate a thirty-day period for negotiations. The Organization's proposed implementing agreement, albeit containing some items outside the ordinary purview of New York Dock Conditions, was designed to provide a reasonable level of protective benefits to the involved employees. The proposal was not out of line with New York Dock implementing contracts that this Organization has negotiated on other properties. Moreover, the Organization's negotiators were confused as to the precise parameters of the work to be transferred to Roanoke. The Carriers hinted that they were coordinating only signal relay repair work raising the Organization's legitimate suspicion that the Carriers planned to contract out other types of shop signal repair work. It is regrettable that the parties had to resort to arbitration because many of the areas of disagreement could have been resolved if the Carriers had simply been willing to consider some of the Organization's proposals. This Committee should order the parties to return to the negotiating table so they can endeavor to reach a negotiated implementing agreement.<sup>5</sup>

The Organization realizes that a Section 4 arbitrator may modify or override the terms of collective bargaining agreements

<sup>5</sup> This statement is the Organization's requested remedy for the Carriers' alleged bad faith bargaining. Presumably, the Organization contemplates that we would retain jurisdiction over this case and later determine the contents of an implementing agreement if good faith negotiations do not result in a negotiated implementing contract. The Organization did not argue that, in the absence of good faith negotiations for the period specified in Section 4 of the New York Dock Conditions, this Committee is deprived of its original jurisdiction over the case and that to reinstate the Section 4 process, the Carriers would have to serve new Section 4 notices.

to the extent necessary for the Carriers to consummate the transaction. 49 U.S.C. § 11341(a). However, the exemption from the Railway Labor Act is not limitless. In this case, the transaction can accommodate a continuation of some of the rules in the CG and SR Schedule Agreements. Specifically, carrying forward pay, discipline and other comparable provisions from the SR and CG Schedule Agreements would not bar the transaction. Preserving most of the CG and SR agreements and allowing transferring workers to maintain their status as CG or SR employees in the coordinated facility would not impede the Carriers from efficiently operating the Roanoke Shop just as CG employees and SR workers have been efficiently performing signal repair work under a common roof at East Point. Although the work at the coordinated facility will be placed under the NW scope rule, the implementing agreement should still provide some reciprocal terms to exclusively reserve the work for the signal craft. This Committee would be impermissibly narrowing the CG and SR scope rules if it forever took the work away from the employees on those properties. Thus, despite the commingling of shop signal repair work, the positions at Roanoke should be allocated to employees on the NW, SR, and CG. Each position can perform any signal repair work but SR and CG employees should have a continuing opportunity to work in the Roanoke shops especially since the genesis of some of the work will be within the SR or CG systems. More importantly, the Organization is concerned that the Carriers are using this coordination as a subterfuge to contract out signal repair work. If work is

Currently reserved exclusively to signal workers by the scope rule in the SR agreement, the Organization fears that placing the work under the NW agreement will allow the Carriers to claim that such work is no longer reserved solely to the signal craft. Also, there is the possibility that work could be subject to the SR scope rule but be outside the boundary of the NW scope rule. A Section 4 arbitration cannot be utilized as a pretext for interest arbitration under the Railway Labor Act. SR v. BRS, NYD § 4 Arb. (Fredenberger; 10/5/82). Suffice it to say, the ICC has never taken the extreme position that the New York Dock Conditions can be used as a tool to extinguish existing collective bargaining agreements.

Finally, the Organization's proposed implementing agreement incorporates terms which will equitably govern the coordination. The Carriers should be obligated to notify employees of the possibility that they could be entitled to New York Dock benefits. The Carriers must inform signal employees about where and how to file claims so that the Carriers do not chill their entitlement to New York Dock benefits. If the Carriers correspond with an individual worker with regard to this coordination, it should send a copy to the Organization's General Chairman. The Organization is not advocating that the parties negotiate a second implementing agreement but it simply seeks an agreed upon clarification of the implementing agreement to avoid any future misunderstandings. Also, the Carriers must assure the Organization that if any NW, SR or CG signal worker is affected by this coordination, the employee will have access to protective

benefits provided by the implementing agreement. The Carriers, on the other hand, are attempting to restrict their liability to a small group of employees, that is, those workers who transfer from East Point to Roanoke. Lastly, the implementing agreement should contain a prohibition against subcontracting out the coordinated work to prevent the Carriers from using the New York Dock Conditions as a pretext for evading the scope rules. If, as the Carriers contend, all signal shop repair work will be performed by employees at Roanoke, the Carriers cannot take any exception to a provision which will reserve the work exclusively to the signal craft.

#### V. DISCUSSION

##### A. Jurisdiction

The threshold question is whether or not the coordination of shop signal repair work is a transaction within the meaning of Section 1(a) of the New York Dock Conditions. As the parties stipulated, neither the Carriers' application nor the ICC's approval in the control case expressly described the coordination of CG and SR East Point signal repair work into the NW's Roanoke shop. In addition, the record does not contain any evidence demonstrating that the Carriers held any unexpressed intent to transfer signal shop work from East Point to Roanoke at the time the ICC approved the NS acquisition. Thus, as the Organization stresses, this Committee is confronted with deciding whether or not the transfer of signal work is a New York Dock transaction when 1) the transfer was not expressly alluded to in the control case; and 2) the Carriers lacked any original intent to



coordinate signal shop repair work when the ICC approved the control case. Put differently, the issue becomes whether or not the Carriers' action, planned six years after the control case, constitutes a New York Dock transaction.

Section 1(a) defines a transaction as "...any action taken pursuant to authorizations of this Commission on which these provisions have been imposed." A careful reading of the literal definition reveals that not every action need be approved by the Commission to attain status as a New York Dock transaction. The words "taken pursuant to" does not connote that the Carriers must obtain the ICC's express approval for each and every transaction. Rather, the definition contemplates that there must be a rationale nexus between the Carriers' action and the Commission's approval in the original control case.

Consistent with the Section 1(a) definition, the ICC has ruled that the Carriers need not obtain the Commission's prior approval to engage in an activity which was not expressly embraced in the control case so long as it is "...the type of action that might reasonably be expected to flow from the control transaction." Norfolk Southern Corporation-Control-Norfolk and Western Railway Co. and Southern Railway, F.D. No. 29430 (Sub-No. 20); ICC Decision dated May 24, 1988; (Affirming NW/SR v. ATDA, NYD § 4 Arb. (Harris; 5/19/87)). The ICC's ruling means that some carrier actions are transactions because they fall within the penumbra of the control case.

The signal shop repair work consolidation is the type of action that the Carriers could reasonably be expected to pursue



under the auspices of the control case inasmuch as the Carriers will accrue the same economic savings that the acquisition was designed to achieve and the coordination will provide the public with more efficient and affordable rail service. Since the private and public benefits of the coordination conform to the goals of the NS acquisition, the signal shop repair coordination is clearly premised on the Commission's authorization. Indeed, the Organization indirectly concedes that the coordination naturally flows from the control transaction because it acknowledged that if the Carriers were to make application, the ICC would quickly and routinely approve the signal shop repair work coordination. [TR 37]

Nevertheless, the Organization argues that regardless of whether the coordination reasonably flows from the control case, the Carriers promised the ICC that they did not plan to coordinate signal facilities. There is some doubt that the Carriers made such a broad representation to the ICC. NW President Claytor, in his November 26, 1960 verified statement, declared that there might be "...further coordination of functions over time..." aside from those coordinations detailed in the Carriers' operating plans presented to the ICC. Apparently, the Carriers' application and the ICC's opinion approving the acquisition dwelled extensively on NW-SR common point consolidations. However, the ICC never precluded the possibility that the Carrier would engage in some unspecified future coordinations involving non-contiguous points pursuant to the original authorization. The ICC wrote:

...the applicants' estimates of employee impact are reasonable. What dislocations there will be appear to be short term. It is possible that further displacement may arise as additional coordinations occur. However, no wholesale disruption of the carriers' work force should occur and the overall disruption is clearly not unusual in comparison to other rail consolidation transactions. 366 I.C.C. 173, 230.

Even though the Carriers told the Commission that they did not intend to coordinate signal work at Cincinnati, Ohio, a common point, the Organization did not cite any representation (made by the Carriers) that all signal employees would be immune from any future coordination. The above quote shows that the ICC foresaw that the Carriers might engage in future transactions that did not involve mass employee relocations. The coordination of shop signal repair work at Roanoke will only cause the abolition of five East Point positions which can hardly be characterized as a wholesale disruption of the Carriers' work force.

This Committee finds, as a matter of fact, that the Carriers' intended coordination of East Point signal shop repair work into the NW's Roanoke facility constitutes a transaction within the meaning of Section 1(a) of the New York Dock Conditions.

B. Implementing Agreement Negotiations

The compulsory negotiating period, which the ICC incorporated into Section 4(a) of the New York Dock Conditions, promotes the preferred labor-management policy of encouraging the parties to reach an agreement of their own accord without the necessity for outside intervention. The Section 4(a) interest arbitration provision fulfills a two-fold purpose. First,

arbitration prevents delays in transaction implementation. A carrier is able to obtain an implementing agreement, the condition precedent to effectuation of the transaction, should a labor organization refuse to negotiate in an effort to block the transaction. Second, the arbitration requirement impels the parties to reach a consensus to avoid the inherent risks of handing their dispute to a third party. Therefore, we agree with the Organization that Section 4(a) of the New York Dock Conditions contemplates that the parties will conduct meaningful, good faith negotiations.

Good faith bargaining is an amorphous principle. A party to negotiations is not guilty of bad faith bargaining simply because the parties were unable to reach an agreement. The duty to bargain in good faith is not equivalent to an obligation to reach an agreement. Therefore, a breakdown in negotiations does not raise any presumption that one party engaged in bad faith bargaining.

The Organization initially charges that the Carriers bargained in bad faith because they adamantly refused to even discuss the Organization's proposed implementing agreement. Despite this allegation, the Organization admitted at the arbitration hearing that the parties spent considerable time reviewing the Organization's proposal. [TR 114-115] Most importantly, the Carriers' second proposed implementing agreement shows that not only did the parties extensively discuss the Organization's concerns about the coordination, but also the

Carriers were open to compromises. Thus, there is no merit to the Organization's allegation that the Carrier issued the Organization an ultimatum (sign our agreement or arbitrate).

The crux of the Organization's bad faith bargaining charge arises from the Carriers' reluctance to consider subjects which they believed were outside the ambit of negotiating a New York Dock implementing agreement. The Organization became frustrated because the Carriers were reluctant to negotiate over the Organization's Memorandum of Agreement regarding the wiring and fitting of signal cases. The Organization also sought monetary benefits in excess of those provided by the New York Dock Conditions.

Under Section 4(a), the parties are obligated to bargain about the selection of forces involved in the transaction and an equitable arrangement for the assignment of employees based on the surrounding circumstances of each transaction. In addition, the parties also bargain about how the New York Dock Conditions will apply. Signal case wiring is not a mandatory bargaining subject under Section 4(a). Rather, it is a permissive bargaining subject.<sup>6</sup> The parties are free to bargain over subjects beyond the purview of Section 4(a), including pecuniary benefits above the level specified in the New York Dock Conditions, but there is no legal obligation (at least in the New

<sup>6</sup> While the Organization's proposal that would effectively prohibit the Carriers from purchasing prewired signal cases is a permissive subject for bargaining under Section 4(a) of the New York Dock Conditions, it is a mandatory bargaining subject under Section 6 of the Railway Labor Act.



York Dock Conditions) for either party to bargain about a permissive bargaining subject.<sup>7</sup> If the parties reach impasse on a permissive subject, a Section 4 arbitrator is without authority to resolve the deadlock. Since the arbitrator could not resolve the impasse, the Organization could hold every transaction hostage to demands wholly unrelated to the selection and rearrangement of forces. While the Organization entered into New York Dock implementing agreements containing terms which addressed permissive bargaining subjects on other railroad properties, these were negotiated as opposed to arbitrated implementing agreements.

Because of the nomenclature (the titles of the shops) in the Carriers' April 13, 1988 notice, the Organization incorrectly formed the impression that the transaction governed only relay repair work. The notice, however, clearly stated that all East Point signal repair work will be coordinated into Roanoke. Moreover, the confusion generated by the name of the East Point

<sup>7</sup> The parties may agree to include in their implementing agreement monetary benefits in excess of those in the New York Dock Conditions, but an arbitrator is bound by the level of benefits set forth in the New York Dock Conditions. SR/NW v. BRAC, NYD § 4 Arb. (LaRocco; 7/17/84);, But see, BM/MC v. ATDA, NYD § 4 Arb. (Sickles; 8/6/85). Although the ICC confirms that a Section 4 arbitrator is limited by the Commission mandated level of protection, it has suggested that there may be benefits that draw their essence from the New York Dock Conditions without being specifically enumerated therein. Such benefits would be mandatory subjects for bargaining and a Section 4 arbitrator could include such benefits in an implementing agreement. See Footnote 10 in the ICC's May 24, 1988 decision Norfolk Southern Corporation-Control-Norfolk and Western Railway Co. and Southern Railway, F.D. 29430 (Sub-No. 20).



and Roanoke facilities did not hamper negotiations. The Carriers' three proposed implementing agreements as well as the Organization's proposed implementing agreement provided for the coordination of all East Point shop signal repair work with identical work at the Roanoke facility.

In summary, both parties exerted sincere efforts toward reaching an agreement. It follows that this Committee has jurisdiction to fashion an implementing agreement to govern the coordination of shop signal repair work.

C. The Appropriate Contents of an Implementing Agreement.

a. The Applicability of SR and CG Schedule Agreements.

When the shop signal repair work is commingled at Roanoke, any specific piece of work will not be readily identifiable as NW, SR or CG repair work even though the signal devices repaired at the coordinated facility will originate on either the NW or the SR or their subsidiary railroads. As a result of the transaction, the NW will assume responsibility for accomplishing shop signal repairs for the entire NS system. Although the Organization acknowledges that the work at Roanoke will be commingled, it nonetheless urges us to carry forward some rules in the CG and SR Schedule Agreements and allocate Roanoke positions among the three railroads. However, complete integration of the fungible signal repair work renders it impossible for the employees who transfer from East Point to Roanoke to import any portion of the CG or SR Schedule Agreements with them. Imposing multiple schedule agreements at the Roanoke facility would not just make the coordination unwieldy but would

totally thwart the transaction. The Carriers persuasively argued that they could never attain operational efficiencies if the NW had to manage signal shop work and supervise shop workers under multiple and sometimes conflicting collective bargaining agreements. The ICC has unequivocally ruled that existing collective bargaining agreements are superseded by the necessity to implement the approved transaction. CSX-Control-Chessie and Seaboard Coast Line, F.D. 28905 (Sub-No. 22); ICC Decision issued June 25, 1988. The ICC broadly interprets the statutory clause exempting approved transactions from other laws including the Railway Labor Act. Id. Maine Central Railroad and Springfield Terminal Railway Co., F.D. 30532; ICC Decision dated August 22, 1985; 49 U.S.C. 11341(a). In the Maine Central case, the ICC observed, "Such a result is essential if transactions approved by us are not to be subjected to the risk of non-consummation as a result of the inability of the parties to agree on new collective bargaining agreements affecting changes in working conditions necessary to implement those transactions." Maine Central, *supra* at 7. The approved transaction is exempt from all legal obstacles under the self-executing operation of Section 11341 of the Interstate Commerce Act. Brotherhood of Locomotive Engineers v. Boston and Maine Corporation, 788 F.2d 794, 800-801 (1st Cir. 1986).

This Committee is a quasi-judicial extension of the ICC and thus we are bound to apply the ICC's interpretation of the Interstate Commerce Act and the New York Dock Conditions. United Transportation Union v. Norfolk and Western Railway Co., 822 F.2d

1114, 1120 (D.C. Cir. 1987). The ICC's authoritative announcements that existing collective bargaining agreements and collective bargaining rights must give way to the approved transaction does not warrant extensive analysis. Suffice it to say, that the Organization clings to an old line of arbitral authority which the ICC overruled in Maine Central Railroad and Springfield Terminal Railway Co., F.D. 30532; ICC Decision dated August 22, 1985 and Denver, Rio Grande and Western Railroad-Trackage Rights-Missouri Pacific Railroad, F. D. 30000 (Sub-No. 18); ICC Decision issued October 19, 1983.<sup>8</sup>

The controlling carrier concept provides that the collective bargaining agreement in effect on the railroad receiving the work, in this case the NW, will thereafter govern the work and workers at the coordinated facility. RYA v. MP/UP, NYD § 4 Arb. (Seidenberg; 5/18/83). UP/MP v. UTU, NYD § 4 Arb. (Brown; 1/85).

While the NW Schedule Signalmen's Agreement will apply to the work and workers at the NW facility to accommodate the transaction, we need to address the Organization's allegation that the Carriers are engaging in the transaction to circumvent the scope rules in the CG and SR agreements. The Carriers say

<sup>8</sup> For example, for the proposition that a Section 4 arbitrator may not modify, vitiate or change existing collective bargaining agreements, the Organization relies heavily on SR v. BRS, NYD § 4 Arb. (Fredenberger; 10/5/82) which followed the Illinois Terminal Trilogy. Subsequent to the Denver, Rio Grande and Maine Central decisions, Section 4 arbitrators have consistently held that they have the authority to override existing collective bargaining agreements where those agreements undermine the transaction. SR/NW v. BRAC, NYD § 4 Arb. (LaRocco; 7/17/84); SR/ICG v. UTU, NYD § 4 Arb. (Harris; 5/2/88); BLE v. UP/MP, NYD § 4 Arb. (Seidenberg; 1/17/85); UP/WP v. ATDA, NYD § 4 Arb. (Fredenberger; 5/27/84); and BRC v. CSX/C&O, NYD § 4 Arb. (LaRocco; 3/23/87).

not invoke the New York Dock Conditions where their sole objective is to change an existing collective bargaining agreement. It cannot construct a sham transaction to circumvent Section 6 of the Railway Labor Act. SSR v. BMW, NYD § 4 Arb. (Zumas: 8/20/83). However, the Organization has not come forward with any evidence proving that the Carriers intend to shift work from East Point to Roanoke and then to contract out work which they could not have farmed out to an outsider if the work remained at East Point. Put differently, we do not find any evidence that the transaction is motivated by the Carriers' desire to circumvent onerous collective bargaining agreement provisions. Nevertheless we will reserve to the Organization the right to progress a claim under Section 11 of the New York Dock Conditions that an employee was adversely affected by the coordination because the Carriers used the coordination as a pretext for contracting out work belonging exclusively to the signal craft. In other words, employees adversely affected by this transaction will be covered by the New York Dock Conditions even if the adverse effect (emanating from the transaction) arises sometime after the Carriers implement the coordination. Since such a right is already contained in the New York Dock Conditions, it is unnecessary to include a separate clause incorporating this right into the implementing agreement.

b. Other Items to be Included in the  
Implementing Agreement

At the arbitration hearing, the parties concurred that Section 10 of the Organization's proposed implementing agreement shall be included in the implementing agreement. [TR 192]



While the Carriers resisted the inclusion of Section 2(b) of the Organization's implementing agreement in both its pre-hearing and post-hearing submissions, the Carriers declared, at the arbitration hearing, that they did not have a problem with the election of benefits component of Section 2(b). [TR 149-150] Therefore, the parties should adopt the last two sentences of Section 2(b) of the Organization's proposal with the following modifications. The introductory phrase in the second sentence shall be replaced with: "If an employee is entitled to benefits under this agreement and one or more other protective arrangements,..." In the final sentence of Section 2(b) the words "within a reasonable period" should be substituted for "during the period set forth in this paragraph (b)." The implementing agreement shall not contain the first sentence of Section 2(b) inasmuch as the New York Dock Conditions do not require the Carriers to ferret out employees who are potentially entitled to New York Dock benefits. Such a provision is unnecessary and does not prejudice an affected worker inasmuch as Section 11 does not contain any fixed time deadlines for instituting a claim for New York Dock benefits.

With regard to Section 9 of the Organization's proposed implementing agreement, the parties concur that the Carriers should supply those employees who presently work at the East Point or Roanoke signal shops (as well as those workers who fill new jobs established at the Roanoke shop) with a copy of the implementing agreement within thirty days after implementation of the transaction. [TR 191]

The Carriers and the Organization agreed that the implementing contract should include a provision that the Carriers shall handle employee claims using the standard procedure customarily followed by the Carriers in protection matters. The Carriers shall notify the Organization if there is a change in the identity of the designated officer who handles protective claims under the implementing agreement. However, the implementing agreement should not rigidly include any particular claim form or claim procedure. [TR 182]

During our discussion of the jurisdictional question, the bargaining issue and the applicability of the SR and CG Schedule Agreements, this Committee made it abundantly clear that most of the substantive items in the Organization's proposed implementing agreement are inappropriate for an arbitrated implementing agreement. Therefore, the implementing agreement shall not contain a prohibition against subcontracting out or any rider pertaining to signal case wiring. In addition, we must exclude from the implementing agreement any terminology which would operate to allow employees transferring from East Point to Roanoke to continue working under the SR or CG Schedule Agreements. Also, this 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. Thus, the implementing agreement shall not contain the Organization's proposals relating to additional per diem benefits, real estate expense reimbursements and other relocation expenses. Unless

expressly stated in our Opinion, we reject the provisions of the Organization's proposed implementing agreement.

Since we are applying the controlling carrier concept to this transaction, those CG and SR employees who bid on and transfer to Roanoke shall have their seniority dovetailed into the appropriate regional signalmen roster on the NW.<sup>9</sup> It would be unworkable to permit other SR and CG employees to have the right to displace workers who transfer from the CG or SR to Roanoke. Reciprocally, the employees transferring to Roanoke from the SR and CG shall not retain any seniority rights on their former carrier.

Sections 3(a) through 3(d) of the Organization's proposed implementing agreement manifest the Organization's attempt to dictate the number of positions that the Carriers must maintain in the coordinated facility. The number of positions to be established at the coordinated facility is the Carriers' prerogative. However, the Organization convincingly argues that the implementing agreement should contain an equitable recognition that shop signal repair work flowing into the coordinated facility will be coming from the SR and CG as well as the NW. The prior rights provision, as drafted by the Carriers in their second proposed implementing agreement, constitutes a suitable rearrangement of forces for this particular transaction. BRC v. C&O/SR, NYD § 4 Arb. (Marx; 12/5/84). Filing subsequent

<sup>9</sup> The Organization may still have these former SR and CG employees represented by the General Chairman on their former property. This Committee will not intrude into internal union affairs.

vacancies at the coordinated facility with SR or CG signal workers (who voluntarily transfer and would have been able to bid on the positions if they had remained at East Point) when the vacating incumbent came from the SR or CG is a sufficient acknowledgment that the coordination involves SR and CG shop signal work. Thus, the implementing agreement shall incorporate the Carriers' prior rights language found in its second proposed agreement but without the provision allowing the transferring employees to retain their SR or CG seniority.

It would be superfluous and redundant to require the parties to enter into a contract overlaying their implementing agreement prior to effectuation of the transaction. The Organization has failed to cite any provision of the New York Dock Conditions that compels the parties to negotiate a second contract clarifying the terms and conditions of the implementing agreement. Should the parties disagree over the interpretation or application of the implementing agreement, either party may progress the dispute to arbitration under Section 11 of the New York Dock Conditions.

Finally, this Committee notes that the Carriers derived their five-day notice provision, contained in Article I, Section 1 of their proposed agreement, from the Schedule Agreements which provide for five days advance notification of job abolishments. In its proposed implementing agreement, the Organization sought a thirty day notification period. In this case, the employees have been aware of the impending transaction since April, 1988, and thus thirty days additional notice is unwarranted. However, regardless of the terms of the SR and CG Schedule Agreements,



East Point workers should be afforded five working days notice of implementation of the transaction. Five working days notice is especially appropriate for shop employees. Thus, the word "working" should be inserted after "(5)" in Article I, Section 1 of the Carriers' proposal.

In conclusion, the parties shall adopt the Carriers' third proposed implementing agreement with the additions and modifications enunciated in our Opinion.

#### AWARD AND ORDER

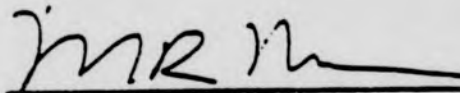
This Arbitration Committee renders the following Award:

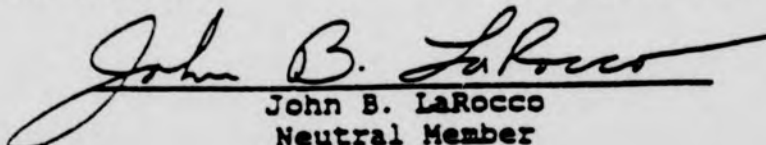
1. This Committee has jurisdiction over the subject matter of this dispute and finds, as a matter of fact, that the Carriers' intended coordination of East Point and Roanoke shop signal repair work is a transaction within the meaning of Section 1(a) of the New York Dock Conditions.
2. The parties shall enter into an implementing agreement consistent with the Opinion. The parties shall adopt the Carriers' third proposed implementing agreement, making the amendments and modifications as specified herein.
3. The parties shall comply with this Award within thirty days of the date stated below provided, this thirty day time period shall not delay the Carriers' implementation of the transaction upon proper notice.

DATED: February 9, 1989

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W. D. Pickett  
Employees' Member

  
Mark R. MacMahon  
Carrier Member

  
John B. LaRocco  
Neutral Member

LABOR MEMBER'S DISSENT  
to  
THE OPINION AND AWARD  
INCLUDING THE ROANOKE SIGNAL SHOP COORDINATION

In the matter of arbitration hearing between:

Norfolk & Western Railway Company, Southern Railway Company  
and Central of Georgia Railroad Company

vs.

Brotherhood of Railroad Signalmen

For your information and file. VMS 4-24-89

cc: C. R. Vaught, General Chairman  
V. J. Sarcini, General Chairman  
M. R. MacMahon, Carrier Member  
J. B. LaRocco, Neutral Member  
W. D. Pickett, Employees' Member

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SR. AVP LABOR RELATIONS  
NORFOLK SOUTHERN CORP.

We must take issue with the factual findings of the arbitrator. We believe that such findings are non-sequester and contrary to the evidence presented at the arbitration hearing.

The arbitrator's reprobative indictment has failed to recognize the established line of demarcation between his so called "quasi-judicial extension of the ICC" and the ICC's assumption that it somehow has the authority to override and/or circumvent the Railway Labor Act or provisions as set forth in the New York Dock Conditions. Contrary to the arbitrator's allegation wherein he stated that "Suffice it to say, that the Organization clings to an old line of arbitral authority which the ICC overruled in Main Central Railroad and Springfield Terminal Railway Co., F.D. 30532; ICC decision dated August 22, 1985 and Denver, Rio Grande and Western Railroad-trackage Rights-Missouri Pacific Railroad, F.D. 30000 (Sub-No.18); ICC decision issued October 19, 1983." It is obvious that we seem to be involved in a game of one-upmanship. Therefore, in repudiation, one must merely look at several recent U.S. District Court decisions wherein they have held that the ICC does not have the express authority to deviate or allow exemptions which are mandated by the Railway Labor Act. As stated by U.S. District Court Judge Paul G. Hatfield in a ruling on the Butte, Anaconda and Pacific Railway Co., Montana vs. Railway Labor Executives Association, et al. CV-85-073-BU-PGH, dated February 2, 1989. "The ICC has no express authority to exempt transactions from the requirements of any other federal statutes".

In a decision rendered by United States District Court, Judge Block, Re: Railway Labor Executives Association vs. Pittsburgh & Lake Erie Railroad Company, Civil Action No. 87-1745, dated March 29, 1987:

. . . . .

"This Court concludes that the mere fact that Congress has granted the ICC broad authority to regulate the transportation industry cannot be read to imply that Congress intended to annul the provisions of the RLA, particularly in light of the strong Congressional policies underlying the RLA, Union Pacific Railroad Company v. Sheehan, supra."

There is no proper or rational basis for supporting the Carrier's overt actions to circumvent the Railway Labor Act and the separate schedule Agreements or for the arbitrator to sanction such action. The unfounded reasoning by the referee has done nothing more than to camouflage both the facts and circumstances of this case. As indicated in the facts of this case, the Carrier's application, and the ICC decision under Finance Docket No. 29430 were completely void of any reference or indication that the Carrier remotely contemplated the consolidation of the signal shops, a fact detailed in a notarized statement by Carrier's President Robert B. Claytor, Re: Finance Docket 29430. "...There are, of course, existing plans for some coordination of operations, set out in detail in the operating plan, with further coordination of functions over time, but, apart from the necessary consolidation of the sales functions, described in Mr. Hall's statement, at this time we do not plan any consolidations of other departments or mass relocation of employees in implementing our plan." (Emphasis added) Mr. Claytor's statement, along with ICC's decision in Finance docket 29430, wherein their only reference to signal force changes indicated that "no change in Southern's existing communications and signal facilities are planned." Therefore, these statements clearly decree that absolutely no changes in signal facilities were anticipated by the Carrier or sanctioned by the ICC under Finance Docket 29430 and as stated within the ICC order, "No change or



modifications shall be made in the terms and conditions approved in authorized applications without prior approval of the commission." (Emphasis added)

The impropriety of the referee's decision is clearly demonstrated, wherein, he has acknowledged that, "as the parties stipulated, neither the Carriers' application nor the ICC's approval in the control case expressly described the coordination of CG and SR East Point signal repair work into the NW's Roanoke shop. In addition, the record does not contain any evidence demonstrating that the Carriers held any unexpressed intent to transfer signal shop work from East Point to Roanoke at the time the ICC approved the NS acquisition. Thus, as the Organization stresses, this Committee is confronted with deciding whether or not the transfer of signal work is a New York Dock transaction when 1) the transfer was not expressly alluded to in the control case; and 2) the Carriers lacked any original intent to coordinate signal shop repair work when the ICC approved the control case. Put differently, the issue becomes whether or not the Carriers' action, planned six years after the control case, constitutes a New York Dock transaction."

The referee's opinion and award is a contradiction of facts and logic, and flies in the face of unrefutable evidence presented on the property and at the arbitration hearing; as clearly defined in New York Dock Conditions Article I Section 1 (9), "'transaction' means any action taken pursuant to authorizations of this Commission to which these provisions have been imposed."

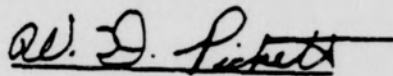
The obvious fact remains, as acknowledged by all parties to this dispute, that the Carrier lacked approval from the ICC to coordinate and consolidate its signal shops. Therefore, this so-called transaction clearly falls under the provisions of the Railway Labor Act under General Duties - Seventh; "No carrier, its officers or agents shall change the rates of pay, rules, or

working conditions of its employees, as a class as embodied in agree. except in the manner prescribed in such agreements or in Section 6 of the Ac. As clearly demonstrated, the Carrier's actions, with the arbitrators blessings, have violated not only the provisions of the New York Dock Conditions but the once sacrosanctity of the Railway Labor Act.

The arbitration panel should have additionally dismissed this dispute on the grounds it did not have jurisdiction; based on the fact that the Carrier failed and refused to bargain in good faith, as mandated in New York Dock and the Railroad Labor Act.

The fundamental facts in this case clearly demonstrate that the opinion and award is palpably erroneous.

Organization Member.

A handwritten signature in cursive script, reading "W. D. Pickett", with a horizontal line extending from the end of the name.

W. D. Pickett, Vice President

BEFORE A  
NEUTRAL REFEREE APPOINTED  
UNDER ARTICLE I, SECTION 4  
OF THE NEW YORK DOCK CONDITIONS

In the Matter of Arbitration  
Between

UNION RAILROAD COMPANY AND  
BESSEMER AND LAKE ERIE RAILROAD  
COMPANY

AND

UNITED STEELWORKER OF AMERICA,  
AFL-CIO\*CLC

) Hearing Date: April 29, 1997  
)  
) Briefs Received: July 18, 1997  
)  
) Award Issued: October 21, 1997  
)  
)  
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)  
)  
)

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## INTRODUCTION

This arbitration arises under Article I, §4 of the New York Dock Employee Protective Conditions. As noted in the Carrier's pre-hearing submission, the Interstate Commerce Commission ("ICC") imposed those conditions in 1988 when it authorized Transtar, Inc., a non-carrier holding company, to obtain control of the Bessemer and Lake Erie Railroad Company ("B&LE"), the Union Railroad Company ("URR"), and five other railroads. Following proceedings before the ICC, the agency exempted Transtar's acquisition of control from the prior approval requirements but, pursuant to its obligation to impose a "fair arrangement...protective of the interests of employees who are affected by the transaction", 49 U.S.C. Section 11347, imposed protective conditions as set forth in New York Dock RY. -- Control -- Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979).

## BACKGROUND

The matter in dispute is the stated intention of Transtar to consolidate accounting clerical functions across its entire system which consists of seven different railroads. Two of those railroads, the Union Railroad and the Bessemer and Lake Erie Railroad, are the only carrier parties to this dispute.

The Union Railroad is, essentially, a switching railroad which operates over approximately 22 miles of mainline and 110 miles of yard track in Allegheny County, Pennsylvania. Its 9 accounting clerical employees are represented for collective bargaining purposes by the United Steelworkers of America.



The Bessemer and Lake Erie Railroad (B&LE) is a freight railroad which transports iron ore, coal and limestone over approximately 140 route miles from North Bessemer, Pennsylvania to Conneaut, Ohio. Its 23 accounting clerical employees are represented by the Transportation Communications International Union.

Currently, each railroad maintains its own accounting department. The clerks are assigned to payroll accounting, accounts receivable/payable, demurrage, revenue, etc.

Each Organization maintains a collective bargaining agreement with the railroad that employs its members. While similar, the two collective bargaining agreements have some distinct differences, particularly in the area of health care benefits, pensions, sick leave and vacations.

Since 1982, the USWA represented clerks and the TCIU represented clerks have worked in a common facility located in Monroeville, Pennsylvania. Each group historically has performed work associated solely with its own employer pursuant to the negotiated scope rules that reserve solely to each railroad's clerical employees the clerical work associated with that railroad. However, the two railroads have used the same computer programs for the work, identical accounting procedures, and have had common supervision from B&LE both at the first line level and the director level in the accounting department. There has not been, however, any commingling of the accounting work between the two bargaining units.

As a further step in the transaction begun by USX in 1988 when ICC approval was sought for control, Transtar seeks to consolidate the accounting clerical functions by eliminating accounting clerical work on the Union Railroad and five other railroads in the system, and having all such work performed by employees on the B&LE. The practical effect of this is the loss of nine accounting

clerical positions on the Union Railroad and the addition of those nine positions to the B&LE. However, as a result of the consolidation of clerical work forces, Transstar anticipates an eventual reduction of two positions, made possible by the efficiencies that will result from an integrated work force. This reduction of two clerical positions, one from payroll accounting and one from accounts receivable/payable, is expected to result in a savings estimated to be \$457,000 over six years and \$113,000 annually thereafter. In January and in March, 1997, B&LE hired two new employees for payroll and receivables jobs that will be abolished when the coordination occurs. They have the lowest seniority in the group of accounting clerks and would be the first to be laid off in the event of the reduction of two positions.

Essentially, the Carriers assert that this consolidation is necessary to effectuate the transaction approved by the ICC in 1988 and that it bears a solid nexus to that transaction. The Carriers have proposed an implementing agreement that would, if imposed in this proceeding, supplant the collective bargaining agreement under which the nine URR clerical employees are now covered.

For purposes of providing a perspective on the instant dispute, highlights of the proposed transaction include the following:

1. Nine employees currently working as accounting clerks on URR will be required to follow their work and accept clerical positions on B&LE.
2. All 9 clerical positions on the URR will be abolished because all clerical work will be performed exclusively by clerical employees of B&LE.
3. Each employee transferring from URR to B&LE will immediately be covered under the Feb. 7, 1965 Mediation Agreement which provides 6 years' protection to railroad employees displaced as a result of merger, consolidation

and so forth.

4. Each employee transferring from URR to B&LE will immediately be covered by the CBA between B&LE and TCIU or as modified by the Implementing Agreement imposed by the New York Dock arbitrator in this proceeding..

5. United Steelworkers of America will no longer represent any employees on the URR in the craft or class of clerical, office, agency, telegraphic, station and storehouse employees because all accounting clerical positions will be abolished on that railroad and consolidated on B&LE.

On December 11, 1996, B&LE and TCIU entered into an implementing agreement that provides, *inter alia*, for a single seniority list merging employee groups by dovetailing their seniority. The Implementing Agreement proposed by the Carrier to the United Steelworkers of America before this proceeding was initiated is attached hereto as Appendix "A". There was no negotiation concerning terms of the Implementing Agreement because the Organization declined to participate in such negotiations on the theory that the exemption procedures of the ICC, now the Surface Transportation Board, including *New York Dock arbitration*, do not and can not override the requirements of Section 6 of the Railway Labor Act with respect to changes or modifications in collective bargaining agreements.

Having failed to reach an Implementing Agreement with United Steelworkers of America, the Carriers proceeded to arbitration by serving notice to the United Steelworkers of America under Article I, Section 4 on December 13, 1996 in accordance with the procedures of *New York Dock*.

In their presentation at the hearing held on April 29, 1997, the Carriers presented the written

statement and testimony of John F. Marteeny, Director of Accounting East for the B&LE. Marteeny said that the consolidation of clerical functions associated with general, revenue, property and payroll accounting, including accounts receivable, accounts payable, mail messenger and data entry, inventory control, car distribution, car hire and demurrage, currently performed by each railroad on its own property, will increase the efficiency of the railroads' accounting operations and result in significant cost savings. He added that with a unified manpower pool, the B&LE "will be able to more effectively and productively allocate the available clerical work among its employees" through increased specialization and development of functional expertise, for example, by assigning work according to function, regardless of which carrier's operations is the subject of the accounting work.

Mr. Marteeny said that the Carriers anticipate an eventual reduction of 2 in the total number of clerical employees after the coordination is completed because of the increased efficiency of a unified department. The reduction in force will then result in a monetary saving. In addition, the Carriers anticipate that this unification of the clerical work force will provide non-monetary benefits such as uniformity in the Accounting Department with respect to accounting procedures, methods and instructions. Moreover, centralization and uniformity of procedures will benefit users of accounting information, simplify training, and eliminate the need for duplicative management information services accounting programs.



**CONTENTIONS OF THE PARTIES**

As its threshold position, the United Steelworkers of America asserts that the Carriers must use the major dispute procedures of Section 6 of the Railway Labor Act in order to change the terms and conditions of employment of its Steelworker-represented employees, particularly with respect to the scope and seniority provisions of its collective bargaining agreement with the URR, and may not resort to *New York Dock* arbitration to circumvent those negotiating requirements. The Organization acknowledges, however, that this Arbitrator is without jurisdiction to decide that issue which currently is before the United States District Court for the Western District of Pennsylvania. The Organization does request, however, that the Arbitrator hold this proceeding in abeyance pending decision by the court.

The first argument advanced by the United Steelworkers of America on the merits of the dispute is that the Carriers have not met their burden of showing that there is a non-labor related transportation benefit to be gained by this coordination of clerical work. The Organization points out that the first coordination of clerical work occurred in 1982 when the URR and B&LE employees were established in the same office by USX under the same supervision while working under separate, though similar, agreements on work within the scope of their own collective bargaining agreements.. Since then, it says, Transtar has not sought to merge the two railroads and has apparently already reaped the benefits of the coordination. Now, says the Organization, the Carriers seek to make the

*New York Dock*

clerical work fungible simply by being relieved of the URR/USWA scope clause which prohibits the transfer of URR clerical work to the B&LE. For that reasons, says the Organization, the purported "transaction" proposed by the Carriers is prohibited by what was 49 U.S.C. Section 11347 which mandates that the employee protections imposed under *New York Dock* be "fair". In accord with *Executives*, 987 F. 2d at 814, the court said:

We agree that whatever else a "fair arrangement" entails, the modification of a CBA must at a minimum be *necessary* to effectuate a transaction...

...If the purpose of the [underlying] . . . transaction were merely to abrogate the terms of a CBA, however, then "necessity" would be no limitation at all upon the Commission's authority to set a CBA aside. We look therefore to the purpose for which the ICC has been given this authority. That purpose is presumably to secure to the public some transportation benefit that would not be available if the CBA were left in place, not merely to transfer wealth from employees to their employer. Viewed in that light, we do not see how the agency can be said to have shown the "necessity" for modifying a CBA unless it shows that the modification is necessary in order to secure to the public some transportation benefit flowing from the underlying transaction . . .

The Organization asserts that the benefit sought here by the Carriers is that B&LE employees can perform either B&LE or URR clerical work thereby allowing the Carriers to cut their employment by two out of 32 employees. The Organization views that "benefit" as flowing solely from modification of the URR-USWA scope clause because any improvement in a non-labor related benefit was achieved in 1982. Thus, says the Organization, the planned modifications "simply transfer wealth from employees to employer and, thus, are prohibited by Section 11347."

As its second point on the merits of this case, the Organization claims that the "controlling

carrier" concept is "not good law" because it is premised on the erroneous belief that *New York Dock* referees may abrogate "rights, privileges and benefits." It credits arbitrators appointed under Section 4 with having devised the doctrine in cases where modification of a CBA was necessary in order to permit a merger. The Organization notes that in the instant case, the Carriers' simplistic formula is that where employees involved in a coordination are covered by different collective bargaining agreements, the agreement and representation structure of the carrier that will "control" the coordinated work should govern the coordinated operation. In the Organization view, this is wrong because the mandate that rights, privileges, and benefits afforded employees under existing CBA's be preserved nullifies the controlling carrier" concept.

As its final major point, the Organization asserts that no changes should be made to the URR/USWA CBA. It stresses that the Carriers have shown no "necessity" to abrogate the CBA, noting that the two employee groups have worked side by side for years enjoying different benefits. Furthermore, the proposed Implementing Agreement does not provide many of the benefits that URR clerical employees are currently entitled to under their CBA such as shift and Sunday premium pay. Therefore, because these benefits are immutable under *Executives* and, in the absence of necessity, no changes can be made. Rather, the Organization urges, a "fence agreement" under which 9/32nds of the work would be assigned to USWA-represented clerical employees should be imposed by the Arbitrator to preserve the URR/USWA agreement "until the parties negotiate a different arrangement under the Railway Labor Act." USWA Post-hearing Brief, p.24, n.17.

*New York Dock*

The Carriers assert that the proposed coordination is a "transaction" that bears a nexus to the ICC exemption and that the changes do provide a transportation benefit.

Citing a wealth of judicial authority, the Carriers deny that this proceeding can be thwarted by the Organization by asserting rights under the Railway Labor Act. Rather, say the Carriers, the ICC had directed that this *New York Dock* arbitration, not the RLA § 6 process, is the exclusive forum for implementing the proposed coordination of URR and B&LE accounting work. Furthermore, pursuant to the arbitration process, the Arbitrator has the authority to modify scope and seniority rules specifically, as shown in CSX Control/Train Operations, the Carriers note, so as to permit implementation of the authorized transaction.

The Carriers argue that the USWA proposal permitting employees transferring from URR to exercise seniority back to URR could result in "churning" of the jobs and defeat the efficiencies sought in the coordination. But if such moves are permitted in the Implementing Agreement, it should also be made clear that any URR employee transferring back from B&LE or any URR employee bumped in such a move will be neither a displaced or dismissed employee and will not be entitled to *New York Dock* benefits, say the Carriers.

In sum, the Carriers contend that their proposal preserves vested and accrued benefits, as required, because it will preserve the former URR employees' Transtar Pension Plan, the only vested and accrued fringe benefit at issue. Other benefits cited by the Organization such as vacations, premium pay or certain health and accident benefits are not vested and accrued benefits and, thus, not



*New York Dock:*

protected by Article I, §2 of *New York Dock*, the Carriers contend. Any Implementing Agreement that permits URR employees to carry their benefits with them would "create an internal rift" and a "fractured work arrangement", in the Carriers' view, the antithesis of a coordinated clerical accounting department.

The Carriers request that the Arbitrator find their proposed Implementing Agreement appropriate and impose it.

**DISCUSSION AND FINDINGS**

Appearances to the contrary notwithstanding, the Arbitrator declines to hold this matter in abeyance for the purpose of awaiting a decision of the United States District Court for the Western District of Pennsylvania on the issue of jurisdiction under *New York Dock*. The case will be decided on the basis of the evidence and argument in the voluminous record timely submitted.

The first questions are (1) whether the Carriers have substantiated that the coordination of clerical forces they seek is a "transaction" which flows from and has a nexus to the exemption granted to Transtar in 1988 (Finance Docket No. 31363); (2) whether the passage of 8 years from the date the exemption from prior approval was granted by the then ICC invalidates the transaction for purposes of applicability of *New York Dock*; (3) whether Section 11347 proscribes changing the CBA because the proposed transaction "is merely to transfer wealth from employees to employer."

The evidence is persuasive that the unification of clerical forces of 7 railroads so that one

railroad performs all clerical work is a change that flows naturally from the ceding of control by USX to a new non-carrier holding company, Transtar. In its decision, the ICC expressed its belief that the "...transaction, when implemented, will give the management of Transtar [an] economic interest in the carriers. This direct interest should assist in encouraging efficient management, encourage competition, and give greater assurance of the development of a sound rail transportation system..." (Emphasis supplied.) Efficient management is one of the stated goals found in the exemption. The efficiencies which can flow from specialization of accounting and clerical functions, non-duplication of effort and supervision, and centralization of activity are many and obvious as shown in the record. They certainly were not available in 1982, contrary to the argument of the Steelworkers, when control was originally awarded to USX because each railroad had its own distinct and separate accounting department requiring each clerical employee to learn the full scope of the accounting functions with equal proficiency, no matter how infrequently required. Certainly, the unification sought here will inure to the benefit of both Carriers and shippers, not only in terms of proficiency and the resulting efficiency, but also in terms of cost. In that very real sense, it provides a "transportation benefit". Thus, while not expressly mentioned in either the petition for exemption or the ICC decision, the proposed coordination flows from and has a nexus to the original exemption and, therefore, qualifies as a "transaction" covered by the exemption.

The second question deals only with the length of time that has elapsed from the date the exemption was granted until the date the Carriers proposed this transaction. While the law with

*New York Dock*

respect to many of the issues in this case is plagued by ambiguity and obfuscation, the law on this point is clear. As stated by the ICC itself, a prime source for interpretation of its powers and responsibilities under the ICA, in CSX Finance Docket No. 28905 (Sub-No. 27):

But we have never imposed a deadline on making merger-related operational changes. In fact, in CSX Corporation -- Control--Chessie System Inc. and Seaboard Coast Line Industries, 8 I.C.C. 2d 715, 724 n. 14 (1992), we held that causality is not diminished with the passage of time:

Causality, however, is not per se diminished by a lengthy delay in exercising authority previously granted. This is not analogous to laches. There could be any number of reasons why an entity formed as a result of a Commission-approved transaction might wish to postpone a coordination which could have been undertaken earlier.

The record compels a finding that the lapse of 8 years, in and of itself, does not detract from characterization of the Carriers' proposal as a transaction authorized in the ICC exemption in 1988 and subject to labor protective conditions under Article 1, §4 of *New York Dock*.

Third, the purpose of the proposed transaction is "not merely to transfer wealth from employees to their employer" as charged by the Organization in reliance on the interpretive language found in *Executives*, (987 F.2d at 815). While an eventual change in the number of employees may yield savings in employment costs, that is a result, certainly not the sole purpose, of the planned coordination. As shown above, centralization of the accounting function has the potential for producing efficiencies and improvements in accounting procedures that will benefit both the Carriers

*New York Dock*

and its customers. Thus, the Organization's argument is not persuasive that, on the facts here, §11347 prohibits any change in the Organization's CBA.

The determination that the coordination of clerical accounting functions is a "transaction" covered by the ICC exemption and that, as a consequence, affected employees are protected by the *New York Dock* provisions imposed thereby, makes issues respecting proposed changes in the labor agreement and development of an Implementing Agreement the next area of inquiry.

The proposed transaction will result in the transfer of all clerical accounting work currently performed on the URR to the B&LE. The effect of the proposed transaction will be to abrogate the scope clause currently in effect between the URR and the United Steelworkers of America.

The Organization stresses throughout its Brief and in its presentation that the Arbitrator in a *New York Dock* proceeding may not abrogate "rights, privileges and benefits" attained through collective bargaining when fashioning labor protective conditions for affected employees. It argues that the best protection for employees is found within the terms of the agreement the bargaining representative of those employees has already negotiated. For that reason, the Organization urges that URR clerical employees who accept employment with B&LE should be permitted to take aspects of their present collective bargaining agreement with them, an arrangement the Carriers vigorously reject.

This case is different from some in that it involves two unrelated organizations, not different units within the same organization. There is, of course, substantial precedent for such circumstances.



*New York Dock*

But it is important to note that it is not the exquisitely-fine points of law concerning authority of the ICC, the STB or the Arbitrator that will provide the needed solution here but a practical and fair approach that will accomplish the twin goals of permitting execution of the Carriers' proposed transaction and protection of affected employees under *New York Dock*.

It should be noted that the Carriers intend to require individual employees to leave their employment with the URR and follow their work to become employees of the B&LE. B&LE employment will be offered to the current members of the craft or class on the URR which they will be free to accept or reject. There are consequences, however, to the decisions made by individual employees. Those who accept employment will be covered by an agreement which is the product of this arbitration. Those who reject employment on B&LE will forfeit protection and may be furloughed. None of this has been meaningfully discussed by the parties because the Organization declined to participate in negotiations that might have led to a mutually acceptable Implementing Agreement. Therefore, it is for the Arbitrator to decide what modifications need to be made, if any, to the proposed Implementing Agreement in order to effectuate the proposed transaction and fairly protect the URR employees.

The Organization's suggestion that a "fence agreement" should be imposed pending negotiation of a different arrangement under § 6 of the Railway Labor Act is rejected as unworkable and contrary to law. Moreover, this solution offers no assurance that the procedures of § 6 will ever result in an agreement that will effectuate the proposed transaction. Rather, it has the potential of

frustrating the transaction, certainly not what the ICC intended. Any fair reading of the multitude of citations provided by the parties here compels the conclusion that a *New York Dock* arbitrator may make changes to a CBA that are deemed necessary to effect the transaction.

### **AWARD AND ORDER**

The Arbitrator renders the following Award and Order:

The Implementing Agreement proposed by the Carriers will be imposed on the employees transferring from the URR to B&LE with the following modifications:

(1) Paragraph 1. shall be amended to provide that the positions identified in Attachment "A" shall become positions of the B&LE effective within 10 days of the date of this Decision. In addition, it shall be amended to provide that the employees currently incumbent to the 9 positions identified in Attachment "A" shall be offered an opportunity to follow their work and to become employees of B&LE covered by the collective bargaining agreement in effect between B&LE and TCIU. In the event any incumbent URR employee declines the offer of employment so offered, the position shall be made available on a seniority bid basis to any qualified member of the craft or class of clerical accounting on URR. Any employee incumbent to

a Attachment "A" position who refuses the offer of employment shall be entitled to exercise bumping rights on the URR. Failure to exercise bumping rights will result in the loss of *New York Dock* protection. Any employee attaining one of the transferred positions through the seniority bid process rather than by acceptance of the Carriers' offer shall be entitled to protection in the event of a furlough. No employee transferring to B&LE shall retain seniority on any other Carrier.

(2) Paragraph 2. shall be amended by changing the description of the transferring employees from "the URR employees listed in Attachment "A" to "the URR employees who accept the offer of employment to B&LE".

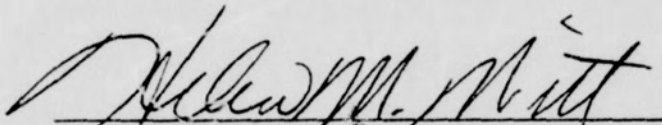
The Arbitrator notes that all 9 employees transferring from URR to B&LE have at least six years continuous service with the Carrier and can be expected to be able to hold in any furlough that could occur as the result of this transaction. But because it is a particularly loathsome prospect for the Organization to have its members forced to transfer from one Carrier to another, in the process changing collective bargaining representatives and being subject to working under a different collective bargaining agreement, because there will be little effect on implementation of the transaction as it will be necessary in any event for the new work force to be trained in the unified procedures, and because the Carriers have not sought to merge the railroads and have not

*New York Dock*

interchanged employees, there is no necessity for requiring current incumbents of the positions listed on Attachment "A" only to follow the work.

(3) Paragraph 9. shall be amended by increasing the number of days advance notice to the Director, District 10, United Steelworkers of America, from 5 to 30 so as to permit time, which can be wisely used to "otherwise agree" to modifications in the Implementing Agreement.

In all other respects, the Implementing Agreement proposed by the Carriers is adopted by the Arbitrator.

  
Helen M. Witt, Arbitrator



AGREEMENT MADE THIS        DAY OF        1997, UNDER  
ARTICLE I, SECTION 4, OF THE NEW YORK DOCK  
CONDITIONS, BETWEEN THE UNITED STEELWORKERS OF  
AMERICA AND BESSEMER AND LAKE ERIE RAILROAD  
COMPANY AND UNION RAILROAD COMPANY IN  
CONNECTION WITH THE COORDINATION OF CERTAIN  
UNION RAILROAD COMPANY ACCOUNTING, MESSENGER  
AND YARD CLERK WORK INTO BESSEMER AND LAKE ERIE  
RAILROAD COMPANY PURSUANT TO INTERSTATE  
COMMERCE COMMISSION ORDER IN FINANCE DOCKET NO.  
31363

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Whereas the Interstate Commerce Commission in Finance Docket No.  
31363 granted approval of the acquisition and control by Transtar, Inc. of the  
Bessemer and Lake Erie Railroad Company (hereinafter referred to as BLE),  
Birmingham Southern Railroad Company, Duluth, Missabe and Iron Range  
Railway Company, Elgin, Joliet and Eastern Railway Company, Lake  
Terminal Railroad Company and Union Railroad Company (hereinafter  
referred to as URR) subject to "New York Dock" Labor Protective  
Conditions; and

Whereas, BLE and URR intend to effect the coordination of work  
performed by certain employees who are employed at the General Office  
Building at 135 Jamison Lane, Monroeville, PA, in the craft or class of

CARRIERS' EXHIBIT 1  
Page 1 of 11

clerical, office, agency, telegraphic, station and storehouse employees and who are represented by the Transportation Communications International Union (hereinafter referred to as TCIU) and United Steelworkers of America, Local No. 3263 (hereinafter referred to as USWA)

IT IS AGREED:

1. On the effective date of this agreement the URR employees and positions that are identified in Attachment "A", attached hereto and made a part hereof, shall become employees and positions of the BLE and the Collective Bargaining Agreement between BLE and TCIU, effective June 15, 1938, as subsequently amended, will be applicable to those employees and positions. On the effective date of this agreement the Agreements between URR and USWA shall cease to be applicable to those employees and positions listed in Attachment "A", attached hereto.

2. On the effective date of this Agreement, the URR employees listed in Attachment "A" attached hereto, represented by the USWA, will be dovetailed into the BLE Clerical Seniority Roster and such employees will be available to perform service on a coordinated basis subject to the BLE

Agreement. On the effective date of this Agreement the BLE Clerical Seniority Roster will be expanded to encompass the positions and work of the positions which are listed in Attachment "A" attached hereto. URR employees who become BLE employees as a result of this agreement shall cease to be employees of URR and their names shall be removed from the USWA roster.

3. Employees affected as a result of this transaction will be afforded the benefits prescribed by the ICC as set forth in New York Dock Ry. - Control - Brooklyn Eastern District Terminal, 360 ICC 60 (1979) hereinafter referred to as "New York Dock conditions", which are by reference incorporated herein and made a part hereof.

4. Any prior continuous service and qualifying years with the URR shall be credited for vacation, personal leave, sick leave, protection pursuant to the February 7, 1965 Mediation Agreement (A-7128) and other benefits under the BLE - TCIU Agreement, which are granted on the basis of qualifying years of service. Insofar as continuous service for the Transtar, Inc. Non-Contributory Pension Plan and the United States Steel Corporation Plan for Employee Pension Benefits (Revision of 1950) purposes is

concerned, continuous service shall be determined under the rules of the Plans. URR employees who become BLE employees pursuant to this Agreement shall not be deemed to have broken continuous service for pension purposes simply as a result of the change in their employing Company.

5. Notwithstanding Section 2 above to the contrary, the URR employees who become BLE employees on or after the effective date of this Agreement shall become covered by the BLE-TCIU Insurance Plan effective the first day of the month after the ninetieth (90th) day following the date on which they acquire seniority under the BLE-TCIU Agreement and until that time they shall continue to be entitled to the same coverage that they would have had had they remained employees of URR, except that Employees and their eligible dependents who are hospitalized on the date on which the employee becomes covered by the BLE-TCIU Insurance Plan, shall have the same coverage that they would have had had they remained employees of URR for the duration of such hospitalization.

6. Any BLE employee, including any former URR employee named in this Agreement, who is deprived of employment on or after the effective



date of this Agreement as a result of this coordination may be offered either:

- 1) a BLE position as a TCIU represented employee at any location; or
- 2) any comparable BLE position, provided it does not require a change of residence.

Such employee shall be given thirty (30) days' written notice by certified mail (with copy to the Regional Representative, Allied Services Division - TCIU) of such offer and must elect in writing one of the following options prior to the expiration of the notice:

- (1) to accept the offer; or
- (2) to be furloughed without protection during the period of such furloughs.

In the event an employee fails to make such an election he shall be considered to have exercised option 2. Employees accepting a job offer that would require a change in residence will be eligible to receive the moving expenses provided under paragraph 3 of this Agreement.

7. The dismissal allowance of any employee shall be reduced to the extent of any earnings made by the employee outside of the employment of BLE or URR or under any benefits received under any unemployment insurance law. Employees receiving a dismissal allowance must, upon

request, provide documentation attesting to the amount of such outside earnings or unemployment insurance benefits. Failure to provide such documentation upon request, or evidence of any fraudulent submission of claims, shall result in a suspension of benefits.

8. An employee who is affected by the transaction and is entitled to benefits under Section 5 or 6 of the New York Dock conditions may file a written request on the form provided, with the Manager Labor Relations, P.O. Box 68, Monroeville, PA 15146, for a statement of test period earnings for use in developing his or her displacement or dismissal allowance. A claim for protection must be presented on the form provided and must be submitted to BLE's Manager-Labor Relations within sixty (60) days following the end of the month in which the adverse affect is claimed. A copy of the form referred to herein is attached hereto as Attachment "B".

9. This Agreement will become effective upon five (5) days advance notice to the Director, District 10, United Steelworkers of America, unless otherwise agreed to and constitutes the required implementing agreement and fulfills all other requirements of Article I, Section 4 of the New York Dock Labor Protective Conditions imposed by ICC Finance Docket 31875.

Signed this       day of       1997, at Monroeville, PA:

FOR THE EMPLOYEES:

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Mr. Andrew V. Palm, Director  
District 10  
United Steelworkers of America

FOR THE COMPANIES:

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Mr. Richard B. McGinley  
Director Labor Relations - East  
Bessemer and Lake Erie Railroad Company

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Mr. Richard B. McGinley  
Director Labor Relations - East  
Union Railroad Company

CARRIERS' EXHIBIT 1  
Page 7 of 11

## ATTACHMENT "A"

Mail Messenger/Accounting Clerk (D. S. Miller, incumbent)  
Clerk (General) (M. L. Fisher, incumbent)  
Clerk (General) (R. J. DiVincenzo, incumbent)  
Payroll Relief Clerk (R. Greiner, incumbent)  
Code Clerk (K. L. Farren, incumbent)  
Clerk (Relief) (C. A. Sauers, incumbent)  
General Accounting Clerk (M. J. Foshee, incumbent)  
General Accounting Clerk (P. L. Schartner, incumbent)  
Yard Clerk (J. Anthony, incumbent)



## ARBITRATION AWARD

Established pursuant to Section 4 of Article I of the New York Dock Conditions imposed by the Interstate Commerce Commission in Finance Docket No. 32133

*In the Matter of Arbitration between:*

*United Transportation Union  
("Organization" or "UTU")*

*and*

*Union Pacific Railroad Company  
("Carrier" or "UP")*

### **I. Issues:**

Organization's Statement of the Issue(s):

- "1. Are the terms contained in Carrier's May 3, 1995 Notice to Organization and Carrier's proposed implementing agreement necessary to the implementation of the merger transaction which was approved by the Interstate Commerce Commission in Finance Docket No. 32133? and,
2. If the answer to question #1 above is 'negative,' should Organization's proposed implementing agreement, in its entirety, be adopted as the implementing agreement in this matter?"

Carrier's Statement of the Issue(s):

"Does the Carrier's Proposed Arbitration Award constitute a fair and equitable basis for the selection and assignment of forces under a New York Dock proceeding so that the economics and efficiencies - the public transportation benefit - which the ICC envisioned when it approved the underlying rail consolidation of the CNW into the Union Pacific will be achieved?"

## II. Introduction:

UP / MP  
CNW  
On February 21, 1995, the Interstate Commerce Commission (ICC) authorized the acquisition of control of the Chicago and North Western Railroad Company (CNW) by the holding company that controls the Union Pacific Railroad Company (UP) and the Missouri Pacific Railroad Company (MP). Union Pacific/Missouri Pacific Railroad Company - Control - Chicago and North Western Railroad Company, Decision No. 25 of ICC Finance Docket No. 32133. To compensate and protect those employees affected by the acquisition, the ICC imposed the employee merger protection conditions as set forth in New York Dock Railway - Control - Brooklyn Eastern District Terminal, 360 ICC 60, 84-90 (1979); affirmed, New York Dock Railway v. United States, 609 F.2d 83 (2nd Cir. 1979) ("New York Dock Conditions) on the UP/MP and CNW pursuant to the relevant enabling statute 49 U.S.C. Sections 11343 and 11347.

On May 3, 1995, Carrier served a ninety (90) days Notice (Appendix "A") upon the Organization of its intent, pursuant to Article I, Section 4 of the New York Dock labor protection conditions, to negotiate an implementing agreement in order to effectuate the benefits of the merger transaction of the UP and the CNW. A copy of Carrier's merger transaction proposal was attached thereto. Said notice letter further indicated that a Question and Answer Session would be held on May 22, 1995; and that negotiations between the parties concerning this transaction would commence on May 23, 1995. The initiation of said negotiations, however, was postponed until June 2, 1995, by mutual agreement of the parties.

In a response letter to Carrier dated May 25, 1995, Organization's Vice-President advised Carrier, in pertinent part, that Carrier's May 3, 1995 Notice "... contained a very drastic change in the operation of the merged railroad compared to what had been presented in the Carrier's Operating Plan to the

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Interstate Commerce Commission..."; and that many of Carrier's proposed changes, which were included in said Notice, were "... not necessary to carry out an ICC approved transaction ..." Absent such a "necessity showing," therefore, Organization continued, the Section 11341 (a) Immunity Provision of the Interstate Commerce Act (ICA), which preempted a carrier's collective bargaining obligations under the Railway Labor Act (RLA), were not applicable.

Negotiations ensued between the parties over the period of the next several months; but the parties were unable to reach an agreement.

Given the parties' inability to reach agreement on all pending issues through their negotiations, in a September 11, 1995 letter, Carrier advised Organization of its intent to submit the dispute to arbitration pursuant to Article I, Section 4 of the New York Dock labor protective conditions.

Carrier and Organization, through their own efforts, agreed to appoint the undersigned as Arbitrator in this matter; and so formally notified said Arbitrator of his appointment by letter dated October 3, 1995.

An arbitration hearing was held in this matter in Omaha, Nebraska on December 4 and 5, 1995. The parties presented their respective cases by means of written submissions, which were reviewed and discussed at the hearing; and which were supplemented by documentary evidence and the testimony of numerous supporting witnesses.

At the outset of said hearing, and repeatedly throughout the progression thereof, and in its written Submission as well, Organization raised a threshold procedural objection contending that the subject arbitration procedure was "premature" because "inadequate negotiations" had taken place between the parties in this matter as required by Article I, Section 4 (a) of the controlling New York Dock labor protective conditions. The Arbitrator advised the parties that



he would take this Organizational procedural argument under advisement and rule accordingly.

Upon the completion of their respective presentations, the parties attested that the hearing had been conducted properly, and that they had been accorded full and fair opportunity to present all relevant evidence, documentation and testimony necessary for the Arbitrator to render a decision in this matter. At the Arbitrator's request, the parties waived the thirty (30) days limitation for issuing an Award herein in accordance with Article I, Section 4(a)(3) of the New York Dock protective conditions. The hearing was then adjourned.

In a letter dated January 4, 1996, the Arbitrator informed the parties that he had concluded that there was sufficient evidence available in the hearing record to support Organization's procedural objection that "inadequate negotiations" had taken place between the parties herein as required by Article I, Section 4 (a) of the applicable New York Dock labor protective conditions. In remedy of said defect, the Arbitrator directed the parties "... to return to the negotiating table ..." Said directive, however, was subject to the following stipulations:

- "1. The parties will recommence negotiations immediately in Omaha, Nebraska no later than January 15, 1996.
2. Should no agreement be reached within the thirty (30) days from the date of this recommencement of negotiations, either party may return the case to this Arbitrator for decision.
3. Should the case be returned to this Arbitrator, no additional hearings will be held, and an arbitration award will be issued within fifteen (15) days from the date that the case is returned to the Arbitrator.
4. This Arbitrator will retain jurisdiction of this case throughout the process outlined above."

As directed, the parties recommenced negotiations on January 15, 1996. Several formal and informal negotiations sessions were held between the parties

at various locations during the designated thirty (30) days period of time. Said additional negotiations, however, also proved to be unsuccessful.

In a February 14, 1996 joint letter to the parties' respective representatives, the Arbitrator advised that an Executive Session would be held on February 20, 1996, in Omaha, Nebraska "... in order to review the parties' respective final proposals in ... (this) ... matter." Said letter further requested that the parties' provide the Arbitrator with a copy of their respective final proposals in advance of the scheduled Executive Session so that he could review them.

Organization's final proposal (Appendix "B") was received by the Arbitrator on February 14, 1996; and Carrier's final proposal (Appendix "C")<sup>1</sup> was received by the Arbitrator on February 17, 1996.

In the cover letter which accompanied its final proposal, Organization requested that the Arbitrator schedule "... a date to reconvene the New York Dock Board in an effort to reasonably accommodate the Organization's response to the Carrier proposal."

Carrier, in the cover letter which accompanied its final proposal, argued inter alia that Organization's request for a reconvening of the Board in this matter was improper and unnecessary; and was contrary to the stipulations which were articulated in the Arbitrator's January 4, 1996 letter to the parties which had directed a thirty (30) days recommencement of negotiations between the parties herein.

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<sup>1</sup> Carrier's final proposal consisted of Carrier's original proposed implementing agreement which was presented to the Arbitrator by Carrier at the December 4-5, 1995 arbitration hearing, and an eight (8) page Implementing Agreement Modifications section which included modifications to Carrier's original proposal which Carrier added subsequent to the parties' recommencement of negotiations and this Arbitrator's issuance of his decision in a similar New York Dock arbitration case involving Carrier and the Brotherhood of Locomotive Engineers.

In a joint telephone conversation between the parties' representatives on February 16, 1996, the Arbitrator informed the representatives that Organization's request for a reconvening of the Board for further presentations by the parties would be denied in light of the fact that the stipulations which were contained in the Arbitrator's January 4, 1996 letter to the parties, the stipulations of which had been mutually agreed to by the parties, had been met.

The above described Executive Session was held in Omaha, Nebraska on February 20, 1996, at which the parties' final proposed implementing awards were offered. Subsequent to the presentations thereof by the parties' respective representatives, who offered detailed summarization's thereof, the Executive Session was adjourned, and the record in this case was declared closed at that time.

### **III. Positions of the Parties:**

Organization's basic contention in this dispute is that Carrier is attempting to obtain changes in the collective bargaining agreements which have been negotiated and are currently in existence between Carrier and Organization which are not necessary for Carrier to carry out the approved merger transaction which was authorized by the ICC in Finance Docket No. 32133. According to Organization, "(W)hile the merger will result in operational efficiencies, ... (Carrier has) ... made numerous requests which seek to create additional efficiencies solely through the abrogation of the terms and conditions of (existing) collective bargaining agreements." Moreover, Organization asserts, Carrier herein is attempting "... to use the ... (ICC's) ... approval as a maneuver to avoid their collective bargaining and Railroad Labor Act ... obligations ..."

In support of the aforesated contention, Organization maintains that the United States Supreme Court in Norfolk & Western Ry. v. American Train Dispatchers Association, 499 U.S. 117, 113 L. Ed. 2d 95 (1991) has ruled that

"... an exemption from legal requirements, such as RLA, under 49 U.S.C. § 11341 (a), by its own terms, applies only when "... necessary to carry out a transaction approved by the Commission." Therefore, Organization argues, the "necessity" requirement of Section 11341 (a) must be satisfied before considering whether the decision to override Carrier's collective bargaining obligations is consistent with the labor protective requirements of 49 U.S.C. § 11347 and the New York Dock conditions.

Organization further argues that various other courts, when reviewing the aforesaid "necessity standard" in such matters, have also held that "... 'necessary' does not signify merely convenient or even the most efficient ... (but) ... (I)nstead, 'necessary' requires something more, the absence of which would bar the consummation of the approved transaction" (See: City of Palestine v. Unites States, 559 F. 2d 408 [5th Cir. 1977], cert. denied, 435 U.S. 950 [1978]).

Continuing, Organization next argues that even if it is determined in the instant case that the "necessity" requirement of Section 11341 (a) has been met by Carrier, which Organization vehemently disputes, then Carrier's action herein runs afoul of Section 11347 of the Interstate Commerce Act (ICA) which "... stands as a separate, distinct, and formidable limitation on the exercise of Section 11341 (a) exemption authority." According to Organization, "(T)he statutory scheme contemplates that Section 11341 (a) will provide the means for advancing the national policy of consolidations in the rail industry that is found in the ... (ICA) ..., while Section 11347 will provide the means for advancing the national policy of collective bargaining in the rail industry that is found in the ... (RLA) ..." Thus, Organization maintains that while these two (2) federal policies appear to be "competing," nonetheless, the courts have ruled that said policies "... can and must be accommodated to each other ... should be



harmonized rather than forced onto a collision course ... (and that) ... Section 11347 clearly mandates that 'rights, privileges and benefit.' afforded employees under existing collective bargaining agreements be preserved ..."

In light of the preceding interpretation and rationale, Organization further notes that, "(T)he court recognized that 'at a minimum' an arrangement cannot be considered fair if it modifies a collective bargaining agreement more than is necessary to effectuate the transaction." In summary of this particular point, therefore, Organization contends that, "(E)limination of collective bargaining obligations to improve the financial conditions of carriers and to rid themselves of what they view as burdensome and inconvenient provisions that are irrelevant to the merger is simply not within the objectives of Section 11341 or Section 11347."

In addition to the above, Organization further argues that the courts' rulings regarding the "complementary" nature of Section 11341 (a) and Section 11347, is further supported by the mandatory labor protective conditions imposed by the ICC in the instant transaction pursuant to 49 U.S.C. § 11347. Accordingly, Organization asserts that Article I, Section 2 of the New York Dock protective conditions provides that "... rates of pay, rules, working conditions and all collective bargaining and other rights, privileges 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 ..." Article I, Section 4 of the New York Dock conditions, Organization contends, "... contemplates that it will be necessary to modify those provisions of collective bargaining agreements that provide for the 'selection of forces' and 'assignment of employees'." Given the interplay between Article I, Sections 2 and 4 of the New York Dock conditions, Organization posits that said Sections can be "harmonized"; and further that

under those same sections "... the parties -- and the arbitrators to whom they may resort -- must abide by existing collective bargaining agreements unless changes are necessary to permit the approved transaction to proceed."

Still yet further related to the preceding point, Organization also contends that throughout the years, arbitrators who have been appointed/selected pursuant to Article I, Section 4 of the New York Dock labor protective conditions, have consistently preserved collective bargaining agreements in accordance with Article I, Section 2; and, relying upon Article I, Section 4, have "... declined to modify ... except to the extent necessary ..." in order to carry out the "approved transaction." As a summary of the preceding point, Organization maintains that, "(A)rbitrators generally recognize that Article I, Section 2, and Article I, Section 4 do not trump one another ... (and) ... (N)either can be read out of the New York Dock conditions." Instead, they "... exist in pari materia and accordingly must be read together in a way that gives effect to each."

On the basis of the above discussion and disclosures, and given the facts of the instant case, Organization asserts that there is no need to make any significant changes (such as those which Carrier advances in its proposed implementing merger agreement) because the collective bargaining agreements which are presently in effect between the UTU and CNW are still workable agreements; the CNW and UP, as end-to-end entities, would not need one agreement to operate; and a great many of Carrier's proposals (i. e. - interdivisional service, changes in seniority, crew consist, eating enroute, and assigned service) are not "necessary" to effectuate the proposed merger transaction as authorized by the ICC in this instance -- particularly in an end-to-end merger such as that which is involved herein.

In addition to the above, Organization also notes that further evidence of Carrier's expansion beyond the required "necessary standard" in this matter can

be discerned from the fact that in Carrier's Operating Plan and Labor Impact statement which were presented to the ICC, Carrier indicated that "... only three (3) employees (were) to be affected, one (1) in Kansas City, one (1) at Des Moines and one (1) at Fremont ... (H)owever, in ... (C)arrier's ... May 3, 1995 Notice to the UTU they show a total of 847 trainmen and yardmen that will be affected by this transaction." Moreover, according to Organization, "... many of the issues ... (which Carrier is) ... attempting to convince this Board now stand in the way of the merger were not even mentioned in their presentation before the Interstate Commerce Commission."

The majority of the remaining portion of Organization's written Submission is a detailed comparative analysis of the various sections of Organization's and Carrier's respective proposed implementing agreements. Due to the extensive nature and scope of these proposals, and the interrelatedness of the various components thereof, rather than reiterating Organization's objections to any specific Carrier proposal and the perceived advantages of Organization's proposals - many of which are repetitive - we will simply summarize several of Organization's major contentions. These are as follows:

- "... needless and radical changes in the current collective bargaining agreements ...";
- "... not necessary to complete the merger of the two properties ...";
- "... would obliterate the UTU - CNW collective bargaining agreements ...";
- "... an attempt to gain the right to arbitrarily change established switching limits without negotiating with the Organization ...";
- Carrier's "... proposal ... appears to eliminate the rates of pay that were established by the December 13, 1992 UTU - CNW Crew Consist Agreement ... (but) ... (T)he rate of pay is not an issue that

would restrict ... (Carrier's) ... ability to complete an orderly transition to a merged system ...";

- Carrier's "... demand to establish Metro complexes at Chicago and Omaha would result in new terminals ... (and) ... establishment of these complexes is not necessary to complete the merger ...";
- Carrier's May 3, 1995 Notice moves all pool service from the preexisting home terminals of Boone, Des Moines, and other locations into the Omaha Metro complex which would cause "... the entire CNW - Southern Seniority District 3 roster employees ... (to) ... lose their prior rights since they would become UP employees working under the UP collective bargaining agreement." However, "... under Article 10 of the July 23, 1971 CNW System Agreement an interdivisional run agreement would have to be consummated for operations in these corridors on the CNW property ...";
- Carrier's proposal to substantially expand the geographic size of the Chicago Consolidated Switching District "... is really nothing more than a compensation issue attempting to masquerade as an operational need ..."; and furthermore, "Article I, Section 4 of the New York Dock conditions is not the proper method to alter switching limits and terminals, which would result in wage and rule concessions in an 'end-to-end' merger ...";
- "(T)his Board is not empowered to alter negotiated agreements, terminals and switching limits on what is commonly referred to as a single-line operation in an 'end-to-end' transaction ... " such as that which is involved in the instant case; and, Carrier is "... attempting to obtain from a third party something that could not be obtained in direct negotiations with the Organization under the Railroad Labor Act"; and
- "(T)he CNW was not a party to the 1972 UTU National Agreement ... (and) ... the CNW does not have the same rights that are contained in the 1972 UTU National Agreement ..." (i.e. CNW does not have the right to operate interdivisional assignments outside the scope of Article X of the 1971 CNW System Agreement); but Carrier is attempting to obtain those very same rights by means of the instant New York Dock proceeding.



In summary of its aforesaid comparative analysis, Organization argues as follows:

"... the May 3, 1995 notice requires unnecessary unilateral changes in the current collective bargaining agreements, and is therefore invalid. The ICC has no authority to supersede provisions of the Railway Labor Act, was not requested to do so, and indicated no interest to do so except as 'necessary' to carry out an 'approved transaction.' Indeed, the ICC authorized nothing permitting blanket changes in collective bargaining agreements. The imposition of the New York Dock conditions provides no vehicle for superseding provisions of the collective bargaining agreements at the will of the ... (Carrier) ..."

Organization's final significant contention in this dispute is that, in light of the preceding argumentation, Carrier's proposed implementing agreement (Appendix "C") is totally inappropriate, and should not be adopted as the implementing agreement herein; but Organization's proposed implementing agreement (Appendix "B") should be adopted instead. Accordingly, Organization asserts that its (Organization's) proposed implementing agreement "... cannot be construed as an expansion of the protective conditions of New York Dock ..." as does Carrier's; and further that Organization's proposed implementing agreement only encompasses those items/issues which are "... necessary to effect the 'approved transaction' as approved by the ICC in Finance Docket No. 32133."

Carrier's basic position in this dispute is that, "(T)he Supreme Court and the ICC have ruled that New York Dock arbitrators, as delegees of the ICC, have the authority to modify or set aside the RLA and CBAs in order to effectuate the transactions identified by the Carrier that are needed to achieve the economies and efficiencies inherent in the underlying rail consolidation." It is Carrier's contention, therefore, that the proposals which are included in Carrier's May 3, 1995 Notice as well as in its proposed implementing agreement "... provide for



an appropriate rearrangement of forces so that the economies and efficiencies of the underlying rail consolidation of the ... (CNW) into the ... (UP) may be accomplished." Furthermore, Carrier asserts, Carrier's proposed implementing agreement "... fully satisfies the requirements of New York Dock ... and it is consistent with both industry standards for such arbitration awards and with the agreements negotiated with other labor organizations<sup>2</sup> in the UP/CNW consolidation."

Carrier next argues that its (Carrier's) proposed changes, which are limited to matters pertaining to seniority and work consolidations, new operations, and terminals/complexes, all involve "acceptable merger activities," and are "necessary" if the economies and efficiencies (i. e. - "the public transportation benefits") of the subject merger are to be achieved.

Given that the Courts have recognized that both the ICC and New York Dock arbitrators have authority under Sections 11341 (a) and 11347 of the Interstate Commerce Act to override RLA procedures and collective bargaining agreements "... as necessary to allow a carrier to combine work forces and achieve the efficiencies which flow from a merger ...", and given that Carrier's proposals are "necessary" to achieve those economies and efficiencies in the instant case and include "... changes that logically flow from that transaction ..."

---

<sup>2</sup> According to Carrier, in the current UP/CNW consolidation, "... most other crafts have been able to make the necessary implementing agreements, and none of those negotiations required the use of the ... (New York Dock) ... arbitration process." Those labor organizations which have agreed to such implementing agreements in the subject consolidation, Carrier asserts, are: Yardmasters, Dispatchers, Clerks, Supervisors, Boilermakers, Carmen, IBEW, Machinists, Sheet Metal Workers, and Firemen & Oilers (Carrier's Submission pp. 30-32). In addition, Carrier also notes that subsequent to the December 4 - 5, 1995 arbitration hearing which was held in this matter, Carrier's locomotive engineers, who are represented for purposes of collective bargaining by the Brotherhood of Locomotive Engineers, have secured an agreement which was effectuated through the utilization of arbitration pursuant to the Article I, Section 4 New York Dock labor protective conditions; and that Carrier's proposals in the instant arbitration are compatible with the terms and provisions of the resultant BLE/UP implementing agreement.

then, according to Carrier, said proposals are proper; and Carrier's proposed implementing agreement (Appendix "C") should be adopted since Carrier's proposal "... is designed to 'promote more economical and efficient transportation' and places the burden of New York Dock protection on the Carrier when it implements those economies and efficiencies." It is Carrier's position, therefore, that Carrier's proposals, as encompassed in its proposed implementing agreement, are those which are necessary to achieve the public transportation benefits of the subject merger as approved and authorized by the ICC in Finance Docket No. 32133.

2. As for Organization's contention concerning the "interdivisional service" issue, Carrier argues that arbitral precedent in New York Dock cases has established that "... the establishment of interdivisional service through a New York Dock proceeding is both proper and appropriate." According to Carrier, "(T)his is especially true in light of the fact that Carrier ... (in the instant case) ... is requesting ... only those new operations which are necessary to achieve the public transportation benefits which the ICC envisioned when it approved the UP/CNW merger."

Organization's award citations concerning this same issue, Carrier asserts, should be rejected because the fact situations involved therein are "incompatible" with those involved in the instant case; and, moreover, said awards have been appealed and were overturned by the ICC and the courts because of the arbitrators' "... unwillingness to make the changes necessary to effectuate the economies and efficiencies of the merger." Still yet further concerning this same point, Carrier also argues that since the issuance of said Organization cited arbitration awards, "... the Commission has made it clear that the protection of 'rights, privileges and benefits' ... (as provided for in Section 2 of the New York Dock labor protective conditions) ... does not extend to the types of changes

proposed by the Carrier in this case." Accordingly, therefore, Carrier contends that its (Carrier's) "... proposed 'New Operations' are necessary to achieve the public transportation benefits - the economies and efficiencies - of the UP/CNW merger and should be approved by this Panel."

Carrier summarizes its position in this dispute as follows:

"1. The Section 11341(a) immunity provision, as well as Section 11347, gives arbitrators the authority to override the Railway Labor Act and Collective Bargaining Agreements as necessary to achieve the purpose of the underlying rail consolidation.

2. This is the clear position of the ICC and arbitrators, deriving their authority from the ICC, are obligated to follow the rulings and decisions of the ICC.

3. Procedural objections of the Organization are totally without merit. The ICC has empowered Article I, Section 4 arbitrators to address *all* issues submitted to them. Section 4 arbitration is to be decided on the merits, not procedure. This includes Section 2 versus Section 4 arguments which have now been decided in favor of Section 4.

4. The test is whether the proposed changes will achieve a public transportation benefit. A proposal which brings about more economical and efficient transportation satisfies this test.

5. The Carrier's Proposed Arbitration Award - supported by arbitration awards, court decisions, other implementing agreements for this merger and, most importantly, by the decisions of the ICC - clearly and without a doubt meets the test. The Carrier's Proposed Arbitration Award will bring about more economical and efficient transportation in the territory covered by the proposal."

Accordingly, Carrier urges that, in the resolution of this dispute, the Arbitrator should direct that Carrier's proposed implementing agreement (Appendix "C") be adopted as the Implementing Agreement governing the

collective bargaining relationship which exists between the Union Pacific/Chicago and North Western and the United Transportation Union.

#### IV. Discussion, Findings and Conclusions:

The Arbitrator has carefully read, studied and considered the complete record which has been presented in this case, including the parties' Submissions which have been offered in support of their respective positions, and concludes that Carrier's position, as reviewed hereinabove, is correct; and, therefore, must be sustained. The rationale for the preceding determination is as follows:

The United States Supreme Court in Norfolk and Western Railway Company v. American Train Dispatchers, 111 S. Ct. 1156 (1991) definitively resolved the issue of whether or not the ICC and arbitrators who fashion implementing agreements under Section 4 of the New York Dock labor protective conditions have the authority to change, modify or abrogate provisions of collective bargaining agreements in order to permit merger. In its decision, the Supreme Court ruled that Section 11341 (a) of the Interstate Commerce Act permits the ICC and New York Dock arbitrators, working under the delegated authority of the ICC, to exempt railroads from existing collective bargaining agreements "... to the extent necessary to carry out ICC approved transactions." It is the "necessary standard"/"necessity predicate," therefore, which delineates the Arbitrator's authority in the instant case.

Organization herein argues that the terms contained in Carrier's May 3, 1995 Notice, and subsequently in Carrier's proposed implementing agreement, are not necessary for the implementation of the transaction; and that no changes, therefore, are needed in the collective bargaining agreements which are presently in place between the parties. In the alternative, however, Organization advocates that its proposed implementing agreement (Appendix "B") "... should



be adopted, with the Arbitrator reserving jurisdiction as to selection, assignment and rearrangement of forces."

Carrier, on the other hand, contends that its proposed implementing agreement (Appendix "C") "... is necessary to carry out the approved transaction ..." and that said proposal constitutes "... a fair and equitable basis for the selection and assignment of forces ... so that the economies and efficiencies - the public transportation benefit - which the ICC envisioned when it approved the underlying rail consolidation of the CNW into the Union Pacific will be achieved."

There can be no doubt whatsoever in this Arbitrator's mind that the nature of the changes proposed by Carrier are "necessary" to carry out the approved transaction and will promote operating efficiencies as well as efficient manpower utilization; and will produce a transportation benefit to the public as contemplated by the ICC when it approved Carrier's request to merge with the CNW. The sheer size of the newly merged entity, the interrelatedness and overlapping nature of the previously separate operations, and the myriad of conflicting rules and agreements which presently exist - and which Organization proposes to perpetuate - necessitates that Carrier's operations be coordinated so as to create a unified rail freight operation which is both operationally efficient and economically viable. The particular mechanism with which to achieve that goal is the issue which confronts us.

The parties' respective proposed implementing agreements (Organization's Proposal - Appendix "B"; and Carrier's Proposal - Appendix "C") have been carefully reviewed and analyzed. That endeavor clearly indicates to this Arbitrator that the major differences therein, by and large, relate to the issues of seniority preservation and interdivisional service.



The undersigned Arbitrator is of the opinion that such issues are appropriate issues to be addressed and resolved in a New York Dock proceeding insofar as they obviously are "necessary" considerations which will affect operating efficiencies as well as efficient manpower utilization; which, in turn, will impact upon the desired transportation benefit to the public – which is the principal consideration in this particular type of New York Dock proceeding.

Given the magnitude, scope and detailed nature of the parties' respective proposals, it is impossible to comment upon each and every provision contained therein; and to offer a comparative analysis of each separate provision. Suffice it to say that our review of the two (2) proposals leads us to conclude that Carrier's proposal, in general, appears to be fair and equitable, comprehensive, and a reasonable approach to the implementation of an effective operating plan which is necessitated by a merger of such vast proportions; and thus, an appropriate basis for the selection and assignment of forces under this New York Dock proceeding. Accordingly, therefore, this Arbitrator will direct that Carrier's proposed implementing agreement (Appendix "C"), with those specific, particularized modifications indicated hereinafter in Implementing Agreement Modifications (Appendix "D"), be adopted as the Implementing Agreement which is to govern the collective bargaining relationship between the parties pursuant to the New York Dock labor protective conditions which were imposed upon the parties by the ICC in Finance Docket No. 32133. It should further be noted, however, that given the nature of this dispute, the aforesaid accommodations/directives are peculiar unto this case alone; and, therefore, may not be cited as precedent in any future merger proceeding involving these same parties.

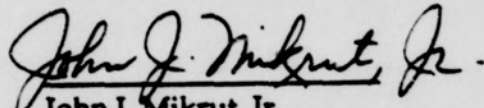
V. Award and Order:

On the basis of the preceding discussion, findings and conclusions the following determination(s) is/are made in this matter:

Carrier's proposed Implementing Agreement (Appendix "C), as modified by the Implementing Agreement Modifications (Appendix "D"), included hereinafter, is found to constitute a fair and equitable basis for the selection and assignment of forces under this New York Dock proceeding, and will, therefore, be adopted.

It is so directed.

Respectfully submitted,

  
John J. Mikrut, Jr.  
Arbitrator

Issued in Columbia, Missouri on February 27, 1996.



May 3, 1995  
NYD - 131 (UTU)

CERTIFIED MAIL - RETURN RECEIPT

MR G A EICKMANN  
GENERAL CHAIRMAN UTU  
2933 SW WOODSIDE DRIVE  
SUITE F  
TOPEKA KS 66614-4181

MR M B FUTHEY JR  
GENERAL CHAIRMAN UTU  
5050 POPLAR AVE #1510  
MEMPHIS TX 38157

MR D J GUTHRIE  
GENERAL CHAIRMAN UTU  
5946 HOHMAN AVENUE  
HAMMOND IN 46320

MR D R HAACK  
GENERAL CHAIRMAN UTU  
7420 W STATE STREET  
WAUWATOSA WI 53213

Gentlemen:

The Interstate Commerce Commission (ICC) approved, in Finance Docket No. 32133, the merger of Union Pacific (UP) / Missouri Pacific Railroad (M<sup>r</sup>) and Chicago and North Western Railway (CNW) effective April 6, 1995. The ICC in its approval of the aforesaid Finance Docket has imposed the employee protection conditions set forth in New York Dock, 360 ICC 60.

Therefore, pursuant to Section 4 of New York Dock, notice is hereby given to implement the merger transaction which is set forth in Exhibit "A", attached. As you will note from reviewing the Exhibit, this merger transaction will affect employees, work and work locations and will obviously require the elimination of incompatible agreements in order to ensure the smooth transition of this merger to that of a streamlined operation.

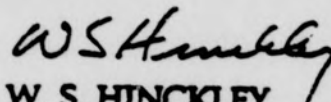
As earlier requested by your Organization, this will confirm that all of the elements in this transaction will be explained in a Question and Answer Session on Monday, May 22, 1995 at 1:00PM in Kansas City, Missouri. Further, and as previously

May 3, 1995

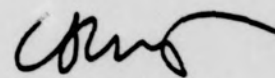
agreed, negotiations on this transaction will commence the following morning at 9:00AM, Tuesday, May 23 in Kansas City, Missouri. The Kansas City meeting locations will be advised by telephone as soon as developed.

As a matter of final note, this letter and Exhibit "A" will be faxed on May 3, 1995 to your offices with the original subsequently mailed on that same date. The posting of these papers on all applicable TE&Y bulletins boards will be initiated on Monday, May 8, 1995.

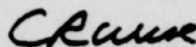
Yours truly,



W. S. HINCKLEY  
General Director  
Labor Relations-Operating/South  
Union Pacific  
Railroad Company



L. A. LAMBERT  
General Director  
Labor Relations-Operating/West  
Union Pacific  
Railroad Company



C. R. WISE  
AVP - Labor Relations-Operating  
Chicago Northwestern  
Railway Co.

Attachment

May 3, 1995

BCC:

T. L. Watts	- Labor Relations - Room 330
J. J. Marchant	- Labor Relations - Room 330
J. M. Raaz	- Labor Relations - CNW - Chicago
A. Shoener	- Operating - Room 1200
R. D. Naro	- Transportation - Room 1206
D. J. Duffy	- Quality - Room 430
D. D. Tholen	- Transportation - Room 1200
W. Sutton	- Intermodal Cprns. - Room 1200
C. O. Malone	- Transportation - Room 1200
S. R. Barkley	- Transportation - Room 1200
C. Aadnesen	- Transportation - HDC
J. E. Biebel	- CNW Trans. Center - Chicago
T. F. Murphy	- CNW Trans. Center - Chicago
R. O. Brownell	- CNW Trans. Center - Chicago
C. R. Quinley	- Transportation - Room 1200

**NOTE:**

Will Mr. Brownell please ensure that a copy of this letter and the Exhibit "A" are posted on bulletin boards accessible to all CNW Trainmen/Yardmen.

Will Mr. Quinley please ensure that a copy of this letter and Exhibit "A" are posted on all bulletin boards accessible to UP/MP Trainmen/Yardmen on the entire Eastern District and C&EI as well as MP locations of Kansas City and St. Louis.



May 3, 1995

**EXHIBIT "A"**

**NOTICE**

**TO ALL TRAIN, ENGINE AND YARD SERVICE EMPLOYEES**

**WORKING ON THE TERRITORIES**

**UNION PACIFIC RAILROAD - EASTERN DISTRICT  
MISSOURI PACIFIC RAILROAD - UPPER LINES  
CHICAGO AND EASTERN ILLINOIS RAILROAD  
CHICAGO AND NORTH WESTERN RAILWAY**

**AND WHO ARE REPRESENTED BY THE**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

**OR**

**UNITED TRANSPORTATION UNION**

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**THE INTERSTATE COMMERCE COMMISSION (ICC), IN FINANCE DOCKET 32133, HAS APPROVED THE MERGER OF THE UNION PACIFIC (UP) / MISSOURI PACIFIC RAILROAD (MP) AND THE CHICAGO AND NORTH WESTERN RAILWAY (CNW). AS A CONDITION OF THIS MERGER, THE ICC IMPOSED NEW YORK DOCK LABOR PROTECTIVE CONDITIONS.**

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**In order to effectuate the benefits of this merger, CNW train, engine and yard (TE&Y) service employees, facilities and operations must be integrated into the UP / MP Operations to the extent necessary.**

**Accordingly, to effectuate this merger and pursuant to the provisions of the New York Dock conditions, this is to serve as a ninety (90) day required notice that on or after August 5, 1995, it is the intent of the UP / MP and CNW to place the following merger transaction into effect:**

**I. Dual Point Terminal Consolidations**

**A. Kansas City - - - -**

**Eliminate all current CNW Terminal assignments including certain Des Moines Terminal**

classification assignments, incorporating the CNW work and its employees into the existing MP Terminal operations which are governed by the MP Collective Bargaining Agreements. The CNW Terminal Classification employees at Des Moines will be relocated to the Kansas City Terminal.

- B. St. Louis/Madison - - - Eliminate all current CNW Terminal assignments, incorporating the CNW work and its employees into the existing MP Terminal operations which are governed by the MP Collective Bargaining Agreements.
- C. Omaha/Council Bluffs - Eliminate all current CNW Terminal assignments including Sioux City Terminal assignments, incorporating the CNW work and its employees into the existing UP Terminal operations which are governed by the UP Collective Bargaining Agreements. The CNW Terminal employees at Sioux City will be relocated to the Omaha/Council Bluffs Terminal.
- D. Fremont - - - - - Eliminate all current CNW assignments, incorporating the CNW work and its employees into the existing UP operations which are governed by the UP Collective Bargaining Agreements.
- E. Chicago - - - - - Eliminate all current CNW assignments, incorporating the work and its employees into a new Chicago Terminal Complex which will include Waukegan, West Chicago and all of the current Chicago and Eastern Illinois (C&EI) limits and which will be governed by the C&EI Collective Bargaining Agreements.

## II. East/West Operation

- A. Establish a new Omaha Metro Road Terminal Complex operation which will encompass the boundaries of Fremont, Missouri Valley, California Junction and Council Bluffs.
  - 1. CNW Pool Freight work and its employees will be incorporated into this new Metro Terminal Complex which will be governed by the UP Collective Bargaining Agreements.

2. Eliminate all current CNW road service assignments (locals - road switchers, extras, etc.), incorporating the CNW work and its employees into the new Metro Terminal Complex operations which will also be governed by the UP Collective Bargaining Agreements.
3. CNW Pool Freight and road service employees from Sioux City as well as other road CNW employees at all other applicable locations will be relocated to the new Metro Terminal Complex.
4. Pool Freight Operation from the new Metro Terminal Complex will include the current westbound away-from-home terminal of North Platte and the new eastbound away-from-home terminal of Boone. In addition, there will also be new eastbound away-from-home terminals of Beverly, Des Moines, Mason City and Iowa Falls and a new north line away-from-home terminal of Worthington.
5. Road Service Operations (locals - road switchers, extras, etc.) established between the Metro Complex and Worthington will be protected by UP Metro Road Service employees.
6. Under this new merger operation Pool Freight and Road Service crews may receive and or leave trains anywhere within the boundaries of the new Metro Terminal Complex.

**B. Establish a new Chicago Road Terminal Complex.**

1. CNW and C&E Pool Freight work and employees will operate westbound from the new Chicago Terminal Complex described in Article I, E to the current away-from-home terminal of Clinton as well as the new away-from-home terminals of Beverly and South Pekin. In addition, these employees will operate to new north line away-from-home terminals of Sheboygan and Cleveland / Plymouth and new northwest away-from-home terminals of Adams and Madison.
2. Approximately 25% of the CNW Road Service employees at South Pekin as well as all CNW Pool Freight and Road Service employees from Clinton will be relocated to the new Chicago Road Terminal Complex for service in this operation.
3. Road Service Operations (Locals, Road Switchers, Extras, etc.) established between Janesville and Reedsburg will be protected by Road Service employees at Madison.

4. Under this new merger operation, Pool Freight and Road Service crews may receive and or leave trains anywhere within the boundaries of the new Chicago Terminal complex described in Article I, E.

### **III North/South Operation**

#### **A. Establish a new Kansas City Road Terminal Complex.**

1. CNW Pool Freight and Road work and its employees will be incorporated into this new terminal complex operation which will be governed by the MP Collective Bargaining Agreements.
2. Approximately 25% of the CNW Road and Pool Freight Service employees from Des Moines will be relocated to the Kansas City Road Terminal Complex.
3. Northbound Pool Freight Operation from the new Kansas City Terminal Complex will include the current away-from-home terminal of Council Bluffs/Omaha (New Metro Terminal Complex boundaries) as well as operation to new away-from-home terminals of Des Moines, Boone and Iowa Falls.
4. Northbound Pool Freight Operation remaining at Des Moines will continue to operation to Mason City with additional new away-from-home terminals of Iowa Falls, Beverly and Clinton.
5. Under this new merger operation, Pool Freight and Road Service crews may receive and or leave trains anywhere within the new Kansas City Road Terminal Complex.

#### **B. Establish a new Twin City Road Terminal Complex which will encompass the limits of St. Paul and Minneapolis.**

1. Pool Freight Operation from this new Twin City Terminal Complex will include the existing away-from-home terminal of Mason City as well as new South line away-from-home terminals of Iowa Falls, Des Moines, Boone and Marshalltown. In addition, this operation will also include the new East line away-from-home terminal of Adams and the new West line away-from-home terminal of Worthington.
2. CNW employees from St. James and Altoona will be relocated to the new Twin City Terminal Complex.



3. Under this new merger operation, Pool Freight and Road Service crews may receive and or leave trains anywhere within the new Twin City Road Terminal Complex.

#### **IV. South Pekin Operation**

- A. Pool Freight operation northbound from South Pekin will include the existing away-from-home terminal of Clinton as well as the new away-from-home terminal of Beverly.
- B. CNW Pool Freight and Road work and its employees at St. Louis / Madison will be incorporated into the C&E terminal operation and will be governed by the C&E Collective Bargaining Agreements.
  1. Road operations from St. Louis will include the north service to South Pekin and under this operation, Pool Freight and Road Service crews may receive and/or leave trains anywhere within the St. Louis Terminal.
  2. Approximately 25% of the CNW Pool and Road Service employees at South Pekin will be relocated to St. Louis.

#### **V. Wyoming Coal Operation**

- A. To immediately effectuate a merger to permit coal operation improvements prior to completion of all necessary merger track construction, current CNW crews with the home terminal of South Morrill will be permitted to receive and/or leave trains anywhere within thirty (30) miles on either side of South Morrill. Further, current UP crews with home terminal of Cheyenne and/or North Platte may also receive and/or leave trains anywhere within thirty (30) miles on either side of South Morrill.
- B. Subsequent to completion of necessary merger track construction and improvements, a complete consolidation merger of the Wyoming Coal Train Operation will transpire under the following provisions:
  1. CNW Pool Freight and Road work and employees will be incorporated into this new Wyoming Coal Operation which will be governed by the UP Bargaining Agreements.
  2. CNW employees from South Morrill will be relocated to Cheyenne and North Platte.



3. CNW employees from Bill will be relocated to Shawnee Junction.
4. Northbound Pool Freight Operations from Cheyenne and/or North Platte will be to the new away-from-home terminal of Shawnee Junction.
5. Shawnee Junction will be the new home terminal for all turnaround operation to and from the coal mines.
6. Under this new merger operation, Pool Freight and Road Service crews may receive and or leave trains anywhere within thirty (30) miles on either side of Shawnee Junction.

#### **VI. Midwest Grain Operation**

- A. Consolidate the seniority of CNW TE&Y employees within this Midwest Grain Operation which includes the primary locations of Boone, Eagle Grove, Ft. Dodge, Marshalltown, Des Moines, Clinton, and Mason City as well as all outlining points currently protected by extra boards at the primary points.
- B. Subsequent to this merger seniority consolidation, Clinton will continue as a yard service operation. Boone will be the source of supply for all other yard assignments that may be established at other locations.
- C. Boone, after the merger seniority consolidation, will also be the source of supply for all future road assignments that may operate at or from any location to any location within the new Midwest Grain Operation area as well as to Beverly, Clinton and the Metro Road Terminal.

#### **VI. Collective Bargaining Agreements**

Where in the course of implementing this transaction, existing CNW Union Agreements, Understandings and/or Practices may restrict the orderly transition for a merged system, such Agreements, Understandings and/or Practices will be eliminated and applicable UP, MP or C&EI Agreements will prevail.

#### **VII. Affected Employees**

As a result of this transaction, the following approximate number of TE&Y employees will be affected:

### Terminal Consolidations

Kansas City - - -	30	Trainmen/Yardmen	15	Enginemen
St. Louis - - -	2	Trainmen/Yardmen	2	Enginemen
Metro (Omaha/Council Bluffs)				
-----	28	Trainmen/Yardmen	14	Enginemen
Chicago - - -	192	Trainmen/Yardmen	91	Enginemen

### East/West Operation

Metro Terminal Complex - - -	145	Trainmen/Yardmen	135	Enginemen
Chicago Terminal Complex - - -	166	Trainmen/Yardmen	153	Enginemen

### North/South Operation

Kansas City Terminal Complex	23	Trainmen/Yardmen	13	Enginemen
Twin City Terminal Complex	27	Trainmen/Yardmen	20	Enginemen

### South Pekin Operation

20	Trainmen/Yardmen	19	Enginemen
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### Wyoming Coal Operation

142	Trainmen/Yardmen	149	Enginemen
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### Midwest Grain Operation

72	Trainmen/Yardmen	56	Enginemen
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Please ensure that this notice is posted on all bulletin boards accessible to the affected UP, MP, CNW and C&EI TE&Y employees.

**C. R. WISE**

AVP - Labor Relations-Operating  
Chicago North Western  
Railway Co.

**W. S. HINCKLEY**

General Director  
Labor Relations-Operating/South  
Union Pacific  
Railroad Company

**L. A. LAMBERT**

General Director  
Labor Relations-Operating/West  
Union Pacific  
Railroad Company

MERGER IMPLEMENTING  
AGREEMENT

between the

UNION PACIFIC/MISSOURI PACIFIC RAILROAD COMPANY  
CHICAGO AND NORTH WESTERN RAILWAY COMPANY

and the

UNITED TRANSPORTATION UNION

In Finance Docket No. 32133, the Interstate Commerce Commission (ICC) approved the acquisition and control of the Chicago and North Western Railway Company (CNW) by the Union Pacific/Missouri Pacific Railroad Company (Union Pacific or UP). In order to achieve the benefits of operational changes made possible by the transaction and to modify pretransition labor arrangements to the extent necessary to obtain those benefits,

**IT IS AGREED:**

Seniority and Work Consolidation. To achieve the work efficiencies and allocation of forces that are necessary to make the merged Carrier operate efficiently as a unified system, the following seniority consolidations will be made:

ST. LOUIS, MISSOURI

ST. LOUIS - SOUTH PEKIN

ST. LOUIS - VILLA GROVE - CHICAGO

CNW employees at South Pekin and the crew on the Monterey Mine run will be slotted on the C&EI road roster between St. Louis to Chicago via Villa Grove. This will be determined by taking the miles run between St. Louis and South Pekin for a stipulated twelve (12) month period for CNW crews and the miles run between St. Louis and Villa Grove for St. Louis crews cut out at Villa Grove and between St. Louis and Chicago for crews operated through to Chicago. This also would cover the same twelve (12) month period.

Note: Since the interdivisional service on the C&EI between St. Louis and Chicago was not implemented until May 3, 1995, consideration will have to be made so that C&EI receives the proper credit for equity on those trains operated through Villa Grove to Chicago.

Once the percentage of equity is determined, the roster will be slotted accordingly. Each slot will show either C&EI or CNW.

CNW crews relocated from South Pekin will be entitled to New York Dock protection.

Two (2) pools will be established to operate out of St. Louis under the C&EI Agreement. One (1) pool will operate from St. Louis to South Pekin. The second pool will operate from St. Louis to Villa Grove and/or Chicago. Employees will bid to each pool based upon their seniority standing on the new consolidated road roster.

CNW employees integrated into the UP Agreements will be protected under the UP Crew Consist Agreement and the October 31, 1985 National Agreement providing their CNW seniority date is prior to each of those applicable agreements.

#### DUPO/MADISON YARD

#### ARTICLE I - TERMINAL COORDINATION

- (a) Effective on or after \_\_\_\_\_, (1) all CNW yardman functions now being performed at Madison and (2) all MP yardman functions now being performed at Dupo, will be consolidated into a single combined terminal controlled by MP with all work being performed under the collective bargaining agreement between Union Pacific (former Missouri Pacific Upper Lines) and United Transportation Union.

#### ARTICLE II - SENIORITY

- (a)(1) On the effective date of the consolidation provided herein, a list shall be prepared showing the names and seniority dates of all employees appearing on the applicable CNW and MP seniority rosters (the rosters covering the work functions identified in Article I). Employees included on this list shall be regarded as prior rights employees.

- (a)(2) Whenever prior rights CNW employees work in the consolidated Terminal, they will be regarded as MP employees.
- (a)(3) CNW employees on the CNW Yardman/Brakeman Roster on the effective date of this Agreement shall retain all seniority rights on that Seniority Roster, but will acquire no seniority rights on the MP St. Louis Road Consolidated Seniority Roster.
- (a)(4) MP employees on the St. Louis Road Consolidated Seniority Roster on the effective date of this Agreement shall retain all rights on that Seniority Roster, but will acquire no seniority rights on the CNW Yardman/Brakeman Seniority Roster.
- (b)(1) Regular and extra assignments in the consolidated Terminal shall be allocated between CNW and MP on a \_\_\_\_\_ % (CNW) and \_\_\_\_\_ % (MP) basis. The allocation of jobs between CNW and MP flowing from this percentage division is set forth in Attachment "A".

Note: Equity will be determined by taking the total yard engine hours paid to MP yard assignments and CNW yard assignments. In an effort to approach the inequities associated with different crew sizes afforded in the respective Crew Consist Agreements, MP equity will be multiplied by 2 and CNW equity multiplied by 1.5. The resulting percentage will control in determining job



allocation. Subsequent to the transaction, all crew sizes will be consistent with the terms and conditions of the controlling MP Agreement.

- (b)(2) Each regular assignment working in the Dupo/Madison District shall be designated as either a CNW or a MP assignment in accordance with the allocation formula set forth in Attachment "A". The designation of comparable assignments shall be done by the appropriate local chairmen and the designated Carrier officer.
- (b)(3) Each regular assignment, whether CNW or MP designation, may work anywhere within the consolidated Terminal in accordance with applicable rules.
- (b)(4) In the application of Section 2, of Article VIII, of the October 31, 1985 UTU National Agreement, either CNW or MP designated yard assignments within the consolidated St. Louis Terminal may be used to meet customer service requirements or to handle disabled trains and trains tied-up under the Hours of Service Act regardless of where the customer is located or which Carrier's road crew manned the train.
- (c)(1) There shall be a common rotary extra board protecting both designated CNW and designated MP regular assignments. The total number of employees to be maintained on the common Dupo/Madison District extra board shall be determined by the procedure set forth in the applicable MP collective bargaining agreement. The respective number of CNW and MP employees on the extra board shall be based on the allocation percentage set forth in

(b) (1), above. Extra board employees may work either CNW or MP designated assignments without restriction.

(c) (2) Should the extra board become exhausted and it is necessary to call additional yardmen, a designated CNW vacancy shall be filled by a prior rights CNW employee and a designated MP vacancy shall be filled by a MP employee. The respective CNW and MP vacancies shall be filled in accordance with the applicable MP rules and practices.

(d) (1) It is understood that CNW employees on the CNW Yardman/Brakeman Seniority Roster on the effective date of this Agreement shall retain seniority rights to the designated CNW assignments in the Dupo/Madison District. Employees hired as CNW after the effective date of this Agreement shall have no seniority rights to work in the Dupo/Madison District.

(d) (2) Should a CNW designated assignment in the Dupo/Madison District go "no bid", the assignment shall be filled by MP employees in accordance with the applicable collective bargaining agreement.

(d) (3) Should a MP designated assignment in the Dupo/Madison District go "no bid", by a prior rights MP employee, the assignment may be filled by a prior rights CNW employee ahead of a non-prior rights MP employee.

(e) The rights to preference of work and promotion will be governed by seniority in the service, the yardman oldest in the service will be given preference if competent, but if considered not competent, he will be advised in writing.

Note: The phrase "preference of work and promotion" refers to the exercise of seniority and not to the preference system in effect prior to the implementation of the Dupo/Madison District.

### ARTICLE III - INITIAL BULLETINS

In order to accomplish the initial assignment of the employees holding seniority in the new consolidated terminal, there will be an advertisement and assignment of all assignments in the Dupo/Madison District in such a manner so that the effective date of the assignments will be simultaneous with the effective date of the consolidation herein provided. (All prior rights employees may bid for the positions advertised in accordance with the seniority rights granted herein.)  
Dupo/Madison Yard

### ARTICLE IV - QUALIFICATIONS

- (a) Any employee involved in the consolidation herein provided, whose new assignment requires performance of duties on a geographic territory not familiar to him, will be given full cooperation, assistance and guidance in order that the employee's qualifications therefor shall be accomplished as quickly as possible.
- (b) An employee whose new assignment requires performance of duties on a geographic territory not familiar to him will not suffer any loss of compensation while qualifying for such territory.

### ARTICLE V - SERVICE CREDIT

CNW employees working in the Dupo/Madison District pursuant to this Agreement will be treated for agreement purposes as though their service on CNW had been performed on MP.

Note: It is recognized that it will be necessary to make adjustments upon the integration of the CNW into the terminal operations. For example, the number of reserve

board positions available  
to the newly integrated  
employees.

CNW employees working jobs under MP Agreements will be compensated in accordance with Article 3 (a) and (c) of the CNW Crew Consist Agreement, dated December 13, 1991. All other MP Crew Consist provisions will be applicable to CNW filled assignments other than that set forth herein.

**ARTICLE VI - SWITCHING LIMITS AND ARRIVAL/DEPARTURE POINTS**

- (a) The switching limits for the Terminal shall be:

**St. Louis**

Missouri Pacific (West)	M.P. _____
Missouri Pacific (Missouri Division)	M.P. _____
Missouri Pacific (Illinois Division)	M.P. _____
C&EI	M.P. _____
Chicago Northwestern	M.P. _____

- (b) The designated arrival and departure points for MP and CNW road crews set forth in the applicable MP and CNW Schedule Agreements shall remain unchanged.

**ARTICLE VII - ROAD TRAIN OPERATIONS**

- (a) Road employees of either CNW or MP may be required to perform service throughout the consolidated Terminal in accordance with their applicable Schedule Agreements in the same manner as though the consolidated Terminal were a single terminal of the railroad.
- (b) Initial terminal delay and final terminal delay rules set forth in the applicable MP and CNW Schedule Agreements shall remain unchanged for MP and CNW road crews operating into and out of the consolidated St. Louis Terminal.

**ARTICLE VIII - TRAVEL ALLOWANCE**

- (a) Should a prior rights CNW employee report to work at Dupu yard, the employee will be compensated for forty (40) round trip miles at the mileage rate based on the present Federal Travel Regulations (FTR) authorized mileage rate. The FTR rate will govern for future mileage rate increases or decreases. In

addition, an MP employee reporting to work at Madison yard will be compensated forty (40) round trip miles as above.

- (b) The travel allowance provided for in paragraph (a), above, shall apply for six years from the effective date of the consolidation provided herein.

#### ARTICLE IX - MEDICAL STANDARDS

- (a) Employees covered by this Agreement who meet the physical standards of their respective railroads will be considered qualified for service in the consolidated St. Louis Terminal. The employees' continuance in service will likewise be governed by the physical standards of their respective railroads.
- (b) The CNW and MP will make every effort to apply medical standards uniformly in the Terminal.

#### KANSAS CITY YARD

#### ARTICLE I - TERMINAL COORDINATION

- (a) Effective on or after \_\_\_\_\_,
  - (1) all CNW yardman functions now being performed at Kansas City and (2) all MP yardman functions now being performed at Kansas City, will be consolidated into a single combined terminal controlled by MP with all work being performed under the collective bargaining agreement between Union Pacific (former Missouri Pacific Upper Lines) and United Transportation Union.

#### ARTICLE II - SENIORITY

- (a)(1) On the effective date of the consolidation provided herein, a list shall be prepared showing the names and seniority dates of all employees appearing on the applicable CNW and MP seniority rosters (the rosters covering the work functions identified in Article



1). Employees included on this list shall be regarded as prior rights employees.

- (a)(2) Whenever prior rights CNW employees work in the consolidated Kansas City Terminal, they will be regarded as MP employees.
- (a)(3) CNW employees on the CNW Yardman/Brakeman Roster on the effective date of this Agreement shall retain all seniority rights on that Seniority Roster, but will acquire no seniority rights on the MP Omaha Subdivision, Northern Division Consolidated Seniority Roster.
- (a)(4) MP employees on the Omaha Subdivision, Northern Division Consolidated Seniority Roster on the effective date of this Agreement shall retain all rights on that Seniority Roster, but will acquire no seniority rights on the CNW Yardman/Brakeman Seniority Roster.
- (b)(1) Regular and extra assignments in the consolidated Terminal shall be allocated between CNW and MP on a        % (CNW) and        % (MP) basis. The allocation of jobs between CNW and MP flowing from this percentage division is set forth on Attachment "A".

Note: Equity will be determined by taking the total yard engine hours paid to MP yard assignments and CNW yard assignments. In an effort to approach the inequities associated with different crew sizes afforded in the respective Crew Consist Agreements, MP equity will be multiplied by 2 and CNW equity multiplied by 1.5. The resulting percentage will control

in determining job allocation. Subsequent to the transaction, all crew sizes will be consistent with the terms and conditions of the controlling MP Agreement.

- (b)(2) Each regular assignment working in the Kansas City Terminal shall be designated as either a CNW or a MP assignment in accordance with the allocation formula set forth in Attachment "A". The designation of comparable assignments shall be done by the appropriate local chairmen and the designated Carrier officer.

Note: For all intents and purposes, it is recognized that the UP designated yard allocation continues to exist and is merely referred to as MP in this document.

- (b)(3) Each regular assignment, whether CNW or MP designation, may work anywhere within the consolidated Terminal in accordance with applicable rules.
- (b)(4) In the application of Section 2, of Article VIII, of the October 31, 1985 UTU National Agreement, either CNW or MP designated yard assignments within the consolidated Kansas City Terminal may be used to meet customer service requirements or to handle disabled trains and trains tied-up under the Hours of Service Act regardless of where the customer is located or which Carrier's road crew manned the train.
- (c)(1) There shall be a common rotary extra board protecting both designated CNW and designated MP regular assignments. The total number of employees to be maintained on the common consolidated terminal extra

board shall be determined by the procedure set forth in the applicable MP collective bargaining agreement. The respective number of CNW and MP employees on the extra board shall be based on the allocation percentage set forth in (b) (1), above. Extra board employees may work either CNW or MP designated assignments without restriction.

- (c)(2) Should the extra board become exhausted and it is necessary to call additional yardmen, a designated CNW vacancy shall be filled by a prior rights CNW employee and a designated MP vacancy shall be filled by a MP employee. The respective CNW and MP vacancies shall be filled in accordance with the applicable MP rules and practices.
- (d)(1) It is understood that CNW employees on the CNW Yardman/Brakeman Seniority Roster on the effective date of this Agreement shall retain seniority rights to the designated CNW assignments in the consolidated Kansas City Terminal. Employees hired as CNW after the effective date of this Agreement shall have no seniority rights to work in the consolidated Kansas City Terminal.
- (d)(2) Should a CNW designated assignment in the Kansas City Terminal go "no bid", the assignment shall be filled by MP employees in accordance with the applicable collective bargaining agreement.
- (d)(3) Should a MP designated assignment in the Kansas City Terminal go "no bid", by a prior rights MP employee, the assignment may be filled by a prior rights CNW employee ahead of a non-prior rights MP employee.

- (e) The rights to preference of work and promotion will be governed by seniority in the service, the yardman oldest in the service will be given preference if competent, but if considered not competent, he will be advised in writing.

Note: The phrase "preference of work and promotion" refers to the exercise of seniority and not to the preference system in effect prior to the implementation of the Consolidated Terminal Agreement at Kansas City.

### **ARTICLE III - INITIAL BULLETINS**

In order to accomplish the initial assignment of the employees holding seniority in the new consolidated terminal, there will be an advertisement and assignment of all assignments in the Kansas City Terminal in such a manner so that the effective date of the assignments will be simultaneous with the effective date of the consolidation herein provided. (All prior rights employees may bid for the positions advertised in accordance with the seniority rights granted herein.)

### **ARTICLE IV - QUALIFICATIONS**

- (a) Any employee involved in the consolidation herein provided, whose new assignment requires performance of duties on a geographic territory not familiar to him, will be given full cooperation, assistance and guidance in order that the employee's qualifications therefor shall be accomplished as quickly as possible.
- (b) An employee whose new assignment requires performance of duties on a geographic territory not familiar to him will not suffer any loss of compensation while qualifying for such territory.

#### ARTICLE V - SERVICE CREDIT

CNW employees working in the Kansas City Terminal pursuant to this Agreement will be treated for agreement purposes as though their service on CNW had been performed on MP.

Note: It is recognized that it will be necessary to make adjustments upon the integration of the CNW into the terminal operations. For example, the number of reserve board positions available to the newly integrated employees.

CNW employees working jobs under MP Agreements will be compensated in accordance with Article 3 (a) and (c) of the CNW Crew Consist Agreement, dated December 13, 1991. All other MP Crew Consist provisions will be applicable to CNW filled assignments other than that set forth herein.

#### ARTICLE VI - SWITCHING LIMITS AND ARRIVAL/DEPARTURE POINTS

- (a) The switching limits for the consolidated Kansas City Terminal shall be:

##### Kansas City

Union Pacific (West)	M.P. 6.59
Missouri Pacific (South)	M.P. 284.22
Missouri Pacific (East)	M.P. 276.32
Missouri Pacific (North)	M.P. 288.37
Chicago Northwestern	M.P. _____

- (b) The designated arrival and departure points for MP and CNW road crews set forth in the applicable MP and CNW Schedule Agreements shall remain unchanged.

#### ARTICLE VII - ROAD TRAIN OPERATIONS

- (a) Road employees of either CNW or MP may be required to perform service throughout the consolidated Terminal in accordance with their applicable Schedule Agreements in the same manner as though the consolidated Terminal were a single terminal of the railroad.
- (b) Initial terminal delay and final terminal delay rules set forth in the applicable MP and CNW Schedule Agreements shall remain unchanged for MP and CNW road crews operating into and out of the consolidated Kansas City Terminal.



#### ARTICLE VIII - TRAVEL ALLOWANCE

- (a) Should a prior rights CNW employee report to work west of the river, the employee will be compensated for twenty (20) round trip miles at the mileage rate based on the present Federal Travel Regulations (FTR) authorized mileage rate. The FTR rate will govern for future mileage rate increases or decreases.
- (b) The travel allowance provided for in paragraph (a), above, shall apply for six years from the effective date of the consolidation provided herein.

#### ARTICLE IX - MEDICAL STANDARDS

- (a) Employees covered by this Agreement who meet the physical standards of their respective railroads will be considered qualified for service in the consolidated Kansas City Terminal. The employees' continuance in service will likewise be governed by the physical standards of their respective railroads.
- (b) The CNW and MP will make every effort to apply medical standards uniformly in the consolidated Terminal.

#### KANSAS CITY - DES MOINES

#### ARTICLE I - COORDINATION

- (a) Effective on or after \_\_\_\_\_, all CNW road functions now being performed Kansas City to Des Moines will be controlled by MP with all work being performed under the collective bargaining agreement between Union Pacific (former Missouri Pacific Upper Lines) and United Transportation Union.

#### ARTICLE II - SENIORITY

- (a)(1) On the effective date of the consolidation provided herein, a list shall be prepared showing the names and seniority dates of all employees appearing on the

applicable CNW and MP seniority rosters (the rosters covering the work functions identified in Article I). Employees included on this list shall be regarded as prior rights employees in accordance with the terms and conditions of the system seniority consolidation contained in the MP Upper Lines 1991 Crew Consist Agreement.

- (a)(2) Whenever prior rights CNW employees work in the consolidated district they will be regarded as MP employees.
- (b)(1) Regular and extra assignments in the newly integrated territory shall be protected by the prior right CNW roster. Current MP - Upper Lines regular and extra assignments shall be protected in accordance with prior rights MP rosters.
- (b)(2) Employees involved in this transaction shall for all intents and purposes be treated as though service date is uninterrupted for purposes of crew consist protection, reserve boards, vacation and personal leave.

#### ARTICLE III - INITIAL BULLETINS

In order to accomplish the initial assignment of the employees holding seniority in the new consolidated district there will be an advertisement and assignment of all assignments in the Kansas City Terminal in such a manner so that the effective date of the assignments will be simultaneous with the effective date of the consolidation herein provided. (All prior rights employees may bid for the positions advertised in accordance with the seniority rights granted herein).

#### ARTICLE IV - QUALIFICATIONS

- (a) Any employees involved in the consolidation herein provided, whose new assignment requires performance of duties on a geographic territory not familiar to him, will be given full cooperation, assistance and guidance in order that the

employee's qualifications therefor shall be accomplished as quickly as possible.

- (b) An employee whose new assignment requires performance of duties on a geographic territory not familiar to him will not suffer any loss of compensation while qualifying for such territory.

#### ARTICLE V - SERVICE CREDIT

CNW employees working in the Kansas City/Des Moines district pursuant to this Agreement will be treated for agreement purposes as though their service on CNW had been performed on MP.

Note: It is recognized that it will be necessary to make adjustments upon the integration of the CNW into the Kansas City operations. For example, the number of reserve board positions available to the newly integrated employees.

#### ARTICLE VI - SWITCHING LIMITS AND ARRIVAL/DEPARTURE POINTS

- (a) The switching limits for the consolidated Kansas City Terminal shall be:

##### Kansas City

Union Pacific (West)	M.P. 6.59
Missouri Pacific (South)	M.P. 284.22
Missouri Pacific (East)	M.P. 276.32
Missouri Pacific (North)	M.P. 288.37
Chicago Northwestern	M.P. 500.3

- (b) The designated arrival and departure points for MP and CNW road crews set forth in the applicable MP and CNW Schedule Agreements shall remain unchanged.

#### ARTICLE VII - ROAD TRAIN OPERATIONS

- (a) Road employees of either CNW or MP may be required to perform service throughout the consolidated Terminal in accordance with their applicable Schedule Agreements in the same manner as though the consolidated Terminal were a single terminal of the railroad.
- (b) Initial terminal delay and final terminal delay rules set forth in the applicable MP Agreements shall remain unchanged for road crews operating into and out of the consolidated Kansas City Terminal.

#### ARTICLE VIII - TRAVEL ALLOWANCE

- (a) Should a prior rights CNW employee report to work west of the river, the employee will be compensated for twenty (20) round trip miles at the mileage rate based on the present Federal Travel Regulations (FTR) authorized mileage rate. The FTR rate will govern for future mileage rate increases or decreases.
- (b) The travel allowance provided for in paragraph (a), above, shall apply for six years from the effective date of the consolidation provided herein.

#### ARTICLE IX - MEDICAL STANDARDS

- (a) Employees covered by this Agreement who meet the physical standards of their respective railroads will be considered qualified for service in the consolidated Kansas City Terminal. The employee's continuance in service will likewise be governed by the physical standards of their respective railroads.

- (b) The CNW and MP will make every effort to apply medical standards uniformly in the consolidated Terminal.

#### CHICAGO TERMINAL COMPLEX

#### ARTICLE I - TERMINAL COORDINATION

- (A) Effective on or after \_\_\_\_\_, switching limits for the Chicago terminal shall be:

CNW Geneva	MP	37.2
CNW Harvard	MP	31.9
CNW McHenry	MP	31.9
CNW Kenosha	MP	31.9
C&EI Chicago	MP	30.0

- (B) On the effective date the resulting CNW yard operations will be consolidated into a single operation.

- (C) C&EI yard operations will continue to be controlled by the collective bargaining agreement of the C&EI subject to attrition of current C&EI employees. Upon attrition of said employees, C&EI yard operations will be subject to the terms and conditions of the CNW collective bargaining agreement.

#### ARTICLE II - SENIORITY

- (A)(1) On the effective date of the consolidation of CNW provided herein, a list shall be prepared showing the names and seniority dates of all employees appearing on the applicable CNW and C&EI seniority rosters (the rosters covering the work identified in Article I). Employees included on this list shall be regarded as prior rights employees.



- (A) (2) Whenever CNW employees work on C&EI yard assignments, they will be regarded as C&EI employees until such time that prior right C&EI employees have attrited out.

Note: CNW employees referred to in (a) (2) shall continue to be compensated in accordance with article III, paragraphs A, B, & C of the December 13, 1991 Crew Consist Agreement.

- (A) (3) Whenever C&EI prior rights employees work on the CNW yard assignments, they will be regarded as CNW employees.
- (A) (4) CNW employees on any CNW groundman's roster on the effective date of this agreement shall retain all seniority rights on that seniority roster.
- (A) (5) C&EI employees on any C&EI groundman's roster on the effective date of this agreement shall retain all seniority on that seniority roster.
- (B) (1) Regular and extra CNW switching assignments in the consolidated terminal shall be allocated between CNW (Northeast 2), CNW (Eastern) and CNW (Chicago Freight Terminal 7) on a \_\_\_\_\_% (Eastern), \_\_\_\_\_% (Northeast 2) and \_\_\_\_\_% (Chicago Freight Terminal 7) (excluding all C&EI assignments). The allocation of jobs between the CNW rosters flowing from this percentage division is set forth in Attachment "A".
- (B) (2) Regular and extra CNW transfer assignments in the consolidated terminal shall be allocated between CNW (Northeast 2), CNW (Eastern) and CNW (Chicago Freight Terminal 7) on a \_\_\_\_\_% (Eastern), \_\_\_\_\_% (Northeast 2) and \_\_\_\_\_% (Chicago Freight Terminal 7) (excluding all

C&EI assignments). The allocation of jobs between the CNW rosters following from this percentage division is set forth in Attachment "A".

- (B) (3) All current regular and extra C&EI yard assignments in the consolidated Chicago terminal shall be controlled by the terms and conditions of the C&EI collective bargaining agreement. Upon attrition of prior right C&EI employees, the CNW collective bargaining agreement will apply to assignments on the former C&EI Chicago Terminal.
- (B) (4) Each regular assignment referred to in (B) (1) and (B) (2) shall be designated as either a CNW (Northeast 2), CNW (Eastern) or CNW (Chicago Freight Terminal 7) assignment in accordance with the allocation formula set forth in Attachment "A". The designation of comparable assignments shall be done by the appropriate local chairmen and the designated carrier officer.
- (B) (5) Each regular assignment, whether CNW or C&EI designation, may work anywhere within the consolidated terminal in accordance with applicable agreements.
- (C) (1) There shall be a common rotary extra board protecting CNW designated switching assignments. The total number of employees to be maintained on the common consolidated switching extra board shall be determined by the procedure set forth in the applicable CNW agreement. The respective number of CNW Northeast 2, CNW Eastern and CNW Chicago Freight Terminal 7 employees on the extra board shall be based on the allocation percentage set forth in (B) (1) above. Extra board employees may work all CNW switching assignments.

- (C)(2) Should the extra board referred to in (C) (1) become exhausted and it is necessary to call additional yardmen, the carrier will 1) call an extra yardman from the CNW transfer extra board established herein, 2) call a C&EI extra yardman from the C&EI extra board established herein and 3) refer to appropriate calling procedures.
- (C)(3) There shall be a common rotary extra board protecting CNW designated transfer assignments. The total number of employees to be maintained on the consolidated transfer extra board shall be determined by the procedure set forth in the applicable CNW agreement. The respective number of CNW Northeast 2, CNW Eastern and Chicago Freight Terminal 7 employees on the extra board will be based on the allocation percentage set forth in (B) (2) above. Extra Board employees may work all CNW transfer assignments.
- (C)(4) Should the extra board referred to in (C) (3) become exhausted and it is necessary to call additional yardmen, the carrier will 1) call all extra yardmen from CNW switching extra board referred to in (C) (1), 2) call a C&EI extra yardman from the C&EI extra board established herein and 3) refer to appropriate calling procedures.
- (C)(5) The current C&EI yard extra board will continue subsequent to the date of this transaction as provided by the C&EI collective bargaining agreement protecting assignments on the current C&EI Chicago terminal limits.
- (C)(6) Should the C&EI extra board referred to in (C)(5) become exhausted and it is necessary to call additional yardmen, the carrier will 1) call an extra yardman from the CNW switching

extra board referred to in (C)(1), 2) call an extra yardman from CNW transfer extra board referred to in (C)(3) and 3) refer to appropriate calling procedures.

- (D)(1) It is understood that C&EI employees on the C&EI yardmen/brakemen seniority roster on the effective date of this agreement shall retain seniority rights to C&EI assignments in the consolidated Chicago Terminal. Employees hired as C&EI after the effective date of this agreement shall have no seniority rights to work in the consolidated Chicago Terminal.
- (D)(2) Should a C&EI designated assignment in the Chicago Terminal go no bid, the assignment shall be filled by CNW employees in accordance with applicable bargaining agreements.
- (E) The rights to preference of work and promotion will be governed by seniority in the service, the yardman oldest in the service will be given preference if competent, but if considered not competent, he will be advised in writing.

Note: Employees will be governed by applicable schedule rules and agreements.

#### ARTICLE III- INITIAL BULLETINS

In order to accomplish the initial assignment of the appropriate employees, there will be an advertisement and assignment of all assignments in the Chicago Terminal operation in such a manner that the effective date of the assignments will coincide with the effective date of the implementation of service herein provided. (All prior rights employees may bid for the positions advertised in accordance with the seniority rights granted herein.)

#### ARTICLE IV - QUALIFICATIONS

- (A) Any employee involved in the consolidation herein provided, whose new assignment requires performance of duties on a geographic territory not familiar to him, will be given full cooperation, assistance and guidance in order that the employee's qualifications therefor shall be accomplished as quickly as possible.
- (B) An employee whose new assignment requires performance of duties on a geographic territory not familiar to him will not suffer any loss of compensation while qualifying for such territory.

#### ARTICLE V - ARRIVAL/DEPARTURE POINTS

- (A) The designated arrival/departure points will coincide with the newly established terminal switching limits in I(A) and agreements in place between the parties.

#### ARTICLE VI - ROAD TRAIN OPERATIONS

- (A) Road employees of either CNW or C&EI may be required to perform service throughout the consolidated terminal in accordance with the applicable schedule agreements in the same manner as though the Consolidated Terminal was a single terminal of the railroad.
- (B) Initial terminal delay and final terminal delay rules set forth in the applicable CNW and C&EI schedule agreement shall remain unchanged for CNW and C&EI road crews operating into and out of the Consolidated Chicago Terminal.



#### ARTICLE VII - TRAVEL ALLOWANCE

- (A) CNW yard extra board employees in the CNW Chicago Terminal Complex will report to Proviso and will be transported to/from their assignment if the assignment is more than twenty (20) miles from the employee's home by the most direct highway route.
- (B) C&EI yard extra board employees in the CNW Chicago Terminal Complex will report to Yard Center and will be transported to/from their assignment if the assignment is more than twenty (20) miles from the employee's home by the most direct highway route.

#### ARTICLE VIII - MEDICAL STANDARDS

- (A) Employees covered by this Agreement who meet the physical standards of their respective railroads will be considered qualified for service in the consolidated Chicago Complex Terminal. The employee's continuance in service will likewise be governed by the physical standards of their respective railroads.
- (B) The CNW and C&EI will make every effort to apply medical standards uniformly in the consolidated Terminal.

#### CLINTON VIA GENEVA/WAUKEGAN COAL OPERATION

#### ARTICLE I - OPERATION

Upon implementation of the Chicago Consolidated Terminal, a separate operation will be established to protect the coal service between Clinton and Waukegan.

## ARTICLE II - SENIORITY

- (A) Upon implementation of the operation indicated in Article I, CNW - Eastern seniority will be afforded \_\_\_\_\_% of the operation based upon the percentage of miles operated over the Eastern seniority district.
- (B) Upon implementation of the operation indicated in Article I, CNW - Northeast 2 seniority district will be afforded \_\_\_\_\_% of the operation based upon the percentage of miles operated over the Northeast 2 seniority district.
- (C) Home terminal will be the Chicago Terminal.

## ARTICLE III - AGREEMENT

The terms and conditions of the operations will be controlled by the CNW collective bargaining agreement.

### OMAHA/COUNCIL BLUFFS YARD

## ARTICLE I - TERMINAL COORDINATION

- (a) Effective on or after \_\_\_\_\_,  
(1) all CNW yardman functions now being performed at Council Bluffs and (2) all UP yardman functions now being performed at Omaha/Council Bluffs, will be consolidated into a single combined terminal controlled by UP with all work being performed under the collective bargaining agreement between Union Pacific (Eastern District) and the United Transportation Union.

## ARTICLE II - SENIORITY

- (a)(1) On the effective date of the consolidation provided herein, a list shall be prepared showing the names and seniority dates of all employees appearing on the applicable CNW and UP seniority

rosters (the rosters covering the work functions identified in Article I). Employees included on this list shall be regarded as prior rights employees.

- (a)(2) Whenever prior rights CNW employees work in the consolidated Omaha/Council Bluffs Terminal, they will be regarded as UP employees.
- (a)(3) CNW employees on the CNW Yardman/Brakeman Roster on the effective date of this Agreement shall retain all seniority rights on that Seniority Roster but will acquire no seniority rights on the UP Zone 100 Consolidated Seniority Roster.
- (a)(4) UP employees on the Zone 100 Consolidated Seniority Roster on the effective date of this Agreement shall retain all rights on that Seniority Roster, but will acquire no seniority rights on the CNW Yardman/Brakeman Seniority Roster.
- (b)(1) Regular and extra assignments in the consolidated Terminal shall be allocated between CNW and UP on a \_\_\_\_\_ % (CNW) and \_\_\_\_\_ % (UP) basis. The allocation of jobs between CNW and UP flowing from this percentage division is set forth in Attachment "A".

Note: Equity will be determined by taking the total yard engine hours paid to UP yard assignments and CNW yard assignments. In an effort to approach the inequities associated with different crew sizes afforded in the respective Crew Consist Agreements, UP equity will be multiplied by 2 and CNW equity multiplied by 1.5. The resulting percentage will control

in determining job allocation. Subsequent to the transaction, all crew sizes will be consistent with the terms and conditions of the controlling UP Agreement.

- (b)(2) Each regular assignment working in the Omaha/Council Bluffs Terminal shall be designated as either a CNW or a UP assignment in accordance with the allocation formula set forth in Attachment "A". The designation of comparable assignments shall be done by the appropriate local chairmen and the designated Carrier officer.

Note: For all intents and purposes, it is recognized that the MP designated yard allocation continues to exist and is merely referred to as UP in this document.

- (b)(3) Each regular assignment, whether CNW or UP designation, may work anywhere within the consolidated Terminal in accordance with applicable rules.
- (b)(4) In the application of Section 2, of Article VIII, of the October 31, 1985 UTU National Agreement, either CNW or UP designated yard assignments within the consolidated Omaha/Council Bluffs Terminal may be used to meet customer service requirements or to handle disabled trains and trains tied-up under the Hours of Service Act regardless of where the customer is located or which Carrier's road crew manned the train.
- (c)(1) There shall be a common rotary extra board protecting both designated CNW and designated UP regular assignments. The total number of employees to be maintained on the

common consolidated terminal extra board shall be determined by the procedure set forth in the applicable UP collective bargaining agreement. The respective number of CNW and UP employees on the extra board shall be based on the allocation percentage set forth in (b) (1), above. Extra board employees may work either CNW or UP designated assignments without restriction.

- (c) (2) Should the extra board become exhausted and it is necessary to call additional yardmen, a designated CNW vacancy shall be filled by a prior rights CNW employee and a designated UP vacancy shall be filled by a UP employee. The respective CNW and UP vacancies shall be filled in accordance with the applicable UP rules and practices.
- (d) (1) It is understood that CNW employees on the CNW Yardman/Brakeman Seniority Roster on the effective date of this Agreement shall retain seniority rights to the designated CNW assignments in the consolidated Omaha/Council Bluffs Terminal. Employees hired as CNW after the effective date of this Agreement shall have no seniority rights to work in the consolidated Omaha/Council Bluffs Terminal.
- (d) (2) Should a CNW designated assignment in the Omaha/Council Bluffs Terminal go "no bid", the assignment shall be filled by UP employees in accordance with the applicable collective bargaining agreement.
- (d) (3) Should a UP designated assignment in the Omaha/Council Bluffs Terminal go "no bid", by a prior rights UP employee, the assignment may be filled by a prior rights CNW employee ahead of a non-prior rights UP employee.



- (e) The rights to preference of work and promotion will be governed by seniority in the service, the yardman oldest in the service will be given preference if competent, but if considered not competent, he will be advised in writing.

Note: The phrase "preference of work and promotion" refers to the exercise of seniority and not to the preference system in effect prior to the implementation of the Consolidated Terminal Agreement at Council Bluffs.

#### ARTICLE III- INITIAL BULLETINS

In order to accomplish the initial assignment of the employees holding seniority in the new consolidated terminal, there will be an advertisement and assignment of all assignments in the Omaha/Council Bluffs Terminal in such a manner so that the effective date of the assignments will be simultaneous with the effective date of the consolidation herein provided. (All prior rights employees may bid for the positions advertised in accordance with the seniority rights granted herein.)

#### ARTICLE IV - QUALIFICATIONS

- (a) Any employee involved in the consolidation herein provided, whose new assignment requires performance of duties on a geographic territory not familiar to him, will be given full cooperation, assistance and guidance in order that the employee's qualifications therefor shall be accomplished as quickly as possible.
- (b) An employee whose new assignment requires performance of duties on a geographic territory not familiar to him will not suffer any loss of compensation while qualifying for such territory.

#### ARTICLE V - SERVICE CREDIT

CNW employees working in the Omaha/Council Bluffs Terminal pursuant to this Agreement will be treated for agreement purposes as though their service on CNW had been performed on UP.

Note: It is recognized that it will be necessary to make adjustments upon the integration of the CNW into the terminal operations. For example, the number of reserve board positions available to the newly integrated employees.

CNW employees working jobs under UP Agreements will be compensated in accordance with Article 3 (a) and (c) of the CNW Crew Consist Agreement, dated December 13, 1991, in lieu of Article 7, of the UP February 1, 1992 Crew Consist Agreement. All other UP Crew Consist provisions will be applicable to CNW filled assignments other than that set forth herein.

#### ARTICLE VI - SWITCHING LIMITS AND ARRIVAL/DEPARTURE POINTS

- (a) The switching limits for the consolidated Omaha/Council Bluffs Terminal shall be:

##### Omaha/Council Bluffs

Union Pacific (West)	M.P.	_____
Missouri Pacific (North)	M.P.	_____
Chicago Northwestern (North)	M.P.	_____

- (b) The designated arrival and departure points for UP and CNW road crews set forth in the applicable UP and CNW Schedule Agreements shall remain unchanged.

#### ARTICLE VII - ROAD TRAIN OPERATIONS

- (a) Road employees of either CNW or UP may be required to perform service throughout the consolidated Terminal in accordance with their applicable Schedule Agreements in the same manner as though the consolidated Terminal were a single terminal of the railroad.
- (b) Initial terminal delay and final terminal delay rules set forth in the applicable UP and CNW Schedule Agreements shall remain unchanged for UP and CNW road crews operating into and out of the consolidated Omaha/Council Bluffs Terminal.

## ARTICLE VIII - TRAVEL ALLOWANCE

- (a) Should a prior rights CNW employee report to work west of the river, the employee will be compensated for twenty (20) round trip miles at the mileage rate based on the present Federal Travel Regulations (FTR) authorized mileage rate. The FTR rate will govern for future mileage rate increases or decreases.
- (b) The travel allowance provided for in paragraph (a), above, shall apply for six years from the effective date of the consolidation provided herein.

## ARTICLE IX - MEDICAL STANDARDS

- (a) Employees covered by this Agreement who meet the physical standards of their respective railroads will be considered qualified for service in the consolidated Omaha/Council Bluffs Terminal. The employees' continuance in service will likewise be governed by the physical standards of their respective railroads.
- (b) The CNW and UP will make every effort to apply medical standards uniformly in the consolidated Terminal.

## OMAHA METRO COMPLEX

### OMAHA METRO COMPLEX (OMC)

CNW and UP road crews operating into and out of locations within the Metro Complex (OMC) will be permitted to operate over all tracks within this Complex (UP and/or CNW). These tracks within the Omaha Metro Complex (OMC) will consist of the CNW tracks from Fremont to Missouri Valley to Council Bluffs and the UP tracks from Fremont to Council Bluffs. CNW and UP crews operating within this Complex will operate under their respective collective bargaining agreements, regardless of which track (UP/CNW) they are operating over.

CNW and UP road crews delivering trains to locations within the Omaha Metro Complex (OMC) will be paid time or rail miles whichever is greater to the designated off-duty point of the designated terminal for which originally called regardless of where the train is left. There will be no change or additional rights granted to

the Carrier, regarding road and yard rules as in effect prior to the establishment of the Omaha Metro Complex (OMC). The only changes will be those clearly specified in this Implementing Agreement under Finance Docket No. 32133.

Road crews required to leave their train at a location outside the Omaha Metro Complex will be paid time or rail miles whichever is greater to the designated off duty point of the designated terminal for which originally called.

CNW and UP assignments operating within the Omaha Metro Complex (OMC) other than through freight and yard assignments at Omaha and

Council Bluffs, will be integrated into the Union Pacific Agreements. The following assignments will be considered as operating within the Omaha Metro Complex (OMC).

Current CNW assignments:

- 1 local two[2] sides operating out of Fremont
- 1 yard engine at Fremont
- 2 locals operating out of Blair
- 1 local operating Blair to Missouri Valley to Blair

Current UP assignments:

- 1 zone local at Fremont
- 2 locals at Weco
- 2 turnaround zone locals at Council Bluffs

Equity will be determined by taking the total engine hours paid to each of the above assignments for a stipulated twelve (12) month period. In order to address the difference in crew size make up, the UP will multiply their total engine hours paid by 2. The CNW will take their total engine hours and multiply by 1.5. This will determine the total percentage of each groups equity.

Note: The purpose of using 2 and 1.5 as illustrated above, reflects the difference in UP crew size requirements of 2 ground service employees compared to CNW crew size requirements of 1 ground service employee. Once the CNW assignments come under the UP Agreements, the

crew size will be 2 ground service employees. The above formula gives each General Committee credit of one-half (1/2) for the second ground crew member on the CNW assignments.

Once the percentage of equity is determined, job positions will be allocated based upon that equity.

CNW employees working jobs under UP Agreements will be compensated in accordance with Article 3 (a) and (c) of the CNW Crew Consist Agreement dated December 13, 1991, in lieu of Article 7 of the UP February 1, 1992 Crew Consist Agreement. All other UP Crew Consist provisions will be applicable to CNW filled assignments other than that set forth herein.

Note: It is recognized that it will be necessary to make adjustments upon the integration of the CNW into the terminal operations. For example, the number of reserve board positions available to the newly integrated employees.

#### OMAHA METRO COMPLEX / CNW ROAD

#### ARTICLE I - COORDINATION

- (A) Effective on or after \_\_\_\_\_. CNW roadmen from seniority districts Southern 3, Central 5 and Western 6 will be relocated to Omaha/Council Bluffs to protect each respective share of equity for the following road operations out of the Omaha Metro Complex.

#### Current CNW assignments:

OMC to Boone  
OMC to Clinton  
OMC to Ames  
OMC to Nevada  
OMC to Worthington  
OMC to Norfolk  
OMC to Sioux City



OMC to Sargent Bluff

OMC to Des Moines

OMC to Mason City

- (B) The operations listed herein shall continue to be subject to all terms and conditions of the CNW collective bargaining agreement.

#### ARTICLE II - EXTRA BOARD

An equity rotary extra board will be established at Omaha/Council Bluffs to protect all CNW assignments operating out of the OMC. Equity will be determined by providing extra slots for the respective seniority district in accordance with the percentage of work protected by said board. Upon implementation, those equity figures will be maintained for future adjustment of the equity extra board per CNW adjustment agreements.

#### ARTICLE III - SENIORITY

CNW employees relocated to Omaha/Council Bluffs shall maintain all rights to their current seniority roster and will not again acquire rights to any other roster.

#### ARTICLE IV - INITIAL BULLETINS

In order to accomplish the initial assignment of the employees holding seniority in the new location, there will be an advertisement and assignment of all assignments in the OMC/CNW District in such a manner so that the effective date of the assignments will be simultaneous with the effective date of the consolidation herein provided. (All prior rights employees may bid for the positions advertised in accordance with seniority rights granted herein.)

#### ARTICLE V - QUALIFICATIONS

- (a) Any employee involved in the consolidation herein provided, whose new assignment requires performance of duties on a geographic territory not familiar to him, will be given full cooperation, assistance and guidance in order that the employee's qualifications therefor shall be accomplished as quickly as possible.

- (b) An employee whose new assignment requires performance of duties on a geographic territory not familiar to him will not suffer any loss of compensation while qualifying for such territory.

#### ARTICLE VI - SWITCHING LIMITS AND ARRIVAL/DEPARTURE POINTS

- (A) Switching limits currently in effect for CNW road operations shall be maintained.
- (B) Arrival/Departure points currently in effect will not be affected as a result of this transaction.

#### MIDWEST OPERATION

A new CNW Midwest seniority district will be created to address necessary operational efficiencies and economics on the following lines: Mason City, Iowa to Butterfield, Iowa; Allendorf, Iowa to Briceland, Iowa; Hartly, Iowa to Emmetsburg, Iowa; Estherville, Iowa to Eagle Grove, Iowa; Burt, Iowa to Goldfield, Iowa; Forrest City, Iowa to Belmond, Iowa; Kanawha, Iowa to Belmond, Iowa; Dows, Iowa to Clarion, Iowa; Mason City, Iowa to Somers, Iowa; Eagle Grove, Iowa to Ames; Ellsworth, Iowa to Jewell, Iowa; Mallard, Iowa to Grand Junction, Iowa; Albert City, Iowa to Rolfe, Iowa; Iowa Falls, Iowa to Alden, Iowa; Oelwein, Iowa to Waterloo, Iowa; Marshalltown, Iowa to Steamboat Rock, Iowa; Marshalltown, Iowa to Powerville, Iowa; Marshalltown, Iowa to Albia, Iowa; Hampton, Iowa to Sheffield, Iowa; Des Moines, Iowa to Yale, Iowa; Des Moines, Iowa to Woodward, Iowa; and Des Moines, Iowa to Bondurant, Iowa. In addition trackage from Des Moines to Mason City and Trackage from Grand Junction to Clinton is included in the new Midwest seniority district.

This new seniority district will be established by top and bottoming the existing CNW consolidated Seniority District No. 3 and Consolidated seniority district No. 5. It is understood, however, that in creating this new district will not effect the current prior rights established under the December 19, 1968 Merger Agreement. Those prior rights are the M&StL, CGW and CNW. (See attached color coded map)

Under existing CNW Agreements ID service cannot be established between Mason City, Iowa to Somers, Iowa and Grand Junction, Iowa to Clinton, Iowa because of home terminals at Eagle Grove and

Boone, Iowa. Without prejudice to the Organization's position that these two proposed runs are outside any merger related territory, the Organization in attempting to reach an Implementing Agreement in line with Arbitrator John J Mikrut's instructions, will agree that these two (2) runs will come under New York Dock. In doing so, Interdivisional Service will be established between Mason City and Somers, Iowa through the home terminal of Eagle Grove and between Grand Junction and Clinton, Iowa, through the home terminal of Boone, Iowa. New York Dock protection will be applicable. All CNW rules will remain in full force and effect. It is understood that ID service is limited only to those runs set forth herein and will not be used as a precedent for additional Interdivisional Service.

The above changes are in line with the Carrier's proposal. All of the other operations set forth in the Carrier's proposal are already in existence. under UTU CNW Agreements and no changes are needed to satisfy the Carrier's proposal.

### TWIN CITIES WORTHINGTON

#### ARTICLE I - COORDINATION

- (A) Effective on or after \_\_\_\_\_. CNW through freight operations will be implemented between Minneapolis/St. Paul to Worthington. Employees from Seniority district Central 5 will relocate to the Twin Cities a sufficient number to protect said service. Home terminal for this operation shall be the Twin Cities.

Note: CMO prior rights employees shall maintain prior rights to the implemented service Twin Cities - Worthington and CGW/M&StL prior rights employees shall maintain prior rights to the implemented service Twin Cities - Mason City.

- (B) The operations listed herein shall continue to be subject to all terms and conditions of the CNW collective bargaining agreement.

## ARTICLE II - EXTRA BOARD

The extra board currently in place at the Twin Cities will protect the service provided herein subject to the existing CNW collective bargaining agreement.

## ARTICLE III- INITIAL BULLETINS

In order to accomplish the initial assignment of the appropriate employees, there will be an advertisement and assignment of all assignments in the Twin Cities/Worthington operation in such a manner that the effective date of the assignments will coincide with the effective date of the implementation of service herein provided. (All prior rights employees may bid for the positions advertised in accordance with the seniority rights granted herein.)

## ARTICLE IV - QUALIFICATIONS

- (a) Any employee involved in the consolidation herein provided, whose new assignment requires performance of duties on a geographic territory not familiar to him, will be given full cooperation, assistance and guidance in order that the employee's qualifications therefor shall be accomplished as quickly as possible.
- (b) An employee whose new assignment requires performance of duties on a geographic territory not familiar to him will not suffer any loss of compensation while qualifying for such territory.

## ARTICLE V - SWITCHING LIMITS AND ARRIVAL/DEPARTURE POINTS

- (A) Switching limits currently in effect for CNW road operations shall be maintained.
- (B) Arrival/departure points currently in effect will not be affected as a result of this transaction.

SOUTH MORRILL OPERATION

- (A) Effective on or after \_\_\_\_\_  
\_\_\_\_\_ the common terminal of South  
Morrill will have the following  
limits.

UP East	M.P. 156.8
UP West	M.P. 166.0

- (B) All road crews (UP and CNW) may  
receive/leave their trains at any  
location within the boundaries of  
the consolidated South Morrill  
terminal and may perform work within  
those boundaries subject to  
agreements between the respective  
parties.



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# MERGER IMPLEMENTING AGREEMENT

between the

UNION PACIFIC/MISSOURI PACIFIC RAILROAD COMPANY  
CHICAGO AND NORTH WESTERN RAILWAY COMPANY

and the

## UNITED TRANSPORTATION UNION

In Finance Docket No. 32123, the Interstate Commerce Commission (ICC) approved the acquisition and control of the Chicago and North Western Railway Company (CNW) by the Union Pacific/Missouri Pacific Railroad Company (Union Pacific or UP). In order to achieve the benefits of operational changes made possible by the transaction and to modify pretransition labor arrangements to the extent necessary to obtain those benefits, IT IS AGREED:

- I. Seniority and Work Consolidation. To achieve the work efficiencies and allocation of forces that are necessary to make the merged Carrier operate efficiently as a unified system, the following seniority consolidations will be made:

### A. St. Louis, Missouri

1. (a) The CNW employees assigned to CNW yard assignments at Madison, Illinois, on September 1, 1995, including any extra board assignments, will be placed on the bottom of Missouri Pacific (MP) Merged Roster No. 1 and will have prior rights to the former CNW regularly assigned yard assignments at Madison. Should those former CNW assignments be abolished or consolidated with other MP assignments, the former CNW employees will have no prior rights. Any newly established assignment will not be subject to prior rights. The Carrier will not be required to assume any additional costs in the application of the prior rights requirement, including not having to use prior rights employees at the overtime rate of pay when non-prior rights employees are available at the straight time rate of pay.
- (b) Both MP employees and former CNW employees may work all assignments covered by Merged Roster No. 1 and may work all assignments protected by the MP St. Louis extra board. All employees and all assignments will work under the MP

Agreement all in accordance with the employees' seniority on Merged Roster No. 1, subject to prior rights.

NOTE: Prior rights will not apply to assignments on nor operation of the MP Merged Roster #1 extra board at St. Louis.

2. (a) The CNW employee(s) assigned to the Monterey Mine assignment on September 1, 1995, will be placed on the bottom of the Chicago and Eastern Illinois (C&EI) road roster at St. Louis and will have prior rights to the Monterey Mine assignment, if regularly assigned. Should this assignment be abolished or consolidated with other C&EI assignments, the former CNW employee(s) will have no prior rights. Any newly established assignment will not be subject to prior rights. The Carrier will not be required to assume any additional costs in the application of the prior rights requirement, including not having to use the prior rights employee at the overtime rate of pay when a non-prior rights employee is available at the straight time rate of pay.
- (b) Both C&EI and the former CNW employee may work the Monterey Mine Assignment, may work all assignments covered by the C&EI road roster and may work all assignments protected by the C&EI extra board at St. Louis. All employees and all assignments will work under the C&EI Agreement all in accordance with the employees' seniority on the C&EI road roster at St. Louis, subject to prior rights.

NOTE: Prior rights will not apply to assignments on nor operation of the C&EI extra board at St. Louis.

3. (a) The number of employees assigned to work South Pekin, Illinois, to St. Louis (in through freight only, excluding power plant operations) on September 1, 1995, will be transferred to St. Louis and will be placed on the bottom of the C&EI road roster at St. Louis and will have prior rights to a maximum of three positions in the new St. Louis to Chicago/South Pekin pool. Any newly established assignments will not be subject to prior rights. The Carrier will not be required to assume additional costs in the application of the prior rights requirement, including the use of a prior rights employee at the

overtime rate of pay when a non-prior rights employee is available at the straight time rate of pay.

- (b) Both C&E employees and former CNW employees may work all assignments in the new St. Louis to Chicago/South Pekin Pool, may work all assignments protected by the C&E road roster (including the Monterey Mine assignment) and may work all assignments protected by the St. Louis extra board (including the Monterey Mine assignment). All employees and all assignments will work under the C&E Agreement all in accordance with the employees' seniority on the C&E roster at St. Louis, subject to prior rights.

NOTE: Prior rights will not apply to assignments on nor operation of the C&E extra board at St. Louis.

**B. Kansas City, Missouri**

- 1. (a) The CNW employees assigned to CNW yard assignments at Kansas City on September 1, 1995, will be placed on the bottom of the MP Consolidated Roster and will have prior rights to the former CNW yard assignments. Should those former CNW assignments be abolished or consolidated with other MP assignments, those former CNW employees will have no prior rights. Any newly established assignments will not be subject to prior rights. The Carrier will not be required to assume additional costs in the application of the prior rights requirement, including the use of a prior rights employee at the overtime rate of pay when a non-prior rights employee is available at the straight time rate of pay.
- (b) Both MP employees and former CNW employees may work all assignments covered by the Consolidated Roster and may work all assignments protected by the Consolidated Roster extra boards. All employees and all assignments will work under the MP Agreement all in accordance with the employees' seniority on the Consolidated Roster, subject to prior rights.

NOTE: These prior rights will not be applicable to assignments on nor operation of the two MP extra boards at Kansas City.



2. (a) The number of CNW employees assigned to road service work between Kansas City and Des Moines (currently headquartered at Kansas City) on September 1, 1995, and the CNW employees on the CNW extra board at Kansas City, will all be placed on the bottom of the MP Consolidated Roster and will have prior rights to their percentage in the new Kansas City to Omaha Metro Complex (OMC)/Des Moines pool. The percentage will be as follows: 50% for the MP Consolidated Roster and 50% for the former CNW employees. The percentage for the former CNW employees need not be maintained as those employees attrite or are unavailable. Any newly established assignments will not be subject to prior rights. The Carrier will not be required to assume additional costs in the application of the prior rights requirement, including the use of a prior rights employee at the overtime rate of pay when a non-prior rights employee is available at the straight time rate of pay.

NOTE: These prior rights will not be applicable to assignments on nor operation of the MP extra boards at Kansas City.

- (b) Both MP employees and former CNW employees may work all assignments in the Kansas City to OMC/Des Moines pool, may work all assignments protected by the MP Consolidated Roster, and may work all assignments protected by the MP Consolidated Roster extra boards. All employees and all assignments will work under the MP Agreement all in accordance with the employees' seniority on MP Consolidated Roster, subject to prior rights.

C. Chicago, Illinois Complex

1. A new consolidated Chicago Terminal Complex (CTC) seniority roster will be established to protect all non-through freight, yard or extra board assignments headquartered within the CTC. The CTC is defined in Article III.
2. The new CTC seniority roster will consist of the following employees:
  - (a) All C&E employees working in Chicago on September 1, 1995;

- (b) All CNW employees on the Chicago Freight Terminal #7 Roster;
- (c) The number of CNW Eastern #1 employees working in Chicago on September 1, 1995; and,
- (d) The number of CNW Northeastern #2 employees working in Chicago on September 1, 1995.

NOTE 1: "Working in Chicago" is defined as holding an assignment (non-through freight, yard, or extra board) with an on-duty point within the territory of the new CTC as defined in Article III.

NOTE 2: One Eastern-1 extra board employee for each four Eastern-1 employees transferred to the CTC and one Northeastern-2 extra board employee for each four Northeastern-2 employees transferred to the CTC will also be transferred to the new CTC roster.

- 3. (a) Employees identified in Paragraph 2, above, will be placed on the new CTC seniority roster in the following manner:
  - (1) Employees identified in 2(a), (c) and (d), above, will be dovetailed based upon the employee's train service date. If this process results in employees having identical seniority dates, seniority will be determined by the employee's service date.
  - (2) The dovetailed list in (1), above, will be placed on the bottom of the CNW Chicago Freight Terminal #7 Roster creating the new CTC roster.
- (b) Each employee placed on the new CTC roster will be provided prior rights to their former work now included in the CTC. Current assignments retained in the new CTC will not be rebulletined. Should any former assignments subsequently be abolished or consolidated with other CTC assignments, there will be no prior rights to those assignments. Any newly established assignments will not be subject to prior rights. The Carrier will not be required to assume additional costs in the application of the prior rights requirement, including the use of a prior rights employee at the overtime rate of pay when a non-

prior rights employee is available at the straight time rate of pay. The new CTC seniority roster will indicate prior rights in the following manner:

NOTE: Prior rights will not apply to assignments on nor operation of the CTC extra board.

EXAMPLE (assumes roster only has five people on it):

Name	Roster Ranking	Prior Rights to which Assignments			
		Chicago Freight Terminal#7	Eastern#1	North-Eastern#2	C&EI
Jones, J.	#1	X			
Smith, L.	#2	X			
Ames, G.	#3			X	
Bailey, T.	#4				X
Moore, K.	#5		X		

- (c) All employees placed on the CTC roster may work all assignments protected by the new CTC roster and may work all assignments protected by the new CTC extra board. All employees and all assignments will work under the CNW Agreement all in accordance with the employee's seniority on the new CTC roster, subject to prior rights.
- (d) New employees hired and placed on the CTC roster subsequent to the adoption of the CTC will be governed by the CNW collective bargaining agreement, but will have no prior rights to any assignments within the CTC; will have no rights to any CNW Eastern #1, CNW Northeastern #2 nor C&EI assignments outside of the CTC; will rank below all prior rights employees on the roster and will have seniority to all assignments headquartered within the CTC.

#### D. Omaha

1. UP/UTU Roster #1 will be expanded to protect all assignments headquartered within the Omaha Metro Complex (OMC) or which

have the OMC as the source of supply. The OMC is defined in Article III.

2. The new UP/UTU Merged Roster #1 will consist of the following employees:

- a. All UP employees on the current UP/UTU #1;
- b. All CNW employees assigned to work between the OMC and Worthington, Minnesota (including assignments at Sioux City, Iowa; Sergeant Bluff, Iowa; and Dakota City, Iowa) on September 1, 1995;

NOTE: "Assigned to work between Worthington, Minnesota and the OMC" is defined as holding an assignment (through freight, non-through freight, yard or extra) with an on-duty point within the territory between Worthington and the OMC.

- c. All CNW employees working an assignment headquartered within the OMC on September 1, 1995;

NOTE 1: "Working an assignment headquartered within the OMC" is defined as holding an assignment (non-through freight, yard or extra board) with an on-duty point within the territory of the OMC.

NOTE 2: "Working an assignment headquartered within the OMC" is also defined as the CNW assignments working to Norfolk, Nebraska, from Fremont, Nebraska, and the CNW assignment at Norfolk.

- d. The number of CNW employees assigned to work on the east-west main line between the OMC and Clinton, Iowa, on September 1, 1995.

NOTE 1: "Assigned to work on the east - west main line between Clinton and the OMC" is defined as those through freight assignments with either Clinton or Boone, Iowa, as the preimplementation home terminal and with either Boone, Clinton, Fremont or Council Bluffs as the preimplementation away-from-home

terminal. Pre-implementation extra board assignments at Clinton and pre-implementation extra board assignments at Boone are also included in this definition.

**NOTE 2:** One extra board employee from the Boone extra board for each three Boone through freight service employees transferred to UP/UTU Merged Roster #1 will also be transferred to UP/UTU Merged Roster #1.

**NOTE 3:** One extra board employee from the Clinton road service extra board for each three Clinton through freight service employees transferred to UP/UTU Merged Roster #1 will also be transferred to UP/UTU Merged Roster #1.

3. (a) Employees identified in Paragraph 2, above, will be placed on the new UP/UTU Merged Roster #1 in the following manner:

- (1) Employees identified in 2(b), (c) and (d), above, will be dovetailed based on the employee's train service date. If this results in employees having identical seniority dates, seniority will be determined by the employee's Company service date.
- (2) The dovetailed list in (1), above, will be placed on the bottom of the UP/UTU Roster #1.

**NOTE 1:** Employees affected by the dovetailing of seniority in 3(a), above, will be transferred to the OMC in accordance with operational needs.

**NOTE 2:** All CNW employees placed on the bottom of UP/UTU Roster #1 will also be placed on the bottom of all rosters, both road and yard, that comprise Zone 100.

- (b) Each employee placed on the new UP/UTU Merged Roster #1 will retain their current assignment (if operated) and will be provided prior rights. Prior rights will also include the new operations established in accordance with Article III, Section A, Paragraph (1), but prior rights will not apply to assignments



on nor operation of the UP extra boards at the OMC. Should any former CNW assignment be abolished or consolidated with UP assignments, the former CNW employees will have no prior rights to those assignments. Any newly established assignments will not be subject to prior rights. The Carrier will not be required to assume additional costs in the application of the prior rights requirement, including the use of a prior rights employee at the overtime rate of pay when a non-prior rights employee is available at the straight time rate of pay. The UP/UTU Merged Roster #1 seniority roster will indicate prior rights in the following manner:

EXAMPLE (assumes only five people on the roster):

Name	Roster Ranking	Prior Rights to which Assignments			
		UP/UTU Roster#1	CNW with-In OMC	CNW - OMC to Worth'ton	CNW East/West Main Line
Brown, J.	#1	X			
Green, S.	#2	X			
Black, C.	#3			X	
White, P.	#4				X
Blue, R.	#5		X		

- (c) All employees placed on the UP/UTU Merged Roster #1 may work all assignments (regular or extra) protected by the new roster. All employees and all assignments will work under the UP Agreement in accordance with the employee's seniority on the new roster, subject to prior rights.
  - (d) New employees hired and placed on the new UP/UTU Merged Roster #1 subsequent to the adoption of this agreement will be governed by the UP Agreement, but will have no prior rights to any assignment protected by the new roster, will rank below all prior rights employees on the roster and will have seniority rights to all assignments protected by the new roster.
4. (a) The expanded IJP/UTU Merged Roster #1 will enable the Carrier to address necessary operational efficiencies and

economies in the territory and on the following trackage: the existing UP/UTU Seniority District #1; the OMC as defined in Article III; the east-west main line from the OMC to Clinton, including the trackage from Des Moines to Mason City; and the north-south main line from the OMC to Worthington, Minnesota, including the trackage to Dakota City.

- (b) The inclusion of the trackage OMC to Clinton and the trackage Des Moines to Mason City will not preclude employees from other seniority districts from performing service on that trackage.

**E. Midwest**

1. A new CNW Midwest seniority roster will be created to address necessary operational efficiencies and economies on the following lines: Mason City, Iowa, to Butterfield, Minnesota; Allendorf, Iowa, to Briceland, Iowa; Hartley, Iowa, to Goldfield, Iowa; Forest City, Iowa, to Belmond, Iowa; Kanawha, Iowa, to Belmond, Iowa; Dows, Iowa, to Clarion, Iowa; Mason City, Iowa, to Somers, Iowa; Eagle Grove, Iowa, to Ames, Iowa; Ellsworth, Iowa, to Jewell, Iowa; Mallard, Iowa, to Grand Junction, Iowa; Albert City, Iowa, to Rolfe, Iowa; Royal, Iowa, to Laurens, Iowa; Coulter, Iowa, to Clarksville, Iowa; Iowa Falls, Iowa, to Alden, Iowa; Oelwein, Iowa, to Waterloo, Iowa; Marshalltown, Iowa, to Steamboat Rock, Iowa; Marshalltown, Iowa, to Powerville, Iowa; Marshalltown, Iowa, to Albia, Iowa; Hampton, Iowa, to Sheffield, Iowa; Des Moines, Iowa, to Yale, Iowa; Des Moines, Iowa, to Woodward, Iowa; and Des Moines, Iowa, to Bondurant, Iowa. In addition, trackage from Des Moines to Mason City and trackage from Grand Junction to Clinton is included in the new Midwest seniority district.
2. The new Midwest Seniority District will consist of the following employees:
  - (a) The number of CNW Southern #3 employees working in the Midwest territory on September 1, 1995 (less those transferred to other districts in accordance with this Agreement);
  - (b) The number of CNW Central #5 employees working in the Midwest territory on September 1, 1995 (less those transferred to other districts in accordance with this Agreement).

**NOTE : "Working in the Midwest territory" is defined as holding an assignment (through freight, non-through freight, yard or extra board) with an on-duty point within the territory of the new Midwest seniority district.**

- 3. (a) Employees identified in Paragraph 2, above, will be placed on the new Midwest seniority roster based upon the employee's train service seniority date. If this process results in employees having identical seniority dates, seniority ranking will be determined by the employees' Company service dates.**
- (b) All employees placed on the new Midwest seniority roster may work all assignments (regular or extra) protected by the Midwest roster. All employees and all assignments will work under the CNW (proper) Agreement.**
- 4. The inclusion of the trackage Grand Junction to Cedar Rapids and Des Moines to Mason City will not preclude employees from other seniority districts from performing service on that trackage.**

#### **F. Seniority and Service Rights**

**The following will apply to employees transferring from CNW to UP (Sections A, B and D of this Article I) and to employees transferring from UP to CNW (Section C of this Article I):**

- (a) All train service seniority with the employees' original railroad will be eliminated;**
- (b) Seniority with the employees' new railroad will be established in accordance with the provisions of this Article I; and,**
- (c) The employees will be treated for vacation, entry rates and payment of arbitraries as though all their time in train service on their original railroad had been performed on their new railroad,**
- (d) Employees with engine service seniority on their original railroad will forfeit that seniority. Engine service on the employees' new railroad will be established either following the same relative standing as on the original railroad or as provided for in the UTU National Agreement.**

NOTE: Subparagraph (d) is contingent upon the implementing agreement for the other operating craft organization.

- (e) The seniority consolidations provided for in this Article I will result in the elimination of CNW Southern #3 seniority district. CNW Freight Terminal #7 and the C&EI Chicago Yard seniority districts will also be eliminated and made part of the new CTC seniority district. The UP/UTU Seniority District #1 will also be eliminated and will become the basis for the new UP/UTU Merged Roster #1 seniority district.
- (f) CNW employees placed on the bottom of a C&EI or MP roster under Sections A and B of this Article I will be placed on the roster in the same seniority order they held on the CNW.
- (g) After the initial placement on a new roster in accordance with the procedures set forth in Article V, below, no additional employees hired prior to the date of this Agreement will be permitted to place on another roster under the provisions of this Agreement.

## II. New Operations

A. The following new operations may be implemented in accordance with the provisions set forth in this Article II:

- (1) Under the UP Agreement with the OMC as the home terminal: OMC-Clinton, OMC-Boone, OMC-Ames, OMC-Nevada, OMC-Des Moines, OMC-Mason City, OMC-Worthington, OMC-Sioux City, OMC-Sergeant Bluff, OMC-North Platte, OMC-Grand Island (including the "picker" pool) and OMC-Marysville.

NOTE: The current North Platte-Fremont and North Platte-Council Bluffs doubleheaded interdivisional pools will cease operations (with the understanding these pools may be re-established by the Carrier) when replaced by an OMC-North Platte and North Platte-OMC operation.

- (2) Under the UP Agreement with Boone as the home terminal: Boone-Clinton.



- (3) Under the MP Agreement with Kansas City as the home terminal: Kansas City-OMC/Des Moines.

NOTE: This will be a single pool with alternative destinations (see Article I, Section B3).

- (4) Under the C&E Agreement with St. Louis as the home terminal: St. Louis - Chicago/South Pekin.

NOTE 1: This will be a single pool with alternative destinations (see Article 1, Section A3).

NOTE 2: The current St. Louis-Chicago operation is a guaranteed pool. The guarantee and outset adjustments for the new pool operation will be paid and adjusted in accordance with Side Letter #1 of the Villa Grove Interdivisional Run Arbitration Agreement.

- (5) On the territory covered by the CNW Agreement:

- (a) Twin Cities (home terminal) to Worthington (far terminal);
- (b) Any Midwest Seniority District location to any other Midwest Seniority District location;
- (c) Waukegan (home terminal) to Clinton (far terminal) with Waukegan as the on-duty point/off-duty point and transported to/from the power plants at Waukegan and Pleasant Prairie.

NOTE: Employees working in the Waukegan-Clinton pool freight service will be from both CNW Eastern #1 and CNW Northeastern #2. The equalization for the pool will be 71% for Eastern #1 and 29% for Northeastern #2. Either road extra board may be used to fill any vacancy in the pool or to perform hours of service relief.

- (d) South Pekin (home terminal) to Clinton; and,
- (e) Chicago (CTC) (home terminal) to Clinton/South Pekin.

NOTE: CTC to Clinton/South Pekin will be a single pool with alternative destinations.



**B. The terms and conditions of the new operations set forth in Section A, above, are as follows:**

- 1. Miles Run - The miles paid shall be the actual miles run.. Actual miles run to/from the OMC will be calculated in accordance with the chart found in Attachment A.**
- 2. Basic Day/Rate of Pay - The provisions of the November 1, 1991, Implementing Agreement (UTU) will apply, to include applicable entry rates.**
- 3. Overtime - Overtime will be paid in accordance with Article IV of the November 1, 1991, Implementing Document (UTU).**
- 4. Transportation - Transportation will be provided in accordance with Section (2)(c) of Article IX of the October 31, 1985, National Agreement (UTU).).**
- 5. Meal Allowance and Eating Enroute - Meal allowances and eating enroute will be governed by Section 2(d) and Section (2)(e) of Article IX of the October 31, 1985, National Agreement (UTU), as amended by the November 1, 1991, Implementing Agreement.**
- 6. Suitable Lodging - Suitable lodging will be provided by the Carrier in accordance with applicable agreements as identified in Article II.**
- 7. Held-away-from-home terminal time will be up to a maximum of eight (8) hours in every twenty-four (24) hour period beginning after the first sixteen (16) hours.**
- 8. All through freight service will be rotary pool freight service with blue print board provisions for placing employees in the proper order at the home terminal and at the far terminal. Under a blue print board operation, employees are not run-around if used on the train for which called.**

**NOTE 1: Item B7, above, will not apply to the OMC-North Platte nor the North Platte-OMC operation. The**

traditional HAHT payment for that operation will continue to apply.

NOTE 2: Item B2, above, will reflect the CNW rate of pay for those new operations governed by the CNW Agreement.

- C. Work trains, local and road switcher service may be established to operate in turnaround service or to operate from any location to any other location within any seniority territory outlined in Article I. Should this service be desired by the Carrier and the desired service would cross seniority lines, such service may be implemented upon a five (5) day notice by the Carrier to the involved General Chairmen. The service will be manned by employees from the seniority territory where the home terminal of the assignment is located. The involved local chairmen may make arrangements for the equalization of work; however, such equalization must be cost neutral to the Carrier.
- D. All pool freight and all other road service crews may receive and/or leave trains anywhere within the boundaries of the terminal of their runs in accordance with the provisions of all national agreements.

NOTE: "Anywhere within the terminal" is defined to include the CTC and OMC as those complexes are defined in Article III and to include the consolidated terminals of St. Louis, Kansas City and South Morrill.

- E. 1. Turnaround service/Hours of Service relief for the new operations listed in Section A, above, may be performed as follows:
  - (a) When crews are heading toward the home terminal, the protecting extra board may be used.
  - (b) When crews are heading toward the far terminal, an extra board at that terminal, if available, may be used in any direction out of the extra board point. The first-out away-from-home terminal crew also may be used.

NOTE 1: Crews used for this service, whether extra or in the pool, may be used for multiple "dogcatches" during a tour of duty.

NOTE 2: When the first-out away-from-home terminal crew completes this service, the crew may be used for either a through train or for additional turnaround service/Hours of Service relief. Any crew used for two consecutive turnaround service/Hours of Service relief jobs will be placed first out after rest for a through train or deadheaded back to the home terminal.

2. Nothing in this Section E prevents the use of other employees to perform work currently permitted by other agreements, including, but not limited to, yard crews performing hours of service relief within the road/yard zone, ID crews performing service and deadheads between terminals, traveling switch engines (TSE's) handling trains within their zones and using an employee from a following train to work a preceding train.
- F.
1. The new operations listed in Section A, above, may be implemented separately, in groups or collectively, upon five (5) days' notice by the Carrier to the involved General Chairman.
  2. The new operations listed in Section A, above, may be run by the Carrier in pool service, extra service or any other type of service necessary to meet the demands of the service and/or to meet customer requirements.

### III. Terminals/Complexes

- A. The following terminal and complex consolidations will be implemented on the Implementation Date of this Agreement in accordance with the provisions set forth in this Article III:
1. Kansas City
    - (a) The existing switching limits at Kansas City will now include the CNW rail line to CNW Mile Post 500.3.
    - (b) All road crews (MP, including former CNW, and UP) may receive/leave their trains at any location within the boundaries of the new Kansas City Consolidated terminal and may perform work anywhere within those boundaries. The Carrier will designate the on/off duty point(s) for road crews.

- (c) All yard assignments in the new consolidated Kansas City terminal will be governed by the MP Agreement and manned by MP employees from the MP Consolidated Roster, subject to the prior rights requirement of Article I.
- (d) All rail lines, yards and/or sidings within the new consolidated Kansas City terminal will be considered as common to all crews working in, into and out of Kansas City. All crews will be permitted to perform all permissible road/yard work. Interchange rules are not applicable for intra-carrier moves within the consolidated terminal.

## 2. St. Louis

- (a) The existing switching limits at St. Louis will now include the CNW rail line to CNW Mile Post 144.
- (b) All road crews (MP and C&EI, including former CNW) may receive/leave their trains at any location within the boundaries of the new St. Louis consolidated terminal and may perform work anywhere within those boundaries. The Carrier will designate the on/off duty point(s) for road crews.
- (c) All yard assignments in the new consolidated St. Louis terminal will be governed by the MP Agreement and manned by MP employees from MP Merged Roster #1, subject to the prior rights requirement of Article I.
- (d) All rail lines, yards and/or sidings within the new consolidated St. Louis terminal will be considered as common to all crews working in, into and out of St. Louis. All crews will be permitted to perform all permissible road/yard moves. Interchange rules are not applicable for intra-carrier moves within the consolidated terminal.

## C. Chicago Terminal Complex

1. The new consolidated Chicago Terminal Complex (CTC) will be the entire area within and including the following trackage:

Waukegan (CNW Mile Post 41.0 on the Kenosha Branch) southwest paralleling the EJE rail line to Geneva (CNW Mile Post 41.0 on the Geneva Subdivision), continuing on a parallel

with the EJE line south through Normantown and East Joliet through Brisbane, Matteson, Chicago Heights (south to the current southern boundary of Mile Post 30.0 on the C&EI) to Griffith, then north on a parallel with the EJE through Van Loon and Ivanhoe, and then east paralleling the EJE line through Kirk and Gary Yard.

2. All road crews (CNW and C&EI) may receive/leave their trains at any location within the boundaries of the new CTC and may perform any work anywhere within those boundaries. The Carrier will designate the on/off duty point(s) for road crews.
3. All yard and non-through freight assignments headquartered within the CTC will be governed by the CNW Agreement and manned by employees from the new CTC seniority roster, subject to the prior rights requirements of Article I.

NOTE: This provision will not be applicable to C&EI non-through freight road assignments headquartered within the CTC which operate onto C&EI road territory.

4. All rail lines, yards and/or sidings within the new CTC will be considered as common to all crews working in, into and out of the CTC. All crews will be permitted to perform all permissible road/yard moves. Interchange rules are not applicable for intra-carrier moves within the CTC.

D. Omaha Metro Complex

1. The new consolidated Omaha Metro Complex (OMC) will be the entire area within and including the following trackage:

Fremont (UP Mile Post 44.75 - west) to Omaha/Council Bluffs (UP Mile Post 473.1 - south) to Missouri Valley (CNW Mile Post 327.2 - east) and return to Fremont. At California Junction, trackage north to CNW Mile Post 10.2 will be included.

NOTE: The Omaha Metro Complex described above is part of the larger UP/UTU Merged Roster #1 seniority district described in Article I.

2. All road crews (UP, including former CNW, and MP) may receive/leave their trains at any location within the boundaries of the



new complex and may perform any work within those boundaries. The Carrier will designate the on/off duty point(s) for road crews.

3. All yard and non-through freight assignments headquartered within the complex will be governed by the UP Agreement and manned by employees from the new UP/UTU Merged Roster #1 seniority district, subject to the prior rights requirement of Article I.
4. All rail lines, yards and/or sidings within the new complex will be considered as common to all crews working in, into and out of the complex. All crews will be permitted to perform all permissible road/yard moves. Interchange rules are not applicable for intra-carrier moves within the complex.
5. In addition to the consolidated complex, the UP terminal at Omaha/Council Bluffs and the CNW terminal at Council Bluffs will be consolidated into a single terminal controlled by UP. The existing UP switching limits at Omaha/Council Bluffs will now include the CNW rail line to CNW Mile Post 345.0.

**E. South Morrill**

1. South Morrill will be a consolidated terminal with the following boundaries: UP Mile Post 156.8 to UP Mile Post 166.0. All road crews (UP and CNW) may receive/leave their trains at any location within the boundaries of the consolidated South Morrill Terminal and may perform any work anywhere within those boundaries.
2. The following will be applicable to achieve efficient operations in and around the common UP/CNW terminal of South Morrill, Nebraska:
  - (a) UP crews (destined North Platte or Cheyenne) may receive their trains up to thirty (30) miles westward on the CNW from their existing far terminal of South Morrill. CNW crews (destined Bill) may receive their trains up to thirty (30) miles eastward on the UP (toward North Platte) or westward on the UP (toward Cheyenne) from their existing far terminal of South Morrill.
  - (b) The thirty (30) miles listed in (a), above, will run east from UP mile Post 156.8 to UP Mile Post 126.8 and will run west from UP Mile Post 166.0 to CNW Mile Post 24.8 and UP Mile Post 196.0.

- (c) Crews relieving trains or extra crews called for this service may also perform all work in connection with the train regardless of where the train is received.
  - (d) Crews performing this service will be paid the actual miles run.
  - (e) Initial terminal delay for crews performing this service will be governed by the applicable collective bargaining agreements and will not again commence when the crew operates into South Morrill. For the operation back through South Morrill, South Morrill will be considered an intermediate point.
  - (f) Departure and/or terminal runarounds will not apply for crews arriving/departing South Morrill under this Section.
3. Nothing in the Section E prevents the use of other employees to perform work currently permitted by other agreements, including, but not limited to, TSE's handling trains within their zone, an employee from a following train to work a preceding train and the CNW extra board at South Morrill to perform service in all directions on both CNW and UP trackage.

**F. General Conditions for Terminal/Complex Operations**

- 1. Initial delay and final delay at Kansas City and St. Louis terminal and at the Chicago and Omaha complexes will be governed by the applicable collective bargaining agreements, including the Duplicate Pay and Final Terminal Delay provisions of the 1985s and 1991 National Agreements.
- 2. Employees will be transported to/from their trains to/from the designated on/off duty point.
- 3. The current application of National Agreement provisions provides for the following regarding work and Hours of Service relief under the Combined Road/Yard Service Zone, which shall continue to apply:
  - (a) Yard crews at Kansas City and St. Louis may perform such service in all directions out of the new consolidated terminals.
  - (b) Yard crews at the CTC may perform such service in all directions out of individual yards (switching limits) within the complex.

- (c) Yard crews at the Omaha Metro Complex may perform such service in all directions out of the individual yards (switching limits) within the complex.
- 4. Nothing in this Section F will prevent the use of other employees to perform this work and/or relief in any way permitted by applicable agreements.

#### **IV. Extra Boards**

##### **A. Terminals/Complexes**

###### **1. Kansas City -**

The current MP consolidated roster extra board (yard) will protect the work in the consolidated terminal. The current MP consolidated roster extra board (road north) will protect the Kansas City, OMC/Des Moines operation. This service for these extra boards is in addition to other service protected by these extra boards.

###### **2. St. Louis -**

The current Merged Roster #1 extra board will protect the work in the consolidated terminal. The current C&EI road extra board at St. Louis will protect the Monterey Mine and the St. Louis - Chicago/South Pekin operations. This service for these extra boards is in addition to other service protected by these extra boards.

###### **3. Chicago Consolidated Complex -**

The current CNW Chicago Freight Terminal #7 extra board will become the CTC extra board and will protect the work (yard and non-through freight) within the CTC, including former C&EI, Eastern #1 and Northeastern #2 work. This service is in addition to any other service protected by that extra board. Prior rights will not be applicable to positions on or operation of this extra board.

###### **4. Omaha Metro Complex -**

The current UP/UTU Seniority District #1 combination extra board will protect the work in the complex and all assignments headquartered within the complex, including the new operations provided for in

Article II. This service for this extra board is in addition to other service protected by this extra board.

5. Outlying Points

- (a) The Carrier may establish extra boards at locations governed by the UP Agreement on the new OMC seniority territory. The locations may include, but are not limited to, Boone, Clinton and Sioux City.
- (b) The Carrier may establish extra boards at locations governed by the CNW Agreement on the new Midwest seniority territory. The locations may include, but are not limited to, Boone, Mason City, Eagle Grove and Estherville.

- B. Nothing in this Article IV will prevent the use of other employees to perform this work in any way permitted by applicable agreements.

**V. Implementation**

- A. The Carrier will give at least forty (40) days' written notice of its intent to implement this Agreement.
- B.
  - 1. Concurrent with the serving of its notice, the Carrier will post a description of those new merged seniority districts which will require former CNW employees to make a seniority election. Those seniority districts are MP Consolidated, C&E road roster at St. Louis, the new CNW Chicago Terminal Complex, the new UP Omaha Metro Complex and the new CNW Midwest.
  - 2. The Carrier will determine the number of employees to be transferred to those new rosters in accordance with Article I.
  - 3. Fifteen (15) days after posting of the information described in B, above, the appropriate Directors of Labor Relations, General Chairmen and Local Chairmen will convene a workshop to implement assembly of the merged seniority rosters. Employees on a roster from where work is being transferred will be canvassed, in seniority order for each roster, and required to make an election as to which roster the employees wishes to be transferred or whether the employee wishes to remain on the current roster. (Staying will not be possible on those rosters which are being eliminated.) Positions on the new roster will be awarded on the basis of the employee's engine



service seniority. Failure or refusal of an employee to make an election will result in the Carrier making the assignment for the employee.

4. At the end of the workshop, which will last no more than five (5) days, the participants will have finalized agreed-to rosters which will then be posted for information and protest in accordance with the applicable agreements. If the participants have not finalized agreed-to rosters, the Carriers will prepare such rosters, post them for information and protest, will use those rosters in assigning positions and will not be subject to claims or grievances as a result.
- C. Once rosters have been posted, the Carrier will bulletin all positions covered by this agreement which require rebulletining for a period of five (5) calendar days. Employees may bid on these bulletined assignments in accordance with applicable agreement rules. However, no later than 10 (ten) days after the closing of the bulletins, assignments will be made .
- D. After all assignments are made, employees assigned to positions which require them to relocate will be given the opportunity to relocate within the next thirty (30) day period. During this period, the affected employees may be allowed to continue to occupy their existing positions. If required to assume duties at the new location immediately upon implementation date and prior to having received their thirty (30) days to relocate, such employees will be paid normal and necessary expenses at the new location until relocated. Payment of expenses will not exceed thirty (30) calendar days.
2. The Carrier may, at its option, elect to phase-in the actual implementation of this Agreement. Employees will be given ten (10) days' notice of when their specific relocation/reassignment is to occur.

## **VI. Protection**

1. Employees who are adversely affected as a result of the implementation of this Agreement will be entitled to the employee protection provided for in the New York Dock Conditions.
2. Employees currently eligible for other protective benefits must elect between those benefits and the benefits provided by this Agreement. This election must take place within ten (10) days after the adverse affect. No benefits will be paid until the employee has made an election.



3. There will be no pyramiding of benefits.
4. Health and Welfare benefits will be provided in accordance with the provisions of the applicable collective bargaining agreement.

#### **VII. Familiarization**

Employees will not be required to lose time or "ride the road" on their own time in order to qualify for new operations. The Carrier will determine the number of familiarization trips needed and may use high-rails to familiarize employees over a new territory. Issues concerning individual qualifications should be handled with local operating officers.

#### **VIII. Conflict of Agreements**

Should the provisions of any UTU Collective bargaining agreement conflict with the terms and intent of this Agreement, this Agreement will apply.

The Carrier may serve the required notices at any after the date of this Arbitration Award. Dated this \_\_\_\_ day of \_\_\_\_\_, 199\_.

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John J. Mikrut, Jr.

## ATTACHMENT A

Actual miles (miles run on the train) will be paid on the basis of the chart set forth below. The miles listed for some locations reflect the mileage payment required under existing agreements. If a crew receives/leaves a train on main/line territory within a consolidated complex out outside a yard, the mileage paid will be based on the main line mile post nearest the train.

OMC (Council Bluffs)	- Clinton	341 miles
	- Boone	144 miles
	- Des Moines	199 miles
	- Mason City	251 miles
	- Worthington	185 miles
	- Sioux City	96 miles
	- Sergeant Bluff	88 miles
	- North Platte	282 miles *
	- Grand Island	144 miles *
	- Marysville	160 miles *
	- Kansas City	204 miles
OMC (Missouri Valley)	- Clinton	320 miles
	- Boone	124 miles
	- Des Moines	178 miles
	- Mason City	231 miles
	- Worthington	165 miles
	- Sioux City	76 miles
	- Sergeant Bluff	68 miles
	- North Platte	281 miles
	- Grand Island	145 miles
	- Marysville	180 miles
	- Kansas City	224 miles
OMC (Fremont)	- Clinton	357 miles
	- Boone	161 miles
	- Des Moines	215 miles
	- Mason City	267 miles
	- Worthington	202 miles
	- Sioux City	113 miles
	- Sergeant Bluff	105 miles
	- North Platte	244 miles
	- Grand Island	108 miles
	- Marysville	145 miles
	- Kansas City	238 miles

These miles are calculated with 4 additional miles working into Council Bluffs to MP 1. We pay 4 miles less working out of Council Bluffs.

These are the current miles and they are to be changed if additions or reductions in the mileage occur.

## **IMPLEMENTING AGREEMENT MODIFICATIONS**

- I. **Seniority and Work Consolidation**. To achieve the work efficiencies and allocation of forces that are necessary to make the merged Carrier operate efficiently as a united system, the following seniority consolidations will be made:

A. **St. Louis, Missouri**

1. (a) The CNW employees assigned to CNW yard assignments at Madison, Illinois, on September 1, 1995, including any extra board assignments, will be placed on the bottom of Missouri Pacific (MP) Merged Roster No. 1 and will have prior rights to the former CNW regularly assigned yard assignments at Madison. Should those former CNW assignments be abolished or consolidated with other MP assignments, the former CNW employees will have no prior rights. However, should those former CNW assignments be reestablished within six (6) months of their abolishment or consolidation, prior rights shall apply. Any newly established assignments will not be subject to prior rights.

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2. (a) The CNW employee(s) assigned to the Monterey Mine assignment on September 1, 1995, will be placed on the bottom of the Chicago and Eastern Illinois (C&EI) road roster at St. Louis and will have prior rights to the Monterey Mine assignment, if regularly assigned. Should this assignment be abolished or consolidated with other C&EI assignments, the former CNW employee(s) will have no prior rights. However, should those former CNW assignments be reestablished within six (6) months of their abolishment or consolidation, prior rights shall apply. Any newly established assignments will not be subject to prior rights.

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B. **Kansas City, Missouri**

1. (a) The CNW employees assigned to CNW yard assignments at Kansas City on September 1, 1995, will be placed on the bottom of the MP Consolidated Roster and will have prior rights to the former CNW yard assignments. Should those former CNW assignments be abolished or consolidated with other MP assignments, those former CNW employees will have no prior rights. However, should those former CNW assignments be reestablished within six (6) months of their abolishment or consolidation, prior rights shall apply. Any newly established assignments

will not be subject to prior rights.

2. (a) The number of CNW employees assigned to road service work between Kansas City and Des Moines (currently headquartered at Kansas City) on September 1, 1995, and the CNW employees on the CNW extra board at Kansas City, will all be placed on the bottom of the MP Consolidated Roster and will have prior rights to their percentage in the new Kansas City to Omaha Metro Complex (OMC)/Des Moines pool. The percentage will be as follows: 75% for the MP Consolidated Roster and 25% for the former CNW employees. The percentage for the former CNW employees need not be maintained as those employees attrite or are unavailable. Any newly established assignments will not be subject to prior rights.

\*\*\*

C. Chicago, Illinois Complex

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3. (b) Each employee placed on the new CTC roster will be provided prior rights to their former work now included in the CTC. Current assignments retained in the new CTC will not be rebulletined. Should any former assignments subsequently be abolished or consolidated with other CTC assignments, there will be no prior rights to those assignments. However, should those former CNW assignments be reestablished within six (6) months of their abolishment or consolidation, prior rights shall apply. Any newly established assignments will not be subject to prior rights. The new CTC seniority roster will indicate prior rights in the following manner:

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D. Omaha

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2. The new UP/UTU Merged Roster #1 will consist of the following employees:

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- (d) The number of CNW employees assigned to work on the east-west main line between the OMC and Clinton, Iowa, on September 1, 1995.

NOTE 1: "Assigned to work on the east-west main line between Clinton

and the OMC" is defined as those through freight assignments with either Clinton or Boone, Iowa, as the pre-implementation home terminal and with either Boone, Clinton, Fremont or Council Bluffs as the pre-implementation away-from-home terminal. Only the number of employees at Boone in through freight service that are necessary to protect their equity in OMC - Boone and OMC - Clinton operations will be transferred to the UP. Pre-implementation extra board assignments at Clinton and pre-implementation extra board assignments at Boone are included in this definition.

\* \* \*

3. (b) Each employee placed on the new UP/UTU Merged Roster #1 will retain their current assignment (if operated) and will be provided prior rights. Prior rights will also include the new operations established in accordance with Article II, Section A, Paragraph (1), but prior rights will not apply to assignments on nor operation of the UP extra boards at the OMC. Should any former CNW assignment be abolished or consolidated with UP assignments, the former CNW employees will have no prior rights to those assignments. However, should those former CNW assignments be reestablished within six (6) months of their abolishment or consolidation, prior rights shall apply. Any newly established assignments will not be subject to prior rights; however, additions to pool freight service shall not be considered "newly established assignments" as used in this sentence. The UP/UTU Merged Roster #1 seniority roster will indicate prior rights in the following manner:

\* \* \*

#### F. Seniority and Service Rights

1. The following will apply to employees transferring from CNW to UP (Sections A, B and D of this Article I) and to employees transferring from UP to CNW (Section C of this Article I):

\* \* \*

2. CNW employees (road and yard) who are transferred to either UP or MP rosters at the Omaha Metro Complex, Kansas City or St. Louis will not be required to place on a UP or MP assignment with an on-duty point that is more than thirty (30) miles outside the Complex or Terminal limits as set forth in this Agreement. Should such an employee not be able to hold a UP or MP assignment at or within thirty (30) miles of the Complex or Terminal or on the employee's prior rights seniority that has been incorporated into the UP or MP seniority territory, the employee will be treated as a



dismissed employee under the New York Dock conditions.

EXAMPLE: A CNW employee working at Sioux City, Iowa, is placed on the UP Zone 100 roster at Omaha and works in pool freight service to Sioux City. The employee is reduced from the pool and cannot hold another assignment with an on-duty point at or within thirty (30) miles of the Omaha Metro Complex limits. The only position the employee can hold is at North Platte, Nebraska. The employee may take the North Platte assignment or elect to be treated as a dismissed employee.. If the employee could hold a yard assignment at Sioux City, the employee would be obligated to take that assignment because it was on the employee's prior rights seniority that was incorporated into Zone 100.

## II. New Operations

- A. The following new operations may be implemented in accordance with the provisions set forth in this Article II:

\* \* \*

2. Under the CNW Agreement with Boone as the home terminal: Boone-Clinton.

\* \* \*

- B. The terms and conditions of the new operations set forth in Section A, above, are as follows:

\* \* \*

8. All through freight service will be rotary pool freight service with blue print board provisions for placing employees in the proper order at the home terminal and at the far terminal. Under a blue print board operation, employees are not run-around if used on the train for which called.

NOTE 3: Existing UP and MP Interdivisional Agreements are not impacted by this Agreement.

\* \* \*

## III. Terminals/Complexes

\* \* \*

- E. South Morrill

\* \* \*

2. The following will be applicable to achieve efficient operations in and around the common UP/CNW terminal of South Morrill, Nebraska:

\* \* \*

- (d) Crews performing this service will be paid an additional one-half (1/2) day's pay for this service.

\* \* \*

#### F. General Conditions for Terminal/Complex Operations

\* \* \*

2. For all locations, road employees will be transported to/from their trains to/from the designated on/off duty point in accordance with applicable rules. Yard Extra Board employees in the Chicago Terminal Complex will report to Proviso and will be transported to/from their assignment if the assignment is more than twenty (20) miles from the employee's home by the most direct highway route.

\* \* \*

### IV. Extra Boards

#### A. Terminals/Complexes

\* \* \*

#### 5. Outlying Points -

- (a) The Carrier may establish extra boards at locations governed by the UP Agreement on the new OMC seniority territory where extra boards do not now exist.
- (b) The Carrier may establish extra boards at locations governed by the CNW Agreement on the new Midwest seniority territory where extra boards do not now exist.

\* \* \*

### V. Implementation

\* \* \*

- E.
1. At St. Louis, Kansas City, Chicago, Omaha and the Midwest, employees will transfer from one seniority district to another. The determination as to which employee will transfer is an individual determination based upon who was on a transferred assignment on September 1, 1995. There are two exceptions to this approach. At Chicago, the number of CNW Eastern #1 and Northeastern #2 employees working in Chicago on September 1, 1995, not the individual, is the determining factor. In the Midwest, the number of Southern #3 and Central #5 remaining after all other transfers is the determining factor.
  2. As an alternative to this process (set forth in Article I and this Article V), the Organization may elect the following process which will be identified as Section B of Article V and replace the Section B set forth in the Carrier's proposal:
    - B. 1. Concurrent with the serving of its notice, the Carrier will post a description of the new and/or merged seniority districts. Included in the description will be the number of employees transferring to the new and/or merged seniority districts identified by the district the employees will be transferring from. For example:

St. Louis - To MP Merged Roster No. 1 from CNW Eastern #1 - 3  
                    To C&EI road roster from CNW Eastern #1 - 6  
Kansas City - To MP Consolidated from CNW Southern #3 - 20
    2. The Carrier will determine the number of employees to be transferred.
    3. Fifteen (15) days after posting of the information described in B. 1., above, the appropriate Directors of Labor Relations, General Chairmen and Local Chairmen will convene a workshop to implement assembly of the merged rosters. Employees on a roster where work is being transferred will be canvassed, in seniority order for each roster, and will be required to make an election as to which new roster the employee wishes to be transferred or whether the employee wishes to remain on the current roster. (Staying will not be possible on those rosters which are being eliminated.) Positions on the new roster will be awarded on the basis of the employee's train service seniority. Failure or refusal of an employee to make an election will result in the Carrier making the assignment for the employee. All positions listed by the Carrier for transfer must be filled.
    4. At the end of the workshop, which will last no more than five (5) days, the participants will have finalized agreed-to rosters which

will then be posted for information and protest in accordance with the applicable agreements. If the participants have not finalized agreed-to rosters, the Carrier will prepare such rosters, post them for information and protest, will use those rosters in assigning positions and will not be subject to claims or grievances as a result.

5. This alternative must be accepted unanimously by the involved General Committees. Without unanimity, the alternative will be considered rejected.
6. The Organization must notify the Carrier within five (5) days of the date of this Arbitration Award whether it accepts or rejects this alternative.
7. Nothing in this alternative affects in any way the placement of employees on the new roster (on the bottom or dovetail, as appropriate) nor does this alternative affect in any way the application of prior rights as set forth in Article 1. This alternative is solely designed to address a different manner for determining which employees transfer to a new and/or merged seniority district.

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- F. Prior to implementation of this Agreement, the parties will meet for purposes of reviewing the operational implementation thereof. Questions and answers pertaining thereto should be prepared by the parties covering that implementation. Should the parties be unable to agree upon any item, that/those matter(s) is/are to be referred to this panel for resolution.

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## VI. Protection

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1. Employees who are adversely affected as a result of the implementation of this Agreement will be entitled to the employee protection provided for in the New York Dock Conditions. With the following addition: Employees required to relocate under this Agreement will have the option of electing the relocation benefits provided for in the New York Dock Conditions or an in lieu allowance in the amount of \$28,000.00 less applicable taxes.

\*\*\*

5. CNW employees holding seniority in train service and working as such on the date of this Arbitration Award will be entitled to the protective benefits provided for in Article XIII of the January 27, 1972 UTU National Agreement for the implementation of interdivisional service if they satisfy the qualifying requirements set forth below:

(a) A CNW employee holding train service seniority and working as such on the date of this Arbitration Award; and,

(b) Assigned to one of the new operations set forth in Article II, Section A of this Implementing Agreement on the implementation date of the new operation. Should implementation of a new operation be phased-in, employees involved in the phase-in will also qualify.

\* \* \*

## **VII. Familiarization**

Employees will not be required to lose time or "ride the road" on their own time in order to qualify for new operations.

1. Employees will be provided with as sufficient number of familiarization trips in order to become familiar with a new territory. Issues concerning individual qualifications should be handled with local operating officers.
2. If road crew or extra board employees operating in CTC have not been in the Chicago Terminal Complex within six (6) months prior to assignment, Carrier will provide a local operating officer or pilot if requested. Issues concerning individual qualifications should be handled with local operating officers.

\* \* \*

\* \* \* \* \*



**IMPLEMENTING AGREEMENT MODIFICATIONS**

- I. **Seniority and Work Consolidation.** To achieve the work efficiencies and allocation of forces that are necessary to make the merged Carrier operate efficiently as a unified system, the following seniority consolidations will be made:

The following will replace the seniority and transfer provisions of Article I, Sections A 1(a) and 2(a); B 1(a) and 2(a); C 3(b); and, D 3(b).

St. Louis - The number of CNW employees assigned to CNW yard assignments at Madison, Illinois, on March 1, 1996; the number of CNW employee(s) assigned to the Monterey Mine assignment on March 1, 1996; and, the number of CNW employees assigned to work South Pekin, Illinois, to St. Louis (in through freight only, excluding extra board employees) will be placed on the bottom of the Missouri Pacific (MP) St. Louis Yard Roster No. 1 and the bottom of the C&E road roster at St. Louis. These employees will have prior rights to the former CNW yard assignments, the Monterey Mine assignment(s) and to a maximum of four assignments in the St. Louis to South Pekin/Chicago pool. Should the yard assignments be abolished or consolidated, the employees will have an equitable percentage of the remaining yard assignments at St. Louis. The percentage will be determined by the parties in accordance with the standard engine hour formula arrangement. Should the St. Louis to South Pekin/Chicago pool be reduced so that the former CNW employees cannot maintain four assignments, the employees will have an equitable percentage of the remaining pool assignments. The percentage will be determined in accordance with the standard miles paid formula arrangement.

Kansas City - The number of CNW employees assigned to CNW assignments at Kansas City on March 1, 1996; the number of CNW employees assigned to road service work between Kansas City and Des Moines (currently headquartered at Kansas City) on March 1, 1996; and the number of CNW employees on the CNW extra board at Kansas City will all be placed on the bottom of the MP Consolidated Roster at Kansas City. These employees will have prior rights to the former CNW yard assignments, to an equitable percentage of the pool assignments in the Kansas City to Omaha Metro Complex/Des Moines pool and to an equitable percentage of

the extra board assignments on the protecting extra board. The percentage of equity will be determined by the parties in accordance with the standard miles paid for formula arrangement. Should the yard assignments be abolished or consolidated, the employees will have an equitable percentage to the remaining yard assignments at Kansas City. The percentage will be determined by the parties in accordance with the standard engine hour formula arrangement.

Chicago - The new CTC seniority roster, set forth in Paragraph 3 (b) will be established. However, current C&EI and all CNW employees, when working assignments at Yard Center or CHTT, will work under the C&EI Agreement and the current C&EI employees will be considered C&EI employees. Current CNW and C&EI employees, when working all other assignments in the CTC, will work under the CNW Agreement.

There will be a separate C&EI extra board in the CTC to protect C&EI assignments at Yard Center and CHTT. Current C&EI and CNW employees when assigned to the C&EI extra board, will be considered C&EI employees. Employees from one CTC extra board may be used on other CTC extra boards when one extra board is exhausted.

The C&EI presence in the CTC will be eliminated by attrition. Attrition is defined as follows: Extra Board - when 51% or more of the assignments are manned by CNW employees; Regular Assignments - when no current C&EI employee may hold a regular assignment.

Current C&EI, Eastern #1 and Northeastern #2 employees placed on the CTC seniority roster will retain their respective road rights.

#### Omaha and the Omaha Metro Complex

The new UP/UTU Merged Roster #1 seniority roster set forth in Paragraph 3(b) will be established and all CNW employees placed on that roster will have their prior rights established in Article 1 as their primary prior rights. In addition, they will have secondary prior rights to all other former CNW work transferred to Merged Roster #1. Secondary seniority will be exercised in accordance with the employee's standing on Merged Roster #1.

• • •

## F. Seniority and Service Rights

1. The following will apply to employees transferring from CNW to UP (Sections A, B and D of this Article I) and to employees transferring from UP to CNW (Section C of this Article I):

- (a) All train service seniority with the employees' original railroad will be eliminated except as provided for in this Article I;

. . .

- (h) Current CNW employees transferring to the UP, MP or C&EI will be treated as crew consist protected if they were crew consist protected on the CNW.

NOTE: It is recognized it will be necessary to make adjustments upon the integration of CNW employees into the UP, MP or C&EI. For example, the number of reserve board positions available to the newly integrated employees will need to be determined.

2. CNW employees (road and yard) who are transferred to either UP or MP rosters at the Omaha Metro Complex, Kansas City or St. Louis terminals will not be required to place on a UP or MP assignment with an on-duty point that is more than thirty (30) miles outside the Complex or Terminal limits as set forth in this Agreement. Should such employee not be able to hold a UP or MP assignment at or within thirty (30) miles of the Complex or Terminal or on the employee's prior rights seniority territory that has been incorporated into the UP or MP seniority territory, the employee will be treated as a dismissed employee under the New York Dock conditions.

. . .

## II. New Operations

- A. The following new operations may be implemented in accordance with the provisions set forth in this Article II:

. . .

2. Under the CNW Agreement with Boone as the home terminal: Boone - Clinton.

• • •

- B. The terms and conditions of the new operations set forth in Section A, above, are as follows:

5. Meal Allowance and Eating Enroute - Meal allowances and eating enroute will be governed by Section 2(d) and Section 2(e) of Article IX of the October 31, 1985, National Agreement (UTU), as amended by the November 1, 1991, Implementing Agreement. CNW operations not changed by this Article II will retain the applicable meal allowance and eating enroute rules.

• • •

8. All through freight service will be rotary pool freight service with blue print board provisions for placing employees in the proper order at the home terminal and at the far terminal. Under a blue print board operation, employees are not run-around if used on the train for which called.

• • •

NOTE 3: Existing UP and MP Interdivisional Agreements are not impacted by this Agreement.

• • •

### **III. Terminals/Complexes**

• • •

#### **E. South Morrill**

• • •

2. The following will be applicable to achieve efficient operations in and around the common UP/CNW terminal of South Morrill, Nebraska:

• • •

- (d) Crews performing this service will be paid an additional one-half (1/2) day's pay for this service.

• • •

#### **IV. Extra Boards**

• • •

##### **A. Terminals/Complexes**

• • •

##### **5. Outlying Points -**

- (a) The Carrier may establish extra boards at locations governed by the UP Agreement on the new OMC seniority territory where extra boards do not now exist.
- (b) The Carrier may establish extra boards at locations governed by the CNW Agreement on the new Midwest seniority territory where extra boards do not now exist.

• • •

#### **V. Implementation**

- E. 1. At St. Louis, Kansas City, Chicago, Omaha and the Midwest, employees will transfer from one seniority district to another. The determination as to which employee will transfer is an individual determination based upon who was on a transferred assignment on September 1, 1995. There are two exceptions to this approach. At Chicago, the number of CNW Eastern #1 and Northeastern #2 employees working in Chicago on September 1, 1995, not the individual, is the determining factor. In the Midwest, the number of Southern #3 and Central #5 employees remaining after all other transfers is the determining factor.



2. As an alternative to this process (set forth in Article I and this Article V), the Organization may elect the following process which will be identified as Section B of Article V and replace the Section B set forth in the Carrier's proposal:

- B. 1. Concurrent with the serving of its notice, the Carrier will post a description of the new and/or merged seniority districts. Included in the description will be the number of employees transferring to the new and/or merged seniority districts identified by the district the employees will be transferring from. For example:

St. Louis - To MP Merged Roster No. 1 from  
CNW Eastern #1 - 3  
To C&EI road roster from CNW  
Eastern #1 - 6  
Kansas City - To MP Consolidated from CNW  
Southern #3 - 20

2. The Carrier will determine the number of employees to be transferred.
3. Fifteen (15) days after posting of the information described in B. 1. above, the appropriate Directors of Labor Relations, General Chairmen and Local Chairmen will convene a workshop to implement assembly of the merged rosters. Employees on a roster where work is being transferred will be canvassed, in seniority order to each roster, and will be required to make an election as to which new roster the employee wishes to be transferred or whether the employee wishes to remain on the current roster. (Staying will not be possible on those rosters which are being eliminated.) Positions on the new roster will be awarded on the basis of the employee's train service seniority. Failure or refusal of an employee to make an election will result in the Carrier making the assignment for the employee. All positions listed by the Carrier for transfer must be filled.

4. At the end of the workshop, which will last no more than five (5) consecutive days, the participants will have finalized agreed - to rosters which will then be posted for information and protest in accordance with the applicable agreements. If the participants have not finalized agreed - to rosters, the Carrier will prepare such rosters, post them for information and protest, will use those rosters in assigning positions and will not be subject to claims or grievances as a result.
5. This alternative must be accepted unanimously by the involved General Committees. Without unanimity, the alternative will be considered rejected.
6. The Organization must notify the Carrier within five (5) calendar days of the date of this Arbitration Award whether it accepts or rejects this alternative.
7. Nothing in this alternative affects in any way the placement of employees on the new roster (on the bottom or dovetail, as appropriate) nor does this alternative affect in any way the application of prior rights as set forth in Article 1. This alternative is solely designed to address a different manner for determining which employees transfer to a new and/or merged seniority district.

• • •

- F. Prior to implementation of this Agreement, the parties will meet for no more than ten (10) calendar days, for purposes of reviewing the operational implementation thereof. Questions and answers pertaining thereto should be prepared by the parties covering that implementation. Should the parties be unable to agree upon any item, that/those matter(s) is/are to be referred to this panel for resolution.

• • •

**VI. Protection**

• • •

1. Employees who are adversely affected as a result of the implementation of this Agreement will be entitled to the employee protection provided for in the New York Dock Conditions. With the following addition: Employees required to relocate under this Agreement will have the option of electing the relocation benefits provided for in the New York Dock Conditions or an in lieu allowance in the amount of \$28,000.00 less applicable taxes.

• • •

5. CNW employees holding seniority in train service and working as such on the date of this Arbitration Award will be entitled to the protective benefits provided for in Article XIII of the January 27, 1972 UTU National Agreement for the implementation of interdivisional service if they satisfy the qualifying requirements set forth below:

- (a) A CNW employee holding train service seniority and working as such on the date of this Arbitration Award; and,
- (b) Assigned to one of the new operations set forth in Article II, Section A of this Implementing Agreement on the implementation date of the new operation. Should implementation of a new operation be phased - in, employees involved in the phase - in will also qualify.
- (c) The provisions for establishing interdivisional service, the terms and conditions for such service and the protection afforded for the establishment of such service as provided for in the 1972, 1985 and 1991 UTU National Agreements, shall apply to the entire CNW.

• • •

**VII. Familiarization**

Employees will not be required to lose time or "ride the road" on their own time in order to qualify for new operations.

1. Employees will be provided with a sufficient number of familiarization trips in order to become familiar with a new territory. Issues concerning individual qualifications should be handled with local operating officers.
2. If road crew or extra board employees operating in CTC have not been in the Chicago Terminal Complex within six (6) months prior to assignment, Carrier will provide a local operating officer or pilot if requested. Issues concerning individual qualifications should be handled with local operating officers.

• • •  
• • • • •

ARBITRATION PURSUANT TO  
ARTICLE I, SECTION 4, OF THE  
NEW YORK DOCK CONDITIONS

\* \* \* \* \*  
In the matter of arbitration between \*  
\*  
United Transportation Union and \*  
Brotherhood of Locomotive Engineers \*  
\*  
-and- \*  
\*  
CSX Transportation, Inc. \*  
\* \* \* \* \*

Background

CSX Transportation, Inc. (hereinafter referred to as CSXT or the Carrier) is a Class I railroad that has evolved from the merger and acquisition of some eleven (11) railroads and their subsidiaries pursuant to the authorization of the Interstate Commerce Commission (hereinafter referred to as the ICC). Since 1962, the Baltimore & Ohio Railroad (hereinafter referred to as the B&O) and the Chesapeake & Ohio Railroad (hereinafter referred to as the C&O) have been commonly controlled and managed. These railroads and some subsidiaries comprised the Chessie System, Inc. The Chessie System, Inc. also controlled the Western Maryland Railway Company (hereinafter referred to as the WM).

In 1980, the Chessie System, Inc. and the Seaboard Family Lines, Inc. were merged to form CSX Transportation, Inc. The ICC approved this merger in Finance Docket No. 28905. In this same Finance Docket, the ICC also authorized the CSX Corporation to control the Richmond, Fredericksburg & Potomac Railroad (hereinafter referred to as the RF&P) through stock ownership.



In 1983, through a Notice of Exemption, the ICC authorized the B&O to operate the railroad properties of WM as part of the B&O system. (Finance Docket No. 30160). In 1987, the ICC issued another Notice of Exemption in Finance Docket No. 31033 merging the B&O into the C&O. As a result of this merger, the B&O ceased to exist as a separate corporate entity. In 1987, the ICC also authorized the merger of the C&O into CSX in Finance Docket No. 31106. In 1988, the ICC authorized the merger of the WM into CSXT (Finance Docket No. 31296). In 1992, the ICC authorized CSXT to operate the properties of the RF&P in the name and for the account of CSXT (Finance Docket No. 32020).

It should be noted that with the exception of the seminal 1980 merger between the Chessie System, Inc. and the Seaboard Coast Line Industries, Inc., all these other mergers were exempt from prior ICC approval. In all of these Finance Dockets, the ICC imposed the labor protective conditions set forth in New York Dock Railway-Control-Brooklyn Eastern District Terminal, 360 ICC 60, (1979) (hereinafter referred to as the New York Dock Conditions).

This arbitration under Article I, Section 4, of the New York Dock Conditions emanates from a January 10, 1994 notice that the Carrier served on four (4) United Transportation Union (UTU) General Committees of Adjustment and three (3) Brotherhood of Locomotive Engineers (BLE) General Committees of Adjustment. The Carrier claims that this notice was served in accordance with Article I, Section 4, of the New York Dock Conditions. The

Carrier contends that this New York Dock notice was served pursuant to ICC Finance Dockets 28905, 30160, 31033, 31106, 31296, 31954 and 32020.

The January 10, 1994, notice advised the affected UTU and BLE General Committees of Adjustment that CSXT intended to fully transfer, consolidate and merge the train operations and associated work force on the former WM, RF&P and a portion of the former C&O in the area between Philadelphia, PA., Richmond, VA., Charlottesville, VA., Lurgan, PA., Connellsville, PA., Huntington, W. VA. and Bergoo, W. VA. This proposed consolidation would include all terminals, mainlines, intersecting branches and subdivisions located in this territory between southern Pennsylvania and southern Virginia. This territory would be known as the Eastern B&O Consolidated District. It would encompass seven (7) existing seniority districts for train service employees and five (5) existing seniority districts for engine service employees.

The January 10, 1994, notice also advised the UTU and BLE General Committees of Adjustment that the aforementioned operations on the C&O, WM and RF&P would be merged into operations on the former Baltimore and Ohio Railroad and the affected train and engine service employees would be governed by the existing collective bargaining agreements on the former B&O applicable to train and engine service employees. Additionally, CSXT proposed that the working lists of the separate districts protecting service in this territory would be merged, including

establishment of common extra boards to protect service out of the respective supply points that would be maintained.

The notice outlined six (6) initial operational changes that the Carrier intended to make in order to facilitate the proposed transfer, consolidation and merger. However, CSXT subsequently withdrew its proposal requiring the Keystone Subdivision to protect certain service west of Cumberland. The Carrier suggested that a meeting be held on January 20, 1994, to commence negotiations for an implementing agreement pursuant to Article I, Section 4, of the New York Dock Conditions.

CSXT estimates that forty-five (45) train and engine positions would be abolished and forty-three (43) new positions would be created as a result of this consolidation. Some positions will be established at new locations. The Carrier asserts that no train or engine service employees will be furloughed as a result of the coordination. However, the Carrier's proposal will result in the closing of a number of supply points on the former C&O, B&O and WM. Reporting points would also change for some train and engine service employees. One seniority district would be created for the proposed Eastern B&O Consolidated District.

On February 10, 1994, the parties met to discuss the Carrier's January 10, 1994, notice. The UTU and the BLE took the position that the notice was improper for a myriad of reasons. They claimed that the proposal was improper because it would cause changes in the rates of pay, rules and working conditions

in existing collective bargaining agreements without compliance with the Railway Labor Act. They further asserted that the proposal did not involve a "transaction" under the New York Dock Conditions. Moreover, the UTU and BLE complained that the notice failed to specifically relate any of the proposed changes to the individual Finance Dockets cited by the Carrier. They also claimed that the proposal was not permitted by the Interstate Commerce Act and had no relation to the merger dating back to 1980 between the Chessie System, Inc. and the Seaboard Coast Line Industries, Inc. because no properties of the former Seaboard Coast Line were involved in the proposed changes. The Unions asked the Carrier to withdraw its January 10, 1994, notice but it refused to do so.

On February 25, 1994, CSXT submitted a proposed implementing agreement to the BLE and UTU involving the properties of the former B&O, C&O, RF&P, and WM it wished to merge. The Unions reiterated their objections to the notice and declined to meet to discuss the Carrier's proposed implementing agreement. On March 25, 1995, CSXT insisted that its notice was proper and legal and suggested that the parties proceed to arbitration pursuant to Article I, Section 4, of the New York Dock Conditions.

The BLE and UTU General Committees of Adjustment agreed to participate in the arbitration requested by CSXT while reserving their rights to challenge the January 10, 1994, notice as improper and procedurally infirm; and that there was no legal basis or authority for the changes proposed in the notice. The

Unions maintained that these arguments, among others, would be presented to the New York Dock arbitrator.

On September 23, 1994, the National Mediation Board designated the undersigned as Arbitrator of this dispute. The parties submitted extensive Submissions and a plethora of evidence in support of their respective positions. A hearing was held on March 28, 1995, in Washington, D.C. Based on the extensive evidence and arguments advanced by the Unions and CSXT, this Arbitrator hereby addresses the issues submitted to him.

#### Findings and Opinion

The ultimate question before this Arbitrator is whether the Carrier's proposed implementing agreements with the United Transportation Union and the Brotherhood of Locomotive Engineers comport with Article I, Section 4, of the New York Dock labor protective conditions. However, before reaching that paramount question, the Unions have presented several threshold issues that must be addressed. As noted heretofore, when the Unions agreed to CSXT's invocation of arbitration, they specifically reserved their right to submit these issues to the Arbitrator appointed pursuant to Article I, Section 4, of the New York Dock Conditions.

It is a universally accepted principle that Arbitrators appointed pursuant to Article I, Section 4, of the New York Dock Conditions serve as an extension of the ICC. Since these Arbitrators derive their authority from the ICC, they are duty



bound to follow decisions and rulings promulgated by the ICC. The ICC has suggested that New York Dock Arbitrators should initially decide all issues submitted to them, including issues that might not otherwise be arbitrable, subject, of course, to ICC review. Consistent with that mission, the undersigned Arbitrator hereinafter addresses the issues advanced by the UTU and BLE.

I. Has CSXT presented a "transaction" as defined in Article I, Section 1(a) of the New York Dock Conditions?

A "transaction" is defined as any action taken pursuant to a Commission authorization upon which New York Dock Conditions have been imposed. The Unions stress that CSXT is the moving party in this arbitration. Therefore, according to the Unions, CSXT must prove that there is a causal nexus between an ICC approved transaction and the operational changes it wished to make on the C&O, B&O, WM and RF&P railroads.

Rather than demonstrate this requisite causal relationship, the Unions contend that the Carrier merely listed seven Finance Dockets in its purported January 10, 1994, notice and explained eight (now seven) changes it wished to implement without identifying whether any of the particular Finance Dockets bear any relationship to any of the proposed changes. For these reasons, among others, the Union submits that CSXT has not submitted a proper and valid New York Dock notice for this Arbitrator's consideration.

In CSX Corp. - Control - Chessie System, Inc. and Seaboard Coast Line Indus., Inc., 8 I.C.C. 2d 715 (1992), the ICC set

forth guidelines to determine when a proposed coordination constitutes a "transaction" under New York Dock. In that proceeding, CSXT proposed to abolish four dispatcher positions at Corbin, Kentucky and transfer this work to management positions in Jacksonville, Florida. CSXT served this notice under the authority of Finance Docket No. 28905 which the ICC had approved in 1980, eight (8) years prior to the proposed transfer of these dispatcher positions. The American Train Dispatchers Association (ATDA) refused to agree to an implementing agreement and one was imposed by a New York Dock Arbitrator. The ATDA appealed the Arbitrator's Award to the ICC arguing that the change proposed in 1988 occurred too long after imposition of New York Dock conditions in 1980 to qualify as a "transaction."

The ICC rejected the ATDA's argument and found that the eight (8) year lapse between its imposition of New York Dock labor protective conditions in Finance Docket No. 28905 and the proposed transfer of dispatching functions in 1988 did not, by itself, render the proposal improper. The ICC explained that the relevant inquiry is not the passage of time but whether the coordination "reasonably flowed" from the control transaction that had been approved in 1980. The ICC declared that approval of a principal transaction extends to and encompasses subsequent transactions that are directly related to and fulfill the purposes of the principal transaction. The ICC did caution, however, that there must be a direct causal connection between the earlier merger transaction and the subsequent operational

changes sought to be implemented by a carrier.

It is instructive to note that in 1980, the ICC authorized the CSX Corporation to control the RF&P in Finance Docket No. 28905. In 1987, the ICC approved the merger of the B&O into the C&O in Finance Docket No. 31033. and the merger of the C&O into CSX (Finance Docket No. 31106). In 1988, the ICC sanctioned the merger of the WM into CSXT which had been formed in 1987 (Finance Docket No. 31296). And in 1992, the ICC authorized CSXT to operate the properties of the RF&P (Finance Docket No. 32020). All these Finance Dockets were cited by the Carrier in its January 10, 1994, notice to the UTU and BLE.

In this Arbitrator's opinion, the operational changes proposed by the Carrier in its January 10, 1994 notice directly related to and flowed from the aforementioned transactions that were authorized by the ICC. Were it not for the ICC permission in those Finance Dockets, CSXT would have no authority to merge the B&O, C&O, WM and RF&P territories into a single, discrete rail freight operation. To this Arbitrator, there is a direct causal relation between the mergers and coordinations sanctioned by the ICC in the Finance Dockets cited in the Carrier's January 10, 1994, notice and the operational changes it sought to implement on the former B&O, C&O, WM and RF&P properties. Accordingly, that proposal constituted a "transaction" as defined in Article I, Section 1(a), of the New York Dock Conditions.

II. Does the Arbitrator lack authority to grant CSXT's request for modification or relief from existing collective bargaining agreements because Article 1, Section 2, of the New York Dock conditions mandates the preservative of rates of pay, rules, working conditions and rights, privileges and benefits under existing agreements?

Article 1, Section 2, of New York Dock provides as follows:

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 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.

In Railway Labor Executives' Association v. United States of America and the Interstate Commerce Commission, 982 F.2d 806 (1993), the United States Court of Appeals for the District of Columbia Circuit ruled that Section 11347 of the Interstate Commerce Act (49 U.S.C. 11347) mandates that rights, privileges and benefits afforded employees under existing collective bargaining agreements must be preserved. The Court remanded the case to the ICC to define "rights, privileges and benefits." The ICC has not yet rendered a ruling in that remanded proceeding.

The Unions argue that until the ICC defines what is meant by the "rights, privileges and benefits" language of Section 405 of the Rail Passenger Service Act, which has been incorporated into Section 11347 of the Interstate Commerce Act, this Arbitrator lacks authority to grant CSXT the right to modify or eliminate any existing collective bargaining agreements.



Although the ICC has suggested that New York Dock arbitrators address all issues submitted to them, subject to its review, clearly it would be inappropriate for this Arbitrator to determine what was intended by the statutory language "rights, privileges and benefits" in Section 405 of the Rail Passenger Service Act. In *Executives*, the Court of Appeals for the D.C. Circuit specifically remanded this determination to the ICC. Therefore, it would be totally inappropriate for this Arbitrator to offer an opinion on the scope of this statutory language and I expressly decline to do so.

Addressing the facts extant in this particular proceeding, it appears that there would be several significant changes in the working conditions of train and engine service employees affected by the Carrier's proposal. For instance, their current seniority districts will be expanded to include all of the C&O, B&O, WM and RF&P territory to be coordinated. Also, the crew reporting points will be expanded to include all reporting points in this combined seniority district. Many present supply points will be eliminated for these employees. And those employees now working under the C&O, WM and RF&P schedule agreements will be placed under B&O schedule agreements. Additionally, some employees will have their representation changed from the UTU to the BLE.

While these are indeed not insignificant changes for many train and engine service employees in the territory to be coordinated, nevertheless similar changes are not uncommon in many New York Dock implementing agreements. Several New York Dock



Arbitrators have imposed implementing agreements placing employees under a different collective bargaining agreement. Moreover, numerous CSXT employees have been transferred to other railroads with different agreements pursuant to ICC implementing agreements. It should be noted that representation changed for many employees when the B&O Central District was created. Moreover, crew reporting points and seniority districts have been changed and expanded as a result of ICC authorized mergers and consolidations. CSXT's current proposed coordination is not markedly different from other mergers and coordinations approved by the ICC or by Arbitrators acting under the authority of the ICC.

III. Does Section 11341 (a) of the Interstate Commerce Act apply to proceedings exempted from prior review and approval by the ICC?

Section 11341(a) of the Interstate Commerce Act (49 U.S.C. 11341(a)) exempts a carrier from the antitrust laws and all other law, including State and municipal law, as necessary to let it carry out a transaction approved by the ICC under Chapter 113 of the Interstate Commerce Act (49 U.S.C. section 11301 et seq.) In Norfolk & Western Railway Co. et al. v. American Train Dispatchers et al., 499 U.S. 117 (1991), the United States Supreme Court ruled that the Section 11341(a) exemption "from all other law" includes a carrier's legal obligation under a collective bargaining agreement when necessary to carry out an ICC-approved transaction. The Supreme Court concluded that obligations imposed by laws, such as the Railway Labor Act, will

not prevent the efficiencies of rail consolidations from being achieved.

The Unions contend that this exemption applies only when it is necessary to carry out a transaction approved by the ICC. They maintain that the exemption does not apply when the ICC exempts a railroad from review and approval pursuant to Section 10505 of the Interstate Commerce Act (49 U.S.C. 10505). All of the transactions cited by CSXT in its January 10, 1994, notice, with the exception of the 1980 seminal transaction in Finance Docket No. 28905, involved exemptions under Section 10505 rather than approvals under Chapter 113. Therefore, the Unions assert that the Section 11341(a) exemption from "all other law" is inapplicable to these transactions.

In the light of the Supreme Court's unambiguous decision in *Train Dispatchers*, it cannot be gainsaid that the ICC may exempt transactions approved under Section 11341(a) from the RLA, and collective bargaining agreements entered into thereunder, when this is necessary to carry out a transaction approved by the ICC. The ICC has ruled that this authority extends to Arbitrators when they are working under the delegated authority of the ICC (See CSX Corporation - Control - Chessie System, Inc. and Seaboard Coast Line Industries, 8 I.C.C.2d 715 [1992]). Moreover, several Arbitrators under Article I, Section 4, of New York Dock have concluded that they have the authority to override existing collective bargaining agreements if they are an impediment to carrying out an approved transaction.

At issue here is whether the Section 11341(a) exemption from the RLA and collective bargaining agreements subject to the RLA also applies to transactions exempt from ICC review and approval under Section 10505 of the Interstate Commerce Act. A literal reading of Section 11341(a) would seem to support the Unions' argument that the exemption from other laws does not apply to transactions exempt from ICC approval. However, the ICC has concluded that it has the authority under both Section 11341(a) and Section 11347 of the Interstate Commerce Act to modify collective bargaining agreements under the RLA when they are an impediment to a merger. (See CSX Corporation -- Control -- Chessie System, Inc. and Seaboard Coast Line Industries, Inc., 6 ICC 2d 715 (1990)). This is the so-called ICC "Carmen II" decision. The Court of Appeal for the D.C. Circuit deferred to the ICC's judgment in *Executives*.

As noted at the outset of this proceeding, Arbitrators acting under the authority of the ICC must adhere to ICC rulings and decisions. In the aforementioned Carmen II decision, the ICC expressly stated that Arbitrators appointed under the New York Dock conditions have the authority to modify collective bargaining agreements when necessary to permit mergers. Thus, this Arbitrator has the authority under both Section 11341(a) and 11347 to modify existing collective bargaining agreements if this is necessary to carry out the coordination proposed by CSXT in its January 10, 1994, notice.

IV. Are the provisions of Section 11341(a) inapplicable to combinations of multiple approved or exempted transactions?

When the CSXT served its January 10, 1994, notice on the UTU and BLE, it cited seven (7) Finance Dockets that the ICC had either approved or exempted from prior approval and regulation. The Unions contend that there is no statutory or other legal basis or precedent for combinations of multiple approved or exempt transactions. This Arbitrator must respectfully disagree with the Unions' contention, however.

It is true that Section 11341(a) of the Interstate Commerce Act refers to "the transaction" in the singular. Nevertheless, the Carrier's reference to multiple Finance Dockets does not appear to be barred by the Interstate Commerce Act, ICC decisions, or the New York Dock Conditions. It is noteworthy that all of the cited Finance Dockets apply to CSXT's control of the four (4) properties it now wishes to consolidate. Moreover, the ICC imposed the same labor protective conditions in each of those transactions. Also, for many years, CSXT and its predecessor railroads have served notices under New York Dock and other ICC labor protective conditions listing multiple Finance Dockets. Evidently, neither the affected rail labor organizations nor the ICC took any exception to this practice.

For all the foregoing reasons, this Arbitrator finds that it was not improper for CSXT to reference a combination of seven (7) Finance Dockets in its January 10, 1994, notices to the UTU and BLE.



V. Is the Section 11341(a) exemption necessary to carry out the Carrier's proposed coordination?

In *Dispatchers*, the Supreme Court declared that the Section 11341(a) exemption is applicable only when it is necessary to carry out an approved transaction. The Court ruled that the exemption can be no broader than the barrier which would otherwise stand in the way of implementation. The ICC advocated a similar limitation in *Carmen II*. The ICC assumed that any change in collective bargaining agreements will be limited to those necessary to permit the approved consolidation and will not undermine labor's rights to rely primarily on the RLA for those subjects traditionally covered by that statute.

The Unions argue that the changes now proposed by CSXT are not necessary to carry out the Finance Dockets cited in the Carrier's January 10, 1994 notices in view of the actual transactions involved in those Finance Dockets; the lack of any relationship between the proposed changes; and the years that have passed since those ICC decisions.

CSXT has convinced this Arbitrator that it is necessary to change the seniority districts of the train and engine service employees affected by its proposal if the territory of the erstwhile C&O, B&O, WM and RF&P to be coordinated is to be run as a distinct and unified rail freight operation. Were the Carrier required to continue operating this territory as four separate railroads each with its own work force and seniority district the operating efficiencies contemplated by the coordination would be illusory. According to the Carrier, the proposed consolidation of



the present four seniority districts into a single seniority district will eliminate some train delays and will promote more efficient manpower utilization. To achieve this enhanced efficiency it is necessary to eliminate the current seniority districts on the affected territory and create a single seniority district.

CSXT also contends that to achieve the enhanced operating efficiency intended by its proposed consolidation some crew supply points will have to be closed, such as Hanover, PA, Charlottesville, VA and Hagerstown, MD for freight train operations. These changes, in conjunction with the establishment of Richmond as a common supply point for train service crews, will improve manpower utilization, according to the Carrier, since excess RF&P train and engine service employees at Richmond will be able to supplement the B&O, WM and C&O crews who now operate there. Again, it appears that it will be necessary to close some former crew supply points in order to achieve the efficiencies contemplated by the proposed consolidation.

It must be stressed that employees working in the consolidated territory will continue to receive the same wage rates and benefits that they currently receive. Except for the elimination of their current seniority districts and the closing of some supply points for crews, the present collective bargaining agreements on the B&O, C&O, WM and RF&P will be continued unchanged. This transaction therefore will not result in a mere "transfer of wealth" from these employees to CSXT which

the D.C. Court of Appeals found impermissible in Executives. Rather, the savings will be achieved from better utilization of equipment, facilities and manpower. Also, CSXT will not be obligated to hire additional train and engine service employees due to its more efficient use of employees on the combined territory. Moreover, CSXT estimates that train delays will be greatly reduced. Thus, in this Arbitrator's opinion, the transaction itself will yield enhanced efficiency independent of any modifications in the present collective bargaining agreements on the B&O, C&O, WM and RF&P.

VI. Is it permissible for the Carrier to coordinate all or part of properties that are already subject to earlier implementing agreements?

In 1983, the UTU and the BLE executed implementing agreements after the B&O received permission to operate the properties of the Western Maryland in Finance Docket No. 30160. In 1992, the UTU and the BLE executed implementing agreements after the CSXT acquired the rail assets and operations of the RF&P in Finance Docket No. 31954. Those implementing agreements provided that "they shall remain in full force and effect until revised or modified in accordance with the Railway Labor Act."

According to the Unions, those implementing agreements are still in effect since they were never revised or modified pursuant to the RLA. The Unions maintain that the Carrier has no right to re-coordinate the properties that were involved in those implementing agreements.

The Unions cite a 1994 award rendered by Neutral Robert O. Harris in a case between the UTU and CSXT involving Carrier's notice to coordinate work performed on the C&O and the Louisville and Nashville Railroad Company in support of its contention. Arbitrator Harris found that because of an earlier implementing agreement involving the same properties, CSXT was precluded from asking for *de novo* arbitration to coordinate property subject to an implementing agreement which, by its express terms, may only be changed pursuant to the RLA. The Carrier has appealed the Harris Award to the ICC.

It appears that Arbitrator Harris concluded that an implementing agreement may not be changed in a second coordination of the same properties except in accordance with the terms of the implementing agreement. However, CSXT and or its predecessors agreed to implementing agreements involving the WM and the RF&P. Evidently, there were no implementing agreements involving the B&O and C&O. Since over 80% of the territory the Carrier now proposes to coordinate involves former B&O and C&O property the Carrier is not now seeking coordination of "the same properties" which were subject to earlier implementing agreements, in this Arbitrator's judgment.

This would seem to distinguish the Harris Award. In any event, this Arbitrator finds nothing in the Interstate Commerce Act, ICC decisions or the New York Dock Conditions which preclude coordination of property previously coordinated and subject to an implementing agreement which may only be revised or modified

pursuant to the RLA. Any tension between this Award and the Harris Award must be resolved by the ICC.

In this Arbitrator's view, when the drafters agreed that an implementing agreement could only be changed in accordance with the RLA they intended this prohibition to apply to matters subject to bargaining under the RLA. They could not have intended it to affect the jurisdiction of the ICC. Nor did they have the right to preclude the ICC from reviewing mergers and coordinations subject to its jurisdiction. A new transaction would be governed by the Interstate Commerce Act, not the Railway Labor Act.

It is also noteworthy that CSXT and its predecessors have negotiated several implementing agreements containing language similar to that involved in the Harris Award. Many of those properties were subsequently coordinated without resort to the RLA. Rather, they were coordinated in accordance with ICC procedures. The ICC has made it clear that labor disputes arising from transactions which it has approved are resolved through labor protective conditions it has imposed, such as New York Dock, not through the Railway Labor Act.

For all the foregoing reasons, this Arbitrator finds that it was permissible for CSXT to propose a subsequent coordination of property that had been coordinated previously which was subject to an implementing agreement which could only be modified or revised pursuant to the Railway Labor Act.

VII. Is there a public transportation benefit flowing from the Carrier's proposal?

In *Executives* the Court of Appeals for the D.C. Circuit held that to override a collective bargaining agreement, the ICC must find that the underlying transaction yields a transportation benefit to the public, not merely a transfer of wealth from employees to their employer. Although the Court of Appeals remanded that proceeding to the ICC to clarify whether there were, in fact, transportation benefits to be had from the lease transaction involved there, it suggested that "transportation benefits" could include the promotion of safe, adequate and efficient transportation; the encouragement of sound economic conditions among carriers; and enhanced service levels.

The Carrier anticipates that its proposed changes will promote more economical and efficient transportation in the territory now served by the B&O, C&O, WM and RF&P which it wished to coordinate. According to the D. C. Court of Appeals, there would thus be some transportation benefit flowing to the public from the underlying transaction proposed by CSXT in its January 10, 1994, notices to the UTU and BLE.

Conclusion

As observed heretofore, the ICC must decide whether changes in the B&O, C&O, WM and RF&P collective bargaining agreements that are necessary to implement the transaction proposed by the Carrier involve "rights, privileges and benefits" of train and



engine employees affected by the transaction which must be preserved. If the ICC determines that their "rights, privileges and benefits" have been preserved, an issue on which this Arbitrator makes no finding, then the implementing agreements proposed by CSXT on February 25, 1994, meet the requirements of Article I, Section 4, of the New York Dock Conditions. Any employees adversely affected by this transaction will be entitled to New York Dock labor protective benefits.

The Carrier's January 10, 1994, notice to the UTU and BLE comported with the requirements of the New York Dock Conditions. The notices were in writing; were posted and served on the UTU and BLE ninety (90) days in advance; contained a full and adequate statement of the proposed changes; and included an estimate of the number of employees in each craft who would be affected by the proposed changes. The notices were therefore proper New York Dock notices.

Respectfully submitted,

Robert M. O'Brien  
Robert M. O'Brien, Arbitrator

April 24, 1995