PUBLIC LAW BOARD NO. 5528
PROCEDURAL

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| PARTIES | UNITED TRANSPORTATION UNION YARDMASTERS DEPARTMENT | AWARD NO. 1 |
| TO | AND | CASE NO. 1 |
| DISPUTE | CSX TRANSPORTATION, INC. (FORMER BALTIMORE & OHIO RAILROAD COMPANY) | |

QUESTION AT ISSUE:

Is the claim filed on behalf of Willard, Ohio Yardmaster D. J. Hiler for protection afforded by Article I of the New York Dock Protective Conditions, as provided for in Article VII, Section 2 of PEB 219 and the Public Law 102-29 Implementing Documents effective November 1, 1991, referable to a Public law Board established pursuant to Section 3, Second, of the Railway Labor Act, as amended by Public Law 89-456, or, must the claim be handled pursuant to the arbitration procedures of Article I, Section 11 of the New York Dock Protective Conditions?

HISTORY OF DISPUTE:

On January 11, 1993 the Carrier implemented the final phase of the elimination of the Westbound Hump Yard at Willard, Ohio. As a result Claimant lost his position as a regular Yardmaster. His seniority was insufficient to enable him to retain such a position.

On March 8, 1993 the Organization filed a claim commencing January 15, 1993 ". . . for protection under the provisions of New York Dock as modified and mandated by PEB 219 and Public Law 102-29 Implementing Documents Effective (sic) November 1, 1991, . . . ." Additionally, the claim alleged that "[T]hrough the Carrier's use of additional moves and flexibility by road crews that were

implemented in PEB 219 Yardmaster Hiler lost his position as a regular Yardmaster." The claim also specifically stated that it was based, at least in part, upon ". . . Document 'A' Article VII Section 2A-PROTECTION. . . ."

The Carrier responded to the claim on April 6, 1993 claiming that the loss of Claimant's position was a result of ". . . the 'Willard Reroute', and had nothing to do with PEB 219." Accordingly, the Carrier denied the claim.

The Organization appealed the denial. The Carrier denied the appeal. Eventually the Carrier appealed the denial to the highest officer of the Carrier designated to handle such disputes who also denied the appeal.

Subsequently, the Organization proposed to the Carrier that they enter into an agreement establishing a Public Law Board to dispose of certain cases including this one. The Carrier refused to agree to place this case before a Public Law Board asserting that the dispute was justiciable exclusively under Section 11 of the New York Dock Conditions.

On January 11, 1994 the Carrier and the Organization entered into an agreement creating this procedural Public Law Board and placing the foregoing question at issue before the Board for determination.

FINDINGS:

The Board upon the whole record and all the evidence finds that the employees and the Carrier are employees and Carrier within the meaning of the Railway Labor Act, as amended, 45 U.S.C. §§151, et seq. The Board also finds it has jurisdiction to decide the dispute in this case. The Board further finds that the parties to the dispute, including Claimant, were given due notice of the hearing in this case.

The dispute in this case centers upon Article VII, Section 2(a) of Implementing Document "A" of the Wage and Rule settlement between the Organization and the National Carriers' Conference Committee (NCCC) as recommended by Presidential Emergency Board (PEB) 219 and imposed by federal law (Public Law 102-29). Section 2(a) provides that "[E]mployees adversely affected by the provisions of Section 1 of this Article shall receive the protection afforded by Article IA (Except Section 4) of the New York Dock Protective Conditions (Appendix III, F.D. 28250)."

The Organization argues that Section 2(a) by its specific terms makes applicable only the protections of the New York Dock Conditions (except those in Section 4) to adversely affected employees and that the forum in which a dispute is given final disposition cannot be considered an ingredient of such protection. The Carrier's principle argument is that inasmuch as the dispute in this case is one over the interpretation or application of the New York Dock Conditions to Claimant's situation, the clear terms of

Article I, Section 11 mandate that the dispute be adjudicated by an Arbitration Committee as provided therein.

We believe the Carrier has the superior position on this issue. We cannot agree with the Organization that the forum provided in Section 11 is not part of the protective scheme of the New York Dock Conditions. An essential ingredient of adequate protection is an effective remedy for its enforcement. The Arbitration Committee provided in Section 11(a) is the forum for such enforcement. The expeditious decisions facilitated by Section 11(c) and the burden of proof provisions of Section 11(e) apply only to proceedings before an Arbitration Committee created pursuant to Section 11. They would not apply to proceedings before arbitration tribunals created pursuant to Section 3 of the Railway Labor Act, 45 U.S.C. §153. Our reading of Section 11 in light of the other provisions of the New York Dock Conditions leads us to conclude that the arbitration forum provided therein and the procedural rules applicable to such forum are impossible to extricate from the substantive scheme of protection of the conditions. We must decline the Organization's invitation to do so.

By its clear terms the claim is based upon the New York Dock Conditions. Adjudication of the claim requires an interpretation or application of those provisions. Article I, Section 11 mandates that any such issue be decided by an Arbitration Committee as provided therein. We find that language clear and compelling.

We find unpersuasive the Organization's argument that because Article VII, Section 2(a) resulted from the notice served by the Organization upon the nation's rail carriers pursuant to Section 6 of the Railway Labor Act, 45 U.S.C. §156, Section 2(a) actually was an agreement negotiated under the RLA the interpretation or application of which properly belongs before a forum under Section 3 of the Act. The fact remains that Section 2(a) clearly and unambiguously affords adversely affected employees the protections of the New York Dock Conditions which we have found to include the arbitral forum and procedural guarantees before it provided in Article I, Section 11 of the Conditions. We agree with the Organization that the drafters of the language of Section 2(a), the members of PEB 219, were fully capable of making their intentions clear when they authorized what became the Implementing Documents. However, contrary to the Organization's view, we believe they clearly expressed the intent in Section 2(a) to retain the Arbitration Committee provided in Article I, Section 11 of the New York Dock Conditions as the exclusive forum for adjudicating questions concerning the interpretation or application of those conditions.

We believe the Organization's reliance upon Article VIII and Letter No. 8 of Document "A" in support of its position is misplaced. While it is true that those provisions do reflect a clear intent of the drafters to substitute arbitration provided therein for arbitration under Section 3 of the Railway Labor Act,

it does not follow that the absence of similar provisions from Article VII, Section 2(a) mandates the conclusion that the drafters did not intend a similar result there. As we have found, the language of Section 2(a) fully supports the conclusion that its drafters intended the provisions of Article I, Section 11 of the New York Dock Conditions to apply to disputes arising thereunder.

Nor does the fact that Article I, Section 11 of the New York Dock Conditions applies by its terms to "transactions" aid the Organization. Article VII, Section 2(a) specifically affords the protections of the New York Dock Conditions to "[E]mployees adversely affected by the provisions of Section 1 of this Article . . . ." Clearly, the drafters of that language intended to substitute the actions encompassed by Article VII, Section 1 for the term "transaction" as used in the New York Dock Conditions. Thus, the triggering mechanism is the event or events contemplated by Article VII, Section 1 rather than a transaction authorized by the Interstate Commerce Commission (ICC). Accordingly, it does not matter that there is no ICC authorized transaction to trigger the benefits contemplated by Article VII, Section 2(a).

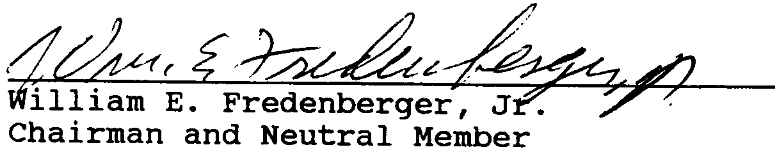
We are persuaded as to the soundness of the result we have reached by NRAB Fourth Division Award No. 4219, Mar. 21, 1985 (McAllister, Referee) between this Carrier and the predecessor of the Transportation Communications International Union. In that case the parties had negotiated a working agreement which specifically incorporated and made applicable thereto the New York

Dock Labor Protective Conditions. The claim advanced by the Organization in that case was predicated upon specific rules of the agreement apparently unrelated to the substantive provisions of the New York Dock Conditions. The Division found that an Arbitration Committee under Article I, Section 11 of the New York Dock Conditions was the exclusive forum for adjudication of the claim and denied it for lack of jurisdiction.

We see a close parallel between Fourth Division Award No. 4219 and the instant case. We believe the fact that here the claim is predicated specifically upon the substantive provisions of the New York Dock Conditions militates even more heavily in favor of the conclusion that a Public Law Board, and any other tribunal constituted under Section 3 of the Railway Labor Act, would have no jurisdiction to adjudicate this claim.

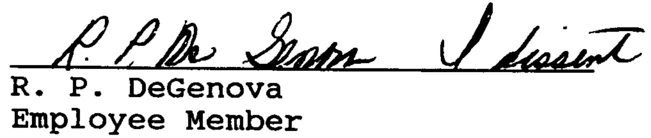
**AWARD**

The claim in this case must be handled pursuant to the arbitration procedures of Article I, Section 11 of the New York Dock Protective Conditions.



William E. Fredenberger, Jr.
Chairman and Neutral Member

W. E. Griffin, Jr.
Carrier Member



R. P. DeGenova
Employee Member

DATED: October 10, 1994