NY Dock 12

ARBITRATION COMMITTEE

In the Matter of the Arbitration between:	)	Pursuant to Article I, § 11 of the New York Dock Conditions
BROTHERHOOD OF LOCOMOTIVE ENGINEERS,	)	
Organization,	)	I.C.C. Finance Docket No. 32760
and	)	
UNION PACIFIC RAILROAD COMPANY,	)	
Carrier.	)	**OPINION AND AWARD**

Hearing Date: November 10, 2000
Hearing Location: Sacramento, California
Date of Award: January 26, 2001

MEMBERS OF THE COMMITTEE

Neutral and Sole Member: John B. LaRocco

QUESTIONS AT ISSUE

ORGANIZATION'S QUESTION AT ISSUE

Does Side Letter No. 24 of the St. Louis Hub Merger Implementing Agreement modify the MPUL Laying Off and Leave of Absence Schedule Rule beyond the geographical territory of the St. Louis Hub?

CARRIER'S QUESTION AT ISSUE

Did the April 15, 1998 letter agreement amending the "Laying Off and Leave of Absence" rule dated October 22, 1952 and contained on Page 250 of the current Collective Bargaining Agreement apply only to the St. Louis Hub or does it apply to all of the MPUL committee?

[St. Louis Hub SL24.NYD]

OPINION OF THE COMMITTEE

I. INTRODUCTION

The United States Surface Transportation Board (STB) approved the application of the Union Pacific Railroad Company (Former UP) to control and merge with the Southern Pacific Transportation Company (SPT) and its subsidiaries. [Finance Docket No. 32760.] The former Missouri Pacific Railroad was one of the properties comprising the former UP. As a condition of the merger, the STB imposed on the merged Carrier (UP) the employee protective conditions set forth in *New York Dock Railway-Control-Brooklyn Eastern District Terminal*, 360 I.C.C. 60, 84-90 (1979); affirmed, *New York Dock Railway v. United States*, 609 F.2d 83 (2nd Cir. 1979) ("New York Dock Conditions") pursuant to the relevant enabling statute.

At the November 10, 2000 hearing, the Organization and Carrier waived the tripartite Arbitration Committee established by Section 11(a) of the New York Dock Conditions.[1] They agreed that the undersigned neutral would act as the sole member of the Arbitration Committee. At the neutral member's request, the parties waived the 45-day time limitation for issuing this decision as set forth in Section 11(c) of the New York Dock Conditions.

II. BACKGROUND AND SUMMARY OF THE FACTS

Following the merger, the Organization and the Carrier entered into several important merger implementing agreements predicated on dividing much of the UP into a hub and spoke operating system. Two of these hubs were at St. Louis, Missouri and North Little Rock, Arkansas.[2] The North

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[1] Unless indicated otherwise, all sections of the New York Dock Conditions cited herein appear in Article I.

[2] St. Louis and North Little Rock are both points on the Missouri Pacific-Upper Lines territory.

Little Rock/Pine Bluff Hub Merger Implementing Agreement went into effect on February 1, 1998. The St. Louis Hub Merger Implementing Agreement went into effect on November 1, 1998.

Both of these merger implementing agreements had a savings clause defining the relationship between the merger implementing agreements and the applicable schedule agreements. Article VIII(A) of the St. Louis Hub Merger Implementing Agreement reads:

> The provisions of the applicable Schedule Agreement will apply unless specifically modified herein.

Identical language appears in Article VIII(A) of the North Little Rock/Pine Bluff Hub Merger Implementing Agreement.

This dispute concerns to what extent a side letter attached to the St. Louis Hub Merger Implementing Agreement modifies or supersedes the Missouri Pacific-Upper Lines Schedule Agreement which is the working agreement at another hub. The Laying Off and Leave of Absence Rule on the Missouri Pacific-Upper Lines, which was originally adopted on or about October 22, 1952, provides employees with a 30-day buffer period (except in cases of illness or injury) before employees are required to obtain a formal leave of absence or forfeit their seniority. More specifically, Section 1 of the Laying Off and Leave of Absence Rule in the Schedule Agreement provides:

> When employees in engine service are permitted to lay off, they must not be absent in excess of 30 days, except in case of sickness or injury, without having formal leave in writing, granted in accordance with the provisions of this agreement.

Side Letter No. 24 of the St. Louis Hub Merger Implementing Agreement, which is dated April 15, 1998, states:

adopted as the working agreement for a particular hub. On the other hand, the Organization argues that the modification applied only to the territory covered by the terms of the St. Louis Hub Merger Implementing Agreement.

During Summer and Fall, 2000, the Carrier sought to apply the 15-day limitation period to engineers working under the Missouri Pacific-Upper Lines Schedule Agreement within the ambit of the North Little Rock/Pine Bluff Hub. The Carrier's application of the 15-day limitation period to lay offs and leave of absences by engineers at the North Little Rock/Pine Bluff Hub precipitated the instant controversy.

From the Organization's perspective, the negotiating history of Side Letter No. 24 is critical to its interpretation. According to the November 7, 2000 affidavit of Dennis E. Penning, who was the former General Chairman on the UP Eastern Region and a signatory to Side Letter No. 24, the Organization was faced with a dilemma. Penning declared that the Carrier threatened to apply the Chicago & Eastern Illinois Schedule Agreement, a labor contract which the Organization deemed inferior to other applicable schedule agreements, to the entire St. Louis Hub territory. Penning further attested that the Carrier had the authority to choose any one of the schedule agreements applicable to any territory covered by the St. Louis Hub Merger Implementing Agreement pursuant to a recent New York Dock arbitration decision. *United Transportation Union and Union Pacific Railroad Company*, NYD § 4 Arb (Yost; 4/14/97). Penning explained that the Organization agreed to modify the laying off and leave of absence schedule rule to obviate the Carrier's threat to adopt the Chicago & Eastern Illinois Schedule Agreement. Penning stressed that inasmuch as Chicago & Eastern Illinois employees were only involved in the St. Louis Hub, the Carrier could not select the

Hub Merger Implementing Agreement. If Side Letter No. 24 changed the Schedule Agreement everywhere, there would be no reason for the parties to insert a non-referable clause in the side letter.

The BLE Committee membership who are subject to the terms of the St. Louis Hub Merger Implementing Agreement ratified the Agreement by an 84.1 percent vote. However, only those engineers working at points encompassed by the St. Louis Hub Merger Implementing Agreement voted in the ratification canvass. Conversely, those employees at other locations on the Missouri Pacific-Upper Lines did not vote on the terms and conditions in the St. Louis Hub Merger Implementing Agreement. The constitution and bylaws of the International Organization provide that a change in a schedule rule is not effective unless ratified by employees who are subject to the rule. More specifically, Sections 43(a) and 43(b) of the International Constitution and Bylaws bar the Organization's officers from entering into an agreement that changes a rule governing the wages and working conditions of engineers without ratification by the affected membership.[3] Since the Organization Committee members at the North Little Rock/Pine Bluff Hub did not vote on the St. Louis Hub Merger Implementing Agreement, the laying off and leave absence rule remains unchanged at North Little Rock. *Division 48, International Brotherhood of Locomotive Engineers v. Windham*, Civ. Action 86-2313-C-2 (E.D. MO 1986).

Assuming *arguendo*, that Side Letter No. 24 is unclear or ambiguous, the negotiating history supports the Organization's interpretation. The former General Chairman iterated in his affidavit that the Organization only agreed to reduce the 30-day limitation period to 15 days in the Schedule Rule to short circuit the Carrier's very real threat of applying an inferior Schedule Agreement to the

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[3] Section 33(a)(1) of the Constitution and Bylaws of the International Organization provide a similar mandatory ratification process for merger agreements.

entire St. Louis Hub territory. However, that inferior agreement could not have been selected by the Carrier in any other Hub touching on the Missouri Pacific-Upper Lines territory. Therefore, it is illogical that the General Chairman and the Organization would agree to modify the Schedule Rule beyond the St. Louis Hub inasmuch as the Chicago & Eastern Illinois Schedule Agreement could not be adopted beyond that Hub.

Furthermore, each merger implementing agreement was negotiated separately and became effective at different times. The parties clearly intended that the terms and conditions of each merger implementing agreement would only apply to the territory expressly covered by the particular implementing agreement.

Article VIII(A) of the St. Louis Hub Merger Implementing Agreement and identical clauses in the other implementing agreements, including Article VIII(A)of the North Little Rock/Pine Bluff Hub Merger Implementing Agreement, demonstrate that the schedule rules are saved unless expressly modified by the Merger Implementing Agreement. Nothing in Side Letter No. 24 suggests that the parties were modifying the laying off and leave of absence rule for the entire property covered by the Schedule Agreement. The savings clause in the North Little Rock/Pine Bluff Hub Merger Implementing Agreement limits the application of Side Letter No. 24 to the territories within the scope of the St. Louis Hub Merger Implementing Agreement.

B. The Carrier's Position

Side Letter No. 24 amended the laying off and leave of absence schedule rule across the Missouri Pacific-Upper Lines. Stated differently, the amended rule is expansive. It pertains to more

territory than just the St. Louis Hub. The schedule rule was modified wherever the Missouri Pacific-Upper Lines schedule agreement is the applicable working agreement.

Nowhere in Side Letter No. 24 is there any language restricting the change in the Laying Off and Leave of Absence Rule to the St. Louis Hub. The absence of such language is a direct contrast to the presence of limiting language on other side letters. For example, Side Letter No. 26 to the St. Louis Hub Merger Implementing Agreement, which amended Schedule Rule 26(D), expressly states that the revision applies only to the St. Louis Hub. Similarly, Side Letter No. 23 to the St. Louis Hub Merger Implementing Agreement contains verbiage restricting the breadth of the rule change so that the amended rule is effective only at certain locations. The language in these two side letters demonstrates that the parties knew how to write restrictive terms. If the parties did not intend for Side Letter No. 24 to completely and entirely modify the Schedule Rule they would have inserted limiting language in the side letter.

Next the express language of Side Letter No. 24 conclusively demonstrates that the change in the rule went beyond the St. Louis Hub. The third paragraph of Side Letter No. 24 states that the current rule will be amended but does not restrict the amendment to the St. Louis Hub. The second paragraph reveals that the Carrier requested modification to existing rules. It would be senseless for the Carrier to ask for a change to a rule and then agree to a bifurcated application of the amendment whereby employees within the St. Louis Hub are treated differently from employees outside the St. Louis Hub.

Lastly, the words in Side Letter No. 24 constitute specific language. It is axiomatic in the interpretation of contracts that specific provisions control over general provisions. The Article

VIII(A) savings clause in the St. Louis Hub Merger Implementing Agreement is a broad and general provision. Side Letter No. 24 is a very specific and detailed provision that supersedes Article VIII(A). Thus, the savings clause is irrelevant.

IV. DISCUSSION

The parties bargained separately over the various hub merger implementing agreements and the Carrier implemented each merger implementing agreement at a different time. This bargaining process and environment strongly suggests that the parties contemplated that the provisions of each hub merger implementing agreement would pertain only to employees and property covered by the particular merger implementing agreement. Otherwise, the Carrier and Organization would have negotiated a master hub agreement, the terms of which would pierce the boundaries of each hub.

In this particular case, the North Little Rock/Pine Bluff Hub Merger Implementing Agreement became effective many months before the Carrier implemented the St. Louis Hub Merger Implementing Agreement. The employees subject to the North Little Rock/Pine Bluff Hub Merger Implementing Agreement understood the changes in working conditions brought about by the terms of their hub merger implementing agreement. Of course, these employees were not privy to the terms and conditions of the separately negotiated merger agreement governing the St. Louis Hub. It is noteworthy that the North Little Rock/Pine Bluff Hub Agreement does not contain a side letter equivalent to Side Letter No. 24 of the St. Louis Hub Merger Implementing Agreement.

Therefore, the North Little Rock/Pine Bluff Hub employees were not subject to any terms of the St. Louis Hub Agreement or, put differently, that they were not suddenly subject to a modification of their working conditions when the St. Louis Hub Agreement became effective nine

months later. It would be incongruous that, for a nine-month period, the North Little Rock/Pine Bluff Hub engineers would be subject to the 30-day limitation period in the Schedule Rule and then, on November 1, 1998, the more stringent 15-day limitation period would suddenly be imposed on these engineers.

In sum, the context in which the Hub Agreements were negotiated strongly supports the Organization's construction of Side Letter No. 24.

In addition, the express language of Side Letter No. 24 buttresses the Organization's position. As the Organization persuasively argues, the second paragraph of Side Letter No. 24 refers to ". . . negotiations of this Hub . . ." which clearly announces that the parties were bargaining over terms and conditions applicable to the territory covered by the St. Louis Hub Merger Implementing Agreement. The language does not state during negotiations of "all Hubs" or, during negotiations of "Hubs attendant to the Missouri Pacific-Upper Lines." It logically follows that the outcome of those negotiations pertained exclusively to the St. Louis Hub.

Absent any language showing that the breadth of the change in the laying off and leave of absence rule extended beyond the demarcation of the St. Louis Hub, the clear language of Side Letter No. 24 restricts the modification to employees subject to the terms and conditions of the St. Louis Hub Merger Implementing Agreement.

Inasmuch as the terms of Side Letter No. 24 of the St. Louis Hub Merger Implementing Agreement did not extend beyond the territory covered by the St. Louis Hub, Article VIII(A) of North Little Rock/Pine Bluff Hub Merger Implementing Agreement preserved (saved) the

unmodified schedule rule on laying off and leave of absence for territory covered by the North Little Rock Hub.

AWARD AND ORDER

Organization's Question at Issue: Does Side Letter No. 24 of the St. Louis Hub Merger Implementing Agreement modify the MPUL Laying Off and Leave of Absence Schedule Rule beyond the geographical territory of the St. Louis Hub?

Answer to Organization's Question at Issue: No.

Carrier's Question at Issue: Did the April 15, 1998 letter agreement amending the "Laying Off and Leave of Absence" rule dated October 22, 1952 and contained on Page 250 of the current Collective Bargaining Agreement apply only to the St. Louis Hub or does it apply to all of the MPUL committee?

Answer to Carrier's Question at Issue: For the reasons more fully stated in this Opinion, Side Letter No. 24 applies only to employees and territory subject to the terms and conditions of the St. Louis Hub Merger Implementing Agreement.

Date: January 26, 2001

John B. LaRocco
Arbitrator
Neutral and Sole Committee Member