

**SURFACE TRANSPORTATION BOARD  
FINANCE DOCKET NO. 33388  
ARBITRATION PURSUANT TO ARTICLE I, SECTION 4  
NEW YORK DOCK PROTECTIVE CONDITIONS  
ARBITRATION OPINION AND AWARD  
APRIL 2, 1999**

In the Matter Involving the

**CSX TRANSPORTATION, INC.,  
and CONSOLIDATED RAIL CORPORATION**

and

**BROTHERHOOD OF LOCOMOTIVE  
ENGINEERS**

**Introduction and Background Facts**

On July 23, 1998 the Surface Transportation Board (hereinafter the "STB") issued an Order authorizing CSX Transportation, Inc. (hereinafter "CSXT"), Norfolk Southern Railway Company (hereinafter "NSR") and the Consolidated Rail Corporation (hereinafter "Conrail" or "CRC") to enter into a Transaction which would result in the allocation of certain Conrail rail lines and facilities to CSXT and NSR; and which would allow Conrail to continue to operate certain properties, known as the Shared Assets Areas (hereinafter the "SAAs").

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In accordance with that authorization the Carriers served notice on representatives of the labor organizations of the various crafts and classes employed by the Carriers to consummate the Transaction pursuant to Article I, Section 4 of the so-called New York Dock (New York Dock Railway - Control - Brooklyn Eastern District Terminal, 360 I.C.C. 60) employee protective conditions. Included among the Organizations receiving the Article I, Section 4 notices was the Brotherhood of Locomotive Engineers (hereinafter the "BLE").

The BLE, CSXT, NSR and Conrail were able to negotiate a New York Dock implementing agreement. That agreement consisted of a master implementing agreement and various attachments. The master agreement provided for the allocation of Conrail engineers between CSXT, NSR and Conrail, as operator of the shared assets areas. The attachments provided for the integration of allocated Conrail employees and operations into each Carrier's workforce and operations. Thus, in the NSR attachments, the BLE and the NSR were able to reach agreements regarding the manner in which CRC Engineers, who would become NSR employees, would be treated for rates of pay, rules and working conditions on the date the transaction was

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consummated. These agreements also included the manner in which CRC Engineers' seniority would be treated.

CSXT negotiated three attachments with BLE, which created three new consolidated seniority districts, Eastern, Western and Northern, from existing CSXT lines and allocated Conrail lines, except that the Northern District contained only former Conrail lines. The involved General Committees of Adjustment of the BLE representing CSXT's Engineers and the General Committee representing CRC's Engineers were, however, unable to reach complete agreement regarding the manner in which CRC Engineers would have their seniority integrated into the seniority rosters of CSXT Engineers for the planned new Eastern and Western Districts.

In spite of diligent and good faith efforts by the three General Committees of Adjustment as well as International Officers of the BLE, this "internal" dispute could not be resolved. Accordingly, the three General Committees of Adjustment, the BLE International and CSXT agreed that the below-signed Arbitrator would hear the parties' respective positions regarding the issue of prior rights.

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Accordingly, on February 26, 1999 a hearing was held before the below-signed Arbitrator in Sarasota, Florida. Pre-hearing written submissions were filed by the BLE General Committees of Adjustment for CSXT's Engineers and by the BLE General Committee of Adjustment representing Conrail's Engineers. CSXT and the BLE International attended the hearing as neutral observers, reserving the right to provide the Arbitrator with documentary evidence and/or any requested technical assistance.

At the February 26, 1999 hearing the Arbitrator heard arguments presented by CSXT's General Committees of Adjustment and Conrail's General Committee of Adjustment. Simply stated, the CSXT Committees sought a resolution whereby prior rights for both CSXT Engineers and Conrail Engineers would be preserved; while the Conrail Committee argued that after a period of preservation of prior rights both CSXT and former Conrail Engineers would have their competitive seniority determined by their original dates of hire.

Arguments were also raised by the CSXT General Committees of Adjustment regarding the Arbitrator's jurisdiction and the applicability of the BLE Constitution.

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At the February 26, 1999 hearing the parties entered their appearances as follows:

Richard S. Edelman, Esquire  
O'Donnell, Schwartz & Anderson  
For the CSXT Northern and Western Lines  
General Committees of Adjustment

Mr. Don Menefee  
General Chairman  
Mr. Cleatus Roy  
General Chairman  
For the CSXT Northern and Western Lines  
General Committees of Adjustment

Mr. Robert W. Godwin  
General Chairman  
Mr. W. A. Thompson  
Alternate General Chairman  
Mr. Larry W. Sykes  
District Chairman  
For the Conrail General Committee of Adjustment

Harold A. Ross, Esquire  
General Counsel  
Mr. Paul T. Sorrow  
International Vice President  
Mr. Edward W. Rodzwicz  
International Vice President  
For the BLE International

Mr. Kenneth R. Peifer  
Vice President, Labor Relations  
Mr. Howard S. Emerick  
Director, Labor Relations  
For the CSXT

The hearing concluded on February 26, 1999. During the brief period that the "internal" BLE dispute was under

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consideration by the Arbitrator, the Arbitrator was advised that the CSXT and the BLE, representing the involved General Committees of Adjustment had agreed that this Arbitrator should serve as Neutral Referee pursuant to Article I, Section 4 of the New York Dock Conditions regarding implementing agreements applicable to CSXT's Eastern and Western Districts.

As previously explained, CSXT, NSR, Conrail and the BLE had reached a so-called "master implementing agreement", which agreement included numerous attachments, and which agreement purposefully omitted provisions regarding prior rights; as the prior rights issue was specifically preserved for resolution through arbitration.

The master implementing agreement (hereinafter the "Negotiated Agreement") was ratified by the BLE everywhere on NSR, Conrail and CSXT except in CSXT's planned Eastern District. In mid-March, 1999, the Neutral Referee was advised of these facts, and an arbitration hearing pursuant to the provisions of Article I, Section 4 of the New York Dock Conditions was scheduled and held on March 18, 1999.

At this hearing the parties entered their appearances as follows:

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Mr. Don Menefee  
General Chairman  
Mr. Cleatus Roy  
General Chairman  
For the CSXT Northern and Western Lines  
General Committees of Adjustment

Mr. Robert W. Godwin  
General Chairman  
For the Conrail General Committee of Adjustment

Mr. Paul T. Sorrow  
International Vice President  
Mr. Edward W. Rodzwick  
International Vice President  
For the BLE International

Mr. Kenneth R. Peifer  
Vice President, Labor Relations  
Mr. Howard S. Emerick  
Director, Labor Relations  
For the CSXT

Ronald M. Johnson, Esquire  
Michael E. Ferrans, Esquire  
Jonathan M. Krell, Esquire  
Akin, Gump, Strauss, Hauer & Feld  
Nicholas S. Yovanovic, Esquire  
Assistant General Counsel, CSXT  
For the CSXT

Mr. William McCain  
Vice President, Labor Relations  
For Conrail

Position of the CSXT and Conrail

The CSXT and Conrail (hereinafter the "Carriers") submit that the only issues before the Arbitrator are (1) What should the prior rights provision be for CSXT's proposed Eastern and Western Districts and (2) Is the

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Negotiated Agreement (including the arbitrated prior rights provision) an appropriate basis for coordinating CSXT lines and allocated Conrail lines in CSXT's proposed Eastern District.

Citing decisions by the STB, the federal courts and arbitrators involved in resolution of New York Dock implementing agreement disputes, the Carriers maintain that the BLE has never contended that the Negotiated Agreement fails to meet any of the STB standards for a New York Dock implementing agreement.

The Carriers contend that the acceptance of the Negotiated Agreement's terms by the negotiators from both sides is the most powerful evidence of the Agreement's appropriateness for this Transaction. The Carriers point out that the United Transportation Union, the other union representing operating craft employees, accepted the same type of implementing agreement as was negotiated between the Carriers and the BLE.

The Carriers contend that New York Dock referees have recognized and deferred to the expertise of the parties' negotiators in resolving the complex and difficult issues involved in fashioning implementing agreements, and have also recognized that the negotiated agreements reflect the

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give-and-take of the bargaining process, creating a balancing of interests that should not lightly be disturbed.

The Carriers maintain that the Negotiated Agreement's changes to collective bargaining agreement terms satisfy the requirements of New York Dock. In support of this contention, the Carriers rely upon the decision of the STB in CSX - Control - Chessie Sys. And Seaboard Coastline, Finance Docket No. 28905 (Sub. No. 22) (Sept. 22, 1998), commonly referred to as Carmen III.

The Carriers cite several examples regarding the manner in which its proposed Northern, Western and Eastern Districts will contribute to a more efficient and consolidated operation and improved utilization of employees, which goals, the Carriers assert, are consistent with the STB Order in Finance Docket No. 33388. The Carriers rely primarily upon the Verified Statement of CSXT's Director of Labor Relations Howard Emerick in support of this contention regarding operational efficiency and employee utilization.

Finally, the Carriers assert that the Negotiated Agreement preserves "rights, privileges and benefits", and

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thus meets the standard established by the STB and the federal courts.

Based upon the foregoing facts and arguments, the Carriers request that the Neutral Referee impose a prior rights provision for CSXT's Eastern and Western Districts, and impose upon CSXT, Conrail and the BLE the Negotiated Agreement, consisting of the master agreement and the Eastern District Attachment, thereby completing the Negotiated Agreement.

Position of CSXT's General Committees of Adjustment

Among the various arguments presented by the CSXT General Committees of Adjustment is the contention that there is simply no operational basis for the size of the Districts proposed by CSXT.

The CSXT General Committees of Adjustment contend that the implementing agreement should provide for the retention of the prior rights arrangement. In support of this contention the CSXT General Committees of Adjustment assert that the New York Dock conditions, which provide the legal framework for the integration of forces, mandate preservation of rates of pay, rules and working conditions,

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a fair arrangement for seniority integration and limited interference with established seniority schemes. The CSXT General Committees of Adjustment maintain that there is a substantial history of the use of prior rights arrangements in merger/consolidation-type seniority integrations. Accordingly, the CSXT General Committees of Adjustment submit that their position regarding prior rights should be adopted, and that the position of the Conrail General Committee of Adjustment, advocating the elimination of prior rights, should be rejected.

The CSXT General Committees of Adjustment submit that the BLE's Constitution in Sections 33(a)(1) and 34(a) supports its position that prior rights is the constitutionally preferred arrangement for the determination of Engineers' seniority in transactions such as the one here under consideration.

The CSXT General Committees of Adjustment further contend that their proposal regarding retention of full prior rights works toward the goal of preserving pre-transaction agreement rights and the equities of Engineers as much as possible, by ensuring that prior seniority rights can and will be preserved unless the majority of the affected Engineers votes to eliminate those rights.

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Additionally, the CSXT General Committees of Adjustment submit that their proposal will protect Engineers by reducing the travel time and traveling expense they will incur if the Conrail General Committee of Adjustment's proposal to phase out and/or eliminate prior rights is adopted.

The CSXT General Committees of Adjustment also contend that Article I, Sections 2 and 4 of the New York Dock conditions, which require that an implementing agreement be a "fair arrangement", also support their proposal regarding retention of prior rights. The CSXT General Committees of Adjustment point out that their proposal seeks to preserve the ability of both current CSXT Engineers and Conrail Engineers to hold prior rights in their own districts; and therefore to have first preference for jobs in their former territories. The CSXT General Committees of Adjustment contend that this arrangement is more fair than an arrangement under which an employee with greater overall railroad longevity could displace a junior employee from work in the territory in which the junior employee previously held seniority.

The CSXT General Committees of Adjustment further point out that the CSXT has expressed no interest in

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whether prior rights are retained; and therefore argues that there is no allegation by the Carriers that the arrangement proposed by the CSXT General Committees of Adjustment is unfair or unworkable.

Citing earlier transactions involving coordinations and consolidations which impacted the CSXT Engineers, the CSXT General Committees of Adjustment assert that that these arrangements involving seniority support their position that there is an established practice of preserving prior rights on the property.

Additionally, the CSXT General Committees of Adjustment point out that a polling of their members demonstrates that the overwhelming majority support the retention of the ability to continue prior rights.

The CSXT General Committees of Adjustment also disputed the contention of the Conrail Committee that they had agreed to the elimination of prior rights. Although, the CSXT Committees initialed the October 16, 1998 draft, they assert that this was done subject to certain specific conditions.

Based upon the foregoing facts and arguments, the CSXT General Committees of Adjustment submit that their proposal is consistent with the BLE Constitution, is fair and

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equitable, complies with the New York Dock conditions and is appropriate and consistent with the will of the majority of Engineers in the two Districts. Accordingly, the CSXT General Committees of Adjustment request that their proposal be adopted.

#### Position of the Conrail General Committee of Adjustment

The Conrail General Committee of Adjustment originally took the position, when it met with the CSXT General Committees of Adjustment, that Conrail Engineers and CSXT Engineers should have their original dates of hire with their respective railroads be the basis for their exercise of competitive seniority. The Conrail General Committee of Adjustment contended that integrating Locomotive Engineers with their dates of hire seniority would protect jobs and enable the Carrier to pursue the Operating Plan as envisioned.

The Conrail General Committee of Adjustment points out that, as its members had "been through numerous railroad mergers and transactions in the past", it was particularly aware of the impact upon employees which would likely result when railroads involved in a merger or consolidation

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"wish to realize efficiencies and restructure rail service". The Conrail General Committee of Adjustment observed that it had "witnessed" Conrail's path to profitability, which included the reduction of eighty percent of the work force. The Conrail General Committee of Adjustment stated that the experience of 76,000 Conrail employees losing their jobs "taught us that we must negotiate in the best interests of all employees, whether they are Conrail Engineers, CSXT Engineers or NSR Engineers."

At the same time, the Conrail General Committee of Adjustment acknowledged that it understood that the negotiations of an implementing agreement had to be conducted in an atmosphere which recognized that the Carrier would have the opportunity to achieve efficiencies approved by the STB in the Carrier's operation.

The Conrail General Committee of Adjustment stated that, in this atmosphere of cooperation, the CSXT and Conrail General Committees of Adjustment met on numerous occasions beginning in February, 1997 to address the question of seniority. The Conrail General Committee of Adjustment points out that, with the assistance of International Officers of the BLE, a master implementing

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agreement was reached on October 16, 1998. The Conrail General Committee of Adjustment further points out that this agreement was initialed by all of the designated BLE General Chairmen. The Conrail General Committee of Adjustment submits that the October 16, 1998 agreement, which reflected a compromise among the General Chairmen regarding the application of the principle of prior rights, should be adopted by the Arbitrator.

The Conrail General Committee of Adjustment submits that the October 16, 1998 "negotiated tentative implementing agreements", which would be applicable to the CSXT's Eastern and Western Districts, was a fair and equitable arrangement and should be adopted by the Arbitrator.

### Findings and Opinion

In all STB-approved transactions the criteria are the same regarding the question of whether an implementing agreement meets statutory, administrative and legal standards. However, the weighing and balancing of those criteria obviously differ because of the unique characteristics associated with the operating plans

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proposed to effectuate each merger, consolidation and/or acquisition.

In the instant case, this Arbitrator did not have to "start from ground zero". This Arbitrator had the recent opportunity to review a substantial body of relevant documentation regarding the STB's Order in Finance Docket No. 33388. This Arbitrator also had the opportunity to consider thorough and detailed arguments regarding the propriety of implementing agreements entered into between CSXT, Conrail and NSR and the Transport Workers Union (hereinafter the "TWU"). Not unlike the instant case, the negotiated implementing agreement executed by the TWU was submitted for approval to its members in the Carmens craft or class. When that agreement failed ratification, a New York Dock Article I, Section 4 arbitration hearing was held before this Arbitrator.

On February 27, 1999, this Arbitrator found that a "Negotiated Agreement" between the Carriers and the TWU met the standards of New York Dock, as those standards have been interpreted by the STB, the federal courts and New York Dock arbitrators.

The following excerpts, reflecting the rationale in this Arbitrator's New York Dock decision involving the TWU

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and the Carriers, are, in this Arbitrator's opinion, applicable to the question here under consideration. The question here is whether the Negotiated Agreement between CSXT and the BLE meets applicable statutory and legal standards and therefore should be imposed. In addressing the question of the "fair and equitable" standard, this Arbitrator observed as follows:

A foundation principle which has been uniformly applied by arbitrators/referees in cases involving the integration of union-represented employees when corporate entities are involved in consolidations, mergers and/or acquisitions is to ensure, in light of all of the factual circumstances, that the selection and allocation of workforces and the integration of employees' seniority is "fair and equitable". The preponderant evidence of record in this case satisfies this Arbitrator that the Carriers' proposal, imposition of the Negotiated Agreement, is a fair and equitable manner for such selection and allocation of workforces. This Arbitrator's view is buttressed by the fact that all of the shopcraft labor organizations as well as the other labor organizations on the properties have agreed to virtually identical implementing agreements. (Page 37)

Except for the facts that (1) the instant case does not involve "other shopcraft unions" but involves the implementing agreements reached by the other operating craft union, specifically, the United Transportation Union (hereinafter the "UTU") and (2) the question of prior rights remains outstanding, the above-recited findings are consistent with the evidence in the instant case. The CSXT has presented sufficient evidence which establishes that the Negotiated Agreement fairly and equitably selects and

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allocates Engineers, satisfies the STB's necessity test, and does not vitiate any protected rights, privileges or benefits.

This Arbitrator also observed as follows:

What "tips the balance" in favor of the Carriers' proposal, in this Arbitrator's opinion, is the Negotiated Agreement and the virtually identical implementing agreements entered into voluntarily by all of the other shopcraft labor organizations. The Carriers' proposal is favored by this Arbitrator, not necessarily because those other implementing agreements establish a "pattern", but because they constitute reliable evidence that many experienced, well-schooled union negotiators, thoroughly familiar with the needs to protect the interests of the employees they represent and the sanctity of the collective bargaining agreements they previously administered, were persuaded that the NSR's and CSXT's operations would be more efficient and meet the purposes of the STB's order in Finance Docket No. 33388. There is no reason to believe that these negotiators would have accepted the CSXT's and NSR's collective bargaining agreements if they did not believe that the new arrangements benefited the employees they represented in the context of the principal Transaction. In exchange for their agreement, TWU/BRC representatives and the representatives of the other shopcraft organizations received substantial and generous quid pro quos reflected in the implementing agreements and the numerous side letters of agreement entered into evidence . . . (Pages 41-42)

There is no reliable evidence in this record which causes this Arbitrator to reach a contrary conclusion. That is, the evidence of record here establishes that, with the exception of the issue of prior rights which has been reserved for separate consideration, the BLE has negotiated an agreement which (1) preserves the rights, privileges and benefits enjoyed by its membership, (2) achieves substantial protections for the Engineers' craft or class

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consistent with and, at times, exceeding New York Dock's conditions and (3) meets the "fair and equitable" standard.

Accordingly, it is this Arbitrator's finding that the Negotiated Agreement should be imposed.

Turning to the "internal" dispute regarding the proper method of integrating Conrail Engineers with CSXT Engineers in the context of "prior rights", this Arbitrator would first observe that there is no greater emotional or difficult issue to resolve than the question of how employees' seniority will be adjusted when corporate entities are involved in mergers, consolidations and/or acquisitions.

As an initial observation, this Arbitrator was impressed with the thorough manner in which the General Committees of Adjustment represented their respective constituencies. It is clear that they engaged in good faith efforts, conducted over a substantial period of time, to reach an acceptable compromise regarding the issue of prior rights. It is not surprising that the CSXT General Committees of Adjustment and the Conrail General Committee of Adjustment, both led by dedicated representatives who had experienced the "downside" of previous coordinations and consolidations, were concerned about the potential

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adverse impacts this Transaction might have upon their respective memberships. These concerns account for the fact that their good faith efforts were unavailing in resolving the issue of prior rights.

After thorough consideration of the respective positions of the General Committees of Adjustment and consistent with the rationale expressed in the two excerpts cited above, this Arbitrator is persuaded that the manner in which seniority for CSXT and Conrail train service employees was integrated constitutes compelling evidence regarding the manner in which Engineers' seniority should be integrated.

The fact that train service and engine service employees on the CSXT will work in the same geographic/operational districts established by CSXT, and in view of the fact that train service and engine service employees have a commonality of interests, particularly insofar as their working conditions are concerned, persuades this Arbitrator that the principles agreed to by the UTU, as the representative of CSXT's and Conrail's train service employees, represent a fair and equitable manner for the integration of the seniority of CSXT and

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Conrail Engineers who will work in CSXT's Eastern and Western Districts.

Based upon the foregoing facts and findings, this Arbitrator issues the following Award:

Award:

(1) The Negotiated Agreement, including the following prior rights provision, is an appropriate basis for coordinating CSXT lines and allocated Conrail lines in CSXT's Eastern District, and is adopted and imposed by the Neutral Referee.

(2) The issue of prior rights for CSXT and Conrail Engineers will be resolved consistent with the general principles contained in the agreements concerning seniority involving CSXT train service employees represented by the UTU.

Accordingly, prior rights for Engineers will be as follows:

(i) There will be prior rights for all CSXT Engineers on all jobs, currently theirs, in the Eastern and Western Seniority Districts;

(ii) There will be prior rights for all Conrail Engineers on all jobs, currently theirs, in the Eastern and Western Seniority Districts;


(iii) New assignments, not working exclusively in former B&O, C&O, L&N or Conrail territory in the Eastern and Western Seniority Districts, including extra boards, will be filled from the date of hire roster without regard to prior right seniority, and;

(iv) Prior right Conrail Engineers will have the right to exercise their Conrail seniority within and between CSXT Eastern, Western and Northern Seniority Districts over any junior Conrail Engineer.

In the event that the exercise of such seniority would result in an immediate shortage of Engineers at the terminal/zone from which the exercise of seniority is being made, the parties will cooperate in resolving this matter and failing thereto will be referred to the General Chairman and the Highest Designated Officer for final resolution.

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This Award was signed this 2nd day of April, 1999.

  
Richard R. Kasher, Arbitrator