

ARTICLE 11 - PROTECTION OF EMPLOYEES

(Article XIII of the January 27, 1972

National Agreement)

Indicated

The scope and purpose of this Article is to provide, to the extent specified herein, for fair and equitable arrangements to protect the interests of certain of the Carrier's employees represented by the United Transportation Union who are adversely affected by the application of Article 27-Interchange, Article 29, Section A (4)-Road-Yard Movements, and Article 10-Interdivisional Service of this Agreement; therefore, fluctuations and changes in volume or character of employment brought about by other causes are not within the purview of this Article.

Section A - Definitions

Wherever used in this Article, unless the context requires otherwise:

(1) "Implementation" means the application and implementation of the provisions of Article 27-Interchange, Article 29, Section A (4)-Road-Yard Movements, and Article 10-Interdivisional Service of this Agreement.

(2) "Displaced Employee" means a Carrier employe represented by the UTU who as a result of an Implementation is placed in a worse position with respect to his compensation.

(3) "Dismissed Employee" means a Carrier employe represented by the UTU who as a result of an Implementation is deprived of employment with the Carrier because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employe whose position is abolished as a result of an Implementation.

(4) "Protective Period" for employes covered by Section B (1) of this Article means that period of time during which a Displaced or Dismissed Employee is to be provided protection hereunder. The Protective Period for such employe shall extend from the date he is displaced or dismissed for a period of time equal to the length of time which such employe has seniority in the craft or class at the time he is adversely affected. In no event, however, will the Protective Period extend beyond the employe's 65th birthday. Where an employe holds seniority as a Conductor

(Article 11, Section A Cont'd)

Ditto

and Brakeman or Yardman, the earlier seniority date shall govern. In the event such a Displaced Employee elects to remain in the Carrier's service after the first day of the month following the month he attains age 65, he will no longer receive any of the protective benefits of this Article and the Carrier may terminate on the same seniority district the protective benefits then being provided the junior Dismissed or Displaced Employee receiving protection under this Article on such seniority district on a one-for-one basis.

(5) "Protective Period" for employees covered by Section B(2) of this Article means the 6-year period of time from the date such employee is dismissed but not to exceed the length of time which such employee has seniority in the craft or class at the time he is dismissed. Where an employee holds seniority as a Conductor and Brakeman or Yardman, the earlier seniority date shall govern.

Section B - Coverage

(1) Subject to the other provisions of this Article, the protective benefits of Sections C, D, E, and F of this Article apply to:

(a) Employees adversely affected directly or indirectly by an Implementation of Article 10-Interdivisional Service.

(b) Regularly assigned employees assigned to yard crews that regularly spend more than 50 per cent of their time in interchange work who are adversely affected as a result of an Implementation of the reciprocal interchange provisions of Section E of Article 27 -Interchange. (Such employees will be determined by a joint check based upon the work performance of the involved yard crews for the 30 working days prior to the Implementation.)

(c) Regularly assigned employees assigned to interchange or transfer crews adversely affected by the interchange of solid trains provision under Section A of Article 27 -Interchange.

(Article 11, Section B Cont'd)

Ditto

(d) Employees of Terminal Companies adversely affected either directly or indirectly by the interchange of solid trains provision under Section A of Article 27-Interchange.

(2) Subject to the other provisions of this Article, the protective benefits provided in Sections D and E of this Article will be accorded to any employee of the Carrier adversely affected by Article 27-Interchange, other than those covered by Subparagraphs (b) and (c) of Section B (1) of this Article or Article 29, Section A (4)-Road-Yard Movements.

(3) The protective provisions of this Section as applied to Terminal Company employees will include, in addition to the above, the exercise of seniority and acceptance of employment on the involved line-haul carriers, locomotive service employees being required to accept locomotive service employment and ground service employees being required to accept ground service employment. The involved line-haul carriers will make appropriate arrangements in connection with Subparagraph (1)(d) of this Section and the foregoing.

Section C - Displacement Allowance

(1) So long during his Protective Period after a Displaced Employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

(2) Each Displaced Employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed service immediately preceding the date of his displacement as a result of the Implementation (thereby producing average monthly compensation and average monthly time paid for in the test period). Both the above "total compensation" and the "total time for which he was paid" shall be adjusted to reflect the reduction on an annual basis, if any, which would have occurred during the specified 12-month

(Article 11, Section C Cont'd)

Ditto

period had Public Law 91-169, amending the Hours of Service Act of 1907, been in effect throughout such period (i. e., 14 hours limit for any allowance paid during the period between December 26, 1970 and December 25, 1972 and 12 hours limit for any allowances paid thereafter). Such allowance shall also be adjusted to reflect subsequent general wage increases. In the event a Displaced Employee shall have less than 12 months of service his total compensation and total time paid for shall be divided by the number of months in which he performed service.

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

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

(5) The displacement allowance shall cease prior to the expiration of the Protective Period in the event of the Displaced Employee's resignation, death, retirement or dismissal for justifiable cause.

Section D - Dismissal Allowances

(1) A Dismissed Employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to $1/12$ of the compensation received by him in the last 12 months of his employment in which he

(Article 11, Section D Cont'd)

Ditto

earned compensation prior to the date he is first deprived of employment as a result of the transaction. Such allowance shall be adjusted to reflect on an annual basis the reduction, if any, which would have occurred during the specified 12-month period had Public Law 91-169, amending the Hours of Service Act of 1907, been in effect throughout such period (i.e., 14 hours limit for any allowance paid during the period between December 26, 1970 and December 25, 1972 and 12 hours limit for any allowances paid thereafter). Such allowance shall also be adjusted to reflect subsequent general wage increases. In the event a Dismissed Employee shall have less than 12 months of service his total compensation and total time paid for shall be divided by the number of months in which he performed service.

(2) The dismissal allowance of any Dismissed Employee who returns to service with the Carrier shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of Section C.

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

(4) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure to return to service after being notified in accordance with the working agreement, or failure without good cause to accept a comparable position which does not require a change in his place of residence for which he is qualified and eligible with the Carrier from which he was dismissed after being notified.

(Article 11, Cont'd)

Ditto

Section E - Separation Allowance

A Dismissed Employee entitled to protection under this Article, may, at his option within 7 days of his dismissal, resign and (in lieu of all other benefits and protections provided in this Article) accept a lump sum payment computed in accordance with Section 9 of the Washington Job Protection Agreement of May, 1936.

Section F - Fringe Benefits

No employee of a carrier who is affected by an Implementation shall be deprived during his Protective Period of benefits attached to his previous employment, such as free transportation, hospitalization, pensions, relief, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees of the Carrier, in active service or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

Section G - Seasonal Fluctuations And Declines In Business

(1) In the event of a decline in a carrier's business measured by the net revenue ton-miles in any 30-day period compared with the net revenue ton-miles for the corresponding period in the preceding calendar year, the number of employees who are receiving dismissal or displacement allowances may be reduced at any time during the said payroll period to the extent of one percent for each one percent decline. Such reductions in protected employees shall be made in inverse seniority order. Upon restoration of a carrier's volume of net revenue ton-miles employees must be returned to their protective status to the extent of one percent for each one percent rise in net revenue ton-miles. In the case of Terminal Companies, the decline in business shall be measured by the total number of loaded and empty cars received from and delivered to connecting carriers, including the number of loaded and empty cars handled in solid interchange trains, in any 30-day period compared with the volume of such interchange in the corresponding period in the preceding calendar year.

(Article 11, Section G Cont'd)

Ditto

(2) In the event that an employee receiving a displacement allowance is subsequently placed in a worse position by reason of a seasonal fluctuation or a decline in business, so long as he continues in such position for that reason the amount paid him as his displacement allowance shall continue unchanged.

(3) In the event that a Displaced Employee is deprived of employment with the Carrier as the result of a seasonal fluctuation or a decline in business, his dismissal allowance shall be the amount which was being paid him as his displacement allowance. An employee other than a Displaced Employee who is deprived of employment as the result of a seasonal fluctuation or a decline in business shall not be paid any protective benefits under this Article.

Section H - Arbitration Of Disputes

(1) In the event the Carrier and the UTU are unable to settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this Article within 20 days after the dispute arises, it may be referred by either party to an arbitration committee. Upon notice in writing served by one party on the other of intent by that party to refer a dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the committee and the members thus chosen shall select a neutral member who shall serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the General Chairman of the UTU or the highest officer designated by the Carrier, as the case may be, shall be deemed the selected member, and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. Should the members be unable to agree upon the appointment of the neutral member within 10 days, the parties shall then within an additional 10 days endeavor to agree upon a method by which a neutral member shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days the neutral member whose designation will be binding upon the parties.

(Article 11, Section H Cont'd)

Ditto

(2) The decision, by majority vote, of the arbitration committee shall be final, binding, and conclusive and shall be rendered within 45 days after the hearing of the dispute or controversy has been concluded and the record closed.

(3) The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(4) In the event of any dispute as to whether or not a particular employe was adversely affected by an Implementation, it shall be his obligation to identify the adverse effect and specify the pertinent facts relied upon. If the facts so stated are sufficient to support a finding that the employe was so adversely affected by an Implementation, it shall then be the Railroad's burden to disprove those facts or prove that other factors affected the employe.

Section
(Title) Added

Section I - Change Of Residence

Any Displaced Employee required to change his residence because of the Implementation of Article 10-Interdivisional Service shall receive the benefits contained in Sections 10 and 11 of the Washington Job Protection Agreement except that he will be allowed 5 working days instead of "2 working days" as provided in Section 10 of said Agreement, and in addition to such benefits shall receive a transfer allowance of \$400.00. The National Mediation Board is substituted for the Interstate Commerce Commission in Section 11(d) of said Agreement. Change of residence shall not be considered "required" if the reporting point to which the employe is changed is not more than 30 miles from his former reporting point.

Section
(Title)Added

Section J - No Duplication Of Benefits

If any protective benefits greater than those provided in this Article are available under existing agreements, such greater benefits shall apply subject to the terms, conditions, responsibilities and obligations of both the Carrier and employe under such agreements, in lieu of the benefits provided in this Article. There shall be no duplication or pyramiding of benefits to any employees.