



Legal Department

Overview of New York Dock Conditions

Under the New York Dock (NYD) labor-protective conditions, any employee who is displaced, dismissed, or required to move because of a merger or consolidation is protected for up to six years as long as the adverse effect is caused by the merger.

Key definitions:

- **Transaction** – Any carrier action taken *because of* an ICC/STB-approved merger or consolidation. There must be a causal link between the merger and the change affecting you. (If the merger **triggered, enabled, or required** the carrier action, then the causal nexus exists, and the employee is covered.)
- **Displaced employee** – You still have a job but are earning less or have worse working conditions due to the merger.

Dismissed employee – You lose your job entirely because your position was abolished or bumped out of existence due to merger-related changes.

FREQUENTLY ASKED QUESTIONS:

Q: When does New York Dock apply?

A: New York Dock applies to “transactions” which broadly means some coordination of operations between the class I entities involved in the merger. Such coordination requires approval of the Surface Transportation Board or STB and often involves such matters as consolidation or elimination of equipment repair shops, terminal facilities and the like.

Q: How do I know if New York Dock applies?

A: Generally, when the STB approves the merger between two class I carriers, it will specify that New York Dock applies.

Q: Is Every employee entitled to New York Protective Compensation?

A: No, Only Displaced or Dismissed Employees are entitled to protection compensation.

Q: How do I know if I am a Displaced employee?

A: A Displaced employee is an employee of the railroad who, as a result of a transaction, is placed in a worse position with respect to their compensation and rules governing working conditions.

Q: How do I determine if I am in a worse position?

A: This usually involves a calculation of a test period average before the merger and afterwards to show that the employee was in a worse position. Reduction in earnings alone is not sufficient to say the employee was displaced. The employee must also show the direct causal nexus between the transaction (or merger) and the adverse impact on their employment relationship.

Q: How is a Test Period Average (TPA) calculated?

A: Under New York Dock a TPA includes all earnings in the 12 months **before** the merger impact (This includes straight-time wages, overtime, special allowances, mileage, premiums and any pay received for time paid) and Total paid hours during the same 12 months. Both totals are divided by 12 to calculate average monthly earnings and average monthly paid time.

Q: Who are dismissed employees entitled to protection?

A: A Dismissed employee is an employee of the railroad who as a result of the transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.

Q: For what period of time is an employee entitled to protective benefits?

A: Generally, under New York Dock an employee is entitled to the same number of months as the employee's total time working for the Carrier up to six years.

Example A: If an employee worked for the Carrier for 15 years (180 months), under New York Dock their protection period is 6 years.

Example B: If an employee worked for the Carrier for 2 years (24 months), under New York Dock their protection period is 24 months.

Q: Is everything the carrier does after a merger subject to New York Dock?

A: No. Not every action following a merger is subject to New York Dock. There must be a causal connection between the action the Carrier takes and the merger. If the Carrier disputes that New York Dock applies, the burden to establish a causal connection lies with the employees and/or the Union. Disputes can be progressed to arbitration.

Q: Does New York Dock change our Collective Bargaining Agreement?

A: No. The Collective Bargaining Agreement and Seniority Districts continue. If the Carrier wants to make changes to those provisions, it must establish the causal connection between the changes it proposes and the need to implement the STB approved merger. Further, this can only be achieved through bargaining with the union or in arbitration. The Carrier cannot unilaterally make changes to the CBA.

Q: What type of Notice are Employees entitled to from the Carrier?

A: The Carrier must provide at least 90 days' notice of any transaction that may cause the dismissal or displacement of employees or the rearrangement of forces.

Q: What happens after the Carrier provides its 90 days' notice?

A: The parties are obligated to engage in negotiations on an implementing agreement regarding the proposed change.

Q: Can the Railroad simply make the changes it wants if the parties do not reach agreement?

A: No, the Carrier must then take the matter to binding arbitration. The arbitration procedures are spelled out and require an expedited process. Arbitration costs are shared equally between the parties.

Q: What would I get if I am Displaced?

A: Typically, the amount of displacement allowance depends on the employees “test period average” or TPA which is the amount of compensation and time for which the employee was paid in the prior 12 months including overtime. In rare circumstances the carrier may be able to prove that the overtime should be excluded because it was extraordinary. The employee will then receive the difference in pay between what he or she is currently receiving and their TPA. Employees can lose the TPA if the employee refuses to exercise seniority to take a higher rated position that does not require a change in residence.

Q: What do I get if I am Dismissed?

A: Typically, employees are entitled to a monthly allowance equal to the monthly average of the 12 months preceding dismissal. The Carrier is entitled to subtract any unemployment benefits or earnings the employee receives from other sources.

Q: Will I be required to move?

A: Possibly. Employees may be denied a dismissal allowance if the employee refuses another comparable position at the carrier even if it would require a change in residence at the outset. However, once an employee is a dismissed employee, they may not be compelled to take a position that requires a change of residence as a condition of continuing to receive a dismissal allowance.

Q: If I am required to move, who pays for the move?

A: The Carrier is required to pay for moving expenses, although what constitutes moving expenses is often worked out in the implementing agreement. There is also a provision which may allow the employee to move back to the original location if they are furloughed within three years and the Carrier has to pay the moving expenses back to the original location as well.

Q: If I am required to move and I have to sell my house at a loss, do I receive compensation?

A: You may be entitled to protections against the loss in the sale of your home if you are forced to move and are unable to sell at a favorable price.

Q: If I am dismissed what happens to additional benefits like health insurance and other benefits?

A: New York Dock protects the employee so that they are in no worse of an economic position that they would have been without the transaction. Therefore, they are entitled to the same fringe benefits they would have had if they had remained employed.

Q: Are these protections automatically implemented?

A: If there is any dispute between the parties as to what benefits a particular employee is entitled to under New York Dock the dispute is resolved in binding arbitration. In such arbitration, the party asserting the claim first has the burden to prove that New York Dock applies to the specific issue at hand. Most New York Dock claims relate to compensation and so the burden is then on the employee/Union to show that they suffered an adverse effect on their compensation or working conditions entitling them to protections. The Carrier can defeat the claim by showing that the loss of earnings was due to some other cause than the transaction, then the employee may not be entitled to protective compensation.