



What Are New York Dock Protections?

BMWED Education Department
2026





Topics Covered

- *Historical Background*
- *“Transactions”*
- *Test Periods*
- *Compensation*
- *Railroad Evasion*
- *Supporting your NYD Benefits*
- *Common Issues or Misinterpretations*
- *NYD alongside other Worker Protections*



NOTE!

THE NATURE OF THE PROTECTIONS PROVIDED UNDER NEW YORK DOCK CONDITIONS REQUIRE THOUGHTFUL RECORDKEEPING AND PREPARATION WELL IN ADVANCE OF ANY POTENTIAL TRANSACTION.

This preparation happens at all levels of our union, from the individual member to National Division. To ensure members receive benefits they deserve under NYD, everyone must do their part!

WHEN IN DOUBT, CALL YOUR
GENERAL CHAIRPERSON!





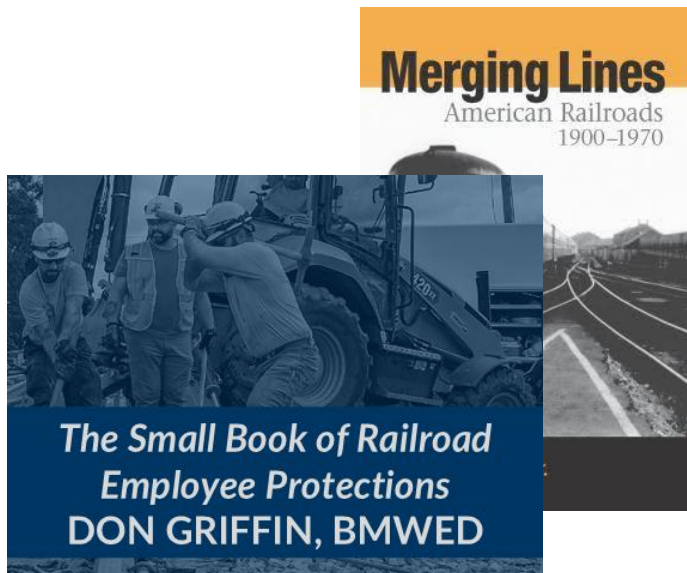
Historical Background

Understanding of how railroad mergers work, and employee protections within the overall framework of railroad mergers, requires understanding US railroad and labor history, especially of the 1920s and 1930s.

Recommended Reading:

***Merging Lines: American Railroads, 1900-1970**
by Richard Saunders, Jr. (NIU Press, 2016)*

***The Small Book of Railroad Employee Protections**
by Don Griffin, BMWED (BMWED, 2017)*



Historical Background



Labor turmoil in the 1920s was barely settled before workers were hit by the overall crisis of the Great Depression, where in 1933 roughly 45% of union-represented rail workers were unemployed.

The US government considered the American railroad network to be grossly overbuilt. Attempts had been made since after WWI to “rationalize” the network through the merger or consolidation of railroads.

Everyone discussing the issue knew, however, that mergers and consolidations meant job cuts.



*The Small Book of Railroad
Employee Protections
DON GRIFFIN, BMWED*

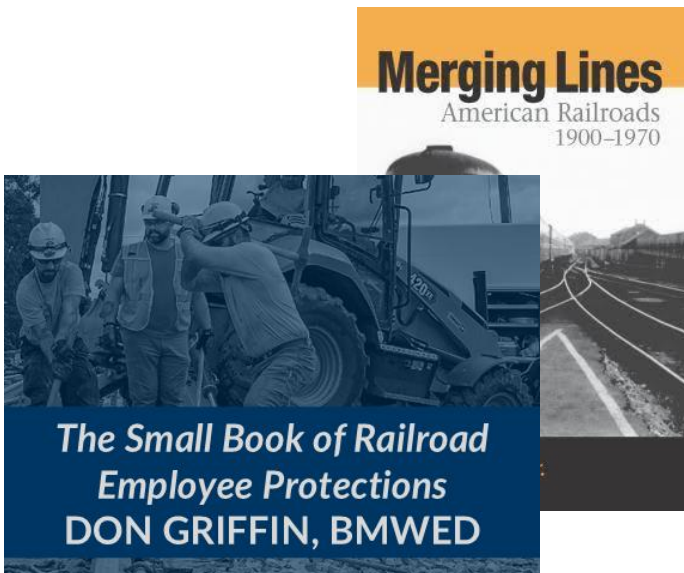
Historical Background



President Roosevelt sets the expectation that rail labor and management negotiate a solution to protect workers impacted by any merger-related job cuts. Previous legislation to address the employment issue (the ERTA of 1933) proved inadequate.

*Negotiations resulted in the Washington Job Protection Agreement of 1936 (WJPA), a **voluntary** agreement between rail labor and management and the predecessor of our modern-day New York Dock Conditions.*

The WJPA had gaps, though.



Historical Background



*WJPA protections did not apply to leases, abandonments, or trackage rights-only to mergers. However, workers were still impacted by these other changes, and a 1937 transaction caused rail labor to appeal to the **Interstate Commerce Commission (ICC)** to impose WJPA conditions as a part of its approval.*

The railroads pushed back, asserting that private employment issues were not in the “public interest” subject to ICC statutory authority.

*The issue went all the way to the Supreme Court, where in **US v. Lowden** the Court found the ICC did, in fact, have the authority to impose WJPA conditions.*



United States v. Lowden,
308 U.S. 225 (1939)



Historical Background

After the creation of the WJPA and the decision in US v. Lowden, ICC's authority to impose protections for workers affected by railroad mergers was established precedent (imposed conditions for other transactions is a more complex topic!).

Subsequent Supreme Court decisions and ICC decisions evolved the nature of worker protections through to those we now know today as "New York Dock" protections.

This history of this evolution is available in BMWED Brother Don Griffin's impressive work, The Small Book of Railroad Employee Protections.

The "New Orleans Conditions"

R.L.E.A. v. U.S., 339 U.S. 142
(1950)

The "Oklahoma Conditions"

B.M.W.E. v. U.S., 366 U.S. 169
(1961)



WHAT NYD PROTECTIONS ARE AND HOW THEY WORK



So What Would You Say You DO Here?

New York Dock Conditions, if imposed, provide:

- ***Up to 6 years of protective benefits for displaced or dismissed employees, with rates adjusted for subsequent GWIs.***
 - *This 6-year period can trigger on when an employee is first affected by the transaction, not the date the transaction consummates.*
- ***Up to 3 days of wage reimbursement for relocation expenses if an employee is forced to move to retain employment***
 - *This provision has seldom been successfully applied.*



So What Would You Say You DO Here?

New York Dock Conditions, terminology:

- *A **DISPLACED** worker is still working after the merger, but they were forced by the merger to relocate or accept a different position (placed in a worse position with respect to your compensation and work rules of your position).*
- *If your regular position was abolished as a result of the merger, but you bumped to another job, this would **DISPLACE** you.*



So What Would You Say You DO Here?

New York Dock Conditions, terminology:

- *A **DISMISSED** worker can't stay working as a result of the merger.*
 - *This means involuntary furlough. It's not the same as a disciplinary dismissal.*
 - *If you get bumped out of a job by someone else who had to bump your position as a result of the merger, and you have nowhere else to go, you are a **DISMISSED EMPLOYEE**.*



Sounds Great! What's the Catch?

NYD compensation is calculated based off a “test period” to determine what is owed to an employee displaced or dismissed as a result of the merger.

- *The test period is a 12-month period preceding the adverse effect on the employee (again, NOT the consummation of a merger).*
 - *The test period looks back at compensation received and hours worked in that 12-month span. An average is calculated, the “test period average” or TPA.*
 - *“Transaction related” overtime can be subtracted from the applicable compensation.*



Understanding the Test Period

The clock does not start at day 1 of a merger!

The test period accounts for the average of 12 months of hours worked and compensation received before you were affected by the merger.



*The impact to **YOUR JOB** can happen months or years after the day the merger consummates!*



Sounds Great! What's the Catch?

An employee displaced or dismissed as a result of the transaction (the merger) is entitled to receive the average monthly compensation within average hours worked based off their calculated TPA.

- *The TPA sets the compensation an employee is entitled to receive.*
 - *If a displaced employee can still work but earns less in a month than their TPA calculation, they can claim the balance.*
 - *If an employee earns more than the calculated TPA in a month, they have no entitlement to additional compensation.*





Some examples (Displacement)

Employee “displaced” – Still working, but work opportunity has been reduced by the impacts of the merger

TPA EXAMPLE \$3000 per month
180 hours per month

Calculated by averaging the compensation and hours worked by this employee in the 12-months prior to their experiencing the displacement

If this employee earns \$2700 in a month in their “displaced” position, they have a claim for \$300 based off their TPA calculation.

If this employee earns \$3400 in a month in their “displaced” position, they have no claim to additional compensation.





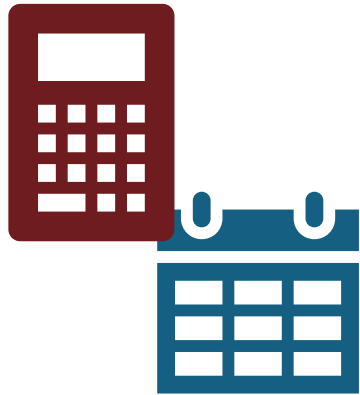
Some examples (Dismissal)

Employee “dismissed” – Bumped out of their job or job abolished and has no positions available to them within their seniority

***TPA EXAMPLE \$3000 per month
180 hours per month***

Calculated by averaging the compensation and hours worked by this employee in the 12-months prior to their experiencing the displacement

This employee will be entitled to monthly compensation equal to their TPA, or \$3000 per month.





Up to 6 years...

Compensation and other benefits provided under New York Dock conditions aren't automatically 6 years for everyone affected. These protections can last UP TO 6 years from the date of adverse impact, but that time can be reduced:

- *Failing to exercise seniority to secure a position available to you that “keeps you whole” compared to your TPA conditions will cancel any NYD benefits.*
- *Your death, retirement, resignation, or dismissal for cause (discipline) also cancels NYD benefits.*
- *Your protective period can't be longer than the time you worked for the railroad up to that point.*



Benefit Reductions

If you are a DISMISSED employee, your NYD benefits can be reduced by:

- *Outside earnings (you have to report them)*
- *Your death, resignation, retirement, dismissal for cause, failure to return to service if recalled, failure to accept a comparable position if notified of its availability (as long as returning to work respects the seniority rights of others working)*
- *You don't have to seek work outside the railroad while DISMISSED but, if working, you have to report what earnings you make from outside work.*



OTHER FACTORS REGARDING NYD PROTECTIONS AND MERGERS



The Railroads Can't “Pre-Game” to get out of NYD!

The railroad cannot rearrange or adjust its forces in anticipation of a merger for the purpose of depriving employees of benefits under NYD.

This provision is one that would require lots of argument and arbitration if the railroad tries it, but it is an established right under NYD conditions.



NYD works alongside the “Cramdown Agreement”

*Unions and the new railroad also negotiate **implementing agreements** to resolve issues that can't be addressed by the agreement/s post-merger (territory overlap issues near common points, seniority lists, etc.).*

If an issue cannot be resolved through negotiating an implementing agreement, it goes through arbitration.



NYD works alongside the “Cramdown Agreement”

Through a merger, the 2001 Cramdown Agreement provides that if the resulting railroad decides to use a single agreement to cover all employees, the representing union gets to choose which of the governing agreements will cover the post-merger work rules, wages, and conditions.

If the railroad continues to operate with multiple bargaining agreements, keeping those agreements in place, Cramdown is not required.



NYD and Cramdown are Conditions Imposed by the STB

The STB can impose NYD protections and Cramdown Agreement provisions (if Cramdown is not voluntary) as conditions of an approved merger.

*Current language like Union Pacific's "Jobs for Life" idea are **NOT** the same as the specific conditions imposed by the STB, a government agency. STB conditions are legally enforceable protections, not slick deal-making.*



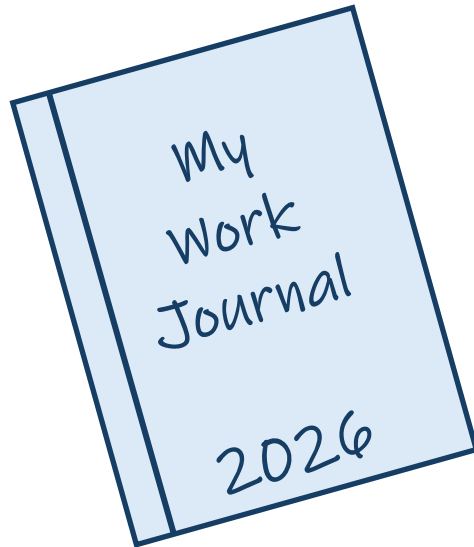
**MAKING THIS WORK
— WORK JOURNALING —**



How you can protect yourself!

Your compensation under NYD depends on the records kept of your work hours and compensation in the 12 months prior to your experiencing an adverse impact from the merger.

That means, to ensure your TPA is correctly calculated and accurate, you need a record of your work you can use to verify the TPA calculations!

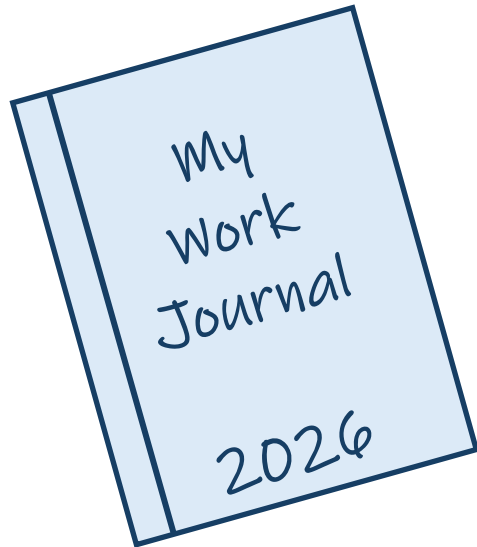


WHERE YOU WORKED

WHAT YOU DID

THE HOURS YOU WORKED THAT DAY (ST & OT!)

KEPT FOR EVERY DAY YOU WORK!



How you can protect yourself!

The railroad has access to your work hours and compensation, since the railroad manages your payroll and timekeeping.

*The union **DOES NOT HAVE ACCESS** to your work history, your compensation history, or what sort of jobs you worked **UNLESS YOU PROVIDE THESE DETAILS!***

Remember, too, that NYD allows compensation to be reduced for “transaction related overtime” worked during the test period. Railroads may exploit this to misclassify your work and reduce their costs!



Keeping a Work Journal

There is no single form BMWED provides to do this journaling work. Your System Division or Federation may have templates or examples you can use.

It's important to keep records accurately and maintain these records for the total test period of 12 months! It may be useful to use a special planner, notebook, or similar system.





Date:	Location:	Time:	Total Hours:	Work Performed:
MONDAY 6/7	MP 70.6 PAYNESVILLE SUB.	Start	Straight	4-10s CHANGED OUT BAD TIES IN A MUDSPOT
		0700	10	
		End	OT	
		1730	0	
TUESDAY 6/8	MP 72.3 PAYNESVILLE SUB.	Start	Straight	4-10s DRILLED & PREPARED PANELS FOR A BRIDGE RENEWAL
		0700	10	
		End	OT	
		1830	1	
WEDNES. 6/9	MP 72.3 PAYNESVILLE SUB.	Start	Straight	4-10s SET & BARRED UP PANELS AFTER B&B CHANGED BRIDGE SPANS
		0600	10	
		End	OT	
		1800	1 1/2	

Work Journal **EXAMPLE**

Week of: JUNE 7-13, 2021

Name: JOHN Q. RAILROADER

Employee Number: 1001234

Date:	Location:	Time:	Total Hours:	Work Performed:
MONDAY 6/7	MP 70.6 PAYNESVILLE SUB.	Start	Straight	4-10s CHANGED OUT BAD TIES IN A MUDSPOT
		0700	10	
		End	OT	
		1730	0	
TUESDAY 6/8	MP 72.3 PAYNESVILLE SUB.	Start	Straight	4-10s DRILLED & PREPARED PANELS FOR A BRIDGE RENEWAL
		0700	10	
		End	OT	
		1830	1	
WEDNES. 6/9	MP 72.3 PAYNESVILLE SUB.	Start	Straight	4-10s SET & BARRED UP PANELS AFTER B&B CHANGED BRIDGE SPANS
		0600	10	
		End	OT	
		1800	1 1/2	
THURSDAY 6/10	MP 72.3 PAYNESVILLE SUB.	Start	Straight	4-10s CLEANED UP SCRAP AND CLEARED WORK AREA AFTER BRIDGE PROJECT
		0700	10	
		End	OT	
		1730	0	
FRIDAY 6/11	MP 69.6 PAYNESVILLE SUB.	Start	Straight	<u>CALLED IN</u> TO FIX BAD TIES AND FIX A HEAT KINK IN TRACK ON DAY OFF
		0700	0	
		End	OT	
		1400	7	
SAT. 6/12	—	Start	Straight	DAY OFF
		—	—	
		End	OT	
		—	—	
SUN. 6/13	—	Start	Straight	DAY OFF
		—	—	
		End	OT	
		—	—	

Keep sheets in date order for easy reference. If more space is required on a certain date, note in work performed and attach behind the journal sheet for that date. Make sure to label extra sheets and be as accurate and detailed as possible. Don't guess or round your numbers! Keep your journal safe!

- EXAMPLE -



Keeping a Work Journal

Work Journals are not just helpful for NYD!

- *Claims and Grievances*
- *§20109 Claims*
- *Fighting off outside contracting*
- *Evidence to establish/correct Feb. 7 status or rates.*

Bottom line, to ensure we keep the railroads honest about any NYD protective benefits you're due to receive, we need the evidence to support you!



CLAIMS & DISPUTES UNDER NYD



If there is a dispute regarding NYD, it goes to Arbitration

This is different from our normal arbitration!

The Surface Transportation Board (STB) can review the arbitration decisions made by arbitration committees formed to resolve disputes in NYD protections. If the STB cannot resolve, it goes to the courts.



If there is a dispute regarding NYD, it goes to Arbitration

If you believe you were adversely affected by the merger

- 1. It's up to you (and your BMWED representatives) to establish the facts (what merger, what impact)*
- 2. It's the railroad's burden of proof to show that your situation wasn't merger-related.*





Claims & Disputes Under NYD

Your rights and responsibilities under NYD operate under unique provisions for interpretation and handling disputes or issues.

IF YOU HAVE ANY QUESTIONS, CONCERNS, OR PROBLEMS REGARDING YOUR STATUS, RESPONSIBILITIES, OR BENEFITS UNDER NYD, CONTACT YOUR SYSTEM DIVISION OR FEDERATION OFFICERS!





Claims & Disputes Under NYD

Don't listen to:

- “Section house lawyers”
- Your railroad officials or payroll department
- Google searches or AI summaries

Don't try to tackle NYD-related issues yourself!



WHEN IN DOUBT, CALL YOUR
GENERAL CHAIRPERSON!

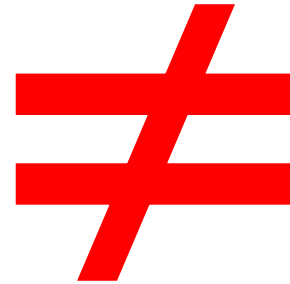


OTHER NOTES & THOUGHTS



Feb. 7 and other Workforce
Stabilization Agreements

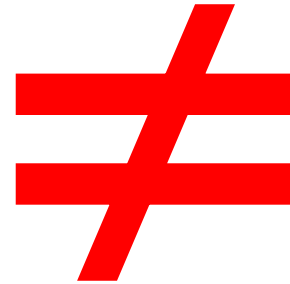
***NEW YORK DOCK PROTECTIONS
ARE NOT FEB. 7 PROTECTIONS!***





Feb. 7 and other Workforce
Stabilization Agreements

***NEW YORK DOCK PROTECTIONS
ARE NOT PRODUCTION GANG
WFS BONUSES!***





*“The **New York Dock** conditions are the high-water mark for employee protective conditions. Employees affected by mergers, consolidations, and line sales were entitled to: 1) a negotiated or arbitrated agreement selecting forces to staff railroad; 2) up to 6 years of 100% income protection, for “displaced” and “dismissed” employees; and 3) a burden of proof allocation that was favorable to the employee seeking protective benefits.*

- Excerpt from Don Griffin’s *The Small Book of Railroad Employee Protections*, BMWED, 2017.



QUESTIONS?



**CONTACT YOUR
SYSTEM DIVISION OR
FEDERATION
OFFICERS!**

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BE ADVISED

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