Award No. 12717
Docket No. TE-11058

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Francis M. Reagan, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Kansas City Southern Railway and the Louisiana & Arkansas Railway that:

1. The Carriers violated and continue to violate the agreement between the parties when, on January 24, 1958, they declared abolished Position No. 7, third trick CTC Operator (KCS), located in Deramus Yard, Shreveport, Louisiana and transferred the work thereof to employes of another Carrier and a different seniority district.

2. The Carriers further violated the agreement when on January 24, 1958 and continuing thereafter, they required the occupant of Position No. 8, third trick telegrapher (L&A), at Deramus Yard, to suspend work during regular hours and perform the work of another position.

3. The Carriers shall restore Position No. 7, third trick CTC Operator (KCS), at Deramus Yard; restore the regularly assigned incumbent, K. L. Prothro, thereto; compensate him for any loss of wages; and reimburse him for any expense incurred.

4. The Carriers shall compensate the senior idle telegrapher, extra in preference, on the seniority district encompassing Position No. 7, in the amount of a day's pay on each day the work of the position is performed by the occupant of Position No. 8 commencing January 24, 1958 and continuing thereafter until the violation is corrected.

5. The Carriers shall compensate the senior idle telegrapher, extra in preference, on the seniority district encompassing Position No. 8, in the amount of a day's pay on each day the occupancy of that position is required to suspend work during regular hours and perform the work of another position.

6. The Carriers shall compensate all other employes displaced or otherwise adversely affected for all wages lost and reimburse them for any expenses incurred.

agreement. That is something which could only be accomplished, lawfully, through negotiation, which is, of course, beyond this Board's province.

The claim is faulty in many respects other than as stated above. For example, Employes request that carrier restore the position of CTC operator, place claimant Prothro thereon, and pay him wages and expenses. It is to be hoped that carrier has retained the prerogative of deciding whether it maintains a job. Unless it has contracted away that right, which it has not, it may put on a job, or take a job off, in pursuance of its managerial judgment. Also, there is no evidence that claimant Prothro would be entitled to a CTC job if one were put on. Many changes have occurred in our telegraphic forces since Job No. 7 was abolished. And there is no evidence of any lost "wages"; and where in the agreement is there even the remotest reference to "expenses" in a situation of this kind? The Board is of course limited to the language of the agreement, which is absolutely silent on the subject.

Not only do Employes ask for reimbursement of claimant Prothro, but they want carrier to pay some undisclosed L&A claimant an undisclosed sum for an undisclosed reason. Certainly if Prothro would be entitled to wages, how could another party also collect for the same work?

And to make matters more absurd Employes attempt to pyramid claims (and carrier's cost of operations) by wanting carrier to compensate a KCS man, undisclosed, for the very same thing which they want an L&A man paid for in the next foregoing paragraph.

And then comes the ultimate — the bushel basket — pay any and everyone, all undisclosed, wages and expenses all undisclosed except "adversely affected", by reason of cutting off Job No. 7. The words "adversely affected" are from the text of the Washington Agreement; and any claim or controversy under that agreement may not be submitted to this Board inasmuch as the Washington Agreement provides its own method for determining such controversies.

The claim should be denied, and carrier respectfully requests that the Board so find.

(Exhibits not reproduced.)

OPINION OF BOARD: A review of this file discloses that the claims in controversy have arisen out of the acts of cooperating Carrier's Kansas City Southern Railway and Louisiana and Arkansas Railway in combining certain telegraphic positions on their respective lines.

By agreement of May 1936 the joint Conference Committee of the Railroad Industry entered into an agreement providing for allowances to defined employes as affected by coordination, i.e., "joint action by two or more Carriers whereby they unify, consolidate, merge or pool in whole or in part their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities" and referring said problems to a Committee established for that purpose.

Thus pursuant to such agreement a Court or Forum of Convenience was established to deal with a particular small segment of the spectrum of railroad labor law problems.

Applying the well known principle of Contract law that the specific controls the general the problems of the instant claims arising out of this coordination act should be referred to the Committee established pursuant to this Agreement of May 1936, Washington, D. C.

It is urged by Carrier that this referral is mandatory being a question of jurisdiction and not convenience and cites the case of Missouri Pacific Railroad; and, Texas and Pacific Railway, vs BLE, BLE&E, ORC&B and BRT, Docket No. 88 in which the learned Committee decided:

> "Carriers herein served a Section 4 notice on their employes that they intended to undertake a 'coordination'. A dispute or controversy, within the meaning of Section 13 of said agreement, thereafter arose over which this committee has exclusive and absolute jurisdiction."

A review of Section 13 of the Agreement of May, 1936, Washington, D. C. discloses the following language being used.

> "Section 13. In the event that any dispute or controversy arises . . . in connection with a particular coordination . . . it may be referred by either party for consideration to a Committee. . . ."
> (Emphasis ours.)

"May" is the language of invitation to the forum of convenience not compulsion. Referral to the Committee is not a question of jurisdiction in problems of coordination but the expressed act of hope that this Committee established for this purpose will do a better job with the particular than your Board can do with the general.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That this Agreement has or has not been violated is a moot question.

AWARD

Claim declined.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1964.

STATEMENT OF CARRIER MEMBERS, AWARD 12717, DOCKET TE-11058

The claim should have been dismissed on jurisdictional grounds. See Docket No. 88 of Committee established by Section 13 of the Washington Agreement. Also see Carrier Members' dissent to Award 12593 (Kane).

G. L. Naylor
R. E. Black
R. A. DeRossett
W. F. Euker
W. M. Roberts