Award No. 12593
Docket No. TE-11118

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LOUISIANA AND ARKANSAS RAILWAY COMPANY

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

1. Carrier violated the agreement between the parties when it suspended E. Smith, first trick telegrapher at Deramus Yard, Shreveport, Louisiana, from work during the regular hours of his position on July 4, 1957, December 25, 1957 and January 1, 1958, and transferred the work of his position to an employe in another seniority district.

2. Carrier shall be required to compensate E. Smith for eight hours at the time and one-half rate on each date mentioned above.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

At the time cause for this claim arose Claimant E. Smith was the regularly assigned occupant of the first trick telegrapher position at Deramus Yard, Shreveport, Louisiana. The position is a seven day position, assigned hours 7:00 A. M. to 3:00 P. M., assigned rest days Saturdays and Sundays, relief on rest days by a regular rest day relief position. The position is in the seniority district known as the "Arkansas District" and subject to seniority of employes on the Louisiana and Arkansas Railway under the Telegraphers' Agreement in accordance with the provisions of Rules 2-4.

Claimant Smith was notified by the Carrier not to report for his regular assignment on July 4, 1957, December 25, 1957 and January 1, 1958. The work of the position on these dates was performed by an adjacent KCS employe occupying a position classified as CTC Operator holding no seniority rights on the L&A in any seniority district. The KCS employe performing the work of the L&A position holds seniority rights on the Southern Division seniority district of the KCS and the CTC Operator position which he occupied is assigned to that seniority district.

because it is contained in the coordination agreement. However, it has no bearing on the matter at issue here because the position was annulled. It was not worked; had it been, claimant would have worked it. The plain simple fact is that on the holidays in question the telegraph work on the particular trick was inadequate to keep two men occupied; and as stated above the one remaining telegraph employe handled whatever telegraph work which came up on that trick; and under Section 4 that remaining employe could be used to handle whatever telegraph work existed.

No one could foresee at the time of the terminal coordination negotiations every change in work requirements which might occur subsequent to coordination date. This is alluded to by carrier because another argument advanced by Employes on the property was that initially one job (No. 15), for example, contemplated work for both lines; and that job No. 16 contemplated 3 days of relief on the "KCS side" and 2 days relief on the "L&A side". Of course no such narrow limitation was ever contemplated. The CTC work at Shreveport is CTC work of both carriers; both carriers using most of the trackage covered by the CTC system throughout the 24 hours. But again, the absolute lack of any limitation on the language of Section 4 is adequate to overcome any attempt at limiting the carrier's rights under that Section 4.

Carrier again states — and it is highly important — that to observe Employes' viewpoint would essentially vitiate the coordination agreement. Carrier spent millions of dollars in construing a coordinated terminal and facilities in which the coordinated working force can carry on carrier's business; and those facilities included many expensive installations for the convenience and comfort of telegraph employes. It paid plenty for the privilege of making one telegraphic force at Shreveport. Employes are attempting a reincarnation here of work divorcement which disappeared with the coordination agreement. That is something which could only be accomplished lawfully through negotiation, which is, of course, beyond this Board's province.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant was the regularly assigned occupant of the first trick telegrapher's position at Deramus Yard, Shreveport, Louisiana. The position was in the seniority district known as the Arkansas District and subject to seniority of employes on the Louisiana and Arkansas Railway under the Telegraphers' Agreement, in particular Rule 2-4. The Claimant was notified that his services would not be needed on July 4, 1957, December 25, 1957 and January 1, 1958, holidays. The work of the position on these dates was performed by an adjacent Kansas City Southern employe occupying a position classified as CTC Operator holding no seniority rights on the Louisiana and Arkansas Railway in any district, but seniority on the Kansas City Southern.

The basis of the claim was that the Claimant should have been called for the holiday work under the coordinating agreement and the parent agreement.

On December 7, 1955, an agreement was entered into between the parties covering the coordination of the telegraph forces at Shreveport of both railroads. The preamble of the agreement is as follows:

"The Carriers have proposed, effective on or after December 1, 1955, to merge certain separate facilities and certain operations or services previously performed by them through such separate facilities at Shreveport, Louisiana, as referred to in notices of August 22, 1955, posted by the Carriers signatory hereto in accordance with provisions of Section 4 of the 'Agreement of May, 1936, Washington, D. C.'

Pursuant to Section 5 of the 'Agreement of May, 1936, Washington, D. C.', in order to provide for the selection and assignment of the employes to operate the jointly merged facility and to afford protection pursuant to the 'Agreement of May, 1936, Washington, D. C.,' to any employes who may be adversely affected by this coordination, the parties signatory hereto agree that: . . ."

As a result of this agreement the positions were allocated among the employes on the basis of seniority rights on their separate Carriers. The work was performed jointly and interchangeable at the Central Office at Shreveport for both Carriers.

The Claimant contended that the position of telegrapher must be filled by employes holding seniority rights to that position, and cannot be transferred to other employes not holding such seniority rights. The coordination agreement does not mean, and was never intended to mean, that all the work of a position assigned to the employes of one Carrier could be transferred to the employes of the other Carrier. At no time was there any intention of consolidating or intermingling all the work of the facility. The coordination agreement did not disturb the separateness of the two Carriers involved nor did it expand or contract the seniority districts and seniority rights provided for in the parent agreement. Each Carrier continues as two separate Carriers. The position here involved was identified as position No. 2 in the coordination agreement and was assigned to the Claimant as a Louisiana and Arkansas employes. Rule 2 of the parent agreement places the position in the Arkansas District and subject to seniority of Louisiana and Arkansas employes.

"2-4. Seniority Rights — (L&A):

In accordance with prior agreements:

(a) Telegraphers who were in service on the Arkansas and Louisiana Districts on May 8, 1929, retaining their seniority dates on their original (home) district, also established a seniority date of May 8, 1929 on the other district.

(b) Telegraphers employed on those two districts subsequent to May 8, 1929 and prior to November 1, 1945 concurrently established seniority on both districts.

(c) Telegraphers who were in service on the Texas District on November 1, 1945, retaining their seniority dates on their home district, also established a seniority date of November 1, 1945 on the Arkansas and Louisiana Districts, and telegraphers employed on those two districts established a seniority date of November 1, 1945 on the Texas District.

(d) Telegraphers employed subsequent to November 1, 1945, concurrently established and establish seniority on all three districts.

(e) In carrying out the provisions of paragraphs (a), (b) and (c) of this Rule 2-4, telegraphers who established a seniority date on the other two districts shall appear on roster of those districts in accordance with their respective seniority date ranking on their home district.

(f) L&A telegrapher positions and vacancies in the Shreveport terminal will be assigned to the senior bidders in accordance with their seniority date applicable at Shreveport."

The employe who filled the position on the holidays had seniority on the Kansas City Southern Railway. Thus the work he performed for the Louisiana and Arkansas Railway on the holidays was a transfer of work from one seniority to another in violation of Rules.

The Claimant also offered in support of his claim Section 5 (a), (b) and (c) of the Coordination Agreement.

"5. (a) In filling positions covered by this agreement by employes taken from the ranks of a particular carrier, the rights of the employes of that Carrier to positions among themselves will be in accordance with the provisions of the applicable agreement, it being intended that the employes of each carrier will have the same right to fill positions allocated to and filled by them as would obtain if the position were an exclusive position of the particular carrier.

(b) For the purpose of applying Section 4-5 of the working agreement in the coordinated terminal, positions therein allotted to employes taken from the ranks of the Kansas City Southern shall constitute one 'office'; and positions in the coordinated terminal allotted to employes taken from the ranks of the Louisiana & Arkansas (including positions at Silver Lake) shall constitute one 'office'.

(c) Extra and vacation relief work (including temporary positions and temporary vacancies contemplated in Rule 4-5) on positions allotted to KCS employes shall be performed by KCS employes; and extra and vacation relief work (including temporary positions and temporary vacancies contemplated in Rule 4-5) on positions allotted to L&A employes shall be performed by L&A employes. If such work is not protected through the operation of Rule 4-5, and there are no regularly assigned or extra employes available on the carrier involved, employes of the other carrier (an available extra man who has not had five days' work within his work week, or an available employe regularly assigned at Shreveport, in that order), may be used to meet the emergency until employes of the first carrier can be made available; while being so used such employes will be paid in accordance with the applicable rules, and while working for the other carrier they will not acquire seniority thereon but will retain and accumulate seniority on their respective home carrier.

6. Employes assigned to or working in positions in the coordinated terminal will retain and accumulate seniority on their respective home road rosters."

The Carrier in support of its contentions that neither the rules of the parent agreement nor the coordination agreement were violated cited Section 4, of the coordination agreement:

Section 4:

"Telegraphers and CTC Operators in the coordinated offices will handle work of either or both carriers."

Furthermore, the work of the telegrapher and CTC operators in the coordinated office could handle work of either or both Carriers without a violation of rules. That in fact on regularly assigned days the work was jointly performed by the CTC operator and the telegrapher.

The Carrier further stated that, inasmuch as there was only sufficient work for one employe on the holidays it annulled one position and transferred the remaining work to CTC operator covered by the Telegraphers' Agreement. The work at this station was pooled as a result of the coordination agreement and no work is reserved for the employes of either Carrier. The Carrier also alleged that the contentions of the Claimant if upheld would vitiate the coordination agreement. That the purpose of such agreement was to consolidate the work of each Carrier in order to have a more efficient operation, and without a consolidation of the work there was no coordination.

Two questions have been raised in this dispute.

1. Does this Board have jurisdiction of this dispute in light of Section 13, of the Agreement of May, 1936, Washington, D. C. entered into between the Organizations and Carriers, and hereinafter referred to as the Washington Agreement?

2. Does the Coordination Agreement entered into by the parties merge the work and thus consolidate the seniority rights of the employes of the separate Carriers irrespective of the parent collective bargaining agreement, and Section 5, of the coordination agreement?

It appears from the submission of the parties that neither party sought any relief under Section 13, of the coordination agreement nor raised the question of the jurisdiction of this Board on the property. The first time the question of the jurisdiction has arisen was in oral argument before this Board. However, this Board is mindful of the rule that the jurisdiction of this Board can be raised at any stage of the proceedings. It is also understood that this Board has the jurisdiction by law, and it is necessary to determine whether the parties by agreement selected another forum to determine disputes as before us.

Thus the application of Section 13, of the Washington Agreement will be considered.

Section 13 reads as follows:

"In the event that any dispute or controversy arises (except as defined in Section 11) in connection with a particular coordination, including an interpretation, application or enforcement of any of the provisions of this agreement (or of the agreement entered into between the carriers and the representatives of the employes relating to said coordination as contemplated by this agreement) **which is not composed by the parties thereto within thirty days after same arises, it may be referred by either party for consideration and determination to a Committee which is hereby established, composed in the first**

instance of the signatories to this agreement. Each party to this agreement may name such persons from time to time as each party desires to serve on such Committee as it representatives in substitution for such original members. Should the Committee be unable to agree, it shall select a neutral referee and in the event it is unable to agree within 10 days upon the selection of said referee, then the members on either side may request the National Mediation Board to appoint a referee. The case shall again be considered by the Committee and the referee and the decision of the referee shall be final and conclusive. The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them." (Emphasis ours.)

The question to be decided is, has Section 13, by agreement of the parties, taken from the National Railway Adjustment Board jurisdiction in this dispute? This Board is of the opinion that Section 13, is permissive rather than mandatory and that was the interpretation and understanding of the parties when they elected to seek the procedure of this Board in resolving this dispute. The submission does not reveal any allegation that the question of jurisdiction was raised by either the Carrier or Claimants on the property, or that either party preferred one forum over another.

The facts show that the claim was not settled within 30 days after the controversy arose as provided for in Section 13. Under such circumstances the parties had an election of remedies under Section 13. They could seek arbitration or seek their remedy through the procedure of this Board, which they did. Both parties elected to refer the dispute to this Board and neither party objected to this procedure.

Thus this Board has no alternative than to adjust the dispute in the forum selected by the parties.

The question has been raised as to the jurisdiction of this Board in light of the terms in Section 13:

". . . it may be referred by either party for consideration and determination to a Committee which is hereby established, composed in the first instance of the signatories to this agreement. . . ."

In Award No. 1151, offered by the Claimant, this Board held that:

"Section 13 does not set up an exclusive remedy. It does not say that coordination disputes 'shall' be decided by arbitration, which is the usual language of arbitration clauses in agreements where the parties intend arbitration to be the exclusive remedy. Section 13 merely says that disputes 'may be referred by either party' to the joint Arbitration Committee. . . ."

In reply to this award the Carrier cites Docket No. 88 of an arbitration panel set up under the provisions of the Washington Agreement wherein it states:

"A dispute or controversy, within the meaning of Section 13, of said Agreement, thereafter arose over which this Committee has exclusive and absolute jurisdiction."

It is difficult to determine from the above statement whether such statement concerns matters before it for adjudication or matters the parties elected to bring before this Board. The jurisdiction to be acquired is determined by the parties when they elected the forum. The Washington Agreement bestows the jurisdiction, not Docket 88. The word "may" in legal phraseology is ordinarily a word of permission rather than command. Webster's Dictionary states:

"liberty; opportunity; permission; possibility; as, he may go."

Thus we can say within the discretion of the parties.

The parties to this dispute in the submission failed to raise the issue of the application of Section 13, of the Washington Agreement in the submission. It has been the policy of this Board to ignore issues that have not been raised as the claim proceeds from its starting point but originate at a hearing before this Board. The obvious purpose of this rule is to resolve disputes as quickly as possible rather than have them amended at every stage in the proceedings, causing delay and perhaps never resolving the dispute.

Thus this Board in its awards has consistently ignored issues that have not been raised in the submission.

The application of Section 13, was raised for the first time in argument before this Board. Thus we can reasonably conclude that the parties themselves were of the opinion that under Section 13, there was an election of remedies to proceed through this Board or through the arbitration procedure set up under Section 13. The parties sought this forum.

The Carrier has cited Award No. 9388 wherein the claim was dismissed and the following language is noted:

> "We must respect the machinery accepted by the parties for the resolution of a dispute concerning 'coordination'. Such a dispute has arisen in connection with the establishment of the joint interlocking plant and is referred to in the Joint Agreement which concerns operation of the plant. Considerations of comity suggest that we should refrain from action under such circumstances."

This Board is of the opinion that Comity is not a question in this dispute as no other forum has taken jurisdiction in this dispute. The doctrine of comity between courts considers that one court should defer action on causes properly within its jurisdiction until courts of another jurisdiction, with concurrent powers and already cognizant of the litigation, have had an opportunity to pass upon the matter. The rule is based on convenience and expediency on the theory that a court that first asserts jurisdiction will not be interferred with while a matter is before it. In the dispute before us neither party exercised any rights under Section 13. If the dispute had been pursued under Section 13, the rule of comity would have been a defense to this Board assuming jurisdiction as another forum had assumed jurisdiction.

The Carrier had the same rights as the Claimant to seek arbitration under Section 13, which they elected not to do. Thus this Board is of the opinion that they cannot raise the question of comity when they never sought relief in another forum.

In Award No. 4538, offered by the Claimant, a provision in an agreement stated:

> "In the event that any dispute or controversy arises with respect to the protection afforded by the foregoing conditions Nos. 1, 2, 3, and 4, which cannot be settled by the carrier and the employe, or his authorized representatives within 30 days after the controversy arises, **it may be referred, by either party, to an arbitration committee** for consideration and determination. . . ." (Emphasis ours.)

It was held in that award: ". . . Under such circumstances the parties have an election of remedies. . . ." That is, the injured party could elect to pursue his remedy before the Arbitration Board or this Board.

Thus this Board is of the opinion that it has jurisdiction of this dispute under the facts and circumstances as exist herein. That Section 13, of the Washington Agreement has not pre-empted the Railroad Adjustment Board in this area but has in fact established an alternative remedy. Furthermore, this award is in concurrence with Awards 1151 and 4538 of this Division.

We turn, to a consideration of the merits.

The Claimant in support of its position that the Carrier transferred work of his position to an employe of another Carrier, Section 5 (a) of the Coordination Agreement is offered:

> "5. (a) In filling the positions covered by this agreement by employes taken from the ranks of a particular carrier, the rights of the employes of that carrier to positions among themselves will be in accordance with the provisions of the applicable agreement, it being intended that the employes of each carrier will have the same right to fill positions allocated to and filled by them as would obtain if the position were an exclusive position of the particular carrier."

Does this provision give the Louisiana and Arkansas employes working in the coordinated office at Shreveport the same seniority rights as they had prior to coordination? This Board is of the opinion that Section 5 (a) of the agreement has not taken away Claimant's seniority rights to the position on the Louisiana and Arkansas Railroad that they formerly held or now hold under the parent agreement. It further provides that the position will be considered as the exclusive position of the separate Carrier.

Thus this Board concludes that the parties did not coordinate the seniority rights of the Claimant.

The Carrier in reply, cites Section 4, of the coordination agreement:

Section 4:

> "Telegraphers and CTC Operators in the coordinated offices will handle work of either or both carriers."

This section is self explanatory, it permits an interchange and comingling of work. However, we cannot extend the impact of this section to eliminate the rights accruing under Section 5 (a) of the Agreement.

It is well established that when the agreement so provides, the Carrier may not unilaterally abolish such position on the holiday and transfer the work of that position to employes of another Carrier, without violating the agreement.

It is the opinion of this Board that the seniority rights of the Claimant acquired on the Louisiana and Arkansas Railroad were retained in Section 5 (a) of the coordination agreement. Thus when the work of this position was transferred to an employe of another Carrier the agreement was violated.

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 Section 13, of the coordination agreement is permissive rather than mandatory, and the parties selected this forum to resolve their dispute.

That the Agreement was violated when the Carrier unilaterally abolished the Claimant's position and transferred the work of that position to an employe of another Carrier.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1964.

CARRIER MEMBERS' DISSENT TO AWARD 12593,

DOCKET TE-11118

(Referee Kane)

This award is erroneous in holding that the Board has jurisdiction to interpret a coordination agreement implementing the Washington Agreement, it is erroneous in its definition and application of comity, and it is erroneous in holding that principles of seniority preclude Carrier from blanking a position that is not required on a holiday.

I.

JURISDICTION

The award proceeds on the sound premise that this Board has no jurisdiction to decide any dispute coming under Section 13 of the Washington

Agreement if that Agreement provides that such jurisdiction shall be reserved exclusively to the so-called Section 13 Committee, but it erroneously concludes that the Washington Agreement does not so provide.

In support of this erroneous conclusion, two facts are noted. First, that the word "may" is used in Section 13; and, second, that this Board held the jurisdiction of the Section 13 Committee to be permissive and optional in **Award 1151** (Garrison).

The Section 13 Committee is certainly in a better position than anyone else to interpret Section 13 and the Washington Agreement as a whole. Subsequent to adoption of our **Award 1151** (holding the language of Section 13 to be permissive, **in the absence of other evidence**), the Section 13 Committee has ruled that it has exclusive jurisdiction to adjudicate the disputes which are referrable to it under Section 13 of the Washington Agreement.

We have no basis for holding that the Section 13 Committee committed error in giving mandatory effect to the word "may" as it is used in Section 13 in connection with the referral of disputes to the Section 13 Committee. It is elementary that in a proper context the word "may" must be given mandatory effect. As is stated in BLACK'S LAW DICTIONARY (Third Edition):

> "MAY. An auxiliary verb qualifying the meaning of another verb by expressing ability, competency, liberty, permission, possibility, probability or contingency. [citations including **U. S. v. Lexington Mill and E. Co., 232 U. S. 399, 34 S. Ct. 337, 340, 58 L. Ed. 658, L. R. A. 1915B, 744**] Regardless of the instrument, however, whether constitution, statute, deed, contract or what not, courts not infrequently construe 'may' as 'shall' or 'must' to the end that justice may not be the slave of grammar. [Many citations including **Farmers' & Merchants' Bank of Monroe, N. C., v. Federal Reserve Bank of Richmond, Va., 262 U. S. 649, 43 S. Ct. 651, 67 L. Ed. 1157, 30 A.L.R. 635.**]" (Emphasis ours.)

In this award, the Referee does not appear to be questioning the principles last mentioned, but rather appears to raise a question as to whether the Section 13 Committee has actually ruled that its jurisdiction is exclusive in a case of this kind. The award states:

> ". . . Carrier cites Docket No. 88 of an arbitration panel set up under the provisions of the Washington Agreement wherein it states:
>
> > **'A dispute or controversy, within the meaning of Section 13,** of said Agreement, thereafter arose **over which this Committee has exclusive and absolute jurisdiction.'**
>
> **It is difficult to determine from the above statement whether such statement concerns matters before it for adjudication or matters the parties elected to bring before this Board. . . .**"

We see no difficulty in understanding this clear decision of the Section 13 Committee. Even if the decision merely referred to the dispute then before the Committee, this ruling that the Committee had exclusive jurisdiction over that dispute under Section 13 necessarily constitutes a ruling that the Committee has exclusive jurisdiction over all disputes coming under Section 13, for Section 13 uses the same terms in conferring upon that Committee jurisdiction over all disputes that may be referred to it.

With further reference to the said decision of the Section 13 Committee in its Docket 88, the Award correctly notes:

> ". . . The Washington Agreement bestows the jurisdiction, not Docket 88. . . ."

The point is that the Committee which made the decision in Docket 88 is expressly authorized by the Washington Agreement to interpret that Agreement as well as Agreements implementing that Agreement, the decisions of the Committee being "final and conclusive"; and that Committee, in Docket 88, has interpreted the Washington Agreement as conferring upon the Committee exclusive jurisdiction over the matters referrable to it.

All parties agree this case turns upon the interpretation of a coordination agreement which implements the Washington Agreement. The Section 13 Committee has "exclusive and absolute" jurisdiction to interpret such agreement.

II.

COMITY

If the Board had jurisdiction to interpret the coordination agreement, well-established principles of comity which this Board has properly followed during the past 20 years would nevertheless require us to abstain from exercising that jurisdiction in this case.

The award states that: ". . . Comity is not a question in this dispute as no other forum has taken jurisdiction in this dispute."

The fact that this specific dispute is not now pending before another forum is not determinative, either under the awards of this Board or the universally accepted definitions of comity. Award 9388 (Rose). BLACK'S LAW DICTIONARY, (Third Edition) gives us this definition of comity:

> "COMITY. Courtesy; complaisance; respect; a willingness to grant a privilege, not as a matter of right, but out of deference and good will. Dow v. Lillie, 26 N. D. 512, 144 N. W. 1082, 1088, L.R.A. 1915D, 754; Woodard v. Bush, 282 Mo. 163, 220 S. W. 839, 842.
>
> The practice by which one court follows the decision of another court on a like question, though not bound by the law of precedents to do so. Herron v. Passailaigue, 92 Fla. 818, 110 So. 539, 542.
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> * * * * *
>
> **Judicial Comity**
>
> The principle in accordance with which the courts of one state or jurisdiction will give effect to the laws and judicial decisions of another, not as a matter of obligation, but out of deference and respect. . . ."

The record in this case presents strong reasons for applying the principles of comity. In addition to those which are self-evident from the foregoing discussion under the heading of JURISDICTION, we have reasons which are peculiar to this case.

The record indicates that this is a companion case to Docket TE-11058, that both cases "hinge" on an interpretation of Section 4 of the Coordination Agreement whereby these parties implemented the Washington Agreement, that the claim in Docket TE-11058 is simply "more extensive and covers a much wider field" than this claim, and that on the property **the employes obtained from Carrier an extension of time for their handling of this claim on the representation that they wanted to submit the cases at the same time.** In requesting the extension of time the General Chairman wrote (Carrier's Exhibit 15):

> "I would like to submit all these cases at same time but the December 10 date will not allow time to get the other case prepared. It will be appreciated if you will agree to an extension of time limit on all three of these cases to March 15, 1959, so that all may be submitted at same time."

Carrier agreed to the time extension, however, the employes submitted the claim in Docket TE-11058 to this Board several days before they submitted the instant claim, and that claim was separated from this and placed in an earlier referee's list.

Docket TE-11058 recently came on for hearing before Referee Reagan. The Carrier Members argued that the case should be dismissed on jurisdictional grounds because of the decision of the Section 13 Committee in its Docket 88, noted above. Referee Reagan proposed an award reading in part:

> "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.
>
> * * * * *
>
> . . . 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."

Obviously, these two companion cases should be read and considered together. When read together, it is obvious that some of the basic conclusions which the Referee has incorporated in this award are not well founded. For example, the award states:

> "The application of Section 13, was raised for the first time in argument before this Board. Thus we can reasonably conclude that the parties themselves were of the opinion that under Section 13, there was an election of remedies to proceed through this Board or through the arbitration procedure set up under Section 13. The parties sought this forum."

But in Position of Carrier in Docket TE-11058, Carrier tells us (page 52):

> ". . . 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 Employes do not allege that this is a new matter.

In both dockets, the Employes have relied upon various rules of their collective agreement which admittedly should be interpreted by this Board. We believe that a fair reading of the two dockets together indicates Carrier did not agree that this Board should decide any question coming within the jurisdiction of the Section 13 Committee.

Although the Referee was handed Docket TE-11058 during the discussion of this case in panel, and was advised of the facts noted above, he has expressly confined himself to the instant docket (TE-11118). While there is authority for confining ourselves to the docket before us in the usual case, we have many awards that take notice of facts in other dockets, even without a showing of unusual handling such we have here. As examples, see **Awards 7439** (Shugrue), **8366** (Lynch), **9000** (Murphy).

Thus we believe that the Referee not only committed error in holding that this Board has jurisdiction, but he also committed error in holding that, assuming jurisdiction to exist, comity is not involved. We believe that if he had consulted a broader and more generally accepted definition of comity, and had given due consideration to the nature of this claim and the handling accorded this and the companion claim, he would necessarily have dismissed the claim in spite of his holding that the Board had jurisdiction.

III.

MERITS OF THE CLAIM

On the merits, the plain and simple question presented is whether the involved coordination agreement precluded Carrier from blanking Claimant's position on the holidays involved.

Carrier's unrefuted statement as to the pertinent facts reads:

> "On the three holidays in question telegraph work at Deramus Yard was greatly reduced because other communicating offices were closed or their work greatly reduced. Ordinarily there was a CTC operator and a telegraph operator on the trick here involved, and since the remaining CTC work was greater in volume and importance than the remaining work on the telegraph job, and only one job was needed, the latter job was annulled on those dates."

The Employes concede that Claimant's position could have been blanked if the work had been entirely suspended. They state

> "'. . . It is conceded the Carrier may have the right to blank a job on a holiday but if that is done the work must also be suspended. Such was not the case here, as the job is necessary for continuous operation, and the duties ordinarily required to be performed by Mr. Smith were unilaterally required to be done by a KCS employe. A KCS employe cannot be expected to absorb work belonging to L&A men.'"

In the absence of some specific agreement restriction, it is clear that a Carrier is entitled to blank a position on a holiday — **Awards 12392** (Stack), **11940** (Dorsey), **11433** (Rose), **11253** (Miller), **11131** (Boyd), **11079** (Dorsey), **10499** (Hall).

The only theory advanced by the Employes to establish that Claimant had a right to work on the involved holiday boils down to the bare contention that the work of the two Carriers at this coordinated facility is not comingled. The award rejects this contention and properly rules that Section 4 permits interchange and comingling of the work. The award states:

> "The Carrier in reply, cites Section 4, of the coordination agreement:
>
> > 'Section 4: Telegraphers and CTC Operators in the coordinated offices will handle work of either or both carriers.'
>
> **This section is self explanatory, it permits an interchange and comingling of work. . . ."**

Following this sound ruling, the award incoherently proceeds to the untenable conclusion that the mere blanking of the position on holidays when Claimant's services were not needed violated Claimant's seniority rights. There is no sound basis for the conclusion that the coordination agreement was violated in this case.

We dissent.

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