Award No. 15358
Docket No. TE-12679

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION (Formerly The Order of Railroad Telegraphers)

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Gulf, Colorado & Santa Fe Railway, that:

1. Carrier violated and continues to violate the Agreement between the parties when, on or about March 1, 1960, it purportedly abolished the position of agent-telegrapher at Beckville, Texas, and thereafter on all subsequent work days required the agent-telegrapher at Tatum, Texas, to suspend work on his regular position during regular work hours and perform service at Beckville, Texas.

2. Carrier shall be required to compensate W. S. Johnson an additional day's pay for each occasion on which he performs service at Beckville and Tatum, on a day-to-day basis, until the violations are corrected, beginning March 1, 1960.

3. Carrier shall be required to compensate R. O. Ford in the amount of a day's pay at the stright time rate of the Beckville position for each day, Monday through Friday, beginning March 1, 1960, and continuing thereafter on a day-to-day basis for all work performed outside the assigned hours of the Beckville position plus all expenses incurred which would not have been sustained or incurred, beginning March 1, 1960.

4. Carrier shall be required to compensate D. Laredo in the amount of a day's pay at the straight time rate of the Pitkin, Louisiana agency position for each work day beginning March 1, 1960, and continuing thereafter on a day-to-day basis until the violations are corrected; and at the overtime rate for all work performed outside the assigned hours of the Pitkin agency position beginning March 1, 1960.

5. Carrier shall be required to compensate A. J. Barlow in the amount of a day's pay at the straight time rate of the Garwood, Texas agency position for each work day beginning March 1, 1960, and continuing thereafter on a day-to-day basis until the violations are corrected; and at the overtime rate for all work performed outside the

assigned hours of the Gardwood agency position beginning March 1, 1960.

6. Carrier shall be required to compensate J. E. Rose in the amount of a day's pay at the straight time rate of Towerman Position No. 111 at Milano, Texas, for each work day beginning March 1, 1960, and continuing thereafter on a day-to-day basis until the violations are corrected; and at the overtime rate for all work performed outside the assigned hours of Towerman Position No. 111 at Milano beginning March 1, 1960.

EMPLOYES' STATEMENT OF FACTS: Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

Beginning on or about March 1, 1960, the Carrier unilaterally declared abolished the agent's position at Beckville, Texas, occupied by Mr. R. O. Ford, displaced the incumbent of the position and thereafter required W. S. Johnson the Agent at Tatum, Texas, to work at Tatum from 7:00 A. M. to 8:00 A. M., drive to Beckville to work from 8:15 A. M. to 11:00 A. M., then return to Tatum for the remainder of the day. The time spent driving to and from Beckville was included in his work assignment. His tour of duty ended at 4:00 P. M.

The Employes filed claim which was subsequently appealed to the highest officer designated by the Carrier to handle such disputes and was denied. This dispute has been handled on the property as provided by the Agreement between the parties and in accordance with the Railway Labor Act, as amended. Your Board has jurisdiction.

This dispute involving so-called "dualization" of stations, was placed in effect by unilateral action of the Carrier by declaring the position of agent-telegrapher at Beckville abolished, while fully aware that the work of the position remained to be performed. The fact that work of each position remains to be performed and the Carrier's awareness of this fact is established by the Carrier's action in requiring the agent at Tatum to travel to and perform service at Beckville where the position was purportedly abolished.

CARRIER'S STATEMENT OF FACTS: There is an agreement in effect between this Carrier and the Order of Railroad Telegraphers, identified as "Telegraphers Agreement, effective June 1, 1951," copy of which is on file with the Third Division, National Railroad Adjustment Board, and it is hereby made a part of this submission.

Tatum and Beckville are two small East Texas branch line stations on the Longview District of the Carrier's Southern Division. Attached hereto and made a part of its submission is Carrier's Exhibit A, which shows the location of Tatum and Beckville with relation to each other and also the nearest open telegraph stations on either side thereof, viz., Longview and Carthage.

Passenger train service over the Longview District was discontinued on February 1, 1956, with the abolishment of Passenger Trains Nos. 201 and 202, which had operated between Longview and Beaumont, Texas. Freight revenue at Tatum and Beckville has dwindled progressively throughout the years resulting from the inroads made in the transportation field by trucks and other private vehicles, and the history of railroad service at these stations is similar to that at many other similar branch line communities.

violate any of the rules of the parties' Agreement. (See Awards 3738 and 5375).'

In Award No. 556, a dispute on this property, Referee Millard stated:

'In connection with Article XX, paragraph (k), the Board cannot agree with the interpretation of this rule as stated and applied by the Carrier. It is true there was a reduction made in the force, and the position of the agent-telegrapher was abolished by action of the Carrier, but the Board submits that the agency force was not reduced in the sense that the term is used in the rule, and the position was not abolished in fact, as the work continued to exist. The fact is that the agent-telegrapher at Kirkland was displaced and replaced by another, while had the station been abolished in fact another agent-telegrapher could not have been assigned to carry on the duties of the station and to maintain the station accounts under the same conditions as handled by his predecessor.

Undoubtedly the plan adopted by the Carrier was induced by proper motives of economy but as stated by a previous Referee of this Division "since its execution infringed upon the terms of the agreement with its employes the method of negotiation rather than that of ex parte action should have been followed."

In the several submissions which have been presented in this claim the fact is evidenced that while the work at both Kirkland and Skull Valley had probabily diminished, much if not all of the same class of work formerly performed continued to be done, and many of the requirements for an agent-telegrapher, as originally negotiated into the agreement, continued to exist at both stations.

It is not the opinion of the Board that all of the work for which an agency is created must disappear before an agency can be abolished; it is however the opinion of the Division that when the Carrier seeks, because of economic or other conditions, to combine or double-up agencies, such action should only be taken by following the same practice as was evidenced when the agreement was negotiated.'

Yours truly,

/s/ D. A. Bobo
General Chairman"

(Exhibits not reproduced.)

OPINION OF BOARD: Tatum and Beckville are two stations on Carrier's Southern Division, Longview District, East Texas branch line. They are 6.4 miles apart (eight miles by highway). Prior to March 1960, an Agent-Telegrapher was employed at Tatum; his assigned hours were Monday through Friday, 8:00 A. M. to 5:00 P. M., with one hour for lunch. Another Agent-Telegrapher was employed at Beckville, also on Monday through Friday, with hours of 7:00 A. M. to 4:00 P. M., with one hour for lunch. These positions

were listed in the wage Appendix of the parties' 1951 Agreement; the Beckville Station position was rated (then) at $1.765, the Tatum position at $1.745. Article I, Scope, of that Agreement provided in part that:

> "Section 1. This Agreement governs the wages, working conditions and compensation of employes on positions of:
>
> * * *
>
> Agent Telegraphers
>
> * * *
>
> and such other positions as may be shown in the appended wage scale or which may hereafter be added thereto."

On January 4, 1960 Carrier applied to the Railroad Commission of Texas for permission to discontinue the full-time agencies at Tatum and Beckville and, instead, to operate each as a part-time agency (i.e., to "dualize" these agencies). At hearings before the Commission, Carrier introduced evidence to show that, during the year ending October 31, 1959, the Beckville Agency had operated at a net loss of about $3,400.00. The net revenue at Tatum, during the same period, had been about $9,700.00.

On February 17, 1960 the Commission authorized Carrier to "discontinue its full-time agency at Tatum and Beckville, Texas, and in lieu thereof to operate each point as a part-time agency, with an agent to be provided for approximately 4 hours 45 minutes in the morning at Tatum, and for approximately 2 hours 45 minutes in the afternoon at Beckville, each working day, Monday through Friday of each week, with such flexibility in hours of duty for the agent at each location so as to meet the reasonable needs of the railroad patrons at both Tatum and Beckville . . ."

Effective February 29, 1960, Carrier abolished the full-time Agent-Telegrapher position at Beckville which had been occupied by Mr. R. O. Ford. Commencing the following morning, March 1, 1960, the work of Tatum Agent-Telegrapher W. S. Johnson was rearranged as follows.

" 7:00 AM to 8:00 AM	—	Work at Tatum
8:00 AM to 8:15 AM	—	Travel to Beckville
8:15 AM to 11:00 AM	—	Work at Beckville
11:00 AM to 11:15 AM	—	Travel to Tatum
11:15 AM to 12:15 PM	—	Lunch period
12:15 PM to 4:00 PM	—	Work at Tatum"

Mr. Johnson's rate was increased from $2.46 to $2.48 an hour at this time. (The Beckville Agent-Telegrapher had been receiving the higher rate.) He also was paid the "usual mileage rate" for using his automobile to drive between the two stations.

Following these actions, Mr. Ford displaced Agent-Telegrapher D. Laredo at Pitkin, Louisiana, Laredo displaced SNT Agent A. J. Barlow at Garwood, Texas, and Barlow displaced Towerman-Telegrapher-Clerk J. E. Ross at Milano, Texas.

* * * * *

In 1932 Carrier dualized two Arizona agencies (which were 6.2 miles apart) under circumstances similar to those here, except that no action of a state railway commission was involved and Carrier furnished a motor track car for traveling between the two stations. The controlling 1924 rules Agreement contained virtually the same rules (insofar as are here relevant) as the 1951 contract. Under Carrier's dualization action, an Agent-Telegrapher was required to work this schedule:

6:15 AM to 6:41 AM	—	Work at Skull Valley
6:41 AM to 11:00 AM	—	Travel to and work at Kirkland
11:00 AM to 2:15 PM	—	Travel to and work at Skull Valey

In December 1937 the Board issued Award 556 (A. M. Millard, Referee), finding that the displacement of an agent-telegrapher at Kirkland constituted a violation of the terms and spirit of the agreement. It was stated that:

> ". . . while the work at both Kirkland and Skull Valley had probably diminished, much if not all of the same class of work formerly performed continued to be done, and many of the requirements for an agent-telegrapher, as originally negotiated into the agreement, continues to exist at both stations.
>
> It is not the opinion of the Board that all of the work for which an agency is created must disappear before an agency can be abolished; it is however, the opinion of the Division that when the Carrier seeks, because of economic or other conditions, to combine or double-up agencies, such action should only be taken by following the same practice as was evidenced when the agreement was negotiated."

No prior Board decisions were cited in Award 556. However, the record reveals that a few months earlier the Board had issued three related decisions. In February 1937, the Board (I. L. Sharfman, Referee) issued Award 388 involving the Telegraphers and Southern Pacific. In that case, a state railway commission had approved the Carrier's request to shorten the hours at two stations, 7.2 miles apart. Thereafter one position was eliminated and the schedule of the other rearranged so that the Agent-Telegrapher spent one hour at one location, three hours at the other, and then 3 hours, 20 minutes at the first. The Board, in sustaining the claim, found that (1) There had been no consolidation of agencies; (2) There had been a consolidation of positions at two different offices; (3) The agreement did not allow displacement of a regularly assigned telegrapher in this way; (4) There was no provision for establishment of a "Joint-Agent" position; (5) The ex parte creation of such a position with the consequent displacement of a telegrapher contravened the guarantee provisions of the agreement which were designed to afford the protection of a full days' pay even if an employe was on duty less than the required number of hours constituting a full days' service.

In Award 434 (A. M. Millard, Referee, May 1937) involving the New York, New Haven and Hartford, and in Award 496 (A. M. Millard, Referee, September 1937) involving the New York Central, similar rulings were made.

* * * * *

In May 1938 the Board (with Referee Millard) interpreted Award 556, involving these parties, and held that the Kirkland Agent-Telegrapher position

should be restored and the position filled "until such time as action is taken to reclassify the position in dispute in accordance with the requirements of the agreement . . ."

* * * * *

The next case, involving the parties here, to come before this Board arose in 1938 when Carrier eliminated one of two telegraphers at Mobest and, thereafter, had a supervisory agent drive a Phoenix telegrapher to Mobest (the stations were two miles apart) in order to leave train orders and clearances on the train register there. While this was not precisely a dualization case, it posed a related problem as evidenced by the decision in Award 1302 (B. C. Hilliard, Referee, December 1940) which cited Award 556, as well as Awards 388, 484, 496 and others.

* * * * *

The third dispute, involving these parties, to come before this Board arose in June 1957, when Carrier dualized two stations at Joshua and Alvarado, following authorization of the Texas Railroad Commission. Under the rearranged schedule, one Agent-Telegrapher (the other job had been elminated) worked at Joshua from 5:20 A. M. to 7:30 A. M., at Alvarado from 8:00 to 11:00 A. M.; and at Joshua again from 12:30 P. M. to 2:20 P. M. (The grievance which followed the 1957 dualization was pending before this Board when the 1960 dualization at Tatum-Beckville, which gave rise to the instant dispute, occurred.)

In its arguments to the Board in the Joshua-Alvarado case, Carrier made no effort to distinguish the factual situation from that which prevailed in Award 556. It contended, however, that the decision in Award 556 (and in Award 1302 as well) had been "overturned" and "reversed" during the intervening years, particularly by Awards 6944 and 6945.

The Board decided this dispute in Award 11294 (P. J. Moore, Referee, April 1963). A vigorous dissent was also submitted. It was held that the Carrier had the right to abolish the two positions since a substantial portion of the work had disappeared and the positions were abolished under circumstances disclosing an intent on the part of Carrier to permanently abolish them. It was also found that no provision of the Agreement prohibited Carrier from establishing a joint agency. Awards 6944 and 10950 were held to be controlling. Award 556 was distinguished from these decisions on grounds that the Board had found in the earlier case "the work continued to exist" whereas in the others "a substantial portion of the work no longer existed." Additionally it was found that Award 388 had been based on a false premise, namely, that the Agreement must provide for establishment of a joint agent's position to enable Carrier to create such position.

* * * * *

Award 10950 (R. R. Ray, Referee, December 1962) concerned the action of the Georgia Railroad in closing an agency and abolishing the Agent position at Stephens in February 1956. In September 1956 the operator of a cotton gin asked Carrier for service for about two months, three hours a day, two or three days a week. After an unsuccessful attempt to negotiate an arrangement with the General Chairman, Carrier assigned this Stephens work to an Agent at Crawford (with approval of the state public service commission). This action was found to be proper in Award 10950.

It is clear, from the above facts, that the circumstances in Award 10950 were quite different from those in 11294 and, by the same token, from the facts in Award 556 and in the case at hand. There was thus no valid basis for the holding in Award 11294 that Award 10950 was "controlling."

* * * * *

Award 6944 (F. W. Messmore, Referee, March 1955) concerned the abolishment by the Atlantic Coast Line Railroad Company of an Agent's position at Hassell in 1951, following approval of a Utlilities Commission. Thereafter, this Carrier dualized two stations, assigning the agent at Oak City to work one hour a day at Hassell. In Award 6944 it was held that work had declined at Hassell to a "substantial degree," and that the Carrier had the right to discontinue a position "where the work of that position declines to the point where a substantial part of the employe's time is not occupied with the duties of the position." Several Awards were cited, although none on the Santa Fe Railroad.

* * * * *

After carefully evaluating the decision in Award 6944 it must be concluded that the Board was mistaken when, in Award 11294, it held Award 6944 to be "controlling." Perhaps the heart of the matter lies in an apparent misunderstanding of that crucial word. Webster's Seventh New Collegiate Dictionary defines "control" as "to exercise restraining or directive influence over; regulate; to have power over; rule." In labor relations parlance a controlling arbitral decision, normally, is one which decided the same issue for the same parties on identical or closely similar facts, and under the same contractual provisions. Decision involving different parties and different contracts cannot be deemed controlling, although they may well be considered convincing or persuasive in their reasoning.

It is important, unquestionably, that some decisions be considered controlling. Were that not the case, no issue would ever be finally settled, the purposes the Railway Labor Act would be frustrated, and litigation would be endless. The Board, including the Referees who, from time to time, participate in the decision-making process, has a responsibility to the parties to insure a continuity of basic principles. One such principle, firmly rooted in labor-management relations and grievance adjudication, is that a controlling decision should normally not be disturbed or overturned. Certainly there are exceptions to this principle: There may be "palpable error" in the prior decision; the decision may not contain sufficient facts to permit of comparison; the decision may omit the reasoning of the Board, thus diminishing its usefulness. However, if there is a truly controlling decision, it should normally be given truly controlling weight, regardless whether subsequent adjudicators agree or disagree, or whether, if confronted initially with the same issue, they would have decided otherwise.

These findings with respect to the importance of controlling decisions are not novel. Similar expressions may be found in many Board decisions, including Awards 5133, 10911, 4788, 8458 and 13623, among others.

It seems clear, then, that the following facts are of critical significance: (1) the action complained of in Award 11294 was virtually identical with that complained of in Award 556; (2) the terms of the Agreement, insofar as they applied to the disputed action, were the same in both cases. Under these circumstances Award 556 was the controlling decision unless it was shown to have been palpably wrong — which was not the case (regardless whether one might

agree or disagree with its conclusions). It follows, then, that Award 11294 was erroneous to the extent that it ignored controlling Award 556, and should not be followed.

* * * * *

The facts in the case at hand are virutally identical with those in Award 556. There have been no contractual changes affecting the disputed actions. Consequently, Award 556 should be deemed controlling here. Part 1 of Petitioner's claim will be sustained.

The monetary claims in Parts 2, 3, 4, 5 and 6, however, seem excessive since all the named grievants appear to have been working subsequent to March 1, 1960. These men, who were all affected directly or indirectly by Carrier's action, should be reimbursed for whatever they lost as a consequence of the abolishment of the Beckville position; in other words, they should be granted back pay based on a computation of what they would have earned (had the position been retained) less what they actually earned.

* * * * *

The findings here, it should be noted in conclusion, are not meant to disturb rulings in other dualization cases. Those decisions, arising under other contracts, have simply not been considered as governing this case in view of the long-standing controlling decision in Award 556.

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 the Agreement has been violated.

AWARD

The claim in Part 1 is sustained. The claims in Parts 2 through 6 are sustained only to the extent that Claimants R. O. Ford, D. Laredo, A. J. Barlow (incorrectly listed as A. J. Laredo in the claim) and J. E. Rose shall be made whole for whatever monetary loss they suffered as a result of the abolishment of the Beckville Agent-Telegrapher position. Each should be compensated in a sum equivalent to the difference between what he earned and what he would have earned had the position not been abolished.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of February 1967.

CARRIER MEMBERS DISSENT TO AWARD 15358 IN DOCKET TE-12679

This Award essentially decides the case by playing a game of numbers and semantics. It states in effect that **Award 556** must control because it involves the same parties, facts, and similar agreement provisions, and implies that **Award 11294** failed to recognize this fact at its peril.

This is a gross oversimplification of the judicial and quasi judicial process. If all that was required was determination of whether the same facts, parties, and agreement were involved, we would probably not need neutrals. An examination of precedents for such obvious elements of comparison is hardly the only function of the referee.

Webster is an unlikely authority as to the meaning of control when applied to a judicial or quasi judicial precedent, or is a general notion of the meaning of the word in "labor relations parlance." A precedent does not necessarily control merely because it has the same parties, facts, and provisions. While these are important considerations, standing alone they certainly do not "control."

> "* * * it is seldom sufficient to say that a controlling decision is adhered to because it is a controlling decision * * * Stare Decisis is not such a doctrine as makes further reasoning irrelevant." **A Practical Approach To Stare Decisis by Singer, 4 Arizona Law Review 67.**

The principles upon which a precedent is based and its reasoning are fully as important as the rather obvious comparative elements outlined by the majority. That fact has been recognized by the Board in the numerous decisions which refused to be bound by precedent considered "palpably erroneous." The instant Award largely ignores this essential ingredient in evaluating the validity of precedents. That cannot be reasonably stated in regard to **Award 11294** in its analysis of the earlier holdings on the issue.

When conditions alter which produced a decision, and the law applicable to the facts undergoes a substantial change, then an old decision does not control simply because it happens to coincide in a few obvious areas. The old decision must be viable and in tune with the realities of the situation. It must still represent the views of the Board on the subject. This is indicated by whether the decision has been acquiesced in by the Division by having been followed, or whether the principles it enunciates have been accepted by subsequent decisions.

The Award erroneously rejected **Award 11294,** the most recent Award directly in point between the parties, and chooses to follow **Award 556** adopted some thirty (30) years ago, and earlier awards, the reasoning of which have been specifically and consistently rejected. **Award 11294** was the later holding and **Award 5133** (Coffey), cited by the majority, has some excellent comments on precedent:

AWARD 5133 (Coffey)

> "* * * we must elect to follow the more recent opinions which, to say the least, represent a definite trend away from earlier Awards, and at the same time carry added weight by reason of the fact that the decisions were reached only after giving a full measure of attention to such earlier opinions. * * *"

At the time **Award 11294** was decided the Division was faced with a lone precedent on this property that could be considered as pertinent. A firmly rooted principle was early stated by Wells in "**A Treatise on the Doctrine of Res Adjudicata and Stare Decisis**":

> "When a question * * * has been passed upon on a single occasion, and which decision can in no just sense, be said to have been acquiesced in it is not only the right, but the duty * * * when properly called upon, to re-examine the questions involved and again subject them to judicial scrutiny."

Justice Brandeis once wrote on the subject of precedent:

> "* * * Modification implies growth. It is the life of the law * * * The decisions * * * have not been acquiesced in * * * Stare Decisis is ordinarily a wise rule of action. But it is not a universal, inexorable command * * *."

The Board has held on the same subject:

AWARD 10747 (Stark)

> "Notwithstanding the decision in Award 10444, which we have carefully reviewed, and despite the substantial similarity in facts, we adhere to the conviction that our reasoning here is correct. Although the principle of **stare decisis** has been recognized by this Board, it cannot reasonably be held, in our opinion, that one award, recently rendered, constitutes the kind of controlling precedent which that principle contemplates."

As to recency, an old award not followed is clearly of no persuasion contrasted with a recent one which has been the subject of critical evaluation and reaffirmed many times.

Accordingly, at the time **Award 11294** was before the Division, it was faced with a single holding on the property reasonably pertinent which was over twenty-five (25) years old and had simply not been followed by the Board. On the contrary, the Board in later years has consistently ignored in many decisions the principles of the early holdings. Representative is **Award** 11511 (Stark).

The principles enunciated by those early holdings have been rejected by the Division in the development of its decisional authority. They are based on views no longer considered valid. To illustrate, the instant Award states one of the principles of **Award 556** to be that "* * * **the agreement did not allow displacement** * * * in this way * * *." and "* * * **there was no provision for** * * * **a joint agent position.**" The overwhelming weight of authority on this question has held for years that a labor contract contains those elements of managerial right and judgment which have been surrendered in the collective bargaining process. In short, the Petitioner in this docket had the clear burden of pointing to some provision in the agreement which prohibited the procedure followed. This certainly was not done in this instance. We will not expand this by chronicling all the old principles which no longer control a case of this nature, or the legion of awards so holding. Each of the principles of the early awards were briefed and argued and their rejection by later authority fully explored. (Emphasis ours.)

Contrast this with the acquiescence in the principles and reasoning by this Board of **Award 11294** succinctly stated in recent **Award 14871 on this question:**

> "* * * in 1963 this Board, in Award 11294 (Moore), repudiated Award 388 in holding that the Carrier has the right to create a 'joint agency' unless prohibited by the Agreement. This Board has consistently followed Award 11294 from its adoption to the present time. See **Awards 11511 (Stark), 11660 (Dolnick), 12377, 12378 (O'Gallagher), 12486 (Ives), 12945, 12946 (Wolfe), 14670 (Devine),** and **14742 (Ives).** Thus, Award 11294 has been firmly established as a precedent." (Emphasis ours.)

The following comment by the Division in **Award 11660** is noteworthy:

> "There is nothing in the Agreement prohibiting an employe from performing work at two places. Since the position at Monroeville was properly abolished because agency work there was substantially reduced, no provision of the Agreement was violated by assigning the agent at Norwalk to work an average of one hour a day at Monroeville. See **Awards 11511 (Stark),** 11589 (Dorsey), 11294 (Moore), 10950 (Ray), and others.
>
> Petitioner particularly emphasizes the dissent to Award 11294. We have read both the Award and the comprehensive dissent. A full and complete analysis of all of the Awards cited therein is contained in Award 11294. The dissent reiterates the Organization's original position. We find nothing palpably wrong with Award 11294. There is no reason for us to overrule it." (Emphasis ours.)

It is interesting to note that no effort was made to distinguish the instant holding from the reasoning and principles enunciated in **Award 11511** by this referee and cited to him on the same subject. It has also been followed by the Board in many subsequent decisions. **Awards 11660, 12377, 12378, 12486, 12945, 12946 and 14871.**

Award 11294 properly rejected the reasoning and principles of the early holdings because the authority of the Board in later years has buried them. If this award intended to weaken **Award 11294,** it should have gone beyond the simple and obvious test outlined and demonstrated wherein that holding was repungent to the overwhelming precedent of the Board as to principles and reasoning. Failing to do so, it has left undisturbed the value of **Award 11294** as a controlling precedent on this property.

Award 11294 was actually the controlling decision in this docket. It involved the same parties, facts and agreement. It demonstrated that the earlier awards were erroneous in principle. **Award 15358** does not discuss wherein the reasoning or the principles of **Award 11294** were in error, or why the principles of the earlier awards should be followed now. **Award 11294** supplied principles and reasoning consonant with the development of authority on the Board. This award does not. **Award 11294** and its principles have been consistently followed by subsequent holdings. **Award 556** and the others have not. In fact, they have been repudiated. Therefore, under any reasonable or authoritative rule of precedent **Award 11294** was the controlling decision absent a clear showing that it was palpably erroneous in principle and there is no such showing.

In short, **Award 11294** rejected **Award 556** on principle. This holding does not demonstrate defects or weaknesses in the reasoning or principles of **Award 11294**. This is essential in rejecting a precedent. **Award 11294** did this, and its reasoning has been reaffirmed and followed. **Award 556** has not. Therefore, **Award 11294** is controlling between these parties.

This award is in grave error. It stops short of any critical analysis of the contract, the principles, practices and reasoning of any of the holdings reviewed. Accordingly, it cannot disturb the precedent value of awards that did not so proceed, and must itself be considered an erroneous holding to be buried with **Award 556** and the other early awards referred to.

T. F. Strunck
R. E. Black
P. C. Carter
G. L. Naylor
G. C. White

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