DOCKET NO. 117 ---Withdrawn by Carrier

Chicago, Rock Island and Pacific Railway)
Southern Pacific Company)
Texas and Louisiana Lines)
) Parties to the Dispute
vs.)
)
The Order of Railroad Telegraphers)

QUESTION:

1. Would the arrangement described in the facts which follow constitute a "coordination within the meaning of Section 2(a) of the Agreement of May, 1936, Washington, D.C.?"

2. If the answer to Question No. 1 is affirmative, what are the proper bases to permit the coordination of the separate station facilities and services of Chicago, Rock Island and Pacific Railway and Southern Pacific Company, Texas and Louisiana Lines at Alexandria, Louisiana, since the parties have been unable to compose their differences?

DECISION:

Withdrawn.

DOCKET NO. 118 --- Withdrawn

The Order of Railroad Telegraphers)
)
vs.) Parties to the Dispute
)
Union Pacific Railroad Company)

QUESTION

Was D. E. Brighton the owner of the abolished agent-telegrapher position, Union Pacific Railroad Company, Minneapolis, Kansas, as provided in the letter of understanding dated March 19, 1963, and is he entitled to the protection afforded by Section 6 of the Washington Agreement, May, 1936, as supplemented by the Memorandum of Agreement of March 18, 1963, between Union Pacific Railroad Company; the Atchison, Topeka and Santa Fe Railway Company, Eastern Lines, and employees of the Carriers who are represented by The Order of Railroad Telegraphers?

DECISION:

Withdrawn.

Donald S. Beattie, Executive Secretary-Treasurer

RLEA RAILWAY LABOR EXECUTIVES' ASSOCIATION

REPUBLIC 7-1541

400 1st Street, N. W., WASHINGTON 1, D. C.

At St. Louis, Missouri
September **22, 1965**

AIR MAIL

Messrs. Charles Luna	(10)	**President**	BRT
C. L. Dennis	(10)	Grand President	BR&SC
Michae**l** Fox	(20)	President	RED
Ralph H. Wachowiak	(10)	Grand President	RYA
G. **E.** Leighty		**President**	TCU

SUBJECT: Docket **119** A, **3, C,** D, and E
Buffalo Terminal

Dear Sirs and Brothers:

Please refer to my letter of September 21, 1965, in which I informed you Referee Bernstein would rule upon the question of whether the number of employees to man a coordinated facility or operation was bargainable under the Washington Agreement. This is in connection with Docket 119 A, B, C, D, and E, the Buffalo Terminal Case.

I am now attaching a copy of Referee Bernstein's decision dated September 20, 1965 on this issue. It should be noted that he has ruled, ". . . that the number of employees to man the coordinated facility is a mandatory subject of bargaining under the Washington Agreement where it is pertinent to the avoidance of worsened working conditions but not for the purpose of achieving a greater measure of job security than provided by Section 6."

This decision, as indicated by Referee Bernstein, should stimulate a resumption of bargaining by the parties for coordination or implementing agreements. He also states that the Committee and Referee retain jurisdiction of the disputes and they are not remanded to the parties. However, as explained in my letter of September 21, 1965, Referee Bernstein has given the parties until October 19, 1965 to achieve implementing agreements through direct negotiations on the property. Failing that objective the Referee will convene the Section 13 Committee with hearing to commence within a week after October 19, 1965. It should also be noted, in this event, he will hold the Committee in as nearly continuous session as possible until the Committee and Referee have written a coordination agreement for the parties.

After the September 16, 1965 hearing, Chairman Macgill indicated that he would, upon receipt of Referee Bernstein's decision on this issue, notify and urge the Erie-Lackawanna and Nickel Plate Managements to promptly resume conferences with the several Organizations and endeavor to resolve the disputes on the property.

Each Organization involved in these disputes should promptly furnish their General Chairmen with copies of the decision (extra copies are enclosed) with instructions to seek conferences with Management and endeavor to negotiate appropriate implementing agreements. The General Chairmen should also be advised that this decision which makes it mandatory on the part of Management to bargain on the number of employees to man the coordinated facility does not give the Organization the right to insist upon a plan of coordination which would, in effect, provide the employees with an attrition agreement. The decision only conveys this mandatory obligation of bargaining on numbers where it is pertinent to the avoidance of worsened working conditions and not for the purpose of achieving a greater measure of job security than is provided by Section 6.

The General Chairmen should also be cautioned when negotiating these implementing agreements to fully protect whatever rights their members have under the existing stabilization and/or merger agreements. For example, the Nickel Plate employees should not be deprived of any benefits available to them under the Merger Agreement of Jan-ary 10, 1962, and the Clerks and Communication Employees on the Lackawanna have the added protection of the February 7, 1965 Stabilization Agreement. Language should be included in the implementing agreements which will preserve any rights ad privileges accorded in the stabilization and merger agreements.

Please note Referee Bernstein desires a report from Chairman Macgill and me to be mailed no later than October 12, 1965 on the bargaining progress together with a statement of whether we expect to resolve the disputes by October 19, 1965. In this connection I will appreciate receiving such a report from each of you not later than Monday, October 11, 1965, so I may comply with the Referee's request.

Fraternally yours,

D. E. Leighty

Chairman
Employee Members, Joint Conference Committee
Agreement of May 1936, Washington, D. C.

Attachment

cc: Messrs. P. S. Heath
K. E. Gilbert
G. M. Harris
N. P. Speirs
R. C. Coutts
P. L. Siemiller
Russell K. Berg
E. F. Carlough
Gordon M. Freeman
A. J. Bernhardt

(Continued Page 3)

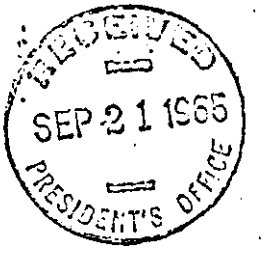
SUBJECT: Docket 119 A, B, C, D, and E
Buffalo Terminal

cc's Continued -

Messrs. Wm. Fredenberger
H. C. Crotty
Jesse Clark
Lloyd W. Sheldon
Jesse M. Calhoon
Thomas Id. Gleason
Howard Pickett
J. W. O'Brien
J. W. Ramsey
T. V. Ramsey
J. B. Zink
R. W. Smith
L. s. Loomis
Homer L. Ellis
S. Vander Hei
W. R. Meyers
A. R. Lowry
Jack Fletcher
Elmer Thias
Herman Webb
E. J. Haessert
Oren Wertz
Melvin B. Frye
C. R. Pfenning
D. J. Lytle
Daniel A. Murphy
D. S. Beattie (10)
J. P. Tahney
Wm. G. Mahoney
R. R. Lyman
L. P. Schoene
R. E. Matthews
M. J. Hayes

THE OHIO STATE UNIVERSITY
COLLEGE OF LAW
1659 NORTH HIGH STREET
COLUMBUS, OHIO 43210

September 20, 1965



Mr. W. S. Macgill, Chairman
Carriers' Committee
474 Union Station Bldg.
Chicago, Illinois 60606

Mr. G. E. Leighty, Chairman
Organizations' Committee
c/o Transportation and Communications' Workers Union
3660 Lindell Blvd.
St. Louis, Missouri

Re: The New York, Chicago and St. Louis R.R. Co. and Erie-Lackawanna R.R. Co. and Brotherhood of Railroad Trainmen, et al. Docket Nos. 119 A-B-C-D and E

Gentlemen:

At the argument of this set of disputes at Washington, D.C. on September 16, 1965 the members of the Committee agreed that I should rule as soon as possible on one issue on which the parties were deadlocked although such an intermediate ruling is not provided for in the Washington Agreement. This ruling is designed to stimulate a resumption of bargaining by the parties for a coordination agreement. However, the disputes are not being remanded to the parties. The Committee and Referee retain jurisdiction. If the parties have not achieved an agreement by October 19, 1965, the Committee will reconvene and decide any issues arising under the Washington Agreement necessary to put the coordination into effect. To that end the Referee is to be provided with a written report on bargaining progress by the Chairmen of the Carrier and Organization Committees to be mailed no later than October 12, 1965. If either side reports that it does not expect a resolution by October 19, 1965, the Referee will contact the respective chairmen to set up a resumed hearing to be begun within a week after October 19, 1965. That hearing will stay in as nearly continuous session as possible until the Committee and Referee have written a coordination agreement for the parties which will be issued forthwith.

In the interests of expedition, this opinion will not set forth in full detail the Referee's conclusions or reasoning already presented orally to the parties in mid-August. The views I expressed at that time remain my views and will be set forth in the final opinion in this case. The views expressed in this ruling are in addition to those already communicated to the parties.

In summary, I have concluded that the implementation of the coordination of the Carriers' new Bison yard in the area of Buffalo, New York, was frustrated by the Organizations insistence upon "attrition" arrangements as an element of coordination agreements. While such a demand poses a legitimate bargaining issue, that form of employee protection goes beyond the protection afforded by the Washington Agreement. As Carriers argue, the Washington Agreement provides for compensation payments as the major means of employee protection in return for which carriers are enabled to put into effect coordinations otherwise barred by rules agreements. The Organizations may not put a higher price upon the implementation of a coordination if the Carriers are unwilling.

I also concluded that in a deadlock situation, this Committee can write an agreement for the parties. Docket Nos. 70 (part (b)) and 57. When the Committee performs that task it may not impose conditions which exceed those provided in the Agreement; hence an attrition agreement may not, and will not, be imposed if this Committee is required to write the implementing agreement.

In the submissions and original arguments, both parties put in issue whether the decision as to how many employees are to man the coordinated facility is a "management prerogative" or one which is a mandatory subject of bargaining under this Agreement. In presenting my views in mid-August, I stated that it seemed unnecessary to rule upon that issue because the record showed that the Carriers in fact had bargained on that issue, having given rather precise information in the Section 4 notices on the numbers of positions contemplated. (See, for example, Exhibits 3 and 15 (p. 3) in Docket No. 119 A). In the absence of necessity for a ruling, it seemed wise not to resolve that issue in view of the inconclusiveness of earlier Committee decisions put forward as precedents.

However, at the August 1965 session Carrier representatives insisted that the issue was a live one and Organization representatives also reported that it had become a key impediment to agreement. So, I asked for special argument on that issue which was had at the September 16 session.

Carriers argue that just as an attrition arrangement exceeds the protection of the Washington Agreement so any provision in a coordination agreement fixing the number of positions also goes beyond the basically compensatory scheme of the Agreement. It is, they contend, a job freeze, just as an attrition agreement is, even if the freeze affects less than all the jobs formerly performed in the operations to be merged. The argument is persuasive--as far as it goes. But it is limited to bargaining over job security and so does not fully dispose of the issue.

The Organizations argue that Section 5, which requires a coordination agreement as a condition of putting a coordination into effect, provides for two related but different things: (1) "the selection of forces from the employees of all the carriers involved on bases accepted as appropriate for application in the particular case" and (2) "assignment of employees . . . on the basis of an agreement between the carriers and the organizations of the employees affected."

Carriers argue that both (1) and (2) are pretty much the same thing and a formula for allocation of the work among the groups whose work is being coordinated satisfies both conditions. But the organizations argue, more persuasively I believe, that the separately stated conditions call for more than one element in the agreement, and that a percentage allocation of work deals only with "selection" but not "assignment." I agree that "assignment" goes beyond a method for choosing the proportion of work to be given to the employees of the carriers involved. If it does, Carriers argue, it deals with bulletining of jobs and the methods of avoiding them. That could be the limit of the second clause of the first sentence of Section 5.

The Organizations argue for a broader reading. They contend that "assignment" necessarily connotes the number of assignments to be made. They buttress this contention with the arguments that (1) the manning of a facility can affect working conditions, (2) the guarantee of Section 6(a) also protects against worsening of "working conditions," and (3) a remedy for worsened working conditions which only comes after the fact is a partial remedy at best so that an implementing agreement is the proper way to give life to the guarantee. Carriers counter that such an interpretation reads too much into the protection against worsened "rules governing working conditions" which guarantees that rules will be no less advantageous. But I find this interpretation too narrow. The rules are for the purpose of protecting against adverse working conditions; it is the latter which are protected if Section 6(a) is to serve its real purpose.

Moreover, Section 4 requires that carrier notices of an intended coordination shall, among other things, include "an estimate of the number of employees of each class affected by the intended changes." The next sentence requires that the carriers and organizations agree upon date and place for a conference about applying the agreement to the intended changes. This specificity about numbers of employees affected indicates that this element of the change is an appropriate subject of bargaining and affects the interpretation of Section 5. The decisions in earlier cases do not lead to a contrary conclusion, as I have heretofore indicated; those cases will be discussed in the final opinion in this case.

I conclude, therefore, that the number of employees to man the coordinated facility is a mandatory subject of bargaining under the Washington Agreement where it is pertinent to the avoidance of worsened working conditions but not for the purpose of achieving a greater measure of job security than provided by Section 6.

Sincerely,

Merton C. Bernstein

Merton C. Bernstein, Referee

MCB:bb

P.S. On September 21, I am meeting with representatives of the Erie-Lackawanna and the Brotherhood of Railway Clerks and will supply copies of this letter to them.

M.C.B.

Duplicate original to Mr. W. S. Macgill

DOCKET NO. 119 --- Withdrawn after interim decision by Referee Bernstein

New York, Chicago and St. Louis Railroad Company)
Erie-Lackmanna Railroad Company)
)
vs.)
)
(a) Brotherhood of Railroad Trainmen) Parties to the Dispute
(b) Brotherhood of Railway and Steamship Clerks)
(c) The Order of Railroad Telegraphers)
(d) System Federations Nos. 100 and 57, Railway)
Employes' Department, AFL-CIO)
(e) Railroad Yardmasters of America)

QUESTION:

1. (a) In the coordination of The New York, Chicago and St. Louis Railroad Company and Erie-Lackawanna Railroad Company terminal fscilitie; and services at Buffalo, New York, pursuant to the Order of the Interstate Commerce Commission in Finance Docket No. 21820 imposing the New Orleans Protective Conditions for affected employes, may the respective General Committees of the respondent organization demand new and different employe protection measures and the retention in service of unnecessary employes as the price for their agreeing to implementation such as is contemplated under Sections 4 and 5 of the Washington Agreement?

(b) In the coordination of The New York, Chicago and St. Louis Railroad Company and Erie-Lackawanna Railroad Company terminal facilities and services and services at Buffalo, New York, pursuant to Order of the Interstate Commerce Commission in Finance Docket No. 21320 imposing "New Orleans protective conditions" for affected employes, may the respective System Boards of Adjustment of the respondent organization demand new and different employe protective measures and the retention in service of unnecessary employes as the price for their agreeing to implementation such as is contemplated under Sections 4 and 5 of the Washington Agreement?

(c) In the coordination of The New York, Chicago and St. Louis Railroad Company and Erie-Lackawanna Railroad Company terminal facilities and services at Buffalo; N.Y., pursuant to Order of the Interstate Commerce Commission in Finance Docket No. 21820 imposing "Xc:; Orleans protective conditions" for affected employes, may the respective Committees of the respondent organization demand new and different employe protective measures and the retention of unnecessary employes service as the price for their agreeing, to implementation such as is contemplared under Sections 4 and 5 of the Washington Agreement to which they arc signatory?

(d) In the coordination of The New York, Chicago and St. Louis Railroad Company and Erie-Lackawanna Railroad Company terminal facilities and services at Buffalo, New York, pursuant to Order of the Interstate Commerce Commission in Finance Docket No. 21820 imposing "New Orleans protective conditions" for affected employes, may the respective System Federations of the

respondent organization demand new and different employe protective measures and the retention in service of unnecessary employes as the price for their agreeing upon implementation such as is contemplated by Sections 4 and 5 of the Washington Agreement?

(e) In the coordination of The New York Chicago and St. Louis Railroad Company and Erie-Lackawanna Railroad Company terminal facilities and services at Buffalo, N.Y., pursuant to Order of the Interstate Commerce Commission in Finance Docket No. 21820 imposing "New Orleans protective conditions" for the affected employes, may the respective Committees of the respondent organization demand the retention of unneeded employes and different employe protective measures as the price for their agreeing to implementation, such as is contemplated under Sections 4 and 5 of the Washington Agreement?

2. (a) In order to effectuate the coordination, what if any adjustment is necessary in the Carriers' proposed basis for selection and assignment of employes as set forth in proposed agreements attached hereto, Carriers' Exhibits 62 and 63?

(b) In order to effectuate the coordination, what if any adjustment is necessary in the Carriers' proposed basis for selection and assignment of employes as set forth in proposed agreement attached hereto as Exhibits 24 and 25?

(c) In order to effectuate the coordination, what if any adjustment is necessary in the Carriers' proposed basis for selection and assignment of employes as set forth in proposed agreement attached to Carriers' Exhibit H?

(d) In order to effectuate the coordination, what if any adjustment is necessary in the Carriers' proposed basis for selection and assignment of employes as set forth in agreement attached hereto as Exhibit N?

(e) In order to effectuate coordination what if any adjustment is necessary in the Carriers' proposed basis for the selection and assignment of employes as set forth in proposed agreement attached as Carriers' letter dated June 14, 1963?

DECISION: (The dispute in Docket No. 119 was submitted to Referee Bernstein who rendered the following interim decision:)

At the argument of this set of disputes at Washington, D.C., on September 16, 1965 the members of the Committee agreed that I should rule as soon as possible on one issue on which the parties were deadlocked although such an intermediate ruling is not provided for in the Washington Agreement. This ruling is designed to stimulate a resumption of bargaining by the parties for a coordination agreement. However, the disputes are not being remanded to the parties. The Committee and Referee retain jurisdiction. If the parties have not achieved an agreement by October 19, 1965, the Committee will reconvene and decide any issue arising under the Washington Agreement necessary to put the coordination into effect. To that end the Referee is to be provided with a written report on bargaining progress by the Chairmen of the Carrier and

Organization Committees to be mailed no later than October 12, 1965. If either side reports that it does not expect a resolution by October 19, 1965, the Referee will contact the respective chairmen to set up a resumed hearing to be begun within a week after October 19, 1965. That hearing will stay in as nearly continuous session as possible until the Committee and Referee have written a coordination agreement for the parties which will be issued forthwith.

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I also concluded that in a deadlock situation, this Committee can write an agreement for the parties. Docket Nos. 70 (part (b)) and 57. When the Committee performs that task it may not impose conditions which exceed those provided in the Agreement; hence an attrition agreement may not, and will not, be imposed if this Committee is required to write the implementing agreement.

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fixing the number of positions also goes beyond the basically compensatory scheme of the Agreement. It is, they contend, a job freeze, just as an attrition agreement is, even if the freeze affects less than all the jobs formerly performed in the operations to be merged. The argument is persuasive--as far as it goes. But it is limited to bargaining over job security and so does not fully dispose of the issue.

The Organizations argue that Section 5, which requires a coordination agreement as a condition of putting a coordination into effect, provides for two related but different things: (1) "the selection of forces from the employees of all the carriers involved on bases accepted as appropriate for application in the particular case" and (2) "assignment of employees . . . on the basis of an agreement between the carriers and the organizations of the employees affected."

Carriers argue that both (1) and (2) are pretty much the same thing and a formula for allocation of the work among the groups whose work is being coordinated satisfies both conditions. But the organizations argue, more persuasively I believe, that the separately stated conditions call for more than one element in the agreement, and that a percentage allocation of work deals only with "selection" but not "assignment." I agree that "assignment" goes beyond a method for choosing the proportion of work to be given to the employees of the carriers involved. If it does, Carriers argue, it deals with bulletining of jobs and the methods of avoiding them. That could be the limit of the second clause of the first sentence of Section 5.

The Organizations argue for a broader reading. They contend that "assignment" necessarily connotes the number of assignments to be made. They buttress this contention with the arguments that (1) the manning of a facility can affect working conditions, (2) the guarantee of Section 6(a) also protects against worsening of "working conditions," and (3) a remedy for worsened working conditions which only comes after the fact is a partial remedy at best so that an implementing agreement is the proper way to give life to the guarantee. Carriers counter that such an interpretation reads too much into the protection against worsened "rules governing working conditions" which guarantees that rules will be no less advantageous. But I find this interpretation too narrow. The rules are for the purpose of protecting against adverse working conditions; it is the latter which are protected if Section 6(a) is to serve its real purpose.

Moreover, Section 4 requires that carrier notices of an intended coordination shall, among other things, include "an estimate of the number of employees of each class affected by the intended changes." The next sentence requires that the carriers and organizations agree upon date and place for a conference about applying the agreement to the intended changes. This specificity about numbers of employees affected indicates that this element of the change is an appropriate subject of bargaining and affects the interpretation of Section 5. The decisions in earlier cases do not lead to a contrary conclusion, as I have heretofore indicated; those cases will be discussed in the final opinion in this case.

I conclude, therefore, that the number of employees to man the coordinated facility is a mandatory subject of bargaining under the Washington Agreement where it is pertinent to the avoidance of worsened working conditions but not for the purpose of achieving a greater measure of job security than provided by Section 6.

(Note: Following Referee Bernstein's interim decision, the parties reached agreement and the dispute was withdrawn from the Committee.)

DECISION NO. 12C --- Decision by Referee Bernstein

William F. McGraw, Individual	)	
	)	
and	)	Parties to the Dispute
	)	
Erie-Lackawanna Railroad Co.	)	

QUESTICS:

"Respectfully submit that I, William F. McGraw, was adversely affected as outlined under the terms of the Washington Job Protection Agreement when my position as Assistant Supervisor of Statistics, Eastern District, Erie-Lackawanna Railroad, was abolished when office of Assistant Vice President and General Manager, Eastern District, was discontinued."

FINDINGS:

The Claimant was not represented at the oral hearing but copies of correspondence show that he was given ample notice and decided not to be present or represented because of the cost involved. In such a situation the Referee should scrutinize the record with special care and make inquiries which the Claimant or his representative might have made if present. This I have done.

Mr. McGraw claims that the Washington Agreement applies to him because his job was abolished when the office to which he was attached was discontinued and its operations consolidated with those of another office as part of the Erie-Lackawanna merger.

The difficulty is that both the offices which were combined were forcer Eric offices. The work done by Claimant, formerly an Erie employee, was not combined with the work of another carrier; his position was discontinued and what remained of his job was done by a former Erie clerk. The entire change was effectuated by agreement of the Clerks and the Carrier pursuant to Rule 11 of the Clerk's agreement and not the Washington Agreement. Hence neither joint action nor consolidation in regard to his work is made out by the record.

He suggests that the caption ("Erie-Lackawanna Merger") used by the Carrier in correspondence with him has some significance, implying that it may

constitute an admission that he was in fact adversely affected by the merger. However, it seems reasonable for the Carrier to use that designation because of the nature of the claim; it cannot be extended into an admission. Nor is it helpful to Mr. McGraw that telephone operators who formerly appeared on the same roster were accorded benefits under the Washington Agreement. The distinguishing factor is that their work was consolidated at Hoboken with the work of former Lackawanna operators.

DECISION:

The claim is denied because Claimant's displacement did not result from the coordination as alleged by him.

DOCKET NO. 12 1 --- Decision by Referee Bernstein

American Train Dispatchers Association)
)
and) Parties to the Dispute
)
Erie-Lackawanna Railroad Company)

QUESTIONS:

"(1) Claim of F. L. Spratt, R. Cisco, H. C. Kaufmann, R. W. Rawls, E. T. Berrian, C. R. Wallace, F. A. Bookstaver and R. L. Wands, employees who were continued in service but were placed in a worse position with respect to compensation and rules governing working conditions in the rearrangement of forces as a result of a coordination, for a DISPLACEMENT ALLOWANCE.

"(2) Are employees who are continued in service who are placed in a worse position with respect to compensation and rules governing working conditions, as a result of a coordination, entitled to protective benefits provided for in the AGREEMENT OF MAY 1936, WASHINGTON, D.C., specifically a DISPLACEMENT ALLOWANCE under Section 6 of said Agreement?"

FINDINGS:

An Implementing Agreement was achieved on February 1, 1961 under which seniority rosters of former Erie and Lackawanna dispatchers were dovetailed. There is no dispute that there was a merger of former Erie and Lackawanna Dispatchers Offices at Hoboken, New Jersey in June 1961. Prior to the consolidation, both offices had 27 positions (including relief); after the consolidation went into effect on June 10, 1961 there were 25 positions. No dispute exists over the loss of those two jobs. On July 1, 1961 former Erie Chief Dispatcher Dana retired; his former duties were combined with former Lackawanna Chief Dispatcher Conboy's work. The Organization claims that this

constituted the loss of a third position due to merger; the Carrier denies this. In June and July two other positions in the consolidated facility were abolished.

The claims at issue concern Train Dispatchers and Towermen who had full time positions prior to the coordination and had full time positions in the same categories after the coordination. However, they allegedly had lowered compensation in some post-coordination months due to the shrinkage in opportunities for extra work which Claimants performed as substitutes for Chief Train Dispatcher and Assistant Chief Train Dispatcher (when those in that classification were off or substituted for Chief Train Dispatchers). Not unimportantly, the extra work carried higher rates of pay than their regular positions.

The Organization contends that Claimants are employees "continued in service" each of whose position was worsened in regard to compensation by the merger and they thereby became eligible for Section 6 allowances. On the property the Carrier rejected the claims on the ground that the employees continued in the same positions of Train Dispatchers and Towermen that they held prior to coordination and hence were not displaced from their position. (For the reasons stated in Docket No. 131 this argument is rejected.) In argument before the Committee, however, a more subtle argument keyed closely to the following language of Section 6 was made.

> No employee of any of the carriers involved in a particular coordination who is continued in service shall, for a period not exceeding five years following the effective date of such coordination be placed, as a result of such coordination, in a worse position with respect to compensation and rules governing working conditions than he occupied at the time of such coordination so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination . . .

This language, it is argued, precludes a finding of worsened position "so long as [the claimant] is . . . able . . . . to obtain a position producing compensation equal to or exceeding the compensation. . ." of his pre-coordination position; here the "positions" of Dispatchers and Towermen have produced at least equal compensation and so, it is contended, valid claim can not be trade. This ingenious reading seeks to overcome the basic guarantee set forth in Section 5 that "no employee . . . . continued in service shall . . . be placed in a worse position with respect to compensation . . . ." for the period of the guarantee.

In Docket No. 62 it was held that an employee can be adversely affected and be eligible for a Section 6 allowance where he obtains a position with a pay rate equal to that of his pre-coordination job but his total compensation falls below the guaranteed earnings (the test period average) if he is within the ambit of the coordination, (unless the Carrier makes an affirmative showing

that the diminished compensation stems from a cause other than the coordination). There it was pointed out that "the formula is to reflect elements of compensation in addition to the 'rate of pay'" and an illustration was overtime for a sixth day's work.

Essentially the same reasoning applies here. The guarantee is directed to the employee's "compensation" (as determined by a comparison of the test period average and the actual earnings of post-coordination months). The guarantee is given for losses that are "a result of such coordination." Here the diminished earnings were a direct result of the shrinkage of employment opportunities brought on by the elimination of jobs in the coordination. In Docket No. 62 the illustration (and it was only an illustration, not a limiting holding) was of overtime on the same position. But it is also commonplace for position holders to obtain extra work either in the same or a related classification (e.g., as here where Telegraphers also qualify as Dispatchers and work in both classifications).

Three interpretations of Section 6 through the quoted proviso are possible:

(1) such extra work is part of the position, realistically viewed, although not part of the bulletined description, and so the proviso does not bar the claim;

(2) the guarantee of Section 6 runs both to a regular position held, to which the quoted proviso applies, and also to extra work to which the proviso does not apply because no "position" is obtained producing compensation equal to what that work produced; and

(3) "position" in both places means situation and not bulletined position and as the new situation does not produce equal compensation, the claim for lost extra work is good. All three interpretations support Claimants.

In addition, this fact situation emphasizes the weakness of the Carrier contention, in other cases in this group, that those working extra prior to a coordination can not be eligible for a Section 6 allowance unless that work constitutes the equivalent of a full time position (if Section 6 is not limited to bulletined positions). For here are full time position holders part of whose total pre-coordination compensation was derived from extra work. That part of their compensation was diminished as a direct result of the coordination. The policy underlying Section 6, as well as its language, is to protect against such a result; the language should and can be interpreted to fulfill that policy.

Moreover, this case underscores another weakness of the Carrier position on the eligibility of those performing extra work for Section 6 protection. The extra work is of the same class as that of the positions involved in coordinations and much of it necessarily follows the positions (as here). Commonly neither can be transferred from under a rules agreement to be performed by employees under another agreement. Only by virtue of the Washington Agreement can the work -- of full time position holders and extra men -- be so

transferred. It follows that the guarantee should be coextensive with both the original prohibition and the exception to the prohibition provided by this Agreement.

For all these reasons it follows that for any month after the coordination in which Claimants had lowered compensation due to the diminished extra work, they were adversely affected and eligible for Section 6 displacement allowances.

As to the issue of timeliness of the claims, suffice it to say that they were made and denied before the supplementary agreement of December 20, 1962 first introduced a time limit.

DECISION:

Claimants, who occupied full tire positions before and after the coordination, were adversely affected by the coordination because jobs were eliminatcd in the merger which decreased their compensation from extra work on the positions eliminated or the positions of those who formerly performed the extra work on the positions elininated. They therefore are eligible for displacement allowances in any month after May, 1961 in which their compensation fell below their test period average. Their claims were timely.

DOCKET NO. 122 --- Decision by Referee Bernstein

Transportation-Communication Employees Union	)	
	)	
and	)	Parties to the Dispute
	)	
Southern Railway System	)	

UESTION:

"Did the Southern Railway fail to comply with the provisions of the Agreement of May, 1936, Washington, D.C., when without notice and Agreement it effected a coordination of its facilities at Fair Street Tower, Atlanta, Georgia, with the South Tower of Atlanta Terminal Company commencing December 14, 1961?"

FINDINGS:

In early November 1961 new equipment in South Tower, a facility of the Atlanta Joint Terminal, began to perform functions formerly controlled by the Fair Street Tower, a Southern installation. (Both carriers are separate parties to the Washington Agreement.) By mid-December a Fair Street Tower position was abolished. Although earlier the claim that this sequence of events constituted a coordination was contested, that issue was withdrawn in argument before me.

Also removed from the case was the contention that the national agreement of 1954 imposing time limits upon the presentation of grievance claims applies to disputes arising under the Washington Agreement.

The sole issue is whether the Organization slept on its claim under the Washington Agreement so that it is barred from pressing it on the merits by the doctrine of laches.

On November 30 and again on December 27, 1961 the General Chairman protested that these events were a coordination which, in the absence of a Section 4 notice and a Section 5 implementing agreement, violated the Washington Agreement. Obviously these protests were timely, coming about as early as possible. The question then becomes whether failure to press the claim under this Agreement enables the Carrier to invoke the doctrine of laches, i.e. that the claim became stale for lack of prosecution and that the Carrier became lulled into believing that the claim had been abandoned.

On January 12, 1962 the Carrier formally rejected the claimed violation of the Washington Agreement. On February 6, 1962, the Organization alleged a violation of its rules agreement; that claim was rejected by the Carrier in August, 1952 and reaffirmed at a conference in September, 1962. In October the General Chairman indicated the unacceptability of the Carrier's final, decision. May 23, 1963 was the deadline for submission to the National Railroad Adjustment Board of a grievance based upon a violation of the rules agreement. On January 23, 1964, the Organization made its submission to this Committee, formally invoking the Washington Agreement. This action came roughly two years after the Carrier first rejected the Washington Agreement contention and about fifteen months after the Organization indicated its dissatisfaction with the Carrier's disposition of its claim of rule; violation.

The Carrier's contention that by processing a rule; agreement grievance the Organization abandoned its Washington Agreement claim is not persuasive. This Agreement, if adhered to, permits carriers to transfer work covered by one rules agreement to another. Usually when Section 5 of this Agreement is violated the same action also will breach the rule; agreement. There is no inconsistency in pursuing a grievance invoking both the rules agreement and the Washington Agreement. (See discussion in Docket No. 106). Uncertainty as to whether any or adequate relief could be procured in either forum arguably made it advisable to press one claim in addition to the other. We are long past the common law notion that a party must make an "election" of the remedies available to him so that when he chooses, or appears to choose, one he is taken to have abandoned the other. Such formality and conceptualism make poor law and worse labor relations for it would permit the perpetuation of unresolved controversies.

The Carrier points to innumerable opinions in NRAB Third Division awards on the issue of laches. Of those it quotes which mention a specific period of delay as constituting laches, practically all involved delays of three years or more (in one the delay was more than five years). In Award 5389 a delay of eighteen months led the Board not to invoke the doctrine; the delay was cited as indicative of the claimant's belief that it had a weak case on

the merits and an additional reason for reaching that conclusion. In Award 6229 a delay in filing for "approximately" two years from the carrier's denial of the claim struck the referee as "unreasonable and not within the purview of the Railway Labor Act."

However, in this case no such period elapsed between filing of the submission here (January 23, 1964) and the last exchange on the issue between the Organization and the Carrier (October 11, 1962).

Although invocation of the doctrine of laches may be appropriate after a given period where the claim is really debatable, where, as here, the violation of this Agreement was quite clear (a conclusion I reached after the first argument of the case, before Carrier representatives withdrew the merits at the second Committee discussion) the same delay can be regarded as not too extensive. Under the circumstances of this case the Carrier could expect that a claim would be pressed whereas in a more debatable case delay might lead to a conclusion that the Union was abandoning its grievance.

I conclude that the Organization neither slept on its rights nor was the Carrier misled into believing that the claim of violation was abandoned. The remedy follows that prescribed in Docket No. 106 for the reasons set forth there.

DECISION:

(1) Southern violated the Washington Agreement by failing to give a Section 4 notice and to negotiate a Section 5 implementing agreement before coordinating Southern's Fair Street Tower facilities and services with those at Atlanta Joint Terminal's South Tower; it is directed to serve the requisite notice and negotiate the required agreement;

(2) Southern is directed to pay full back pay (i.e. based upon the average compensation earned in the 12 months preceding the dates of the changes and including all fringe benefits and improvements in pay and fringes since that time), less actual wages and/or benefits received, to all employees affected by the unauthorized changes until Section 4 notices are served and a Section 5 implementing agreement is achieved. The protective conditions under the Washington Agreement shall be in force through February 1967.

DOCKET NO. 123 --- Withdrawn

Brotherhood of Locomotive Engineers)
)
vs.) Parties to the Dispute
)
Gainesville Midland Railroad Company)

QUESTION:

1. Claim for the difference between the coordination allowance and the amount earned for the month of August 1960.

2. Claim of $650.00 for expenses incurred during the period of May 7, 1960 through July 23, 1960, due to being forced to take a position as yard fireman in Atlanta, Georgia.

DECISION:

Withdrawn.

DOCKET NO. 124 --- Decision by Referee Bernstein

Transportation-Communication Employees Union)
)
and) Parties to the Dispute
)
Missouri Pacific Railroad Co.)
Missouri-Illinois Railroad Co.)

QUESTIONS

"1. Does the arbitrary coordination of service performed by train dispatcher-car distributors employed by the Missouri-Illinois Railroad Company at Bonne Terre, Missouri prior to June 1, 1962 with the services performed by train dispatchers employed by the Missouri Pacific Railroad Company at Chester, Illinois, without agreement, constitute a violation of the Agreement of May 1936, Washington D.C.

"2. If the answer to Question No. 1 is, affirmative, are all employees adversely affected entitled to the protection set forth in Sections 6 through 12 to the extent applicable?"

FINDINGS:

At issue is (1) whether the transfer of dispatching work, governing Missouri-Illinois train; performed at Bonne Terre, Missouri by Missouri-Illinois employees, to Chester, Illinois where it was combined with dispatching work performed at the Missouri Pacific facilities was a coordination of services and facilities and (2) whether the alleged coordination was pursuant to "joint action by two or more carriers," a necessary element of a "coordination" as defined in Section 2 (a) of the Washington Agreement.

Since 1929 the Missouri Pacific has owned a controlling interest in the Missouri-Illinois and for many years the two Carriers have had common officers and direction. Nonetheless, each is a separate carrier under the terms of Appendix B of the Washington Agreement. In 1932, the Carriers declare, "the dispatching of Missouri-Illinois trains and car distributing work on the east side of the Mississippi River was consolidated with the Missouri Pacific dispatching office at Bush, Illinois, and the dispatching of Missouri-Illinois

trains and car distributing work on the west side of the river was consolidated with Missouri Pacific dispatching office at Poplar Bluff, Missouri." In 1943, traffic growth necessitated the establishment of what the Carriers call a "branch office" at Bonne Terre, Missouri to dispatch Missouri-Illinois trains west of the Mississippi. That facility was manned by "Missouri-Illinois" dispatchers; the Carriers assert that they operated under the supervision of the Missouri-Pacific Chief Dispatcher at Poplar Bluff. This arrangement continued until June 1, 1962 when the Bonne Terre dispatchers office was abolished and its work consolidated with the Missouri Pacific dispatching office at Chester.

In essence the Carriers contend that the Bonne Terre office was a Missouri Pacific facility so that when its work was consolidated with that of the Missouri Pacific in 1962 separate facilities of two carriers were not involved. But this characterization seems at odds with the fact that Missouri-Illinois dispatchers were controlling Missouri-Illinois train movements from Bonne Terre.

This aspect of the case shades into the Carriers' other contention that joint action is not involved because of the common direction and operation of the two railroads since 1932. When asked whether this state of affairs made it impossible for joint action ever to be effectuated by these two Carriers alone the Carriers' representative was almost unable to give an example of such a possible combination which would come within the definition of "coordination" under the Agreement, the lone illustration - the combination of single man Missouri Pacific and Missouri-Illinois agencies - is inconsistent with the argument that joint action is not possible because the Carriers' officers are the same. The result contended for by the Carriers is wholly inconsistent with the separate carrier status of the Missouri Pacific and the Missouri-Illinois under the Agreement, which came into being several years after the supposed final consolidation. While the dispatchers are not governed by any rules agreement they are carried as employees of one or the other railroad. (There is no dispute that if there was a coordination, Section 3(a) makes the Agreement applicable to employees outside the crafts and classes whose members are represented by the organization signatories of the Washington Agreement.)

For all the foregoing reasons I conclude that separate operations or facilities of two Carriers were consolidated pursuant to joint action by those two Carriers, effectuated by their common officers.

DECISION:

The transfer of dispatch work performed by Missouri-Illinois employees at Bonne Terre, Missouri to Chester, Illinois where it was combined with Missouri Pacific operations and facilities constituted a "coordination" which came about through the joint action of the two Carriers. As a result adversely affected employees are entitled to the protection of the Washington Agreement in accordance with the pattern and for the reasons set forth in Docket No. 106.