DISSENT --- DOCKET NO. 92

The Employee's Committee dissents to the Referee's decision in Docket 92.

The Referee completely ignores the language in Section 2(a) of the Washington Agreement which specifically defines a "coordination" as the term is uesed in this Agreement as meaning "joint action by two or more carriers whereby they unify, consolidate, merge or pool . . . in part their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities."

The communication work formerly performad by the employees employed in "MC" Tower, as the Referee stated in his Findings:

> "Some of the communication work on those positions has been placed on positions at the 'JAY' Tower."

most certainly constitutes "services" performed by the Chicago and Eastern Illinois-Railroad Company in its separate facility at "MC" Tower. This "service", as the Referee has declared in his Findings, was coordinated with the work or services of the Elgin, Joliet and Eastern Railroad Company employees at "JAY" Tower.

Thus there can be no question that this joint action of the two Carriers constitutes a coordination as defined in the Agreement and the Referee ignores the plain language of the Agreement in his decision that this action does not constitute a "coordination".

DOCKET NO 93 --- Withdrawn by Organization

The Order of Railroad Telegraphers)
VS.) PARTIES TODISPUTE
Chicago Union Station Company)

QUESTION: 1. Was John Sholl an employee who was adversely affected by the coordination at 21st Street, South Branch Bridge, Chicago, Illinois, involving the Pennsylvania Railroad Company, the Chicago Union Station Company, and the Chicago and Western Indiana Railroad Company, which was effective on November 10, 1960?

2. If the question posed in (1) is answered in the affirmative, is Sholl entitled to the protective conditions provided in Sections 6 and/or 7 of the Agreement of May, 1936, Washington, D. C., from November 10, 1960, the date he was adversely affected, during the protective period provided therein?

DECISION: Withdrawn by Organization.

DOCKET NO. 94 --- Withdrawn by Organization

The Order of Railroad Telegraphers)
vs.) PARTIES TO DISPUTE
Erie-Lackawanna Railroad Company)

QUESTION: . Did the Erie-Lackawanna Railroad Company (hereinafter referred to as the Carrier) violate the terms of the Memorandum Agreement dated September 11, 1961, when, on April 29, 1962, without proper notice to and agreement with the Organization, it abolished the following positions:

(a) Second trick clerk-operator position at Bath, New York.
(b) Third trick clerk-cperatcr position at Bath, New Ycrk.
(c) Relief position No. 7 scheduled to work first trick, Bath, Sunday; first trick, Dansville, Monday; first trick, Mount Morris, Tuesday and Wednesday; and third trick, Bath on Thursday.

2. Did the Carrier violate the terms of the Memorandum Agreement, dated September 11, 1961, when, on April 29, 1962, without agreement with the Organization, it abolished the following positions:

(a) Second trick clerk-operator position at Corning, New York.
(b) Relief position No. 8 scheduled to work first trick, Corning, Monday and Tuesday; Bath, Wednesday; and second trick, Corning, Thursday and Friday.

3. Did the Carrier violate the terms of the Memorandum Agreement, dated September 11, 1961, when, on April 29, 1962, without Proper notice to and agreement with the Organization, it effected the following changes in employment and locations as indicated:

(a) Mount Morris, New York, agent-operator position, changed rest days from Tuesday and Wednesday to Wednesday and Thursday.
(b) Bath, New York, agent-operator position changed assigned hours from "7:45 A. M. to 3:45 P. M." to "10:00 A. M. to 7:00 P. M." with a lunch period assigned 1:00 P. M. to 2:00 P. M.
(c) Corning, New York, agent-operator position changed assigned hours from "7:00 A, M. to 3:00 P. M." to 9:30 A. M. to 6 30 P. M." with lunch period assigned 12:30 P. M. to 1:30 P. M., and changed assigned rest days from Monday and Tuesday to Friday and Saturday.

4. If the answers to Questions 1, 2 and 3 are in the affirmative, should the Carrier be required to:

(a) Restore all the employees affected to their former positions and reinstate the same working conditions as existed prior to April 29, 1962, and

(b) Compensate all employees displaced as a result of such improper abolishment6 and changes in employment, for all wages lost and expenses incurred commencing with April 29, 1962 and thereafter until these conditions are restored?

DECISION: Withdrawn by Organization.

DOCKET NO. 95 --- Decision by Referee Coffey

The Order of Railroad Telegraphers)
vs.) PARTIES TO DISPUTE
St. Louis-San Francisco Railway Company)

QUESTION: Are employees assigned to extra board who are affected by a "coordination" entitled to the protective benefits provided in the "Agreement of May, 1936, Washington, D. C." specifically a "displacement allowance under Section 6"?

FINDINGS: The parties hereto are signatories to the Agreement of May, 1936, Washington, D. C. (Washington Job Protection Agreement).

On the basis of the entire record, a11 of the evidence, and reasonable inferences, I find and determine that:

The particular "coordination" was made effective November 1, 1961. Each of the two participating Carriers abolished one position as the result of said "coordination".

This Carrier abolished an agent-telegrapher position at the joint facility and the incumbent of that position exercised his seniority for displacing the incumbent of an agent-telegrapher position at another location. This set in motion a chain of seniority displacements (bumps) affecting four other incumbents of regularly established and recognized positions under the rules schedule. The last of the four incumbents lacked sufficient seniority to obtain and retain a regularly estabiished and recognized position under the rules schedule, and, in accordance with said rules schedule: he reverted to the extra list (board). All who were thus displaced have been afforded and are receiving the compensatory protection as provided by Section 6(a); and, Interpretation (Docket) No. 9, applicable when an employee is forced off his regularly established and recognized positon to the extra board.

By reason of the last displaced telegrapher being reduced to and forced on the extra list, the standing of five of the six extra telegraphers on the seniority extra list, was relatively reduced. None was displaced from the list. Such a displacement occurs only when an extra employee is "not used for a period of ninety consecutive days in positions covered by this (rules) Agreement." Article VIII, (7)(a), Telegraphers' Schedule, effective May 16, 1928, revised effective May 16, 1953.

Any person entering service of this Carrier in the Telegrapher class or craft is dependent upon the extra work he can catch from the seniority roster, or, colloquially speaking, the "extra list", for sustenance, until he accumulates sufficient seniority to bid for and to be assigned to a regular position, but extra or unassigned telegraphers are not assigned to an extra board or extra list as such, by advertisement and bid in accordance with existing rules and practices.

When a telegrapher's job is abolished or he is displaced in the exercise of seniority and has insufficient seniority to obtain and retain another established and recognized position under his rules schedule, he reverts to the extra list, as in the instant case. He continues thereon until he can exercise his seniority to another job opening, or until cut off account his seniority standing leave; him unplaced, due to exigencies of the service, for ninety consecutive days on an established and recognized position covered by the rules schedule.

DECISION: A "position" under the Telegraphers' Agreements always has meant, with rare exceptions, a post of employment with a well defined place of work, hours, duties, and a fixed compensation to be periodically paid for regular work or services of greater worth and responsibility than that of a manual or menial kind.

"Position" can mean rank, standing, situation or condition, but here it must be given its contractual meaning.

"Positions", regular or extra, within the contractual meaning of the term, are those that are advertised as such on the system of railroad in accordance with existing rules and practices and/or awarded in the exercise of seniority.

Reasoned as above, additional protective benefits are not allowable in connection with this particular "coordination".

DISSENT --- DOCKET NO. 95

The Organizations emphatically dissent from the Referee's decision in Docket No. 95, in which he has erred on several counts.

First, he interprets the word "position" as it appears six times in Section 6(a) as meaning, in each usage, "job" or "post of employment with a well-defined place of work", whereas the word as first used in the section means "rank, standing, situation or condition", as 4s also defined in Webster's Dictionary. To substitute the word "job" for the word "position" in its first usage in Section 6(a) destroys the meaning of the paragraph and the intent of the authors of the Agreement. Referee Rogers in his General Findings to Consolidated Arbitration Awards 41, 42, 43 and 44 issued by Special Board of Adjustment 226, expertly defines the torn "position" as it is used in two different senses in the Burlington Conditions when he said:

> "At the outset therefore it is necessary to ascertain the practical meaning of the term 'position' as it is used in two different

"senses in the text of Section 1 of the 'B/C' (Burlington Conditions). Basically, the meaning of the term, 'position' as used here, is 'relative place, situation or standing'.

To illustrate, Section 1 of the 'B/C', in prescribing employee protection in abandonment cases mentions, first, 'the position from which he was displaced' and, secondly, 'the position in which he is retained'.

From a reading of Section 1 of the 'B/C', as a whole, it is discerned that the 'position' from which an employee is displaced in an abandonment case is not limited, necessarily, to the single assignment on which the employee was working at the time of the abandonment. The term 'position', in this first sense in which it is used, comprehends as many assign-=, including both regular and extra assignments, as an employee may have worked during the 'test period'. And the average monthly compensation of such 'position' is the aggregate of his earnings during the 'test period' divided by 12.

Similarly, the term 'position' in the second sense in which it is used comprehends all assignments, one or more, both regular and extra assignments, on which an employee works during each monthly period within the 'protective period'. And the monthly. compensation an employee receives in each monthly 'retained position is the aggregate of earnings received by him from all assignments during each monthly 'retained position'.

It is noted therefore that an employee will have as many 'retained positions' as monthly periods he works during the 'protective period'.

The foregoing examination of the clauses, first, 'the positicn from which he was displaced'and secondly, 'the position in which he is retained', discloses, we hold, that the 'B/C' apply to 'positions' of both regular and extra employees who are 'displaced'. They apply to such employees within the seniority district, whether employed on the abandoned line or elsewhere within the seniority district.

Each employee, regular or extra, has a 'position' before the date of an abandonment. Each has a better, an equivalent, or a 'worse position', from month to month, subsequent to an abandonment. The employee who is forced to take a 'worse position' in any monthly period as the result of an abandonment, is a 'displaced employee'. He qualifies for ' a monthly displacement allowance' during the 'protective period'. The compensation actually earned by him in each monthly 'retained position' shall be increased, if necessary, by a displacement allowance to make his compensation in each monthly 'retained position' equivalent to his average monthly compensation in the 'positicn from which he was displaced."'

Second, Referee Coffey has ignored a sustainingdecision of the Section 13 Committee, sitting without a referee, in Docket No. 17 which disposed of a dispute involving the application of Section 6(a) to employees assigned to the extra board at the time of coordination. The ten employees listed in Docket. No. 17 below J. H. Harvey were assigned to the Telegraphers' extra list or board at the time of coordination. The Section 13 Committee composed entirely of representatives of the signatory organizations and carriers unanimously ruled as follows:

> "That employees of the D&RGW represented by the ORT lost two jobs at Palmer Lake as a result of the coordination that occurred at that point, but on the basis of peculiar facts of record all employees thereby affected, including those affected by Mr. Hale's exercise of seniority on tie D&RGW roster, will be accorded protection under the 'Agreement of May 1936, Washington, D. C.'"

Third, ths Referee ignored more recent sustaining arbitration decisions issued by Special Board of Adjustment No. 226 (sitting as an Arbitration Board as provided in Paragraph 5 of the B/C pursuant to an agreement between the parties) on August 30, 1960 with Mr. Daniel C. Rogers sitting as Referee in consolidated Awards Nos. 41, 42, 43 and 44 (ORT Exhibit A) involving ths payment of protective benefits to employees assigned to the extra list or board at the time of adverse effect.

These consolidated awards involved an interpretation of paragraph 1 of the "Burlington Conditions" in the application of the protective conditions to employees assigned to the Telegraphers' extra board at the time of the abandonment involved in the case. The pertinent language of ths "Burlington Conditions" is; for all practical purposes, identical to the language in Section 6(a) of the Washington Agreement under consideration.

Referee Rogers in sustaining Award No. 43 stated:

> "It is self-evident, as a normal experience, that a regular assigned employee is "placed in a worse position' with respect to his compensation and rules governing his working conditions when ha is forced from his attained regular position to an inferior regular position or to the extra board. As a normal experience he would be expected to suffer. a loss in earnings and inconvenience by change in his residence. Similarly, it is self-evident, as a normal experience, that an extra board employee is 'placed in a worse position' with respect to his compensation and rules governing his working conditions when he is forced from his attained position on the extra board to a lower position on the extra board. He, too, normally, would be expected to suffer a loss in earnings and impaired working conditions."

As indicated, Referee Rogers ruled that employees assigned to the extra board at the time of abandonment were entitled to the protective benefits provided in the "Burlington Conditions".

The reasoning and decision of Referee Coffey in this Docket No. 95 is indeed amazing! In spite of the sustaining decision in Docket No. 17, which decision was made unanimously by the signatory representatives of the carriers and the organizations comprising the Section 13 Committee, many of whom actually participated in drafting the Agreement; and in complete disregard of the sustaining awards of Referee Rogers, he (Referee Coffey) riled that extra employees are

not entitled tc benefits under the Washington Agreement.

Finally, the most grievous error committed by the Referee is the attempt here tc revise the Washington Agreement by changing the language of Section 6(a) of that Agreement, which provides:

"No employee of any of the carriers, etc."

tc read:

"No regular assigned employee of any of the carriers, etc."

This injustice perpetrated by the Referee is unconscionable and no display of rhetoric can explain or justify this denial of the rights and privileges guaranteed all employees who may be placed in a worsened position as a result of a coordination.

For the reasons set forth here, the Organizations vigorously dissent.

DOCKET NO. 96 --- Withdrawn by Carriers

Missouri Pacific Railroad Company and)
The Texas and Pacific Railroad Company)
vs.) PARTIES TO DISPUTE
Brotherhood of Railway and Steamship Clerks,)
Freight Handlers, Express and Station Employees)

QUESTION: Is the Carriers' proposed agreement for the selection of employees to perform the coordinated accounting work of The Texas and Pacific Railway Company and the Missouri Pacific Railroad Company an appropriate agreement as required under Section 5 of the Washington Agreement?

Is the Employees' proposal that the number of The Texas and Pacific Railway Company employees entitled tc participate in the performance of the coordinated work of The Texas arid Pacific Railway Company and the Missouri Pacific Railroad Company be limited to the number of positions contemplated to be established in addition to those now in existence in the coordinated Accounting Office at St. Louis, Missouri, and that 17 senior of the 114 The Texas and Pacific Railway Company employees whose positions will be abolished be entitled tc elect to resign and accept the separation allowance provided for in Section 9 of the Washington Agreement of May 21, 1936, an appropriate basis for selection of employees and a correct application of Section 9 of the Washington Agreement?

DECISION: Withdrawn by Carriers.

DCCKET NO. 97 --- Withdrawn by Carrier

Missouri Pacific Railroad Company)
VS.) PARTIES TO DISPUTE
Brotherhood of Railway and Steamship Clerks,)
Freight Handlers, Express and Station Employees)

QUESTION: Is the Washington Agreement of May 21, 1936, applicable to the Carrier's contemplated moving of the District Accounting from Palestine, Texas to the General Accounting Office at St. Louis, Missouri?

DECISION: Withdrawn by Carrier.

DCCWT NO. 98-A, 98-B, 98-C --- Decision by Referee Coffey

St. Louis-Southwestern Railway Company and)
Southern Pacific Company (Texas and Louisiana Lines)))
VS.) PARTIES TODISPUTE
Brotherhood of Locomotive Engineers)
Brotherhood of Locomotive Firemen and Enginemen)
Brotherhood of Railroad Trainmen)

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

(2) Xf the answer to Question No. 1 is affirmative, what are the proper bases to permit the coordination of the separate yard facilities and services of St. Louis-Southwestern Railway Company and Southern Pacific Company (Texas and Louisiana Lines) at Dallas, Texas, since the parties have been unable to compose their differences?

FINDINGS: The parties hereto are signatories to the Agreement of May, 1936, Washington* D. C. (Washington Job Protection Agreement).

On the basis of the entire record, all of the evidence, and reasonable inferences, I find and determine that:

Carriers are undertaking to combine their separate train yard facilities and services at Dallas, Texas, said yards being identified in the record as the St. Louis-Southwestern's (St.LSW) Austin Street Yard and the Southern Pacific's (SP) Dallas Yard, also its Miller Yard, same being separate train yards within switching limits.

A consolidation of existing switching limits of participating Carriers is being proposed for establishing a unified yard (switching) operation under the Cotton Belt's (St.LSW) handling, and embracing all territory south of St.LSW Mile Post L-607, Pole 27, and all territory east of SP Mile Post 271.61, west of SP

Mile Post 257.11, and west of Mile Post 313.93 on the Jacksonville Branch.

DECISION: This dispute is here as a Section 5 controversy, but mainly because the parties could not settle on that part of an implementing agreement over and above what is contemplated by Section 5 Of the Washington Job Protection Agreement.

The Organizations, representing the employees affected by changes consequent upon "coordination", complain about the lack of progress made in negotiations on the property and would not be adverse to the Committee remanding the case for further efforts in that regard. In the meantime, however, Carriers would face a continued stalemate in their efforts to make said "coordination" effective-

Section 4 Notices were given on or about October 20, 1961. The dispute was lodged hare on or about June 11, 1962. A ninety (90) days' written notice of a particular "coordination" is contemplated by Section 4, Agreement, supra. The date and place of a conference between representatives of all the Parties interested in such intended changes, for the purposes of reaching agreements with respect to the application thereto of the terms and conditions of said Washington Agreement, must be agreed upon within ten (LO) days after the receipt of said notices, and conference shall commence within thirty (30) days from the date of such notice.

Whiie none is anxious tc interfere in efforts of participating Carriers and the Organization of employees affected, to reach a fuli accord for implementing the terms of the Agreement of May, 1936, Washington, D. C. and to reach an early settlement if they can on matters that otherwise must be left for handling under Section 6 of the Railway Labor Act, as amended, changes consequent upon "coordination" are not to be thereby unreasonably delayed. The parties clearly have ninety (90) days from date of notice pertaining to such intended "coordination" to reach an agreement. On the other hand, forced delays beyond ninety (90) days are unreasonable, and neither party to the dispute is acting with undue haste nor improvidently by invoking other processes for settlement of their dispute after that time.

This Committee need not be reminded that its delegated powers and authority are limited under Section 13 of said Washington Agreement. Hence, there is no intention here to interfere with the collective bargaining processes under this or any other agreement, or as provided by law.

Accordingly, the Committee does not undertake to make or enforce agreements on rates of pay, rules and working conditions. In the event of the parties failure to agree, however, on the arrangement of forces as contemplated by Section 5 of the Agreement over which this Committee does have supervisory control, the dispute may be submitted by either party for adjustment in accordance with Section 13.

Until the dispute was lodged with this Committee, there was no real disagreement that a "coordination" as defined by Section 2(a) of the Washington Job Protection Agreement, was being undertaken in fact. The Organizations have been heard to argue in this docket, however, as in some others, that Carriers' submission is premature, the Committee is without jurisdiction and that a valid "coordination" under said Washington Agreement is not involved without approval first by the Interstate Commerce Commission of the contemplated "coordination". That

argument is not valid. See Docket No, 88 for more on the subject with regard to the need for prior approval of the I.C.C.

Carriers' proposal for a division of work and selection of employees between the two Carriers contemplates the allocation of 60% to SP employees and 40% to St.LSW employees of all work in t's coordinated switching operation and is based on engine hours worked, cars handled, etc., so far as practicable. Such division of work and selection of employees of Carriers involved is hereby deemed appropriate for application in this particular case.

The parties having failed to consummate a different agreement, the protective provisions of the Washington Agreement of May, 1936, shall apply to this particular "coordination".

What is left for making changes consequent upon a "coordination" effective naturally follows and it does not necessarily amount to undue inference with the processes of collective bargaining to mention what is manifestly contemplated and implied by the Agreement of May, 1936, Washington, D. C.

It is shown by the record that the coordinated facilities are to be operated by the St.LSW.

The contract now in effect, or which may hereafter be negotiated between the operating Carrier and its yard service employees shall govern in the coordinated operation until a different agreement can be reached. Read rules applicable on the lines of each participating Carrier for operating into, through, or out of switching limits before consolidation will apply in the coordinated operation until there is a different agreement.

Carrier parties to this dispute may now proceed, should thay elect, to place the "coordination" into effect forthwith or at some later date under the above described arrangements, same to continue in effect until modified in accordance with the due processes of law, contract, or by mutual consent.

DISSENT --- DOCKET NO. 98-B

QUESTIONS AT ISSUE: (Carrier's Brief)

"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 yard facilities and services of St. Louis-Southwestern Railway Company and Southern Pacific Company (Texas and Louisiana Lines) at Dallas, Texas, since the parties have been unable to compose their differences?"

DISSENTING OPINION: While the employees represented by the BLF&E feel that the arrangement proposed by the Carriers is not a valid coordination as defined by Section 2(a) of the WJPA, the record will show that Question 1 was not an issue until the dispute reached the Section 13 Committee. Actually the BLF&E assigned a Vice President to assist the two General Committees representing the employees in their negotiations with the Carriers for the purpose of consummating an implementing agreement under Section 5. Difficulty arose when the two General. Committees could not agree upon a proportionate allocation for each group to participate in the proposed "coordinated" operations. Conferences were then recessed in order to determine an appropriate allocation of the service under BLF&E organic laws. While this was being accomplished, the Carriers advised that the dispute had been filed with the Section 13 Committee with the plea for that agency to direct the "proper bases to permit the coordination of the separate yard facilities." Before the Section 13 Committee was convened to hear the dispute, the Carriers were notified that a decision had been rendered by the International President in accordance with ELF&B organic laws allocating the service on a 62% SP-38% STLSW basis. Request for resumed conferences was filed at the same time. Carriers declined on the premise that the dispute was pending before the Section 13 Committee and would be thus decided.

Since Question 1 was not disputed at that time and proper determination already made with respect to allocating the service between the employees represented by the BLF&E, there were no real issues for the Section 13 Committee to properly decide. Hence it was urged that the matter be remanded to the property for final dispcsitisn. This the carrier members of the Section 13 Committee declined to do, supposedly on the premise that the Committee had the authority to direct the "proper bases" of an implementing agreement under Section 5.

In summary, it is self-evident that the Carriers created synthetic issues in this particular proposed coordination clearly with an attitude of "what have we got to lose" in the hope that a biased Referee could be obtained who would "cram the works down the throats" of the Employees. In this connection the "Decision" of the Referee rendered March 19, 1962, in Docket No. 98 amply speaks for itself.

Patently, no authority exists under the Washington Job Protection Agreement for the Section 13 Committee or ths Referee to write new rules directing the "proper bases" of an implementing agreement under Section 5. Obviously, the "Decision" of the Referee is in contravention to the orderly processes of the Railway Labor Act and has no legal or enforceable status. We therefore dissent.

DOCKET NO. 99 --- Decision by Referee Coffey

The Order of Railroad Telegraphers)
vs.) PARTIES TO DISPUTE
Atlanta and West Point Railroad Company and)
Western Railway of Alabama)

QUESTION: Telegrapher G . T. Brumbelow entitled to a "separation allowance" under the provisions of paragraph 4 of the Implementing Agreement dated January 5, 1962?

(2) If the answer to Question (1) is in the affirmative, should the Carrier be permitted to deduct from his "separation allowance" any money he earned in outside industry since February 7, 1962?

(3) If the answer to Question (1) is in the negative, should the Carrier be ordered to reinstate Telegrapher Brumbelow with pay for time lost?

FINDINGS: The parties hereto are signatories to the Agreement of May, 1936, Washington, D. C. (Washington Job Protection Agreement),

On the basis of the entire record, all the evidence, and reasonable inferences, I find and determine that:

On or about February 1, 1962, the Carriers effected the "coordination" of their separate train dispatching offices in Atlanta, Georgia.

An Implementing Agreement, adopting and applying the Washington Job Protection Agreement with certain modifications, was nade and entered into. Paragraph 4 of the Implementing Agreement provides:

> "An employee who may continue in service, but who is required to change the point of his employment as a result of this consolidation and is therefore required to move his place of residence, instead may resign and accept in a lump sum a separation allowance pursuant to the provisions of Section 9 of the Agreement of May, 1936, Washington, D. C."

Claimant herein was displaced on February 7, 1962, from his regular assigned second shift telegrapher position in the "G" Relay Telegraph Office located in Atlanta, Georgia, due to the exercise of seniority consequent upon said "coordination". A position was available to him at the time of his displacement at Auburn, Alabama, 118 miles from Atlanta. This position did not appeal to him because he would have been required to change his place of residence.

On February 8, claimant made a formal claim for a lump sum settlement; He withheld his formal resignation until any controversies that might arise over his claim had been settled between Carriers and the representatives of employees affected in said "coordination".

Claim was acknowledged and declined in writing on February 9. The reason given for declining said claim assumed that it was being made under Section 9 of said Washington Agreement, and, therefore, not allowable in the case of one who had not been deprived of employment.

On February 9, claimant was dismissed frw service for his refusal to protect Relief Assignment "A", under bulletin at the time, on instructions to go to LaGrange and work the first trick position February 10, 1962.

DECISION: This dispute involves a unique Implementing Agreement which goes far beyond the Washington Job Protection Agreement and, therefore, a decision in this case will not likely serve to any great advantage in another case.

The local Agreement, entered into between the Carriers and representatives of the employees, relates to a "coordination" as contemplated by the

Agreement of May, 1936, Washington, D. C. Therefore, this Committee has jurisdiction of any unresolved dispute arising under said Implementing Agreement, insofar as any undertaking thereunder falls within the framework of the Agreement over which this Committee has supervisory control.

Claimant herein was first adversely affected as a result of said "coordination" on February 7, 1962. Section 2(c) Agreement of May, 1936, Washington, D. C. Sight is not to be lost of that data for it runs like a scarlet thread throughout the entire fabric of this dispute.

Paragraph 4 of the Implementing Agreement entitles the employee who is affected by the "coordination" to a lump sum allowance on stated conditions, one condition being that he be an employee whose seniority is sufficient fcr claiming a continuing employment status.

If, as an employee who may continue in service, he would be required to change the point of his employment as a result of the "coordination" and therefore required to move his place of residence, he is not required thereafter to continue in service, unless he elects to do so when first adversely affected as a result of the "coordination" which, in this case, was February 7, 1962.

February 7, 1962, as stated, was a crucial date. On that date,, claimant was at loose ends, He had to explore the job opportunities available to him in the normal exercise of a seniority choice. Any claim he had for a lump sum separation allowance had to be promptly made.

Since the seniority choice is one of personal privilege, the situation must be viewed through claimant's eyes. He saw a job over at Auburn, Alabama, which was his by seniority preferment. He would be required to move his place of residence, but the position was still his if he chose. If he saw some greater advantage to a lump sum settlement than in the job opportunity afforded, the option had been given him under the Implementing Agreement to give up the job security attendant upon the move, separate from the service, take his money, and gamble on the future.

References in the record to other job "possibilities", i. e., "the new swing job-Relief Assignment 'A"' and the "extra board", prove to be irrelevant on the record as a whole for defeating the claim.

The first question posed by the subject matter in dispute is answered in the affirmative.

As to the second question, I do not find where the parties have agreed to a deduction of outside earnings in the premises. Also, what is found herein to be due claimant was subject to being claimed on February 7, 1962, and, as of that time, there were no offsets due Carrier.

The third question is outside the scope of disputes handling by this Committee pursuant to its delegated powers and authority.

DOCKET NO. 100 --- Decision by Referee Coffey

The Order of Railroad Telegraphers	)	
vs.	)	
Cincinnati Union Terminal Company	)	
Baltimore and Ohio Railroad Company	)	PARTIES TO DISPUTE
Chesapeake and Ohio Railroad Company	)	
Southern Railway System (CNOTP)	)	
New York Central System (CCC&St.L)	)	
Louisville and Nashville Railroad Company	)	
Pennsylvania Railroad Company	)	

QUESTION: (1) Does the consolidation of the work performed exclusively by the telegraphers in the employ of the Cincinnati Union Terminal Company at "GC" Office, Cincinnati, O., prior to the abolishment of the positions at that point on March 1, 1962, with the work of the telegraphers employed by the seven railroads utilizing the facilities of the Cincinnati Union Terminal Company at various locations on the tenant lines constitute a violation of the Agreement of May, 1936, Washington, D. C.?

(2) If the answer to Question No. 1 is in the affirmative should the Carrier be required to restore the positions at "GC" Office, Cincinnati, Ohio, pending the issuance of proper notice to the interested parties as provided in Section 4 of the Agreement and Agreement between the parties.

FINDINGS: The parties hereto are signatories to the Agreement of May, 1936, Washington, D. C. (Washington Job Protection Agreement).

On the basis of the entire record, all the evidence, and reasonable inferences, I find and determine that:

The Cincinnati Union Terminal is a "Carrier" as defined by Section 2(b). It is listed and described in Appendices "A", "B" or "C" as a single carrier party to said Washington Agreement.

The facility is a unified passenger terminal that owes its origin to the discontinuance of several smaller terminals and combining of facilities before the Agreement of May, 1936, Washington, D. C. came into existence. The facility was staffed by employees drawn from the seven tenant lines.

Effective March 1, 1962, these tenant lines withdrew from the Terminal's function, the responsibility for issuing and delivering train messages and orders to their crews and are now doing the work through their separate facilities. This is the subject matter of dispute.

DECISION: The Agreement of May, 1936, Washington, D. C. was not violated.

DISSENT --- DOCKET NO. 100

The Organizations dissent from the Referee's decision in Docket No. 100.

The Referee in his Findings:

> "The Cincinnati Union Terminal is a 'Carrier' as defined by Section 2(b). It is listed and described in Appendices 'A', 'B' or 'C' as a single carrier party to said Washington Agreement."

recognizes and accepts the fact that the Cincinnati Union Terminal Company is a "Carrier" separate and apart from all other carriers signatory to the Washington Agreement and therefore is subject to all of its provisions in tha same manner and to the same extent as any other signatory carrier.

Since the Cincinnati Union Terminal Company is a party to the Washington Agreement as indicated by Referee Coffey, it is also subject to the provisions of Section 3(b) of the Agreement, which read as follows:

> "(b) Each carrier listed and established as a separate carrier for the purposes of this Agreement, as provided in Appendices 'A', 'B' and 'C', shall be regarded as a separate carrier for the purposes hereof during the life of this Agreement; provided, however, that in the case of any coordination involving two or more railroad carriers which also involves the Railway Express Agency, Inc., the latter company shall be treated as a separate carrier with respect to its operations on each of the railroads involved."

Tie Referee further states in his Findings:

> "Effective March 1, 1962, these tenant lines withdrew from the Terminal's function, the responsibility for issuing and delivering train messages and orders to their crews and are now doing the work through their separate facilities. This is the subject matter of dispute,"

which is sufficient evidence that he recognized the fact "services" formerly performed by the Cincinnati Union Terminal Company in its separate facilities were coordinated into or with the separate facilities of the several tenant lines.

This is a strange decision in which the Referee recognizes in his Findings that a coordination was effected and the Carriers involved are subject to the Agreement but utterly fails to comprehend the meaning and intent of the parties in Section 3(b), quoted above, that "Each carrier listed and established as a separate carrier for the purposes of this Agreement . . . shall be regarded as a separate carrier for the purposes hereof during the life of this Agreement . . ."

The Referee erred in his decision by failing or refusing to recognize the clear language and intent of Section 3(b). On this basis the Organizations vigorously dissent.