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December 5, 1963

Mr. G. E. Leighty, Chairman
Section 13 Committee - Agreement May, 1936
Washington, D. C.
For Members representing participating
Organizations of Employes
c/o The Order of Railroad Telegraphers
3860 Lindell Boulevard
St. Louis 8, Missouri

Mr. W. S. Macgill, Chairman
-Section 13 Committee - Agreement May, 1936,
Washington, D. C.
For Members representing participating Carriers
c/o Bureau of Information Eastern Railways
Room 1050 - 342 Madison Avenue
New York 17, New York

Gentlemen:

I am furnishing each of you, herewith, two copies of my response to dissents on file. Three copies are being furnished to the National Mediation Board for the record. I do not know whether there will be any reproduction or distribution through the offices of the National Mediation Board, but each of you is at liberty to reproduce and make such distribution as will serve some additional purpose, if any, in your opinion.

Very truly yours,

/s/ A. Langley Coffey
A. Langley Coffey
P. 0. Box 212
Sand Springs, Oklahoma

Encl.

cc: E. C. Thompson

NOTE: Referee Coffey's response consists of 24 pages and neither adds to nor detracts from these decisions. For these reasons the response is not included in this document. However, copies are available upon request.

G. E. Leighty

Agreement of May, 1936, Washington, D.C.
(Washington Job Protection Agreement)

Committee Established Uodor Section 13
Referee's Findings and Decisions
Dated Chicago, Illinois, March 19.1963
(A. Langley Coffey, Referee)


Dockets 70, 71, 73, 74, 75, 78, 79, 88, 89,
PO, 92, 95, 98, 99, 100.

## REFEREE RESPONSE TO DISSENTS

The learned Employee Representatives of the Section 13 Committee are on record with dissents in all but three cases where the decision was against them. Ae a further display of the same vigor with which they tried to protect me against tho error they now see in tho workings of "legalistic minds" and "mental gymnastics" that "can make white turn into black", they add a general dissent.

I must continua to disagree with my most worthy and highly respected colleagues, for whom I have a groat deal of personal admiration. I can and will refrain, however, from being disagreeable.

## RE-SUBMITTED DOCKET NO.70

The Committee, with assistance of another Referee, decided that the proposed integration of switching service on the San Fernando Branch by employer of Pacific Electric with road service performed by Southern Pacific crows was a "coordination" within the meaning of Section 2(a) of the Washington 3ob Protection Agreement.

It seemingly made *no* difference *to* the Employee Representatives of the Committee that their argument, on principle, for holding that yard and road service could not be unified, consolidated, merged or pooled in whole or part, due to a difference in the service and a difference in rules schedules, had failed to convince the other Referee that the separate services could not be "coordinated".

(Continued)

The force of their argument before me was that the other Referee crrod in deciding that the Carriers' propooed integration is a "coordination" within the moaning of Section 2(a) of tho Agreement, supra, for reasons again assigned in tho dissent. In what I thought was a layman's language, I ruled:

> "That decision is *final* and bidding on the parties to this dispute as provided in Section 13 of said Agreement."

Section 13 clearly provides that the "decision of the Referee shall be final and conclusive."

The record was read. From what I *road* therein, noither the Employoa, nor their Repreoentatives, had any real interest in the "selection of forces from tho employees of all the Carriers involved on bases as appropriate for application in the particular case." I urged upon the partisan members of the Committee that they agree upon a plan if they could and allowed them time for doing so. They did not confer, but submitted separate papers *for* my attention and study. The Employee Representatives of tho Committee offered nothing now. They continued to argue instead:

(A) That Carriers' right to re-submit "has no foundation under any provision of the Washington Agreement";

(B) That Sections 4 and 5 of the Agreement of May, 1936, Washington, D. C., do not vest authority in the Section 13 Committee to proscribs the conditione of a particular "coordination" including the compensation of employee required to perform the coordinated service;

(C) The Washington *Agreement* does not supersede Section 2, Seventh, and Section 6 of the Railway Labor Act, as amended, since any plan of coordination would affect the seniority status and working conditione of the cmployoo affected.

I could not agroa that Carriers' re-submission was improper when, upon "failing agreement the proper procedure is recourse to the Section 13 Committee", as decided by the other Referee in Docket No. 70.

Section 5 of the Washington Agreement expressly provides that in event of failure to agree on the "assignment of employees made necessary by a *coordination*", then and in that event "the dispute may

(Continued)

be oubmittcd by either party for adjustment in accordance with Soctton 13." The basic dispute was over failure of the parties to agree on the assignment Of employees. The incidence of their dieputs over compensating omployeo retained in tho service and other working conditiona, that are in controversy in connection with changes brought about in the "coordinated" operation, had been covered by a Section 6 notice;

We were and are la accord that tho Washington Agreement does not take away any rights that the employes have under Section 2, Seventh and Section 6 of the Railway Labor Act, as amended, but neither do we see anything in said Washington Agreement that conflicts with said Railway Labor Act. Additionally, there isn't anything la tho Act *for* staying the application of the Washington Agreement until tha parties to a dispute can reconcile their differences in collective bargaining over rater of pay, rules and working conditions in the coordinated operation.

I do not dispute the contractual *right of* employes to follow their work and participate in tho "coordinated" operations, but this does not mean that some "employees of all the Carriers involved" will not bo "deprived of employment as a result of raid coordination."

I learn *from* reading the *record,* in the instant case, that a critical impasse *bad* boon reached by failure of the Pacific Electric freight crews *on Pacific* Electric *San Fernando Branch* to evidence *any real* interest in following their work. So, is it now to be said that Carriers' rights under the Agreement of May, 1936, Washington, D. C. can be defeated by inaction on the part of employes that ohowo a *lack* of interest in following the work and a clear refusal to agree upon "assignment of employees made necessary by a coordination?" Carriers were willing to agree but tho Organizations of tho employes affected wore not and so far as I know never have been and are not now, Carriers' expressed willingness for the Organizations to work out the assignment of employes to their own satisfaction within the bounds of said Washington Agreement is the basis here for saying that Carriers were willing to agree.

Thooo who speak of the Washington Job Protection Agreement in reverent tones for its clarity and ease of understanding by men of practical experiences thereunder failed to "cram down my throat" the gagging morsel of thought that the knowledgeable and sophisticated authors of said Agreement intended for it to be "mutilated" in any ouch way.

(Continued)

I decided that the parties should have another thirty days on the property for agreeing upon a proper basis for selection and assignment of forces from participating Carriers, after contention4 that might have bold them apart had boon docidcd by me, but, if they continued to disagree, the terms proposed by Carriers should to made effective; and, any dispute *over* the incidence of the changes to bc later oottlud in accordaaco with tbc Railway Labor Act, as amended. In the meantime those "defined employees affected by coordination" (employee of *all* the *Carriorr* involved) to brvc all allowances to which entitled under the Washington Agreement.

The Carriers' proposed arrangement for selection and assignmem of forces in this *dispute* might not have the Committee's sanction in other and diffcront eircumstancco, but must be accoptcd hero "as appropriate for application in the particular case." (emphasis added). Only one biased as between the parties could have docidcd the dispute in any other way, in my studied opinion.

## DOCKET NO. 93

This dissent, although proper under the broad notice that "Employee Members reserve the right to file dissents to any of the decisions *they* so desire", was, nevertheless, uauxpcctod.

The wordr found in the "Decision" that "more cannot be required of the *Carriers*", appear to havo an offcneivc ring at this late date, but were not mentioned as offensive at the time of adoption. Even now. the words, used out of full context. as they are in the dissent, are characterized in said dissent as a "bland observation", and I agree. Obviously, though, more is intended by the dissent than to quibble over words.

The thrust of the dissent is that neither "the Section 13 Committoo *or* Referee Coffiey bavc *any* vested authority *to* prescribe *or* direct the terms or conditions of an implementing agreement under Section 5 other than tho allocation of employees to participate in a coordinated operation."

If the Section 13 Committee, with or without *a* referee, is powerless to dictate the terms of an implementing agreement other than as stated above, and I have no reason to say that it has that authority, where, under the Washington Job Protection *Agreement, do* the employees or their Organizations find t&o right to inject foreign matters into deliberations involving the assignment Of employees made necessary by a re-arrangement or adjustment Of forces in anticipation of a coordination?

The right, in my opinion, is non-existent and does not vest anywhere or in any one under said Washington Agreement.

In the instant dispute, the employees and their Organizations insisted, (after reaching an accord on the selection of forces, the apportionment of the work, and assignment of employees to that work, as contemplated by Sections 4 and 5) that Carriers make the concession, before putting the "coordination" into effect, that not less than eight [illegible] engine assignmentsworking• ovon daysper week for a period of three to five pus, depending upon agreement, be retained in service.

I concurred in the views of the Carriers that this amounted to an attempted "job freeze" contrary to the purposes and intent of the Washington Job Protection Agreement.

Recognizing, • o I do, that, in connection with any anticipated "coordination", the partics thereto • ro free to bargain out my differences, upon which they can readily agree, without rarort to the Railway Labor Act; and, seeing some practical advantage in broadening the scope of any implementing *agreement,* beyond what is required by Sections 4 and 5 of said Washington Agreement, for putting at rest all troublesome questions that can be foreseen and disposed of amicably in "one package", I sought not to impose upon this freedom of choke. • o long as not misused or abused to defoat the lawful objects and purposes for first putting tho "coordination" into effect and without any restraint upon negotiations later to follow, pursuant to the serving of the Section 6 notice under the Railway Labor Act, as amended. Tho decision speaks for itself in all the particulars herein mentioned.

## DOCKET NO. 93-B

The issues on which the Committee, without a Referee, deadlocked are as stated in the Referee Findings and Decision and as repeated in the dissent.

Those issues were fully heard, argued and extensively briefed.

The evidence in the record clearly showed that, pursuant to Section 4 notices, the parties met and conferred, but could not agree on tko re-arrangement and selection of forces or assignment of employees made necessary in what Carriers alleged, and a majority on the Committee found, vu a "coordination".

(Continued)

The record further reflected that the Carriers' proposed selection of forces from the employees of all the Carriers involved, and assignment of employees made necessary by a "coordination", was appropriate for application in the particular case.

The Employe Members of tho Committao did not ream to think the Committee had synthetic issues before it, or a biased Referee to "cram the works *down* the throat" of the employes, until they loot the case.

"The 'Decision' of tho Referee rendered March 19, 1963, in Docket 98 amply speaks for itself" and I stand thareoa darpite any feeling without proof to support, *on* the part of others whose impartiality has never been attested or certified to, that said decision reflects bias, prejudice and some ● adirtic tendencies.

## DOCKET NG. 73

With regret, I was unable to find a *proper* basis for sustaining a "separation allowance under Section 9 of the Washington Agreement of May, 1936" without doing what I thought would be violence to an agreement that all on the Committee, with or without a Referee, are duty bound to uphold in keeping with their individual judgments properly exercised.

In the absence of claimant's chosen counsel, on whose advice he obviously acted, a stirring and moving plea was made, on his behalf, by the Employe Members of *tho* Committee, and the Vice Chairman of the Employe Joint Conference Committee in particular. On the basis thereof and wlth the concurrence of the Carrier Member8 of the Committee, the door was left open for t&e "practically illiterate" claimant to claim "any *other* protective benefits he may bo able to establish if there are others to which ha can lay claim under said agreement." This *part of* the decision *was* not arrived at out *of* sympathy but duo to some remaining uncertainty that all of claimant's rights had bcon foreclosed or extinguished on the basis of facts of record. The decision is just and conscionable. The Agreement just door not support the claim at issue, *however.* from what I can find therein.

## DOCKET NO. 92

Hare is a dissent that ably demonstrates 'a remaining difference of opinion *on the* merits. *I* congratulate the author.

Some remote, tag-end work was transferred from one fully coordinated operation to another, after positions had been abolished that owed their continued existence to a manual operation and no longer required at the one "coordinated" facility after At had been converted to an automatic operation.

I was not able to determine, on tha basis of tho record, the essential "joint action of two or more carriers whereby they unify, consolidate, merge or pool in whole or in part their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities." (emphasis supplied).

It continues to be my opinion that the abolishment of three regular and one regular relief Operator-Leverman positions at MC Tower was not the result of joing action of two or more Carriers for effectuating a "coordination", as that term is defined in Section 2(a) of the Washington Job Protection Agreement.

## DOCKET NO. 95

This case was ably and skillfully tried, argued and briefed. The arguments in all cases on the agenda are a matter of record. The "Findings" and "Decisions" in all dockets, the same as the "Dissents", must be evaluated in terms of the whole record, despite any and all resulting disappointments.

### ORGANIZATION (tr. p. 22)

"Now, the word position is something that we have got to decide here, just what it means with respect to the Washington Agreement".

### ORGANIZATION (tr. p. 419)

"But where we disagree, and where this dispute lies, is how ate the employes assigned to the Telegraphers' extra boud who were moved down one place on the extra board; have these people been affected by the coordination? That is our problem here."

### CARRIER (tr. pp's 448, 449)

"The Agreement under consideration is popularly known as the Washington Job Protection Agreement and this Carrier earnestly believes that if this Committee will construe the word 'position' as meaning a job wherever it is used in that sense in the Washington Job Protection Agreement, it will have no difficulty in reaching a proper determination of the question at issue.

(Continued)

"Whatever confusion exists lies in the fact chat the Organization has attempted to substitute relative place, situation *of* standing as the meaning of tho term 'position' where that term is used in the sense of a job. An employe's relative place, situation or standing on a seniority roster is not a job."

CARRIER (tr. pp's 437, 438, 439)

"No telegrapher on the extra list has a position, Job, with its usual attributes of a regular work period, duties, rats of pay, etc. A telegrapher's rank on the extra list is determined by his seniority date on the *roster* and the seniority date remains constant irrespective of the number of men on the extra list.

"Smith displaced no one on the extra list. He merely placed himself in the *slot* to which hi8 seniority entitled him. This is a seniority and not a rotary extra list and telegraphers thereon are called in seniority order to respond to service jobs covered by the Telegrapher's Agreement.

"Telegraphers on tho extra list do not displace among themselves except when working on jobs covered by the Agreement.

"Under *the* rules of rho Telegrapher's Agreement on this property there LB neither an extra board nor an extra list consisting of an accepted *and* established number *oi* men or jobs. When a telegrapher's job lo abolished or ha is displaced in cho exercise of seniority rights and lacks sufficient seniority to obtain and retain another regular job, he reverts co the extra list.

"He may continue thereon indefinitely provided a *period* of ninety consecutive days does not elapse between his service *on* jobs covered by the Agreement, and such a situation rarely occurs."

ORGANIZATION (tr . pp's 420, 421, 422)

"Now, on November 13, 1961, *our* man *Smith* reverted *20* the Telegraphers' extra board, and he is receiving a displacement allowance. There were six men assigned to the Telegraphers' extra board at that time. There was only one man on the board senior to him.

"That meant that when to reverted to the extra board there were *five* men below him *on* that board, junior *to* Mr. Smith.

(Continued)

"Now, the rule governing the use of extra board men on this property is Rule 3(a), which I will quote.

> 'Temporary vacancies will be filled by the oldest idle extra employees, provided an extra employee cannot claim extra work in excess of 40 hours in hi0 work week, if another extra employee who has bad less than 40 hours in his work week lo available, except that in filling the assignment of a regular employee ho may continua thereon, subject to other provisions of this paragraph 3, with respect to retention of an assignment by extra employees. When an extra employee takes the assignment of a regular employee, ha assumes the conditions of such assignment, including the work week and rest days thereof.'

"That In a nutshell means that extra employees on the Frisco Railroad are used in accordance with their seniority.

"In other words, Phase people have a position on the extra board, the oldoot man, the next, the third and so on down.

"As the work becomes available the senior idle extra employee on that list is used, he has a preference *for* the *work* as it becomes available.

"If, for example, in this case there were six men on the extra board. If two weeks work became available, the senior man became eligible for this work and he would perform it. At the completion of this assignment he returns to thu extra work board and there is no other work.

"He again is first out on that extra board because he is the senior employee assigned to that board.

"Therefore, when Mr. Smith returned to the extra board on November 13, 1961, all five of those men junior to him were placed down on that extra board just one more man. Their job opportunity was lessened to ths extent not only of the loss of one position but the increase in eho size of the extra board by one man."

(Continued)

CARRIER (tr. pp's *447,449)*

"* * * this Committee is further earnestly urged to give special attention to the following remarks of the Counsel for this Organization at a recent hearing before Emergency Board No. 148 (Carrier's Exhibit 3 in the record):

'MR. SCHOENE: I am *sorry, Dr.* Daly, I don't get the distinction you are making between jobs and positions, apparently.

'In our terminology, we refer to the same thing as a job and a position, and when -- it is when we try to be formal *and* write it into agreements, we *ray* 'positions' whan WQ talk among ourselves, wo talk about jobs.

'Each of them has certain attributes, and Mr. Leighty has testified to such as it has a rate of pay; it has defined hours por day, days por week, and at least generally specified duties attached to the Job. As Mr. Leighty has testified, it is each ouch position or job is identified in tha wage scale, and when it is essential that its attributes be described in the bulletin.'"

ORGANIZATION *(tr.* pp's 451, 452, 453)

"MR. SCHOENE: Yes, I have a few quastfono. I will precede them by observing that I am becoming thoroughly convinced that anything that I and my clients say somewhere is somehow recorded in some gigantic electronic brain.

"Mr. Deaton, in the statement you filed with the Committee on July 19th, you quoted Mr. Leighty from the same hearing that you today quotod me from.

"Do you know what context the discussion was taken from?

"MR. DEATON: A. *Well,* there is in the record, on page 5 of Carrier's Exhibit B, where quite a *few* of you were discussing tho question. Mr. Trienens was cross examining Mr. Leighty and he said this.

"MR. SCHOENE: Q. Now, when you have a vacancy *or* sickness or other absences, and a man is taken from what is called the extra board, door he *occupy* a position? Is there reach a thing as an extra position?

(Continued)

"A. Mr. Leighty said:

> 'On some railroads, and I am not completely familiar with all of the operations of the New York Central System, but under the vacation agreement the employing *officer* of each division is supposed to confer with the district chair*man* on each division and arrange for vacation schedules *for* each employee who is entitled to a vacation that year.'

"Now then, to return to your question, Mr. Schoene. One of the members of the Board gave his definition of the term position and job. I think that was where *your* remarks followed.

"Q. In what context was this, what use of the term position was under discussion?

"A. This was in the hearing in connection with the dispute on the New York Control.

"Q. What was in dispute?

"A. It was the so called job freeze notice, as I recall it.

"Q. What was that notice, what did it say?

"A. Well, I don't have it. I read it, Mr. Schoene, but I don't have all of the transcript here before me.

"Q. Well, in order to judge the relevance of the conversation that you quoted, isn't it necessary that we know in what context the *word* position is used?

"A. Well, I have --

"Q. But you don't know?

"A. The record has several pages.

"Q. None of which reflect what the dispute was about?

"A. It is extracted from the hearings, yes.

"Q. Yes, but the extracts don't reflect what proposal was under discussion, do they?

(Continued)

"Let ma ask you this, You said you read tho record. Is it in accordance with *your* recollection that the proposal that gave rise to the dispute was the proposal that tho existing rules *bu* amended to include a provision that no position should bo abolished or discontinued except by agreement between tho Carriers and the Organization?

"A. *I* think *you* are correct.

"Q. In *otbor* words, this conversation relating to what the Organization meant should not be abolished or discontinued except by mutual agreement?

"A. That to what has generally been referred to as job freeze notices.

"Q. I want to know if that was the context of tho word 'position'. I understand your answer to be yes, is that correct?

"A. My answer was, the Emergency Board hearing was held ao a result of the notico the ORT served upon the Carrier, and I think- *you* have substantial knowledge *of* what it was, you have substantially stated what it was."

CARRIER (tr. pp's 443, 444, 445, 446)

"The Washington Job Protoctioa Agreement has been in effect for more than a quarter of a century, and although the parties to this dispute have been *involved* in other coordinations, this is the first time the Organization has contended that extra list telegraphers were adversely affected.

"On August 25, 1959, this Carrier and the Kansas City Terminal Company in Kansas City served a Section 4 notice to coordinate KCT tower 4 and Frisco-29th Street interlocker, Kansas City.

"On September 20, 1959, the Frisco Company *and* tho Santa Fe served Section 4 notices to coordinate this separate station facility at Pawnee, Oklahoma and Girard, Kansas.

"The implementing agreement on the Pawnee-Girard coordination was entered into on October 14, 1959, with the ORT.

"The implementing agreement covering the KCT tower 4 and Frisco-29th Street interlocker was entered into with tho Telegraphers on February 29, 1960.

(Continued)

"On May 1, 1960, the Frisco and Cotton Belt served Section 4 notices for coordination of their separate station facilities at Harvard and Gideon. The implementing agreement was signed September 1, 1960.

"In none of those coordination8 was there any contention voiced by the Organization as they are advocating here today, and in connection with the Santa Fe-Pawnee-Girard coordination, I would like to read into the record one provision in the implementing agreement.

"This is Section 4 *of* the implementing agreement of October14, 19591

> 'Subsequent *to* the effective date *of* the aforesaid coordinations at Girard, Kansas and Pawnee, Oklahoma agencies, as herein before provided, this ● bsll be determined by Frisco la connection wlth the Pawnee. Oklahoma coordination, and the Santa Fe in connection with the Girard, *Kansas* coordination; *the* names and seniority dates of the individuals displaced *from* • *regular* assignment as a result of such coordinations. Andbuchdisplaced● ○□●□△◆□ shallbehandled in accordance with *the* provisions of the Agreement of May, 1936, Washington, D. C.'

"The Arbyrd-Gideon coordination wltb rho Cotton Belt, ● *ffecdw* September 1, 1960. According to *ORT* Exhibit A, introduced here *today,* those awards and the dissent therefor are dated September 25, 1960.

"Now then, the notice to coordinate, Leachville and Campbell were ● uwd on August1, 1961. Implementing agreement was signed on August 24, 1961, and the coordination became effective November 1, 1961.

"It is apparent therefore that the Organization has seemingly changed its views as to the meaning and intent of the Washington Job Protection Agreement, and particularly Section 6 thereof, since the Arbyrd-Gideon coordination."

*ORGANIZATION* (tr , pp'r 456,457)

"Mr. Referee, for the record 1 would like to clarify this agreement that Mr. Deaton refers to, involving Girard, Kansas and Pawnee, Oklahoma.

"He quoted a paragraph from that implementing agreement which specifically roferrud to the application of Cho protective benefits to a regularly assigned employee who is displaced.

"I said earlier here that as part of my duties I supervise the negotiations under the Washington Agreement.

"When this agreement was negotiated involving Girard and Pawnee, we had a relatively brand new General Chairman on this property, and we had a brand now Vice President.

"I think I will repeat to you, Mr. Referee, what I told the committee. When this agreement roached my derk there was certain action taken, and I don't believe the Vice President ● ●●● flads it very comfortable to elt down.

"That is the only agreement, to my knowledge. that has a . specific reference *to* the Washington Agreement being applicable only to regularly assigned employees.

"That was a mistake, we have had to live with it and haven't insisted in this agreement that the extra employees are entitled to anything.

"I want to correct the record. that this isn't our position and never has been. Other Carriers are paying tho ● *xtrb* employees who have been affected, but it is a vory difficult thing, Mr. Reforeo, Co police the application of the Washington Agreement.

"It 10 a very complicated Agreement, and many of our people overlook these benefits that some of our employees are entitled to receive.

"I just wanted to corroet the record, that this is not the Organization's position, as contained in this implementing agreement."

As an explanatory note, ORT Exhibit A refers *to* sustaining awards in an ad hoc arbitration by Special Board of Adjustment No. 226 for interpreting language of paragraph 1 in the "Burlington conditions" and the application of sold "Burlington conditions" to extra boards Telegraphers in employments with the MK&T R.R. Co., stressed in 4 pages of argument by the Organization (tr. pp's 426,427, 428, 429), with the same heavy ● mphaoir again being p&cad thereon in the dissent.

Docket No. 17, decided by the Committee, without a Referee, is also drawn into contention by the dissent. With regard to said docket, the only evidence of raeord on oral hearing, disclosed:

17. Order of Railroad Telegraphers v. The Denver and Rio Grande Western R. R. co.

Claim of the General Committee of The Order of Railroad Telegraphers on Denver & Rio Grande Western Railroad, 'that as a result of the coordination of the carrier's separate railroad facilities at Palmer Lake, Colorado, with the separate railroad facilities of tho Atchison, Topeka & Santa Fe Railway at same place, effective July 15, 1938, tha Denver & Rio Grande Western Railroad employees covered *by* tha telegraphers' agreement, as listed below, havo been adversely affected in their earnings, and under the provisions of the Washington Agreement of May, 1936, and particularly Section 6(a) thereof, have due them for the period July 15, 1938. until April 30, 1940, approximately the amount8 set opposite their respective names:

| | | | |
|---|---|---|---|
| G. E. Schlaf | $7.24 | G. B. Pitney | $364.12 |
| C. F. Swanson | 327.73 | J. 0. Smith | 334.26 |
| J. H. Harvey | 123.50 | Fay Highfill | 510.91 |
| P. D. Lewis | 327.25 | F. J. Thimmesch | 422.18 |
| S. M. Blackwell | 370.42 | E. T. Viebrock | 17.38 |
| J. F. Strador | 337.78 | Chas. Coombm | 201.54 |
| C. J. Wheat | 230.51 | | $3,574.82 |

and thereafter, subsequent to April 30. 1940, for the remainder of *tho* five year period mentioned in Section 6(a), the same employes shall be paid semi-mouthly the difference, if any, between their actual ● *ualag#* and the average semi-monthly earnings of the base year.

Submitted Ex Parte by O.R.T., September 29, 1941.

DECISION:

That employes of the D. & R.G.W. represented by the Order of Railroad Telegraphers lost two jobs at Palmer Lake as a result of the coordination that occurred at that point, but on tho basis of peculiar facts of record all smployoo thereby affected, including those affected *by* Mr. Hale's exercise of seniority on the D. & R.G.W. roster, will be accorded protection under tho "AGREEMENT OF MAY, 1936, WASHINGTON, D.C."

Neither the closing of tho agency at Howard nor the transfer of the telegrapher position at Walsenburg to the Colorado & Southern was

(Continued)

rho result of, o: related to, the Palmer Lake Coordination, and they will not enter into the compensation calculation as used by either party.

## REFEREE'S INFERENCES, DEDUCTIONS, AND CONCLUSIONS (Reasoning)

The dispute war submitted Ex parte for decision on the proposition:

> "Are employees assigned to an 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?"

Section 6 provides:

> "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 tho effective date of such coordination, be placed. as a reault of such coordination. in a worse position with respect to compensation and rules governing working conditiona than he oecupiod at tha time of such coordination so long as ha 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, *except* however, that *if* he fails to exercise his seniority rights to secure another available position, which does not *require* a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline."

The real dispute is over the meaning of the word'position". Cne position had been abolished as the result of a "coordination". The occupant of tho abolished "position", baing unable, in tho normal march of his seniority under existing agreements, rules and practices, to obtain another "position" was forced to the extra list.

> "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 (the position) he occupied at the time of such coordination."

The protection afforded by paragrbph (a) of Section 6 shall be made effective "whenever appropriate" through what is designated as a "displacement allowance". Any employe entitled to such allowance is referrad to, for purposes of the agreement, as a "displaced employee". Section 6(b).

If the "displaced employee" falls to exercise hit "seniority rights" to secure another available "position", which door not require a change in residence, to which ho is entitled undor the *working* agreement and which carries a "rate of pay" and "compensation" exceeding those of *the* "position" which ho elects to retain, ho shall thereafter ba treated for purposes of Section 6(a) as occupying the "position" which he elects to decline.

The key words la Section 6(a) are "position" and "seniority rights" as we shall try later to demonstrate.

The only "displaced employee" so fbr as I am able to see, for purposes of this care, was the regular assigned encumbent of the abolished position, who was unable in tho exercise of his seniority rights, to secure another available position under the working agreement producing compensation equal to or exceeding the compensation of the position hold by him at the time of the particular coordination. He is being taken care of. No employo on the extra list was displaced thorofrom.

In Docket No. 9, the Committee, without a Referee, *had* before it a submission dated February 29. 1944. The Washington Job Protection Agreement had boon in existence only about four years. The record before me in connection with that Docket is next hereinafter reproduced.

9. Order of Railroad Telegraphers v. Gulf, Colorado & Santa Fe Railway co.

Joint request for interpretation of the "Agreement of May, 1936, Washington, D. C." in connection with the consolidation of telegraph facilities at each Brady, Texas, and Brownwood, Texas. Joint submission, February 29, 1940. Oral hearing waived.

QUESTION (1) - Is the "average monthly compensation" determined in accordance with the formulae prescribed in Section 6-(c) and 7-(a) of the Agreement, subject to change to conform to subsequent increases and/or decreases in basic hourly rates resulting from general wage adjustments?

QUESTION (2) - Are affected employes who have insufficient seniority to obtain and retain a regular assignment, but who revert to and perform service from the extra list, entitled to compensation under Section 6 or Section 7, of the Agreement, or under a combination of both Sections?

DECISION:

QUESTION (1) - No.

QUESTION (2) - Section 6 of the "AGREEMENT OF MAY, 1936, WASHINGTON. D.C." applies.

Practical railroad men, if you please, made that decision within a relatively short period after the Washington Agreement was consummated, not some 27 years latex. The "benefit provisions" were sufficiently clear for the "practical railroad men", who were parties to the dispute, to know what they mean. They claimed only on behalf of the "affected employees who have insufficient seniority to obtain and retain a regular assignment". If there had been some basis for claiming more under the submission, pursuant to the Agreement, I reasoned that these "practical railroad men" would have known about it, so soon after the Agreement under which they were claiming had been consummated, and construed their action to be a complete accord with said Agreement. Docket No. 9 was frequently mentioned on oral hearing. (tr. pp's 418, 449, 459, 460).

(Continued)

In Docket No. 17, supra, the Committee, without a Referee, had before it an Ex parte submission from the ORT dated September 29, 1941 on behalf of individual claimants, as distinguished *from* a submission on principle in the instant case and as in Docket No. 9.

The decision in Docket No. 17 does not say who of the individual claimants were affected, but dooo bold:

> "That employes of thw D.&R.G.W. roproeentod by the Order of Railway Telegraphers loot two fobs at Palmer Lake as *a* result of the coordination that occurred at that point, but on tto basis of the peculiar facts of record all employer thereby affected, including those affoctod by Mr. Hale's exercise of seniority on the D.& R.G.W. roster will be accorded protection under the 'Agreement *of May,* 1936, Washington, D. C.'"

The "peculiar facts of record", in Docket No. 17, and not in some other docket, were obviously controlling of that decision. What the "peculiar facts of record" wore that influenced the decision is still a mystery to ma. Presumably those facts wore peculiarly applicable to D. & R.G.W .'a agreement with its Telegraphers.

Dockets 18 and 21 came on *for* bxloi mention during oral argument, as shown at page 458 of the transcript, as follows:

> "In Dockets 18 and 21, those dockotr seemingly cover disputes as to displacement allowances to which regularly assigned employees were entitled.
>
> "But if those regularly assigned employees who were claimants in those dockets reverted to the extra board, or as the Organization says, displaced someone else on the extra list, I don't find *any* claims in those docket8 in behalf of the extra employees."

After the record *had* been closed (tr. p. 458) the Employs Members *of tho* Committee, sensing some failure on the Organization's part to see *in* Dockot *No, 17* the great weight and *probative* force earlier that the Employe Members *of* the Committee would now give to that decision, later came forward, on the last day the Committee was in session, with the ORT's submission in that Docket. but not the entire record.

The ORT submission serves to identify the named claimants according to "position held immediately prior to coordination"; "normal exercise of seniority as a result of coordination"; and, "subsequent exercise of seniority". "Total compensation received during test period" and "average monthly compensation received during test period" are given for verification of the claims on behalf of the individual claimants.

It can also be determined from the Ex parte submission, in said Docket No. 17, that one J. M. Harvey was displaced on the extra board from the "position" of "2d Telegrapher Trinidad, Colorado" which he held immediately prior to the coordination. Ten Of the other named claimants were on the extra board. Mr. Hale, named in the decision, was "not involved in the instant claim". He "did not choose to place himself in a less favorable condition of employment by severing his employment with the D&RGW and transferring his seniority to the Santa Fe Railway in order to continue in employment at Palmer Lake."

The Carrier Members of the Committee refused to be drawn into another argument after the record had been closed. The Carrier's officer, who had argued the case before me, was not aware, at the time, that the Organization had new arguments to advance. The Employes generally look with disfavor upon re-hearings or re-argument. I was not particularly impressed with the decision made on the "basis of the peculiar facts of record". Those words are studiously employed frequently by a deciding agency, in connection with any complicated record, to tie the decision down to a particular case. The little of the record before me in Docket No. 17 is complicated. I decided against applying the decision in another and later case, involving different parties, who cannot be identified with the "peculiar facts of record" in the decided case.

I did ignore the sustaining arbitration decisions by Special Board of Adjustment No. 226, but not out of any disrespect for the views of the very able Referee who reasons his result quite well. Whether he would have reasoned the same result on the record before me, or whether I would have arrived at the same decision in the dispute heard by him, neither of us is called upon to say.

The language in paragraph 1 of the "Burlington Conditions" and Section b(n) of the "Washington Agreement" springs from different sources. Those who are called upon to look to other

"conditions" for employe protection are free to look to this Committee's interpretation of the Washington Agreement, if they wish, but what they say about the "Burlington Conditions" as a basis of granting or withholding benefits, does not bind this Committee, in my opinion.

The Section 13 Committee has no standing under the "Burlington Conditions", nor does an Arbitration Board, in ad hoc arbitration proceedings for construing, interpreting and applying the "Burlington Conditions", have any standing under the "Washington Job Protection Agreement".

The enactment of Section 5(a)(f) of the Interstate Commerce Act, or action of the Interstate Commerce Commission imposing conditions for the protection of employes, does not necessarily stay the application of the Agreement of May, 1936, Washington, D. C., from what I see in Docket No. 27, decided by the Committee with the assistance of another Referee.

I feel confident that the Employe Members of the Committee would not hold themselves to ho bound by an advoreo decision in an arbitration proceedings outside the Washington Job Protection Agreement and we think with good season as herein stated.

I tried, but could not reason that the words "worse position", appearing in Section 6(a) differed from the use of the word "position" five more times in rho same Section, or in connection with it3 many other appearances elsewhere in the Agreement of May, 1936, Washington, D. C. See Sections 6(c), 7(a), 7(c), 7(f), and 9.

The word "position" is not defined. A better or worse "position" with respect to compensation and rules governing working conditions" has to find its roots in existing agreements, rules and practices on the property, for the craft or class of employes affected. The same holds for the exorcise of seniority rights.

A "position" under the Telegraphers' Agreement has certain attributes, such as "rates of pay", "defined hours per day", "days per week", "and at least generally specified duties attached to the job", as shown from testimony before Emergency Board No. 148. In or out of context with that dispute, the words have a familiar ring, as do the words "each such position or job is identified in the wage scale, and when it is essential that its attributes be described in the bulletin".

The "bulletin", in railroad *parlance,* is the advertisement of an existing vacancy in 4 position identified in the wage scale under the Telegraphers' Agreement. The "bulletin" is the means *for* advertising the vacancy, rate *of* pay, hours of work, duties, etc. of the vacant position, for the "exercise of seniority rights under existing agreements, rules and practices."

Seniority is tha touchstone of all rights under the Agreement of May, 1936, Washington, D. C. and is the link that is inseparably welded to all "positions" within the contractual moaning of that word in keeping with the agreement, *rules* and practices on the ● *er*○□♦♦□ properties.

The decision, as a casual glance will show, does not foreclose *tho* rights *of* all "extra* employes under the Agreement of May, 1936, Washington, *D. C. There* are those "extra" employes in the railroad industry, who. in the normal exercise of seniority rights under existing agreements, rules and practices on the different properties, displace on or displace from the extra list or board in the normal exercise of seniority rights under existing agreements, *ruler* and practicer. In the instant case no telegrapher had been displaced from the extra list, nor was anyone on raid *extra* list *at* the time of ths coordination deprived of employment as a result of said coordination. This was not an abandonment case, nor a transaction approved by the Interstate Commerce Commission where other protective benefits had been imposed.

The final point of disagreement is the asserted "grievous error" that X changed the words. "no employee of any of the Carriers etc" to read, "no regular assigned employee of any of tho Carriers etc". I am left to reason that if I had changed the words to read, "no regular assigned or extra employees of any of the Carriers etc", I would not have changed the language of Section 6(a). The words, "no employee of any of the Carriers etc" standing alone are devoid of any meaning. It does not amount to a change in language to supply words of reasonable intendment on the basis of the entire page, writing, or agreement, as explained on the record by knowledgeable persons. *Tho* fault must bo, therefore, that *I* did not supply the words that the, Organization wanted me to use.

The value to be assigned to the decision and the dissent in this case can now be assessed on the basis of all of the record in the great detail herein recited.

(Continued)

## *DOCKET NO. 100*

Section 2(a) of the Agreement of May, 1936, Washington, D.C. provides:

> "The term 'coordination' as used herein means joint action *by* two *or more* carriers whereby they unify, consolidate, merge or pool in whole *or* in *part* their *separate* railroad facilities or any of the operations or services previously performed by them through such separate facilities."

I have it on authority of tho Organization (tr. p. 490) that:

> "Here we have a terminal that was coordinated, that is how they formed the terminal in the first place, the seven tenant lines.
>
> "This was effected prior to the Washington Agreement, but it was a coordination."

Therefore, it is ● s&bl.lrhed at the outset that, by joint action *of* two *or* more carriers, the operations *or* services previously performed by them, in whole or in part, through their separate facilities had been unified. consolidated, merged or pooled before this dispute arose.

Tenant lines are now performing the questioned operations w services, in *whole or* in part, through their separate facilities. The Organization's argument that tho Cincinnati Union Terminal is • carrier party to the Agreement of May, 1936, Washington, D. C. had some appeal, but did not carry enough weight to overcome some precedent value of earlier decisions by the Committee, assisted by another Referee, in Dockets 25, 26, 51 and 61.

I did aot recognize in the "Findings" that a coordination was effected under the facts and circumstances of record, as tha dissent gratuitously holds. If this had been a case of first impression or other than tenant lines hod been involved, I might have reasoned differently; but, I was aot convinced, oa the basis of this record, that Section 2(a) of the Agreement, supra, is ● *p#icaUo.* This case is one

where operations or services previously performed by the tenant lines through their separate facilities are again being performed, in whole or in part, through those same separate facilities.

## CONCLUSION

This response to the dissents will not serve my learned and respected colleagues, on either side, to any great advantage, nor will it likely gain for me any greater respect from the Employee Members of the Committee. Most of what appears herein was said by me to the Committee in our long deliberations; and, if I failed to impress my dissenters then, as I obviously have, I hold forth scant hope of doing so now.

A Referee is at some disadvantage, however, in the eyre of others, who do not know the record, by reason of his reluctance to expound on his decisions, if, in the process, he can get by with fewer words. The reasoned *result* is important only in those disputes that continue after the result is known.

Dated at Sand Springs, Oklahoma, this the 5th day of December, 1963.

Respectfully submitted,

A. Langley Coffey

A. Langley Coffey, Referee