AWARD NO. 129
Case No. MW-8-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE ) Maine Central Railroad Company
Portland Terminal Company
and
Brotherhood of Maintenance of Way Employes

QUESTIONS AT ISSUE: The Carrier has posed the following questions:

1. Does the proposal contained in the Carrier's Notice of October 17, 1968 constitute an organizational and operational change of the type contemplated by Article III, Section 1, of the Mediation Agreement of February 7, 1965 (Case No. A-7128)?

2. Does the Implementing Agreement proposed by the Carrier in its "Exhibit B" adequately meet the provisions of Article III of the February 7, 1965 Agreement?

3. May the Organization be required to enter into such Implementing Agreement with the Carrier as may be necessary to provide for the organizational and operational changes contemplated in Carrier's Exhibits "A" and "B"?

OPINION OF BOARD: Between May 24, 1965, and September 16, 1966, the parties entered into five implementing agreements providing changes in track sections and the consequent exercise of seniority by affected protected employees. Each of these agreements involved abolishment of a few positions. The implementing agreement proposed by Carrier following its notice of May 28, 1968, involved the abolishment of 37 foremen positions. In all other substantial respects it is identical with the five preceding implementing agreements and uses, verbatim, the same terminology.

According to the Employes, Carrier's proposed agreement is inadequate. One reason advanced is that in one of the many changes proposed, involving Sections 49 and 50, part of a section would be placed in another seniority district.

Unlike Award No. 5, cited by the Employes, the purpose of Carrier's action is not a merger of seniority districts.

Another argument of the Employes is that Carrier's aim is simply a desire to abolish positions. But what is involved here, as it was in the cases of the previous implementing agreements, is an organizational and operational change. Article III, Section 1, provides that Carrier has the right to make such changes. Section 4 specifies that the Disputes Committee shall not consider "the right of the carrier to make the change." The Committee is authorized solely to determine the "manner of implementing the contemplated change."

The Employes cite Rule 9 of the working agreement, effective 12 years prior to the February 7, 1965, Agreement, which provides:

> No rearrangement of sections will be made unless by agreement between the parties to this agreement.

The Employes contend that Carrier must comply with Rule 9 "before the proposed rearrangement of track sections can be made." This is virtually the entire substance of its submission to the Committee. In effect, what is being urged is that unless the Employes agree, no change proposed by Carrier may be instituted. However, Rule 9 does not limit the February 7, 1965 Agreement. The opposite is true. For the 1965 Agreement refers to this Committee the terms of an implementing agreement about which the parties are in dispute.

The general chairman's letter on the property, dated February 24, 1969, stated that "an Implementing Agreement should provide for a procedure to be followed in offering employees the opportunity to transfer from one seniority district to another..." The rules, Addenda Nos. 11 and 12, respectively dated November 21 and 22, 1968, and proposed Addendum No. 14 adequately deal with this subject. They amplify the proposed Implementing Agreement.

In addition to Rule 9, the only contention in the Employes' submission is that the pertinent provision of Article V should be incorporated in the Implementing Agreement. Even without specific reference, the applicable provisions of Article V bind the parties.

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The answer to the Questions is Yes.

Milton Friedman, Neutral Member

Dated: Washington, D. C.
September 10, 1969