AWARD NO. 309
Case No. TC-BRAC-119-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE ) Peoria and Pekin Union Railway Company and TC Division - BRAC

QUESTIONS AT ISSUE:

(1) Did the transfer of Peoria and Eastern Railway Company work from the Gulf, Mobile and Ohio Railroad Company, Pekin Tower, Pekin, Illinois, to the Peoria and Pekin Union Railway Company constitute a coordination as that term is used in the Washington, D. C. Agreement of May, 1936?

(2) If the answer to the above question is in the affirmative, shall Carrier be required to restore the status quo, serve the proper notice under Section 4, and to negotiate an Agreement as required by Section 5 of the Washington Job Protection Agreement?

OPINION OF BOARD: For many years employees of the Gulf, Mobile and Ohio Railroad Company performed various services at Pekin Tower, Pekin, Illinois, for the Peoria and Eastern Railway Company. Effective October 10, 1968, that work was transferred to employees of the Peoria and Pekin Union Railway Company.

According to the Organization, this transfer of work involved a coordination of facilities, subjecting the parties to the Washington Agreement of 1936. Section 2(a) of that Agreement defines coordination:

> 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 facility.

In Docket No. 140 the Section 13 Committee had before it a similar triangulated situation. The carefully reasoned opinion and findings of Referee Bernstein in that case are dispositive. He decided that "the transfer of the work performed by Illinois Central for Central of Georgia to Southern was a 'coordination.'" It must be held, therefore, that the Washington Agreement controls and the failure of P & PU to file the requisite notices violated its obligations under that Agreement.

Section 4 provides:

> Each carrier contemplating a coordination shall give at least ninety (90) days written notice of such intended coordination by posting a notice on bulletin boards convenient to the interested employes of each such carrier and by sending registered mail notice to the representatives of such interested employes. Such notice shall contain a full and adequate statement of the proposed changes to be effected by such coordination, including an estimate of the number of employes of such class affected by the intended changes. The date and place of a conference between representatives of all the parties interested in such intended changes for the purpose of reaching agreements with respect to the application thereto of the terms and conditions of this agreement, shall be agreed upon within ten (10) days after the receipt of said notice, and conference shall commence within thirty (30) days from the date of such notice. (Underlining added.)

In Docket No. 59 Referee Bernstein had reluctantly followed precedent in denying existence of a coordination where the work of one carrier was removed from the employees of another, who had been performing it, and transferred to a third. There was a resulting loss of jobs in that case by the employees who previously had done the work. However, Referee Bernstein held that he must follow precedential awards which denied that this was a coordination as "to the carrier who lost the contracted work."

Significantly in the instant case GM&O, which lost the work, has not been joined in the preceedings. Nor has P&E, the owner of the work. The claim is directed solely against P&PU which acquired the work. A question has been raised as to the propriety of this proceeding, because it involves only one of the three carrier parties in the coordination. Certainly no Award can be directed against non-participants, although an Award directed at one of the carriers participating in a common undertaking necessarily will have an impact upon others.

Logically, it would appear that at least Peoria and Eastern, whose work was involved, should have been made a party to the proceedings. GM&O may have been considered as playing merely a passive role, since it lost the work, although it and its employees are apparently the most imminently and adversely affected. Certainly what, if any, substantive complaint the employees of P&PU have, is not visible.

Nevertheless, the Organization has a right to enforce any of its agreements against an individual carrier who is a signatory to it. Redress may be limited thereby. But where a coordination is improperly executed, each of the participants is individually at fault and may be required to comply with the Washington Agreement--or else withdraw from participation in the coordination.

Thus the Organization's request for restoration of the status quo may be considered in relation to a single carrier of the three who played some part in it. As to that carrier, withdrawal from participation in a coordination may be directed in order to retain the status quo, although obviously no similar Award is possible against a carrier who has not been brought into the proceedings. Similarly the one carrier may be required to serve the requisite Section 4 notices and to negotiate an agreement as provided by Section 5, before <u>it</u> can join in a coordination.

In view of the absence of any evidence of loss, no compensation in this case would be appropriate for employees of GM&O. So far as the record is concerned, while GM&O lost the work, there is no indication that any individual employee suffered thereby.

Although a sustaining award is rendered, its effective date is delayed for 120 days for two reasons. One is the impossibility of restoring the full status quo by action of only one of three carriers who were involved in the coordination. All that P&PU could now do is restore the status quo as to itself, by ceasing to perform the work. Whom that would actually profit is unknown. The other reason is the uncertainty that may have been engendered among these carriers by conflicting prior awards. This justifies a decision which is the least disruptive possible.

In the interim, the terms of the Washington Agreement can be complied with, the notices served and the conferences undertaken, if the parties wish to proceed properly with the coordination, as should have been done originally. The matter may thereby be satisfactorily resolved but, if not, this Carrier still must revert to the status quo ante at the end of 120 days.

A W A R D

The Answer to Question Nos. 1 and 2 is Yes.

This Award shall be effective 120 days from date.

Milton Friedman, Neutral Member

Dated: July 26, 1972
Washington, D. C.