AWARD NO. 420
Case No. SG-13-SE

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Brotherhood of Railroad Signalmen
and
Clinchfield Railroad Company

QUESTIONS AT ISSUE: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Clinchfield Railroad Company:

"(a) Carrier violated and continues to violate the Scope and other rules of the current agreement of July 1, 1950 on the Clinchfield, and also violated the Washington Job Protection Agreement, when it permitted employees other than Mr. F. G. Wright, SC&E Maintainer, Chesnee, South Carolina, and/or other proper Clinchfield SC&E employees, to perform work covered by our current agreement.

"(b) Mr. Wright be paid for all hours worked by any and all employees performing Signal, Communication and Electrical work on the Spartanburg Terminal, straight time rate for all time during his straight time assigned hours and overtime and/or double time rate, whichever applies, for all hours worked outside Mr. Wright's regular working hours, rest days and holidays.

"(c) Men assigned to SC&E Gang #17 be paid straight time rate of pay and/or overtime and/or double time for any work performed on Spartanburg Terminal by more than one employee due to repairing signal, communication or electrical apparatus or device, etc.

"(d) This claim is to be a continuing claim until such time as the SC&E work on Spartanburg Terminal is returned to the coverage of the current Clinchfield Agreement, with the claim retroactive 60 days from the date of Signal Engineer J. W. Hager's May 17, 1977 letter of SC&E Maintainer F. G. Wright.

"(e) Due to the fact the work is now being performed and time carried on other railroad and other department employees time records, we be permitted to examine those records to determine the hours covered under this claim."

OPINION OF BOARD: At the outset it must be noted that Petitioner indicates that "the basic question before this committee is that part of the instant dispute which involves the interpretation and application of the WJPA." It is noted further that an identical claim has been filed before the Third Division, National Railroad Adjustment Board.

The genesis of the work involved is important in an understanding of the issues in this dispute. First the initial agreement between the Organization and this Carrier was entered into on June 23, 1950 and included a Scope Rule which is quite comprehensive. Prior to 1963 there was no thru line service between Carrier herein and three former railroads (now part of the Seaboard Coast Line Railroad) the Atlantic Coast Line Railroad, the Charleston and Western Carolina Railway and Piedmont and Northern Railroad. To accomplish this physical connection between the Clinchfield and these roads a new corporation was established in 1953 called the Spartanburg Terminal Company. Its stock was owned by the Atlantic Coast Line, the Charleston and Western Carolina Railway and the Louisville and Nashville Railroad. Thus, the Clinchfield owned no part of this new company. On September 30, 1976 the Seaboard Coast Line Railroad became the sole owner of all of the stock of Spartanburg Terminal Company. With authorization from the Interstate Commerce Commission, Spartanburg Terminal Company was authorized to construct and operate a tunnel with one or more railroads to form a connection between the Clinchfield and the Charleston and Western Carolina Railroad. It is also noted that subsequently the Charleston and Western Carolina Railroad was merged into the Atlantic Coast Line Railroad.

Construction of the tunnel, track and appropriate signaling and other facilities of the Spartanburg Terminal Company, was completed in June of 1963. Upon completion, an agreement was entered into between Carrier herein and the Spartanburg Terminal Company and Atlantic Coast Line Railroad Company and Piedmont and Northern Railway Company which, in addition to describing the property involved and its ownership and other conditions, established the methods for use of the facilities as well as its maintenance. Included in that Agreement was a proviso which stipulated that the trackage and tunnel and all other signal systems would be maintained by the Terminal Company or by Clinchfield as its agent. Following completion of the tunnel and the use of the facility, the Spartanburg Terminal Company did not and never has had any employees. Thereafter, it determined it would not maintain the facilities but would have this done by Clinchfield as its agent. For this reason since 1963 Clinchfield Maintenance of Way and Signal forces maintained the track, tunnel and signaling facilities until the Terminal Company was dissolved and included as part of the Seaboard Coast Line Railroad Company.

On December 14, 1976, Seaboard Coast Line Railroad Company, as sole stock holder of Spartanburg Terminal Company, decided, by resolution, to a plan of liquidation and voluntary dissolution of the Terminal Company. On December 29, 1976, the assets of the Terminal Company were conveyed to SCL. Following this action, on January 21, 1977, SCL's Vice President-Operations advised Carrier's Executive Vice President and General Manager of the dissolution of the Terminal Company and that any and all maintenance requirements would be performed thereafter by SCL employees. Following this notification new arrangements had to be worked out to cover the costs of this Carrier's continued use of the tunnel and trackage to effect interchange.

Early in February of 1977 Carrier's Signal Engineer notified Claimant herein, the Signal Maintainer who had been used to perform signal maintenance work on the former Terminal Company property, that the property had been acquired by SCL who would perform the maintenance from that point forward. As a matter of fact, Carrier states, and it was not disputed by Petitioner, that the decision of SCL to perform its own maintenance did not result in the abolishment of any Clinchfield positions, did not result in a displacement of any incumbents and no Clinchfield employee has been placed in a worse position with respect to compensation and other working conditions.

Petitioner argues that since both the SCL and Clinchfield are parties to the Washington Job Protection Agreement, the changes in the performance of the disputed work constitutes a coordination as defined in the Washington Job Protection Agreement. Following that logic, Petitioner urges that the coordination should only have been made upon the basis of an Agreement approved by all the Carriers parties thereto. Further there should have been advance notice to the Organization pursuant to Section 4 of WJPA and an implementing agreement arrived at among the parties in accordance with Section 5. The Organization insists that the changes involved could not have been made without the joint action involving not only the Spartanburg Company but the SCL and Carrier herein. Petitioner also argues that the question of a violation of the Scope Rule, which it insists took place in this incident, is referrable to the WJPA. As part of its rationale that the Clinchfield had to be a party to the coordination, which it claims took place, Petitioner argues that they are both part of the so-called family lines system.

Carrier argues on a number of scores including most significantly the fact that the action taken by SCL was not a coordination and further that the work involved is not covered by the Scope Rule of the Agreement between the Carrier and the Organization. Further it is argued that the claim in this case, when handled on the property, was not handled as a Section 13 dispute but as an alleged violation of the schedule agreement. In furtherance of this position, Carrier points out that the claim seeks payment under the schedule agreement rather than an order for an implementing agreement which would be the remedy under the WJPA. Carrier further points out that to sustain this claim would place this Board in a position of requiring Carrier to pay its employees for work performed by SCL signal forces on property owned by SCL.

The essential problem in this dispute is whether or not there was a coordination under the WJPA. Section 2(a) of that agreement provides as follows:

> "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."

A careful examination of the record of this dispute indicates that the construction of the Terminal property, and its subsequent maintenance, was accomplished by contract between it and Carrier herein. Thus, the work involved was not covered by the Scope Rule of the schedule agreement but was part of the normal work of this Carrier as in any off property activity. It could not have been part of the Scope Rule since the Scope Rule was negotiated prior to the agreement for Clinchfield to do the work for the Terminal Railroad. An analogous dispute involving this Carrier and Organization occurred in a claim progressed to the Third Division (Award No. 19706). In that dispute the Organization claimed work of the Haysi Railroad was covered by the Scope Rule of their agreement with Clinchfield. The Board held, in that case, similar to that herein, that the railroad as a corporation was separate from the Haysi Railroad Company and the Haysi Railroad Company apparently contracted out pole line construction and installation work to Clinchfield. The claim was dismissed.

It is quite clear that there was no coordination or consolidation as those terms are generally understood involved in this incident. Carrier herein had no control over the work in question since it was merely doing the work on a contract basis for a Carrier owned in whole by SCL. There was no coordination because SCL made the decision to dispose of its work in a new fashion. Therefore, there was no joint action by two or more Carriers including Carrier. In fact, the very language of the claim under the factual circumstances would seem to mitigate against the claim. Paragraph D indicates that the claim is to continue until such time as the work on Spartanburg Terminal is returned to the coverage of the current Clinchfield agreement. Such stipulation seems impossible under any circumstances to either order or ordain. The work had never been under the dominion or control of Clinchfield and therefore cannot be returned to Clinchfield. It is and has been the work of another Carrier which was contracted to Clinchfield for a term at the pleasure of the contracting Carrier.

The rationale employed in Docket No. 148 of the Section 13 Committee involving a claim that a coordination occurred is quite similar to that herein. In that case, the Section 13 Committee indicated that the evidence failed to reveal any semblance of justification that a coordination resulted. "There is no proof of any joint action by the two Carriers. .....It had no choice but to comply with the direction from the Alton and Southern. And there is no evidence in the record that the method for the changeover was utilized by agreement of the two Carriers to circumvent the obligations prescribed in the May, 1936 agreement, Washington, D.C." Similarily in Award 390 of this Board we held that the Awards of the Section 13 Committee make it clear that a taking back of work is not a coordination under the Washington Agreement.

Under the circumstances herein there is no question but that what occurred in this dispute is not within the definition of coordination in the WJPA and for that reason the claim must be dismissed.

AWARD

Claim dismissed.

I. M. Lieberman
Neutral Member

Dated: March 14, 1979