

SPECIAL BOARD OF ADJUSTMENT NO. 605

AWARD NO. 427

CASE NO. CL-73-E

PARTIES TO THE DISPUTE:

BESSEMER AND LAKE ERIE RAILROAD COMPANY,
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY
LAKE TERMINAL RAILROAD COMPANY, NEWBURGH AND
SOUTH SHORE RAILWAY COMPANY

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS & STATION
EMPLOYES

QUESTIONS AT ISSUE:

- (A) Can the Organization, by filing an alleged dispute before the Third Division, NRAB, remove such dispute involving the application of the Washington Agreement of May 1936 from the jurisdiction of the Disputes Committee created by Section 13 of that Agreement?
- (B) Do the Notices of Coordination served by the Carriers under Section 4 of the Washington Agreement of May 1936 contain a full and adequate statement of the proposed changes to be effected by the coordination as contemplated by Section 4 of the Washington Agreement of May 1936?
- (C) Does the agreement proposed by the Carriers, attached hereto as Carriers' Exhibit E, meet the criteria set forth in the Washington Agreement of May 1936, particularly Section 5 thereof, and constitute the terms upon which the Carriers may carry out the coordination?
- (D) If the agreement proposed by the Carriers (Exhibit E) does not meet the criteria set forth in the Washington Agreement of May 1936, what agreement terms would be appropriate for application in this particular case and constitute the terms upon which the coordination may be accomplished?

BACKGROUND:

Prior to the occurrence of this dispute, the Bessemer and Lake Erie Railroad Company (BLE), the Duluth, Missabe and Iron Range Railway Company (DMIR), the Elgin, Joliet and Eastern Railway Company (EJE), the Lake Terminal Railroad Company (LT) and the Newburgh and South Shore Railway Company (NSS), had a certain amount of commonality in data processing activities; primarily utilizing the BLE facility at Pittsburgh, Pennsylvania, the DMIR facility at Duluth, Minnesota, and the EJE facility at Joliet, Illinois. These computer centers are interconnected by transmission lines and have the capacity to interchange data. In April 1980 the respective Carriers decided to attempt a functional integration, but not a physical relocation, of the three (3) facilities, i.e., to make them functionally interchangeable for purposes of input/output and processing data from each or all of the referenced Carriers, while retaining the separate equipment, employes and facilities at each of the three referenced geographic locations. To that end, each of the Carriers on April 22, 1980 served upon the respective BRAC General Chairmen on the property, identical Notices pursuant to Section 4 of the Washington Job Protection Agreement (WJPA) of 1936, typified by that sent to employes on the EJE (Attached A).

The respective General Chairmen each responded on May 2, 1980 with a qualified willingness to discuss the proposed changes, while reserving the following stated objections to that proposal:

"We do not feel that your Notice of April 22, 1980, contains a full and adequate statement of the proposed changes to be affected by the coordination which you contemplate. Your notice is deficient and not in compliance with Section 4 of the Washington Agreement.

"It is our further position that the serving of your Notice is barred by the moratorium provisions of our Agreement, dated February 28, 1980."

Representatives of each of the Carriers involved and of the employes on each of those Carriers met in joint conference on May 20, 1980. At that meeting the Carrier representatives presented a proposed Implementing Agreement covering the proposed changes. (Attachment B) In addition to the objections preserved in the May 2, 1980 letters, supra, the Organization representatives at that meeting raised three (3) issues concerning: (1) a "freeze" on positions at each of the three involved data processing facilities; (2) express language regarding input/output of data from each of the involved railroads; and (3) placement of certain Programmer and Supervisor positions under the Scope of the appropriate BRAC schedule agreements with the BLE, EJE and LT. The record shows that the Carriers indicated willingness to redraft the proposed Implementing Agreement to accommodate the first two (2) concerns, but rejected the proposal to extend Scope Rule coverage on the asserted ground that the Programmers and Supervisors sought by the BRAC were occupying "management" positions. The May 20, 1980 meeting adjourned without consensus, but with agreement to meet again on June 11, 1980 for further negotiations.

On June 6, 1980, five (5) days before the next scheduled meeting, the DMIR representatives and the BRAC General Chairman representing employes on the DMIR, entered into the following Memorandum:

AGREEMENT made this 6th day of June, 1980
by and between the DULUTH, MISSABE AND IRON
RANGE RAILWAY COMPANY and certain of its
employees represented by the BROTHERHOOD OF
RAILWAY, AIRLINE AND STEAMSHIP CLERKS

It is hereby agreed that the consolidated data processing center, described in the Notice of Coordination dated April 22, 1980 (a copy of which is attached hereto), may be established as set forth in the

Notice of Coordination at such time as the other railroads named in the notice are ready to proceed with the coordination.

Accepted for the
BROTHERHOOD OF RAILWAY, AIRLINE
AND STEAMSHIP CLERKS

Accepted for the
DULUTH, MISSABE AND IRON RANGE
RAILWAY COMPANY


General Chairman


Director of Labor Relations

Accordingly, the DMIR Carrier and labor representative did not participate further in the proceedings.

On June 11, 1980 the remaining Carrier representatives and BRAC General Chairmen, excepting those from the DMIR property, met in further negotiations. At that meeting the Carriers representatives presented an amended proposed Implementing Agreement which addressed the first two (2) issues raised by the BRAC representatives at the May 20, 1980 meeting. (Attachment C) Apparently the Organization representatives did not object to the language of the amended proposed Implementing Agreement per se, but proposed "in concert with and in consideration of", i.e., as a condition of BRAC acceptance of, the amended Implementing Agreement of June 11, 1980, that 11 ETE Programmers, 27 BLE Programmers, and 1 LT Supervisor of Quality Control be included within the coverage of the respective BRAC Schedule Agreements with the EJE, BLE and LT. Carriers declined to accept the Organizations proposed condition and the BRAC representatives accordingly declined to accept the Carriers' proposed Implementing Agreement of June 11, 1980.

Carrier advised it would press the issue to this Board and the negotiations were terminated.

On June 11, 1980, the same date as the unsuccessful second conference, BRAC filed with the Third Division, NRAB, separate notices of intent applicable to each of the Carrier parties hereto, excepting the DMIR, reading as follows:

- "1. Carrier violated the effective Clerks' Agreement when, under date of April 22, 1980, it served notice, allegedly pursuant to the Washington Agreement of May 21, 1936, which is barred by, and in violation of the basic Agreement, in particular, the moratorium provisions signed on February 28, 1980, which are in effect until October 24, 1985;
- "2. Carrier shall now be required to withdraw its notice dated April 22, 1980, until such time as it has complied with the moratorium provisions of February 28, 1980."

We are advised that waiting the proscribed statutory period, the Organization pulled those submissions back from the NRAB and the above quoted issues now are pending before four (4) separate Public Law Boards on the respective properties. In the meantime, Carriers progressed the Question at Issue before this Board as Case No. CL-73-E. The Organization initially protested placement of this case on our docket and refused to file a submission because of alleged procedural inadequacies by Carrier and the pendency of its own submissions before the NRAB. By letter of November 4, 1981, however, BRAC advised that upon review it would file an appropriate submission with this Board in Case CL-73-E. The National Mediation Board (NMB) authorized handling of this case on April 5, 1982 whereupon the Board convened and heard the matter in Washington, D.C. on May 26, 1982.

Unfortunately, however, the work of this Board, and other arbitration tribunals under Section 3 of the Railway Labor Act, was interdicted when the National Mediation Board suspended operations for a protracted period of time. As a result of these bureaucratic maneuverings we are only now able to render a decision in this case.

OPINION OF THE BOARD:

The threshold question in this case concerns whether the pendency of the NRAB (P.L. Board) grievances alleging violations of the Local Moratorium provisions of the respective Schedule Agreements requires us to stay our jurisdiction to hear and decide the Question at Issue submitted to us for disposition under Article VII of the Agreement of February 7, 1965. The bottom line answer to that question, necessitated by the express language of the WJPA and the February 7, 1965 Agreement, as interpreted and applied by a host of authoritative awards by this Board, is that the NRAB submissions have no effect whatever upon our jurisdiction. The issues presented before the respective forums are separate and distinct. As a matter of comity and of well-established precedent of restraint, they must be treated as such by this Board. In plain words, our jurisdiction and responsibility is limited to determining whether Carriers' proposed coordination and Implementing Agreement comport with the requirements of the WJPA as incorporated by reference in the Agreement of February 7, 1965. We do not express or imply an opinion regarding compliance with or violation of the terms and conditions of the Schedule Agreements on the respective properties. Rather, we leave such questions to the appropriate forum under Section 3 of the Railway Labor Act, as amended. Perhaps the most erudite of the many decisions adhering to this principle was that of this Board in Award No. 230 (Referee Milton Friedman), as follows:

Award No. 230
Case No. TCU-82-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Missouri Pacific Railroad Company
TO THE) and
DISPUTE) Transportation-Communication Employees Union

QUESTIONS
AT ISSUE:

1. Does the transferring of any work performed by employees covered by the Linemen's Agreement (who are employees represented by the Transportation-Communication Employees Union) to employees not covered by that Agreement constitute a violation of Article III, Section 1? (Carrier File B-279-883 cc 279-406).
2. Did Carrier violate the Telegraphers' Linemen Agreement when it negotiated the work of line construction to an outside contractor without first following the procedures set forth in Article III, Sections 1 and 2?

OPINION

OF BOARD: The Organization has also filed with the Third Division its claim stated in the second Question that Carrier improperly contracted out work. That question cannot properly come before this Committee since it concerns an alleged violation of the Linemen Agreement. The jurisdiction of the Committee is restricted to the February 7, 1965, Agreement.

Article III of the February 7 Agreement in any case is not a provision setting forth employee rights and benefits. Its purpose is to endow carriers with the right to effectuate transfers that might otherwise be forbidden by schedule agreements. Article III does not require carriers to enter into implementing agreements. It enables them to do so as a means of effecting transfers.

If the transferring of work is improper, the February 7 Agreement is not violated. Only when protected employees are denied that Agreement's guarantees may it be invoked. In other words, what the Organization must show this Committee is how the February 7 Agreement's benefits were denied protected employees, and it has not done so in this case.

As it was presented, the first Question also concerns the right to contract, purely and simply. So far as the February 7 Agreement is concerned, Carrier can transfer work, contract out or take any other steps it chooses, but at least provide the benefits of that Agreement to protected employees. Thus the Organization's objection to Carrier's action can be processed only under the schedule agreement, for contracting out does not violate the February 7 Agreement, which contains neither scope rules nor seniority rules.

A W A R D

1. The answer to Question No. 1 is No.
2. The Committee is without jurisdiction to consider alleged violations of the schedule agreement.

See also, Section 13, Committee Decisions in Docket Nos. 48, 61, 78, and 98. For similar results, see SBA No. 605, Award Nos. 278, 400, and Interpretation Award No. 355. Based upon all of the foregoing, therefore, we find that Question A must be answered in the negative.

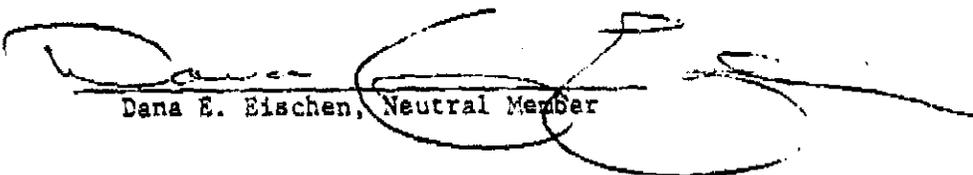
Turning to the remaining Questions at Issue, and the various positions urged by the Organization in handling on the properties, we have no hesitancy in finding that the Notice of Coordination served by the Carriers on April 2, 1980 (Attachment A hereto) complied with the requirements of Section 4 of the WJPA. Accordingly, Question B must be answered in the affirmative.

With respect to Question C, no where on the record before us has the Organization demonstrated any way in which the Implementing Agreement proposed by Carriers on June 11, 1980 failed to comply with the criteria set forth in Section 5, or any other provisions, of the WJPA or the Agreement of February 7, 1965. Indeed, the record appears to support Carriers' position that the Implementing Agreement proposed on June 11, 1980 meets or exceeds

the requirements of the WJPA. BRAC urged at the Board hearing that Carriers did not "bargain in good faith" with respect to this Implementing Agreement and that the proposed creation of the "consolidated Data Processing Centers" is not a "coordination" within the meaning of that term in the WJPA. Neither of those belated de novo theories find support in the evidence of record and neither constitutes a bar to the adoption of the Implementing Agreement essentially as proposed by Carrier on June 11, 1980. The Organization urges that it was "justified" in seeking certain additional improvements in the proposed Implementing Agreement, specifically a provision to amend the Scope Rule coverage of the controlling Clerks Agreements with the involved Carriers. We do not express or apply any opinion or value judgement as to the "justification", propriety or general worthiness of such proposals. Such questions likely are beyond the realm of our competence and without doubt are beyond the reach of our jurisdiction. Whatever the merits of such proposals, we do not have the authority to engraft upon an Implementing Agreement which otherwise meets the requirements of Section 5 of the WJPA such additional conditions. See Section 13, Committee Decisions, Docket Nos. 90, 119 and 161. As noted in Award 230 of this Board supra, our authority is limited to reviewing the application and interpretation of the Agreement of February 7, 1965 and the WJPA to the extent therein incorporated. Due to the passage of time since June 1980, we strongly recommend that Section 3 of the proposed Implementing Agreement of June 11, 1980 be amended and updated so that the positions and incumbents referenced in Exhibit A of that Implementing Agreement are provided applicable protection for a five (5) year period from the effective date of the Agreement. With these amendments we are compelled to answer Question C in the affirmative.

AWARD

- 1) The answer to Question A is No.
- 2) The answer to Question B is Yes.
- 3) With the recommended revision and updating of Section 3 and Exhibit A, referenced herein, the answer to Question C is Yes.
- 4) The answer to Question D is that the reference to "January 1, 1986" in Section 3 must be amended so as to provide five (5) years protection from the effective date of the Implementing Agreement; and Exhibit A thereto must be amended to reflect the positions and incumbents as of the effective date of said Agreement.



Dana E. Bischen, Neutral Member

Date: January 10, 1983

SPECIAL BOARD OF ADJUSTMENT NO. 605

AWARD NO. 427
CASE NO. CL-73-E
INTERPRETATION NO. 1

PARTIES TO DISPUTE:

BESSEMER AND LAKE ERIE RAILROAD COMPANY,
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY
LAKE TERMINAL RAILROAD COMPANY, NEWBURGH AND
SOUTH SHORE RAILWAY COMPANY

- and -

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS & STATION
EMPLOYES

BACKGROUND

In April 1982 this Disputes Committee convened to hear and consider four (4) questions submitted by the Carriers party to this dispute, including the following questions, which are now again at issue:

- "(C) Does the agreement proposed by the Carriers, attached hereto as Carriers' Exhibit E, meet the criteria set forth in the Washington Agreement of May 1936, particularly Section 5 thereof, and constitute the terms upon which the Carriers may carry out the coordination?
- "(D) If the agreement proposed by the Carriers (Exhibit E) does not meet the criteria set forth in the Washington Agreement of May 1936, what agreement terms would be appropriate in this particular case?"

After receiving extensive submissions and hearing oral argument, the Committee on January 10, 1983 issued its decision and Award No. 427, reading in part pertinent to the present controversy, as follows:

With respect to Question C, no where on the record before us has the Organization demonstrated any way in which the Implementing Agreement proposed by Carriers on June 11, 1980 failed to comply with the criteria set forth in Section 5, or any other provisions, of the WJPA or the Agreement of February 7, 1965. Indeed, the record appears to support Carriers' position that the Implementing Agreement proposed on June 11, 1980 meets or exceeds the requirements of the WJPA. BRAC urged at the Board hearing that Carriers did not "bargain in good faith" with respect to this Implementing Agreement and that the proposed creation of the "consolidated Data Processing Centers" is a not a "coordination" within the meaning of that term in the WJPA. Neither of those belated de novo theories find support in the evidence of record and neither constitutes a bar to the adoption of the Implementing Agreement essentially as proposed by Carrier on June 11, 1980. The Organization urges that it was "justified" in seeking certain additional improvements in the proposed Implementing Agreement, specifically a provision to amend the Scope Rule coverage of the controlling Clerks Agreements with the involved Carriers. We do not express or apply any opinion or value judgement as to the "justification", propriety or general worthiness of such proposals. Such questions likely are beyond the realm of our competence and without doubt are beyond the reach of our jurisdiction. Whatever the merits of such proposals, we do not have the authority to engraft upon an Implementing Agreement which otherwise meets the requirements of Section 5 of the WJPA, such additional conditions. See Section 13, Committee Decisions, Docket Nos. 90, 119 and 161. As noted in Award 230 of this Board supra, our authority is limited to reviewing the application and interpretation of the Agreement of February 7, 1965 and the WJPA to the extent therein incorporated. We are compelled to answer Question C in the affirmative, with a

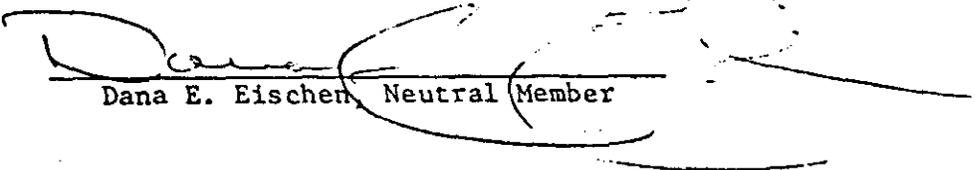
caveat that due to the passage of time since June 1980, Section 3 of the proposed Implementing Agreement of June 11, 1980 must be amended and updated so that the positions and incumbents referenced in Exhibit A of that Implementing Agreement provides applicable protection for a five (5) year period from the effective date of the Agreement.

AWARD

* * * *

3) The answer to Question C, except for necessary updating of Section 3 and Exhibit A referenced therein.

4) The answer to Question D is that the reference to "January 1, 1986" in Section 3 must be amended so as to provide five (5) years protection from the effective date of the Implementing Agreement; and Exhibit A thereto must be amended to reflect the positions and incumbents as of the effective date of said Agreement.


Dana E. Eischen Neutral Member

Date: January 10, 1983

Upon receipt of the Award, Carrier on February 25, 1983, submitted to BRAC for execution the earlier proposed Implementing Agreement of June 11, 1980, with two important changes: 1) the date "January 1, 1986" in Section 3 was amended to "February 25, 1988", and 2) Exhibit A to Section 3 was changed by the deletion of two (2) positions and incumbents, i.e., Keyboard Operator-Data Process Operator S. A. Sandal off the DMIR and Computer Operator F. Minarich off the EJE. The BRAC General Chairman took exception to the latter deletions, following which the dispute between the parties over the meaning and application of Award No. 427 reached impasse in the following exchange of letters:

Mr. Jay W. Moody
 Director of Labor Relations
 Elgin, Joliet & Eastern Ry. Co.
 P. O. Box 880
 Joliet, IL 60434

Dear Mr. Moody:

This is in reference to your letter dated March 16, 1983, concerning my objections to the Memorandum of Agreement on the Data Processing Coordination.

My objections to your proposal are chiefly concerned with Exhibit "A" in which you have eliminated two positions; one on the Elgin, Joliet and Eastern Railway, and one on the Duluth, Missabe and Iron Range Railway.

If you are agreeable to amending Exhibit "A" to include those positions, I would find no other particular objections to your proposal and I believe we could consummate an agreement on that basis.

Would you please advise me at your earliest opportunity.

Yours truly,


 General Chairman

Mr. R. L. Knoles, General Chairman
Brotherhood of Railway, Airline and
Steamship Clerks
59 East Van Buren - Suite 2416
Chicago, Illinois 60605

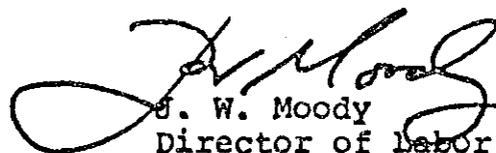
Dear Mr. Knoles:

Reference is made to your letter dated March 25, 1983 wherein you state your objections to the Memorandum of Agreement on the Data Processing Coordination.

There are no positions eliminated in Exhibit A, as Exhibit A reflects the positions and incumbents as of the effective date of said Agreement, exactly as prescribed by Mr. Eischen.

The amending of Exhibit A, as you request, is most untimely, contrary to the orders of the Award and will not be agreed to.

Very truly yours,


J. W. Moody
Director of Labor Relations

Following this deadlock, the Union invoked the jurisdiction of this Committee to "issue an official interpretation" regarding the disputed points.

DISCUSSION

The Implementing Agreement proposed by Carrier on May 20, 1980 and again on June 11, 1980, at Section 3, Appendix A contained three (3) positions and incumbents on the DMIR (including Keypunch Operator-Data Process Operator S. A. Samdal) and four (4) positions and incumbents on the EJE (including Computer Operator F. Minarich). On June 6, 1980 the DMIR and BRAC representatives entered into their own side-bar Agreement accepting those conditions as then proposed. On that basis, DMIR and its BRAC-represented employees were not

participants in the proceedings before this Committee which resulted in Award No. 427. In November 1981, while the matter was pending, but several months before it was heard, Carrier notified BRAC and SBA No. 605 as follows:

Mr. P. A. Bauer, General Chairman
 Brotherhood of Railway Clerks
 Suite 2416
 59 East Van Buren Street
 Chicago, Illinois 60605

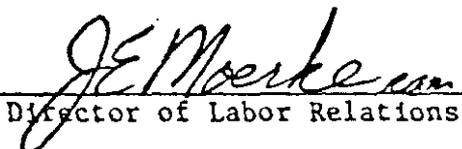
Mr. J. C. Fletcher, Executive Director
 Disputes & Procedures
 Brotherhood of Railway Clerks
 220 South State Street
 Chicago, Illinois 60604

Dear Sirs:

This is to advise you that inasmuch as the Elgin, Joliet and Eastern Railway Company has taken delivery of a new IBM 4331 Computer, the installation of which reduces the Carrier's clerical (computer operator) requirements in its Joliet data processing center, one position in that center will be eliminated as a result. Accordingly, since no agreement with your organization has been obtained in connection with the coordination proposed by the Elgin, Joliet and Eastern Railway Company, the Duluth, Missabe and Iron Range Railway Company, the Bessemer and Lake Erie Railroad Company, the Lake Terminal Railroad Company, and the Newburgh and South Shore Railway Company, covered by the carriers' Washington Job Agreement (Agreement signed at Washington, D.C. in May, 1936) Section 4 Notices dated on or about April 22, 1980, the proposed implementing agreement offered by the Carriers as the basis for implementing that proposed coordination, which was furnished to you at our conference in Chicago, Illinois on June 11, 1980, is hereby amended by the substitution of the Exhibit "A" attached hereto in place of the Exhibit "A" which was attached to that June 11, 1980 proposed implementing agreement.

A copy of this letter, with attachment, is being sent to Special Board of Adjustment No. 605 for incorporation into the ex parte submission of the Carriers in Case CL-73-E of Special Board of Adjustment No. 605.

Yours truly,


 Director of Labor Relations - B&LE


 Director of Labor Relations - EJ&E


 Director of Labor Relations - DM&IR


 Director of Labor Relations - LTRR


 Director of Labor Relations - N&SS

Attachment

EXHIBIT "A"

AGREEMENT DATED JUNE 11, 1980

(Revised November 9, 1981)

	<u>Position</u>	<u>Incumbent</u>
Bessemer and Lake Erie Railroad Company	Machine Operator	@ C. Bennett
	Machine Operator	@ F. Lame
	Machine Operator	@ D. Johnson
	Machine Operator	@ B. Zanolli
	Asst. Machine Operator	@ M. Kline
	Asst. Machine Operator-	@ B. Flickinger
	Machine Operator	
Elgin, Joliet and Eastern Railway Company	Computer Operator	* J. P. Mostyn
	Computer Operator	* R. D. Kollman
	Computer Operator	* W. E. Shumate
Duluth, Missabe & Iron Range Railway Company	Data Processing-Keypunch Operator	@ J. D. Findlay
	Keypunch Operator	@ D. L. Larson
	Keypunch Operator -	
	Data Proc. Operator .	@ S. A. Sandal

@ As of May 1, 1980

* As of November 9, 1981

All of the foregoing evidence and information was before this Committee and was considered before issuance of Award No. 427 on January 10, 1983. It was plain to this Board that Minarich already had been removed due to the abolishment of his position in November 1981, and we took no exception to that change in the proposed Exhibit A. It was brought to our attention that, due to the time passage since the last updating of Exhibit A, some other changes already might have occurred of which we were not aware at the time of issuing Award No. 427 on January 10, 1983. It neither was considered, contemplated nor intended that Carrier could abolish unilaterally positions and incumbents following receipt of our decision issued January 10, 1983 and thus create the necessity of further amendments to Exhibit A. The removal of S. A. Sandal by abolishing his position following receipt of Award No. 427 is not in keeping with the intent or the meaning of that decision. Since Sandal was a DMIR employe, his removal moreover appears to be inconsistent with the Memorandum Agreement entered into by DMIR and BRAC on June 6, 1980.

INTERPRETATION

Award No. 427 did not authorize the removal of positions and incumbents from Exhibit A of Section 3 of the Implementing Agreement which had not already occurred as of January 10, 1983.

Dana E. Eischen /pk
Dana E. Eischen, Chairman

Date: May 21, 1984