NATIONAL MEDIATION BOARD, ADMINISTRATOR
SPECIAL BOARD OF ADJUSTMENT NO. 1087

In the Matter of the Arbitration

-between-

Brotherhood of Maintenance of Way Employes

-and-

National Carriers' Conference Committee

OPINION AND AWARD
Case No. 7

In accordance with the October 25, 1996 Agreement in effect between the above-named parties, the Undersigned was designated as the Chairman and Neutral Member of the referenced Board to hear and decide a dispute concerning these parties.

A hearing was held at the offices of the Carriers in Washington, District of Columbia on June 14, 2001 at which time the representatives of the parties appeared. All concerned were afforded a full opportunity to offer evidence and argument and to examine and cross-examine witnesses consistent with the Agreement that created the Board. The Arbitrator's Oath was waived.

THE QUESTION AT ISSUE

The parties failed to stipulate an issue to be resolved by the Board. The parties authorized the Board to formulate an appropriate issue. The Organization proposed the following issue:

> Was the employee W. S. Wallace affected by an operational or organization change when the Carrier abolished Bridge & Building Gangs 6216 that was "headquartered on line" and replaced with Gang 6226 assigned to a fixed

headquarters point at Nampa, Idaho?

The Carriers proposed the following issue:

> Does the headquartering of a gang constitute a "technological, organizational, and operational change" as that term is used in Article III Section 1 of the February 7, 1965, Agreement, as amended ("JSA").

On the basis of the arguments of the parties and a careful review of the entire record, the Board deems a fair statement of the issue to be:

> Did the Claimant, W. S. Wallace, have a right pursuant to Article III, Section 1 of the February 7, 1965 Agreement, as amended, to receive the Section 10 benefits of the Washington Job Protection Agreement of 1936 because an organizational or operational change occurred in connection with the abolishment of headquartered on line Gang 6216 on or about April 8, 1999 and the simultaneous creation of fixed headquarters Gang 6226?

BACKGROUND

The Claimant served as a Carpenter First Class in the Bridge and Building Department of the Union Pacific Railroad Company. The Claimant served as a member of Gang 6216, which had three persons and which was a mobile gang headquartered on line that had existed since at least 1971. As a member of Gang 6216, the Claimant received a per diem of $48 to cover meals and lodging expenses and worked Monday through Thursday for 10 hours each day with Friday, Saturday, and Sunday as regular rest days.

The Carrier abolished the Claimant's position and Gang 6216 as of April 8, 1999 in connection with a force reduction. The Carrier created a new position of Carpenter First Class on new

Gang 6226 as of April 8, 1999 as part of a three-member, fixed headquarters gang, which did not receive a per diem but received reimbursement for actual necessary expenses while away from the fixed headquarters location. The vacancy bulletin for Carpenter First Class on Gang 6226, headquartered at Nampa, Idaho, indicated that the members of Gang 6226 would work Monday through Friday for 8 hours of service from 7:00 a.m. to 3:30 p.m. and a meal period of 30 minutes with Saturday and Sunday as regular rest days.

It is undisputed that the Claimant changed his residence, which was 278 miles from the fixed headquarters of Gang 6226, to retain his protected status. It also is undisputed that these circumstances did not require an Implementing Agreement.

As a result, the Claimant sought the Section 10 relocation benefits pursuant to the Washington Job Protection Agreement of 1936. The Carrier denied the request. The parties failed to resolve the dispute during the preliminary steps of the grievance procedure. The matter proceeded to the Special Board of Adjustment for a final and binding determination.

PERTINENT PROVISIONS

MEDIATION AGREEMENT
FEBRUARY 7, 1965

ARTICLE III - IMPLEMENTING AGREEMENTS

Section 1 -

The organizations recognize the right of the carriers to make technological, operational and organizational changes, and in consideration of the protective benefits provided by this Agreement the carrier shall have the right to transfer work and/or transfer employees throughout the system which do not

require the crossing of craft lines. The organizations signatory hereto shall enter into such implementing agreements with the carrier as may be necessary to provide for the transfer and use of employees and the allocation or rearrangement of forces made necessary by the contemplated change. One of the purposes of such implementing agreements shall be to provide a force adequate to meet the carrier's requirements.

INTERPRETATION

ARTICLE III - IMPLEMENTING AGREEMENTS

The parties to the Agreement of February 7, 1965, being not in accord as to the meaning and intent of Article III, Section 1, of that Agreement, have agreed on the following compromise interpretation to govern its application:

1. Implementing agreements will be required in the following situations:
   (a) Whenever the proposed change involves the transfer of employes from one seniority district or roster to another, as such seniority districts or rosters existed on February 7, 1965.
   (b) Whenever the proposed change, under the agreement in effect prior to February 7, 1965, would not have been permissible without conference and agreement with representatives of the Organizations.

That part of Item I (a) hereof which reads - "***as such seniority districts or rosters existed on February 7, 1965" applies particularly to situations such as those that frequently obtain in collective agreements to which the Brotherhood of Maintenance of Way Employes is a party which provide that seniority is co-extensive with the territorial jurisdiction of a supervisory officer. Under these conditions, if the territory of the designated officer is expanded or contracted it does not have any effect on the seniority of the involved employes. The language above quoted is intended to mean that seniority districts or rosters existing on the effective date of the February 7, 1965 Agreement are not to be changed insofar as the application of the aforesaid agreement is concerned, except as the result of an implementing agreement or other agreement mutually acceptable to the interested parties.

2. In all instances in which the carrier makes a change such as described in Article III, Section 1, of the February 7, 1965 Agreement which does not require an implementing agreement under Item 1 hereof, but which requires an employe to change his place of residence in order to retain his protected status, such employee shall be accorded the benefits contained in Section 10 of the Washington Agreement notwithstanding anything

to the contrary contained in said provisions and shall have five working days instead of the "two working days" provided by Section 10 (a) of said Agreement.

When a carrier makes a technological, operational or organizational change which does not require an implementing agreement, employes affected by such change will be permitted to exercise their seniority in conformity with existing seniority rules.

3. When changes are made under Items 1 or 2 above which do not result in an employe being required to work in excess of 30 normal travel route miles from the residence he occupies on the effective date of the change, such employe will not be considered as being required to change his place of residence unless otherwise agreed.

POSITION OF THE ORGANIZATION

The Organization asserts that Article III, Section 1 generated certain disputes between the parties about the need for implementing agreements when a carrier institutes a technological, operational, or organizational change. The Organization relates that the parties reached a compromise about the need for an implementing agreement when a carrier implemented a technological, operational, or organizational change. It is the position of the Organization that the parties added a provision to grant moving expenses under Section 10 of the Washington Job Protection Agreement to employees affected by a technological, operational, or organizational change that does not require an implementing agreement.

The Organization observes that the present dispute did not require a transfer of employees from one seniority district to another seniority district and did not require an implementing agreement. The Organization points out that the change required the Claimant to change his residence to retain the position.

The Organization challenges the Carrier's argument that no operational or organizational change occurred. The Organization discerns that the Carrier attaches too much significance to the absence of a transfer of employees from one seniority district to another seniority district. The Organization contends that the key inquiry involves a determination of whether an operational or organizational change occurred.

The Organization explains that Article III fails to define an operational or organizational change. The Organization reasons that the ordinary meaning of these terms therefore applies and must derive from the particular facts contained in the record. The Organization finds that the reason the Carrier made the change lacks relevance. The Organization refers to certain arbitral precedent to identify the proper meaning of the disputed language. The Organization points out that the Carrier abolished the original mobile gang and changed the operation by creating a gang with a fixed headquarters location. The Organization interprets the arbitral precedent to reflect that such a change of work location meets the requirement to establish an operational or organizational change within the meaning of Article III and to qualify the Claimant for the benefits set forth in Section 10 of the Washington Job Protection Agreement.

The Organization highlights that the change resulted in the elimination of a per diem allowance for meals and lodging and the need for the Claimant to change his residence, which was 278 miles from the fixed headquarters location. The Organization

acknowledges that the old gang and the new gang perform the same work, however, the method of headquartering the gang changed in such a manner that an operational or organizational change occurred.

The Organization deems the simultaneous abolishment and creation of the gangs to reflect a coordinated plan of restructuring. The Organization repeats that the Carrier's reason to change the arrangement--to save per diem costs--lacks relevance to whether an operational or organizational change occurred. The Organization adds that the Carrier's table of organization changed even though the magnitude of the change may not be dramatic. Instead, the Organization summarizes that the change in the organization of the Carrier's forces and the way the Carrier operates constituted an operational and organizational change. As a result, the Organization submits that the Carrier had an obligation to provide Section 10 benefits to the Claimant.

POSITION OF THE CARRIER

The Carrier asserts that the Article III, Section 1 and Article V of the Job Stabilization Agreement and a compromise Interpretation (dated November 24, 1965) apply to the present dispute. The Carrier maintains that the Carrier decided to abolish a three-man traveling Bridge and Building Department gang and re-bulletin the gang at a fixed headquarters for budgetary reasons. It is the position of the Carrier that no transfer of any employee occurred from one seniority district or roster to

another seniority district or roster. The Carrier stresses that the gang performed the same work at all times. The Carrier emphasizes that the Carrier had the right to act in this manner prior to February 7, 1965. As a consequence, the Carrier argues that no requirement existed to have an implementing agreement under these circumstances. In the absence of a requirement to have an implementing agreement, the Carrier insists that the Claimant lacks a right to relocation benefits under Article V of the Job Stabilization Agreement.

The Carrier recognizes that sometimes an entitlement exists for an employee to receive relocation benefits in the absence of a requirement to have an implementing agreement. The Carrier insists that the Organization must prove that the disputed action constituted an organizational or operational change and that the Claimant had to change his place of residence to retain his protected status.

The Carrier denies that any organizational or operational change occurred. The Carrier reasons that certain arbitral precedent mandates that substantial alterations of a carrier's operational or organizational structure must occur and must involve the transfer of work or employees. The Carrier underscores that a mere reduction in force does not constitute a substantial alteration of a carrier's operational or organizational structure. The Carrier highlights that no meaningful change occurred to the relevant maintenance activities or engineering function. The Carrier mentions that no shift or

transfer of employees occurred. The Carrier discerns that such ordinary managerial decisions do not fall within the scope of Article III. The Carrier elaborates that the gang did the same work after being headquartered as the gang had performed before being headquartered. The Carrier comments that the Organization failed to prove that an operational or organizational change and a transfer of work occurred within the meaning of Article III, Section 1. The Carrier concludes that no organizational or operational change occurred and that no transfer of work occurred. The Carrier submits that the Carrier exercised its managerial rights that pre-dated the Job Stabilization Agreement. The Carrier finds that the Organization failed to prove that the Claimant had a right to relocation benefits. The Carrier requests that the claim be denied.

OPINION

I. Introduction

This case involves language interpretation. The parties stipulated that the Organization--as the moving party--has the burden to prove its case by a fair preponderance of the credible evidence.

In analyzing the record, the Special Board of Adjustment underscores that Section II(A) of the October 25, 1996 agreement between the parties that led to the creation of this Special Board of Adjustment indicates that:

> The Board shall not have the authority to add contractual terms or to change existing agreements governing rates of pay, rules and working conditions.

The following analysis reflects these limitations on the authority of the Board.

II. The Meaning of Article III, Section 1

A careful review of the record indicates that Article III, Section 1 is unclear. Article III, Section 1 fails to specify how to determine whether an action constitutes an operational or an organizational change. In particular, this provision omits whether such an assessment should occur from the standpoint of a carrier, from the standpoint of an organization, or from the standpoint of an employee or a group of employees.

The perspective of such an evaluation oftentimes can make a difference. A carrier may view a change to be much less significant and therefore not within the meaning of an operational or an organizational change whereas an organization, an employee, or a group of employees may regard the same change as quite significant and therefore definitely within the meaning of an operational or an organizational change.

The parties introduced certain arbitral precedent concerning the proper interpretation and application of Article III, Section 1. In addition to several cases from the Third Division, the Organization refers to the following arbitral precedent from Special Board of Adjustment No. 605: Award No. 132 (September 10, 1969) (Friedman, Neutral); Award No. 220 (November 16, 1970) (Friedman, Neutral); and Award No. 235 (January 19, 1971) (Friedman, Neutral). The Carrier relies on the following arbitral precedent from Special Board of Adjustment No. 605:

Award No. 43 (April 28, 1969) (Rohman, Neutral); Award No. 124 (August 7, 1969) (Rohman, Neutral); Award No. 167 (December 8, 1969) (Friedman, Neutral); Award No. 503-B (September 24, 1996) (LaRocco, Neutral); and Award No. 504 (September 24, 1996) (LaRocco, Neutral).

A careful review of these cases fails to reveal any extensive analysis about the proper perspective to use in construing and applying Article III, Section 1. Instead the precedent tends to examine the particular facts and circumstances of the dispute and reach a conclusion with appropriate analysis restricted to the particular facts and circumstances set forth in the record. In doing so, the decisions tend to focus on either the decision of the carrier or the effect of the decision on the employee or employees involved in the dispute without necessarily acknowledging the different possible perspectives in a direct way. As a result, different precedent exists to support the positions of both parties.

A careful reading of Article III, Section 1, however, expressly confirms that the carriers have an affirmative right to make operational and organizational changes. This language reflects quite a broad latitude that the carriers have to make changes in the workplace. The carriers guaranteed, insured, and preserved such authority by using especially expansive language.

The protective benefits and relocation benefits set forth in Article III, Section 1 and the second part of the compromise Interpretation (which covers situations that do not require an

implementing agreement) shift the focus to the employee or employees, who become affected by the exercise of the right of the carriers to make operational or organizational changes. The availability of such benefits are derived from the right of the carriers to make the operational or organizational changes. As in the present dispute, the potential availability of such benefits to an employee or to employees sometimes encourages the Organization, an employee, or employees to argue that a change falls within the scope of Article III, Section 1 because the employee or the employees then become eligible for the protective benefits and/or relocation benefits.

In such cases the critical inquiry oftentimes remains the need to pinpoint the proper standard to use to determine whether an operational or organizational change occurred. Insofar as the carriers have obtained wide discretion to make operational or organizational changes, an objective analysis requires that wide latitude must exist to protect the right of the carriers to make such operational or organizational changes. The benefits that flow to the employees as a result of such changes are ancillary, incidental, and secondary to the primary focus of Article III, Section 1, namely, to guarantee the carriers the right to make such operational and organizational changes.

III. The Application of Article III, Section 1

In the present case, the record indicates that the Carrier abolished Gang 6216; established Gang 6226; changed the days of work from Monday through Thursday to Monday through Friday;

changed the regular rest days from Friday, Saturday, and Sunday to Saturday and Sunday; changed the hours of work from 10 hours per day to 8 hours per day; eliminated the $48 per diem payments; instituted reimbursement for actual necessary expenses while the members of the new gang were away from the fixed headquarters location; eliminated the headquarters on line arrangement; and instituted the fixed headquarters location. The record further indicates that the new gang operated in the same territory as the original gang and that the members of the new gang performed the same tasks as the members of the original gang.

No dispute exists that the Carrier had the right to institute these changes. In fact, Article III, Section 1 vests the Carrier with a wide range of discretion to make such changes. Such important, noticeable, and substantial changes fall within the scope of Article III, Section 1 because they involve operational and organizational changes. A mere abolishment of a gang did not occur. Instead, the simultaneous abolishment of one gang and the establishment of a new gang reflect that an operational and organizational change occurred. This change constituted an alteration, a rearrangement, and a restructuring of the way the Carrier conducted its business of maintaining its property. These substantial changes exceeded the circumstances that arise in an ordinary reduction of forces.

As a consequence, the Carrier had the right to make such operational and organizational changes and the Claimant had a right to receive the relocation benefits that apply in such a

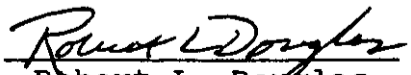
situation. Any change to this arrangement is a matter for collective bargaining, not arbitration.

IV. Conclusion

Under these special circumstances and based on a thorough analysis of the entire record, the Organization proved by a fair preponderance of the credible evidence that the Claimant did have a right pursuant to Article III, Section 1 of the February 7, 1965 Agreement, as amended, to receive the Section 10 benefits of the Washington Job Protection Agreement of 1936 because an organizational or operational change occurred in connection with the abolishment of headquartered on line Gang 6216 on or about April 8, 1999 and the simultaneous creation of fixed headquarters Gang 6226. The Award shall indicate that the Claim is sustained.

Accordingly, the Undersigned, duly designated as the referenced Board and having heard the proofs and allegations of the above-named parties, make the following AWARD:

> The Claimant, W. S. Wallace, did have a right pursuant to Article III, Section 1 of the February 7, 1965 Agreement, as amended, to receive the Section 10 benefits of the Washington Job Protection Agreement of 1936 because an organizational or operational change occurred in connection with the abolishment of headquartered on line Gang 6216 on or about April 8, 1999 and the simultaneous creation of fixed headquarters Gang 6226. The Claim is sustained.



Robert L. Douglas
Chairman and Neutral Member

Donald F. Griffin
Union Member
Concurring/Dissenting

A. K. Gradia
Carrier Member
Concurring/Dissenting

Ernest L. Torske
Union Member
Concurring/Dissenting

John F. Hennecke
Carrier Member
Concurring/Dissenting

DATED: January 20, 2002
STATE of New York)ss:
COUNTY of Nassau

I, Robert L. Douglas, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Opinion and Award.