DOCKET NO. 109 --- Decision by Referee Bernstein

Lighter Captains' Union, Local 996, I.L.A., AFL-CIO

and

Erie-Lackawanna Railroad Company

Parties to the Dispute

QUESTION:

"Interpretation of Sec. 1, of the Agreement of May, 1936, Washington, D.C., which states as follows:

'that the fundamental scope and purpose of this agreement is to provide for allowances to defined employees affected by coordination as hereinafter defined, an-l it is the intent that the provisions of this agreement are to be restricted to those changes in employment in the Railroad Industry solely due to and resulting from such coordination. Therefore, the parties hereto under; tand and agree that fluctua tions, rises and falls and changes in volume or character of employment brought about solely by other causes are not within the contemplation cf the parties hereto, or covered by or intended to be covered by this agreement.'

"Interpretation of Section 7, (cj 2, of the Agreement of May, 1936, Washington, D. C., relative to in employee being deprived of his employment and entitled to a coordination allowance, under that portion cf Section 7, (c), 2, which reads as follows: ' or by other employees, brought about as a proximate consequence of the coordination, and if he is unable by the exercise of his seniority right; to secure another position on his home road or a position in the coordinated operation.' --(Emphasis added by underlining.)

"Interpretation of Section 12, of the Agreement of Nay, 1936, Washington, D.C., relating to a practice whereby the Erie R.R. Co.," in deference to maintaining and repairing its own barges and lighters chose to lay up its own floating equipment; and did thereby lease, charter, rent or acquire floating equipment from the D. L. & W. R. R. Co. These D. L. & W. barges and scows were manned by D. L. & W. Lighter Captain forces. This necessitated the furloughing of Erie Lighter Captain forces. These men were denied work that contractually should have been theirs. However, in the rearrangement and adjustment of the Lighter Captain forces of both the Erie and the D. L. & W. R. R. cos., Lackawanna Captains were pressed into the service of the Erie R. R. Co. aboard D. L. & W. floating equipment. This joint action of the former Erie and D. L. & W. R. R. Cos., deprived Erie Lighter Captain; of active employment during 1959 and 1960. This was during a period when the Erie R. R. Co. and the D. L. & W. R. R. Co. were anticipating merger."

FINDINGS:

(a) This case is a companion to Docket No. 103 and should be read with it. What was said there about the alleged violation of Section 12 applies equally here. While there are other common issues, the denial of the claims

makes it unnecessary to dispose of them, although were it otherwise their disposition in Docket No. 103 would govern here.

Claimants held regular positions when in the Spring and Summer of 1962 (more than a year after the implementation) they claim to have been adversely affected by the coordination effectuated in February 1961. The Organization's contention is that by reason of the merger of seniority lists in February 1961 the Claimants were adversely affected in their compensation in May, June and August 1962. The Carrier counters that for a year after the implementation their compensation matched or exceeded that prior to coordination (a fact generally attested to by their work records and the absence of claims under the Washington Agreement); the drop in work is attributable, it argues, to a demonstrable drop in tonnage handled. The record amply supports these contentions. Claimants experienced no adverse effect for over a year during which the coordination and dovetailed seniority lists had been in effect. The total tonnage handled by lighters, barges, and scows showed a decided drop from 1961 to 1962 when each month is compared with the corresponding month of the preceding year. Moreover, for the months for which claims are made (May, June and August, 1962) tonnage fell off from the preceding months. These decreases were not slight. So, for example, in April 1962 tonnage totaled 69,332, but in May totaled only 59,989; the slight increase to 62,438 in June did not regain the April level of activity. After a 71,995 ton month in June, there was a precipitous drop to 48,886 tons in August. Boat days of service fluctuated accordingly. These changes are sufficient to account in major part for the diminished earnings of these Claimants in the months of April, June and August 1962.

Section 1 of the Agreement provides:

> The fundamental scope and purpose of this agreement is to provide for allowances to defined employees affected by coordination as hereinafter defined, and it is the intent that the provisions of this agreement are to be restricted to those changes in employment in the Railroad Industry solely due to and resulting from such coordination. Therefore, the parties hereto understand and agree that fluctuations, rises and falls and changes in volume or character of employment brought about solely by other causes are not within the contemplation of the parties hereto, or covered by or intended to be covered by this agreement.

Conceivably the brunt of the work loss occasioned by the reduced tonnage available to the Carrier might have fallen on different employees had there been no merged seniority list. But that is rather speculative. Where, as here, facilities and rosters have been merged and no adverse effect is experienced until some time later when there is a palpable and indisputable drop in the work available to the Carrier, that fluctuation may be taken as the cause of employees' diminished earnings. Hence, the Claimants have not shown that they were adversely affected by the coordination.

(b) The claim for Captain Dirienzo is different. He was the long time Captain of heavy hoist Whirler No. 5. At the end of July 1962 he was bumped from this position by another former Erie Captain, Thomas Doyle who was

number 9 on the merged Hoist Captain seniority list which is separate from the Lighter Captain list. - (All but one of those with greater seniority than Captain Doyle also were former Erie men.) Captain Doyle's move was occasioned by the retirement of Gas Hoist Lighter No. 456 which Carrier declares had become unserviceable; soon thereafter it was sold. The Carrier declares that this change was unrelated to the coordination.

But the Organization contends that tht availability of former Lackawanna heavy duty hoists freed Whirler No. 5, which had large capacity, from its former fixed station at Weehawken, thereby enabling the Carrier to dispense with smaller hoists and thereby reduce the number of places for Hoist Captains.

In response the Carrier list; these reasons for retiring the hoists it did:

(1) They were beyond economical repair;

(2) Technological change and the changed methods of stevedoring companies reduced the demand for Hoists;

(3) More unloading of ships from decks' to open boats utilizing the ships' gear also decreased demand;

(4) The biggest factor was reduced volume of tonnage handled.

This last factor has been amply demonstrated. The other factors lend additional weight to the conclusion that the displacements did not stem from the coordination.

DECISION:

The claims are denied because the alleged worsening of compensation occurred a substantial period after the coordination was effected and was then directly traceable to decreases in the Carrier's tonnage handled by lighters, scows and barges. Hence the coordination has not been shown to be the cause of the Claimants' worsened position.

DOCKET NO. 110 --- Decision by Referee Bernstein

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| National Marine Engineers Beneficial Association District No. 1 | ) | |
| and | ) | |
| The Long Island Railroad Company | ) | Parties to the Dispute |
| and | ) | |
| The Pennsylvania Railroad Company | ) | |

QUESTIONS:

*"Question No. 1.* Whether or not the arrangement made by the P.R.R. in letter of February 19, 1953, providing ultimately for the abandonment by the L.I.R.R. of its floating equipment and facilities and utilization by the P.R.R. of the separate facilities and floating equipment in furtherance of the floating operations or services to which the abandoned facilities and floating equipment had been devoted, constitutes a coordination within the meaning of Section 2(a) of the Washington Job Protection Agreement of May 1936? And, if so;

"Question No. 2. Does the proposed agreement, put forth by the Organization, M.E.B.A., in letter dated May 7, 1963, see exhibit #3 equitably dispose of the matter in accordance with Section 5 of the Washington Job Protection Agreement of May 1932?"

FINDINGS:

Only Question 1 has been argued by the parties; in view of the decision on it, it is not necessary to decide Question 2.

From before 1900 through the early part of 1953 the Long Island provided floatation service for the Pennsylvania from Greenville, New Jersey to Long Island City, New York which is an interchange point between the two Carriers; the services were rendered by Long Island crews and equipment pursuant to a series of agreements, the last dated October 30, 1951.

The agreement provided for payment to the Long Island on a "cost plus" 10% bas is. "Seventh" provided that the agreement was terminable by either Carrier on six months' notice. Such a notice was given by the Pennsylvania in a letter dated February 19, 1953 notifying the Long Island that its right to terminate was being exercised to take effect six months later on August 31, 1963. As a result, the jobs of some fifty Long Island employees were abolished, including those of eight members of N.E.A.A.

The Organization claims that this change in operations *constituted* a "coordination" between the two Carriers, both of which are individual signatories

of the Washington Agreement, and that the Agreement was violated because the Carriers failed to give Section 4 notices and to conclude Section 5 Implementing agreements. It argues that Long Island work was transferred to Pennsylvania facilities pursuant to joint action by the two Carriers, citing Docket No. 71 as a comparable situation.

The Carriers contend that the discontinuance of the contract arrangement was not a coordination because no combination of services or facilities was involved and that the action was not joint but unilateral under the 1951 agreement, pursuant to which the Pennsylvania resumed doing its own work; they invoke Docket No. 38 as an applicable precedent.

Although the Pennsylvania owns 100% of the Long Island's shares, there is no dispute that the two are separate Carriers for purposes of the Washington Agreement; moreover, there seems no dispute that each operated quit? independently of the other at all times relevant to this dispute, the separate management of the Long Island having been mandated by New York legislation.

Docket No. 71 is cited for the proposition that the "joint action" required by Section 2 of the Washington Agreement is inferable from the entire situation and need not be proved directly. But it is not necessary to resolve that issue because I conclude that what was done here did not constitute a "coordination" in any event. The work performed by Long Island employees was Pennsylvania work which i.t was the Long Island's to perform only by virtue of the Pennsylvania's contracting out of the work. The Long Island could not in turn transfer it to employees of another carrier; but the Pennsylvania could cancel the arrangement under the Carriers' agreement and the evidence indicate; that this was done for valid business reasons. The resulting resumption of the work by Pennsylvania employees was not tte kind of combination of services and or facilities to which the Washington Agreement is directed either in term; or intent. After the cancellation Pennsylvania work was to be done by Pennsylvania employees o n Pennsylvania facilities-this does not come within the definition of Section 2. (Another issue would be presented were the work transferred to employees of a third carrier.; The elements of this case seem essentially like those in Docket. No. 38, as the Carriers argue, Nor is this conclusion changed by the fact that a Long Island rug used for the disputed work was sold to the Pennsylvania in the absence of a showing that this was anything other than a bona fide sale.

DECISION:

The cancellation of the contract under which Long Island employees performed floatation operations fcr the Pennsylvania employees and facilities did not constitute a "coordination."

DOCKET NO. 111 - Withdrawn

Joint Texas Division of Chicago, Rock Island )
and Pacific Railroad Company )
Fort Worth and Denver Railway Company )
Missouri-Kansas -Texas Railroad Company ) Parties to the Dispute
)
vs. )
)
The Order of Railroad Telegraphers )

QUESTION: Coordination of station facilities and services of the above carriers at Waxahachie, Texas entering into an agreement between the Management and The Order of Railroad Telegraphers on the Carriers under the Agreement of May, 1936, Washington, D. C.

DECISION:

Withdrawn.

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DOCKET NO. 112 --- Withdrawn

Missouri-Kansas-Texas Railroad Company )
Fort Worth and Denver Railway Company )
) Parties to the Dispute
vs. )
)
The Order of Railroad Telegraphers )

QUESTION:

To determine the issue of Section 5 of the Agreement of May, 1936, Washington, D.C. (Washington Job Protection Agreement) requires the Carrier to accede to demand of the Employes that the joint agent under this coordination agreement and who will be subject to agreement rules of the Fort Worth and Denver Railway Company's working agreement, the Operating Company, that the existing payroll classification be changed from that of Star Agent to that of Agent-Telegrapher; thus, in fact, giving the Telegraphers' Organization of the N-K-T a right to participate in negotiating a change in the classification rule now existing in agreement between the FW&D and their employes represented by the FW&D General Chairman of the Telegraphers' Organization.

The question at issue also involves an increase in the rates of pay for the forces retained at the coordinated station facilities et Stamford cn the implication that the forces should share in any saving made by such consolidation of forces.

DECISION:

Withdrawn.

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DOCKET NO. 113 --- Withdrawn

St. Paul Union Depot Company )
Chicago, Milwaukee, St. Paul and )
Pacific Railroad Company ) Parties to the Dispute
)
vs. )
)
Brotherhood of Railway and Steamship Clerks )

QUESTION: ) Would the arrangement described in the facts which follow constitute a "Coordination" within the meaning of Section 2 (a) of the Agreement of May, 1936, Washington, D.C.?

(2) If the answer to Question (1) is affirmative,

(a) should the carriers' proposal for the selection and assignment of employes set forth in the proposed agreement attached hereto as Exhibit D-1 be adopted for effectuating the coordination of the mail handling operations at St. Paul, Minnesota?

(b) In the event it is determined that the carriers' proposal concerning the selection and assignment of employes should not be adopted in its entirety, what revisions should be adopted for effectuation of this coordination?

DECISION:

Withdrawn.

DOCKET NO. 114 --- Withdrawn by Organization

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| Railway Employes' Department, System Federation No. 6 | ) | |
| vs. | ) | Parties to the Dispute |
| Chicago, Rock Island and Pacific Railroad Company | ) | |

QUESTION That under the terms of the Washington Job Protection Agreement of May, 1956, Firemen and Oiler Ben Becton, who was employed by the Chicago, Rock Island and Pacific Railroad Company, is entitled to receive coordination allowance, in accordance with the provisions of Section 7(a) of said agreement, as a result of the coordination of passenger facilities of the Chicago, Rock Island and Pacific Railroad Company with the Illinois Central Railroad Company, at Memphis, Tennessee on OK about June 1, 1961.

DECISION:

Withdrawn.

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DOCKET NO. 115 --- Decision by Referee Bernstein

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| The Brotherhood of Railroad Trainmen | ) | |
| and | ) | Parties to the Dispute |
| The Erie-Lackawanna Railroad Co. | ) | |

QUESTION:

"The Carrier violated the agreement between the parties when it failed to accord a displacement allowance as claimed by Griffith Davis for the months of May and June, 1962, as provided in Interstate Commerce Commission Order entered September 13, 1950, I.C.C. Finance Docket 20707, which order made subject by reference to the employees' protective conditions imposed in the New Orleans Union Passenger Terminal Case 282-ICC-271."

FINDINGS:

The Claimant, Mr. Griffith Davis, was a Trainman on the former Scranton Division of the Delaware, Lackawanna and Western Railroad. The work of his division was covered by an Implementing Agreement which went into effect on December 7, 1961. The claim is for the difference between his test period average earnings and the lower amounts he earned in May and June 1952.

(a) The Extra Issue

A main ground of the Carrier's denial of the claim is that Mr. Davis worked "extra" before and after the merger. However, despite an early Carrier denial that there was an "extra board", it was established that there was a regulated "extra board" for trainmen who worked "first in-first out", i.e., without regard to the relative seniority of those on the board. In addition, it was established that others who had been removed from such an extra board and reduced to working extra without the assurance of fairly steady work afforded by a regulated extra board had received allowances from this Carrier. Moreover, had Mr. Davis been removed in that fashion, the Carrier stated its willingness to pay an allowance. Hence this ground of denial is wholly insubstantial; his "extra" status at the time of coordination was not a proper basis for denying his eligibility. See also Docket No. 108.

(b) Whether The Coordination Caused Claimants Diminished Earnings

The Carrier also contends that Mr. Davis' lessened earnings were caused by decreased Carrier business rather than any change involved in the merger. It adduced evidence of a constant decline in carloadings starting in April 1960. However, it is appropriate to look at the months following the merger to ascertain what influence that factor had; perhaps it also is useful to look at the carloadings for the months in the preceding year comparable to those for which claim is made. All show a steady but not a drastic decline in carloadings. However, there is data for only one of the months immediately following the effectuation of the merger until the claim was made.

The Carrier representatives argued that in view of this decline and the fact that there was an arrangement for the apportionment of work among Delaware and Erie Trainmen in proportion to carloadings prior to merger, merger was excluded as a causative factor. But that conclusion does not follow because the merger did occasion economies which reduced work opportunities (see Docket No. 146); the possibility of proportional sharing in fewer job opportunities does not negate the impact of the merger-made efficiencies. Coming so soon after merger, the reduction of Claimant's earnings below his test period average made a prima facie case of merger-caused adverse effect which was buttressed by the observable economies made possible by the merger. The counter-proof of lessened business was inconclusive on this issue and insufficient to overcome the Organization's showing that the Claimant's compensation had been lowered by the merger.

DECISION:

Contrary to Carrier's contention, Claimant's extra status at the time of coordination does not disqualify him from a Section 6 allowance. Nor did the Carrier overcome the Claimant's prima facie showing of merger-caused adverse effect by inconclusive evidence attempting to show that his lessened earnings were caused by a decline in Carrier's business. The Carrier violated the Agreement by failing to pay claimant Griffith Davis a displacement allowance for the months of May and June, 1962 and it is directed to pay such allowance as computed under Section 6(c).

DOCKET NO. 116 - - - Withdrawn

Brotherhood of Railway and Steamship Clerks )
)
vs. )
) Parties to the Dispute
Detroit, Toledo and Ironton Railroad Company )
Wabash Railroad Company )
Ann Arbor Railroad Company )

QUESTION:

(a) The transfer of Ann Arbor accounting work from the Wabash General Office at St. Louis, Missouri, tc the DT&I General Cfficc at Dearborn, Michigan and the transfer of Ann Arbor work from various stations on the Ann Arbor Railroad to various stations on the DT&I Railroad, is a coordinating of se;-arate railroad facilities and subject to the terms and conditions of the Washington Agreement of May 1936, Washington, D.C.

(b) The Carriers violated the terms and conditions of the Washington Agreement when they failed to furnish a Section 4 notice of intended coordination and failed and refused to apply the terms and conditions of the Agreement for the protection of the employes affected by the coordination.

(c) The Carriers violated the terms and conditions cf the Washington Agreement when they coordinated Ann Arbor work with DT&I work Without agreement as contemplated by Section 5.

*(d)* The Carriers shall now be required *to* restore the status *quo* and apply all the terms and conditions of the Agreement to the coordination involved.

DECISION:

Withdrawn.