DOCKET NO. 130 --- Decision by Referee Bernstein

Transportation-Communication Employees Union	)	
	)	
and	)	Parties to the Dispute
	)	
Erie-Lackawanna Railroad Co.	)	

QUESTION:

"Are employees who were adversely affected by the change of employment when the Erie-Lackawanna Railroad Company consolidated the former DL and W Railroad 'WF' Office, Binghamton Passenger Station, Binghamton, New York, with the former DL and W East Binghamton Yard Office, Binghamton, New York, into a new communication center known as 'QD' Yard Office located in the former Erie Railroad Company Freight Yard Office at Binghamton entitled to the protection afforded employees by the Memorandum Agreement of September 11, 1961?"

FINDINGS:

(a) The Merits

In Finance Docket No. 20707 the ICC imposed the New Orleans Union Passenger Terminal Conditions when approving the merger of the Erie and Lackawanna in September 1960. The parties to this case executed an Implementing Agreement on September 11, 1361; that Agreement made specific how the Washington Agreement was to be applied. The controversy here is whether that Implementing Agreement govern; the elimination in late 1963 of the former Lackawanna Binghamton Passenger Station "WF" Office and the former Lackawanna Binghamton Yard Office which were consolidated and relocated at what had been the Erie Freight Yard Office. In accomplishing this change the Carrier abolished the positions at both discontinued offices and bulletined three seven day positions and one relief position at the new "QD" office, resulting in the loss of one job and an alleged "change in employment" for all the employees formerly assigned to the positions which were abolished.

The Organization contends that Article III, Section 1 of the Implementing Agreement extends its protection beyond that of the Washington Agreement to "any change of employment by reason of [the] merger." That section reads :

> Any change in employment by reason of this merger contemplated by the carrier subsequent to the effective date of this agreement shall be subject to the procedures set forth in Sections 4 and 5 of the Agreement of May, 1936, Washington, D.C. (hereinafter referred to as the 'Washington Agreement").

The Carrier responds that the language is not susceptible to such an interpretation and that only Sections 4 and 5 of the Washington Agreement, calling for notice and an implementing agreement, are the subject of the Article. That argument is persuasive and is reenforced by the fact that the remainder of the Implementing Agreement provides procedures only for benefits covered by the Washington Agreement and no others.

The pivotal question then becomes: did the combination and relocation of the facilities constitute a "coordination" (the Washington Agreement terminology) or a "merger" (the corresponding term of the Implementing Agreement)? The latter is undefined but apparently contemplates application of the Washington Agreement term which is defined this way:

> 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.

In Docket No. 70 this provision was discussed and it was held that:

> Nothing in this language restricts "coordination" to the combination of like things, although that might be the kind of combination most anticipated. The combining of one carrier's facilities and/or services with another carrier's personnel is no less a "merging" or "pooling" than the combining of the same or different kinds of facilities and/or services. Many ordinary coordinations require the combination of "facilities" and employees in order to render "services" -- both categories covered by Section 2 (a).

In this case the two former Lackawanna operations were consolidated at a former Erie facility. Not only does the term as defined in the Agreement fit, but the result of the consolidation is the kind to which the Agreement is addressed -- the combination of separate operations and facilities for greater efficiency, and the protection of employees adversely affected by such arrangements. The former Erie facility made it possible to combine two former Lackawanna operations which resulted in a saving of manpower. The Agreement was meant to apply to such transactions and any loss of earnings which might result.

The Carrier attributes these rearrangements to operational changes which required less switching and classification of trains at East Binghamton. The remaining Telegrapher work there was transferred to another office about 150 yards from the Passenger Terminal. As Telegrapher work done there would in part be duplicative, the two offices were combined into the new "QD" office -- at the former Erie Freight House. While related to the operational changes, the combination nevertheless was a combination of services and facilities of the two former carriers and made possible by the merger. Nor does it change the result that the changes were accomplished in conformity with the Erie-Lackawanna-Telegrapher rules which themselves are post-merger.

I conclude that the Carrier violated the notice, implementation agreement and other protective conditions of the Implementing Agreement which follow the pattern and, indeed, provisions of the Washington Agreement.

(b) Procedure

The Carrier asserts that the claim was untimely because not made "within sixty days following the last day of the calendar month in which compensation loss is claimed" as required by a separate letter agreement of September 11, 1961. The claim letter naming individuals allegedly adversely affected was dated January 23,

1964. The changes complained of took place on October 31 and November 7 so that the first month in which adverse effects could take place was November 1963. The January 23, 1964 letter was within the 60 days following the last day of November -- hence it was timely. Moreover, the Organization protested the changes even before they took place. Hence the allegation that the claim is barred as untimely is without factual support.

DECISION:

The combination of two former Lackawanna telegrapher offices at a former Erie facility in Binghamton constituted a coordination. Failure to give the Section 4 notices and to reach a Section 5 Implementing Agreement as agreed and to accord the protective benefits to adversely affected employees violated the September 11, 1961 Implementing Agreement. The Carrier must serve the required notice, negotiate an implementing agreement and pay the benefits called for by the September 11, 1961 Agreement to adversely affected employees in accordance with the procedure detailed in Docket No. 106.

DOCKET KC. 131 --- Decision by Referee Bernstein

Transportation-Communication Employees Union)
)
vs.) Parties to the Dispute
)
Erie-Lackawanna Railroad Co.)

QUESTION:

"Is D. Leahy, who was employed in the Telegraph Office at Jersey City, New Jersey, prior to September 8, 1952, date of coordination of Telegraph Offices at Hoboken, New Jersey and Jersey Ciry, New Jersey, entitled to displacement allowances under the provision; of the Implementing Agreement dated September 11, 1961?"

FINDINGS.

This case arises out of the Erie-Lackawanna merger approved by the I.C.C. in 1960 and the same general Implementing Agreement of September 11, 1961 involved in Docket No. 130.

Pursuant to that Agreement specific implementing agreements were negotiated governing the merger of various facilities, including the consolidation of the former Erie "YA" office at Jersey City and the former Lackawanna "HO" office at Jersey City into a new "YA" office at Hoboken in September 1962. A total of 13 regular positions, including relief, operated the former offices; the new "YA" Office required 6 positions (one of which was not filled).

The controversy here is over a claim by Mr. D. Leahy who held the second trick telegrapher position in the old "YA" office at Jersey City; another claim is being held in abeyance. The old "YA" second trick position was abolished and the new "YA"

office positions were offered first to those in the offices abolished; Mr. Leahy succeeded in bidding in the second trick telegrapher position in the new office. The General Chairman requested test period data for Mr. Leahy in December, 1962. The Carrier refused the information on the ground that he was "not affected by reason of merger" because he held the same position as he did before the merger. Two issues emerge: could Mr. Leahy be adversely affected under these circumstances and may the Carrier unilaterally decide to withhold test period information on its determination that the individual is not eligible for a Section 6 allowance?

In this torrent of changes it would take a metaphysician trained at a German university to demonstrate that a few drops remained the same. Almost every conceivable aspect of the jobs in the discontinued offices were changed--the location, hours, territory served, and, crucially, the number of railroads served--except the title and the craft. Surely one would have no difficulty in deciding that a first vice-president of one of the former Carriers had a different job when he became the first vice-president of the merged Carrier even if his place of work had not changed.

The Carrier places great emphasis upon the terminology of the Oklahoma Conditions, which are comprehended within the ICC-imposed New Orleans Conditions, and the Implementing Agreement. Both repeatedly refer to a "displaced employee" as the one to whom their protection flow. Section 4 of the Oklahoma Conditions extends to any employee who "is displaced, that is placed in a worse position with respect to his compensation and rules governing his work conditions . . . ." As noted in Docket No. 108, this is but a paraphrase of Section 6 of the Washington Agreement. The language of Article IV, Section 1 of the Implementing Agreement, which affords benefits "if as a result of the merger an employee is displaced or deprived of employment", derives from the use of these terms in the Washington Agreement and the Oklahoma Conditions and their interpretations. Thus the Carrier's argument that Mr. Leahy could not be adversely affected because he did not lose his position is rejected for the reasons discussed in Docket No. 108. Indeed, the quite clear precedents under the Oklahoma Conditions are against such an interpretation, even if the Washington Agreement precedents were inapplicable. But they are applicable.

In Docket No. 62 the carrier sought to establish that if an employee had a full time position after the coordination with a rate of pay equal or superior to those of his pre-coordination position, he could not establish eligibility for a Section 6 displacement allowance. That contention was rejected because Section 6(a) of the Agreement requires that his "compensation" not be less than formerly; Section 6(c) provides the method of measuring whether it is or is not. Once direct involvement in a coordination is shown and monthly compensation falls below the test period average, the employee presumptively is eligible for a displacement allowance. If the Carrier can show that despite the merger-based changes in the work situation the first loss of earnings stems from some other cause, a Section 6 allowance is not due. In oral argument, Carrier Members contended that if the post-coordination position rate of pay equals that of the pre-coordination position but total compensation falls below the test period average the only possible explanation would be that hours worked were fewer; but if the hours of the job were the same then there was no change in position and hence no adverse effect. Such reasoning overlooks what was said in Docket No. 62.

In the normal and usual case, applying the formula of Section 6(c) will show whether an employee is "in a worse position with respect to compensation." In other words, if an employee drops below the "average compensation" (all earnings) for a period equal to or less than the "average monthly time paid for" he makes out a prima facie case that he is in a worse position than before the coordination. Because of the many variables -- new schedules, possible differences

in size of work force, probable differences in volume of work, and a host of other factors -- the drop in average compensation is inferentially caused by the coordination.

The inference is rebuttable. Section 6(a) is quite explicit that the "worse(ned) position" must be "as a result of such coordination." If it can be shown that the difference in "compensation" is dce to some cause unrelated to the coordination, the allowance would not be due.

So that even if total hours worked were the same, there may be fever hours of overtime in a coordinated operation which would account for the lessened compensation. Other elements of the employee's work situation may differ because of the coordination and thus produce lower compensation. (For a fuller discussion of this problem see Docket No. 121).

Carrier also invokes Rule 23(a) cf the Erie-Telegrapher's agreement which provides :

An employee will not be considered displaced until his position is actually filled by the employee exercising displacement rights.

As the Claimant has not been "displaced" by a senior employee, the argument runs, he is not "displaced" for tte purposes of the Implementing Agreement. Eut the argument proves too much because it would remove from the protection of the Agreement (and the Washington Agreement) a category clearly intended to be covered -- those whose jobs arc abolished. The rule; provision is addressed to a situation entirely different from tic displacements caused by coordinations.

In this case one difficulty with the Carrier's contention that it nay withhold test period information where it decides there is no eligibility for benefits is demonstrated. Its determination may bc incorrect as it turned out to be here. Other weaknesses of this position arc discussed in Docket Xc. 135, whose reasoning also applies here.

DECISION:

Claimant D. Leahy is entitled to a displacement allowance for any month in which his post-coordination earnings did fall below his test period average after September 1, 1962 because his work was changed in an admitted coordination; the lowered earnings would constitute a worsened position in regard to compensation. The Carrier has made no showing that such lowered earnings stem from a cause other than the merger.

DOCKET NO. 132 --- Decision by Referee Bernstein

Transportation-Communication Employees Union)
)
vs.) Parties to the Dispute
)
Erie-Lackawanna Railroad Co.)

QUESTIONS:

"1. Is W. S. Littell, who was involved in the relocation of passenger station from Main Street, Buffalo, New York, to the foot of Babcock Street, East Buffalo, New York, entitled to benefits under protective conditions prescribed by the Interstate Commerce Commission in its Order dated September 13, 1960 in Finance Docket No. 20707 authorizing merger of The Delaware, Lackawanna and Western and Erie Railroads as implemented by Memorandum Agreement dated September 11, 1961?

"2. Is L. B. Smith, whose position was abolished when Michigan Avenue Tower, Buffalo, New York, was closed, entitled to benefits under the protective conditions prescribed by the Interstate Commerce Commission in its Order dated September 13, 1960 in Finance Docket No. 20707 authorizing merger of the Delaware, Lackawanna and Western and Erie Railroads as implemented by Memorandum of Agreement dated September 11, 1961?"

FINDINGS:

This case also arises from the Erie-Lackawanna merger approved by the ICC in September 1960 and tied up in litigation until the following Spring. On September 11, 1961 the parties executed an Implementing Agreement.

The Organization claims: that the shutdown of the former Lackawanna passenger station in Buffalo and its reopening in the former Erie Railroad yard office several miles away constitutes a coordination; that the transfer of Claimant Littell from the abolished Ticket Agent-Operator position at the old station to a newly-bulletined Ticket Agent-Operator position at the new station came within the Implementing Agreement or, alternatively, is covered by Section 6 of the Washington Agreement; and the shutdown of the Michigan Avenue Tower resulted from the passenger station shutdown so as to require benefits for the Towermen whose jobs were abolished either under the Implementing Agreement or the Washington Agreement. The Carrier contends: that the Implementing Agreement does not grant greater protection than the Washington Agreement; and that the Washington Agreement is inapplicable because a coordination of passenger facilities did not take place inasmuch as the Erie had no passenger facilities with which the Lackawanna's could be combined.

In contending that the Implementing Agreement expands upon the benefits and eligibility provisions of the Washington Agreement, the Organization relies upon a provision which reads:

ARTICLE III

1. Any change in employment by reason of this merger contemplated by the carrier subsequent to the effective date of this agreement shall be subject to the procedures set forth in Section 4 and 5 of the Agreement of May 1936, Washington, D.C. (hereinafter referred to as the "Washington Agreement").

2. The carrier's letter notice of August 11, 1960, copy attached, meets these requirements as to the rearrangement of forces by reason of this merger estimated at this time in the specific cases outlined in said letter notice.

While the language conceivably may go beyond the requirements of Section 4 and 5 of the Washington Agreement (although it is not clear to me what it might include that they do not), nothing in Article III enlarges upon the coverage of Sections 6 and 7 of the Washington Agreement, while the benefit sections of the Implementing Agreement are cast wholly in terms of the Washington Agreement and derive their content from those provisions. No benefit eligibility provisions are to be found which vary those of the Washington Agreement.

However, the Washington Agreement seems applicable because former Lackawanna passenger "operations" and "services" were combined with former Erie "facilities" in the establishment of the new passenger terminal.

Hence the abolition of Mr. Littell's former position and the establishment of the new one were elements in the coordination; this is so even though the abolition of the one and the bulletining of the other also were required by the rules agreement. These events fit the definition of "coordination" in Section 2(a). As Docket No. 70 established, the combination of unlike factors -- such as services and facilities -- can constitute a "coordination." It makes no difference that some such shift had been under consideration long before the coordination, for it was effectuated after the merger and was made possible by the availability of the one carrier's facilities as the site of the operations and services of the other. This was the only issue initially disputed. As to Mr. Littell's request for a recomputation of test period, the Carrier agreed that where, as here, the Claimant has been adversely affected in one merger and is subsequently caught up in another, the test period average should be recomputed when he is adversely affected by the second coordination. However, Carrier Members of the Committee indicated at the last round of argument that they did not endorse this view. The Organizations insisted that such notification came too late. In turn Carrier Members indicated that if the Organizations pressed the point, they in turn would insist upon a decision as to how such a recomputation should be made; the Organizations did not object to a resolution of the latter difference. Argument on the issue was had and, having been posed, it seems best to resolve it.

In dispute is whether the recomputed test period earnings should include amounts paid under Section 6(c) by virtue of the guarantee for the first coordination. The Organizations contend such amounts should be included, the Carriers contend that they should not. Under Section 6(c) the amount payable to an employee continued in service is the difference in any month between his compensation for time actually worked and the guarantee (derived by averaging the total compensation received in the twelve

months in which [the employee] performed service immediately preceding displacement"). Carriers contend that the guarantee should not include amounts paid by virtue of the guarantee for the first coordination because such payments, they argue, are not "compensation." The Organizations declare that they are and point out that Section 6(c) payments are treated as compensation for purposes of Railroad Retirement and Unemployment Compensation. On this aspect of the argument the Employees seem to have the better of it for this reason and further because if such payments were not treated as "compensation," employees adversely affected by two coordinations might be entitled to two guarantee payments which partly duplicate each other (otherwise in computing the amounts due for the second no credit would be given the carrier for guarantee payments in computing what compensation had been received). The language of the Section alone does not clearly point to a conclusion because there is no verbal clue as to whether "compensation" does or does not include guarantee payments paid for the first displacement; the formula can be applied either way.

But the second Carrier Members' argument, that the Organization view would result in a guarantee preserving compensation levels pre-dating the first coordination for a period longer than the five year maximum provided in Section 6(a), is persuasive. The result argued for by the Organization would be justified only if it could be concluded that in the absence of the coordination an employee normally could expect to continue his pre-first coordination earnings even beyond the first five year guarantee period. But such an assumption is wholly unwarranted. The five year guarantee (along with other procedural and benefit provisions) is the quid-pro-quo exchanged by the Carriers for a relaxation of the ban upon shifting work from under rules agreements; it is meant to approximate appropriate compensation for the adverse effects of coordinations. But it also may be true on occasion that in the absence of coordination carrier losses would lead to job losses. Hence it seems appropriate to limit the guarantee payments to their compensatory role for the initial period of five years following the first coordination. Any recomputation due to the adverse effect of a second coordination should be based upon compensation for services actually rendered; on occasion, this could lead to a higher guarantee due to such variables as more overtime worked or rates reflecting post-coordination increases.

A lower guarantee resulting from such a recomputation should not cancel eligibility for the amounts due under the original for the full period of that first guarantee. If eligibility derives from more than one coordination no reason appears not to pay benefits under the one which provides the highest guarantee for whatever period that guarantee is in effect. Of course, adverse effect from the second coordination starts a new guarantee period.

On the day before the old passenger station was closed the Carrier applied to the ICC for permission to discontinue the Michigan Avenue Tower located on the approach to the old station. The ICC public notice of the application reported the "reason stated in the application" was "Account of abandoning the present passenger station at Main Street, no passenger trains will operate on these tracks." Also involved was a new East Buffalo classification yard, a merged operation, which also would reduce yard operations in the vicinity of the Tower. The Carrier asserts that elimination of the Tower had long been under study due to the small amount of traffic in that vicinity. Of course, the shutdown of the old passenger facilities and their "coordination" with Erie facilities further reduced the Tower's utility. According to the Carrier, the station shutdown "merely expedited the inevitable." However, the

close relation in timing, the reduction in Tower functions due to the station transfer, and the Carrier's own declaration to the ICC lead to the conclusion that the Tower shutdown was part and parcel of the station coordination so that the abolition of the Tower jobs entitles Towerman L. B. Smith to the protection of the Agreement.

DECISION:

The relocation of the former Lackawanna passenger station in the former Erie Freight Yard Office in Buffaolo constituted a "coordination" within the meaning of Section 2(a). Accordingly Claimant W. S. Littell's test period should be recomputed in accordance with the principles discussed in the "Findings." The shutdown of the Michigan Avenue Tower was part and parcel of the passenger station shutdown so that the abolition of his Towerman job entitled L. B. Smith to the protection of the Agreement.

DOCKET NO. 133 --- Decision by Referee Bernstein

Transportation-Communication Employees Union)
)
vs.) Parties to the Dispute
)
Erie-Lackawanna Railroad Company)

QUESTION

"How long is the protective period of M A. Goetz, who was employed by the Carrier for a period of six (6) months prior to the effective date of Interstate Commerce Commission Order in Finance Docket No. 20707 in the merger of the Delaware, Lackawanna and Western and Erie Railroads?"

FINDINGS:

The Implementing Agreement in this case provides:

> "Except as modified by I.C.C. Finance Docket No. 20702 and this Agreement, the terms and provisions of the Washington Agreement shall apply in all respects."

The Commission had ordered the protective conditions of the New Orleans Union Passenger Terminal Case. In turn the New Orleans Conditions comprise the Oklahoma Conditions covering "employees adversely affected within four years from the effective date of the Commission order . . . as a minimum" and if an individual thus receives less than would be payable under the Washington Agreement he is to receive all that he would under it "for the full protective period therein provided . . . until the total compensatory benefits provided therein for his particular period of service have been paid." Condition 4 of the Oklahoma Conditions limits protection after the effective date of the Commission order to a period equal to the employees' service prior to that date.

Claimant M. A. Goetz had four months and twenty-two days service prior to the effective date of the order. The Carrier asserts that under the Agreement and the New Orleans Conditions his protective period ended four months and twenty-two days after the effective date of the Commission's order.

The Organization argues that the time limit provision of Condition 4 was extinguished by the Supreme Court's decision in the New Orleans case (Railway Labor Executives' Association v. U. S., 339 U. S. 142 (1950)) and the Commission's subsequent order. Originally the Commission, acting under Section 5 (2)(f) of the Interstate Commerce Act, held that it could order no more than four year's protection in a consolidation case because the Act so declared. The statutory language in dispute was:

> "As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order."

In that case the Organizations argued that the time limits of the second sentence gave the Congressional command as to the minimum protection to be afforded, while the first sentence gave the Commission discretion to order protection beyond that period as would be "fair and equitable." The Court agreed with this interpretation, saying:

> The second sentence thus gave a limited scope to the Harrington Amendment and made it workable by putting a time limit upon its otherwise prohibitory effect. There was no comparable need for such a restriction upon the first sentence. We find, therefore, that the time limit in the second sentence now applies to it and to it alone. As thus limited, that sentence adds a new guaranty of protection for the interests of employees, without restricting the Commission's power to require greater protection as part of a fair and equitable arrangement.

On remand the Commission responded by amending its order to add the Washington Agreement protection to the Oklahoma Conditions. This extinguished the time limits contained in Condition 4 both by the terms of the Supreme Court interpretation of Section 5 (2) (f) and the language in which the Commission cast its order. The Carriers argue that although the Supreme Court read the first portion of the second sentence of Section 5(2)(f) [relating to a four year protective period] as no limitation upon the first sentence calling for "fair and equitable" employee protective conditions, the limitation of the second portion of Section 5 (2) (f) [limiting each employees protective period to a period equal to his own pre-coordination service] does operate

as such a linit. Eut such a construction seems wholly untenable.*

Nonetheless, Carriers argue that the words "for his particular period of service" in the New Orleans Conditions passage quoted above indicates that the Commission retained the time limit of Condition 4. But the New Orleans Conditions there refers to the Washington Agreement and pretty Clearly refers to the benefits under Section 7 which vary according to the individual claimant's period of service.

DECISION:

Both the Implementing Agreement and the New Orleans Conditions insure that Claimant Goetz, an employee "continued in service," is entitled to the full five years' protection of Section 5 of the Washington Agreement without the time limitation contained in Oklahoma Condition 4.

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* When 1 orally presented my tentative opinions to the Committee I indicated a contrary view because, prior to that time, the consequences of the Supreme Court decision had not been fully impressed upon me. Subsequently, while sitting as a neutral member of a special Board of Arbitration on a set of Washington Agreement cases involving the Erie-Lckawanna (the Carrier party to this case) and the Clerks, I heard argument on a similar issue turning upon the effect of the Supreme Court decision. There I was persuaded of the error of my tentative conclusion in this case and I informed the Committee and asked fcr further argument on the issue here, which was presented. However, I was not repersuaded.

DOCKET NO. 134 --- Decision by Referee Bernstein

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees	)	
and	)	Parties to the Dispute
Missouri Pacific Railroad - Gulf District	)	

QUESTION:

"Is W. J. Colman, whose work was transferred from Palestine, Texas to St. Louis, Missouri, under the terms of an agreement dated December 14, 1962, implementing the Washington Agreement entitled to the protection set out in Section 11 of the Washington Agreement for losses incurred in the sale of his home at less than its fair value when he elected to remain on his home road and change his place of residence and displace a junior employee at Houston, Texas?"

FINDINGS:

Clainant's jcb at Palestine, Texas was abolished and the work transferred to St. Louis, Missouri as part of an admitted coordination. His claim is for the protection afforded by Section 11, indemnity against loss occasioned by the sale of a home at less than its fair value. Section 11 applies "to any employee who is retained in the service of any of the carriers involved in a particular coordination ... who is required to change the point of his employment as a result of such coordination and is therefore required to move his place of residence . . . ." iiie Carrier contends that the Implementing Agreement in this coordination made Section 11 benefits available only to those at Palestine who followed their work to St. Louis. Claimant did not do so. Instead he exercised his seniority on his home district and obtained a position in Houston, Texas, some 150 miles away. It is this move and consequent sale of his Palestine home which is the subject of the claim.

The Carrier points to the following language of the implementing agreement:

> Those employees who are furloughed as a result of this coordination who do not transfer seniority to St. Louis under the terms of this agreement will not be entitled to benefits under the Washington Agreement of May 21, 1936. Those employees in Seniority Districts 7, 19, and 22 who are affected by this coordination as provided for under the terms of this agreement will be protected by being paid displacement allowances as provided for in the Washington Agreement of May 21, 1936, but only while holding regular assignments in Districts 7, 19, or 22.

Claimant was in the second category. The Carrier asserts that this language affirmatively states all of the benefits due those in the described categories who did not go to St. Louis. It further claims, without contradiction, that in all of its prior coordinations Section 11 allowances were paid only to those who followed their jobs. It claims even more - that such is the reach of Section 11; but that interpretation finds support neither in the language of the Section nor any precedent other than, perhaps, its own practice.

The Organization asserts that the Implementing Agreement conferred Section 11 allowances by this language:

"Article IV of the agreement of December 7, 1962, shall be applicable to those affected by this coordination."

That article in a companion Implementing Agreement deals with moving allowances and protection for sale of homes, among other things. The first portion dealing with moving allowances seems to be limited to those moving to St. Louis. The second, which concerns protection for those selling their homes, concerns procedures; there is no occasion for mention of any place other than the location which the employee is leaving. The proximity of the two sections plus the similarity of the language of Section 10 of the Washington Agreement dealing with eligibility for moving allowances, buttresses the argument that both were being extended only to those moving to St. Louis.

The first quotation from the Implementing Agreement can be read as the Carrier claim; it is consistent with the bargaining it describes and the interpretation it places upon Article IV - none of which the Employee submission attempts to contradict or explain away except in pointing out that Article IV is "applicable to those affected by this coordination."

Moreover, in other respects the Implementing Agreement apparently confers markedly less protection than the Washington Agreement would afford - which lends additional cogency to the Carrier's contention.

For all of these reasons the claim is denied.

DECTSION:

Claim denied.

DOCKET NO. 135 --- Decision by Referee Bernstein

Transportation-Communication Employees Union	)	
	)	
and	)	Parties to the Dispute
	)	
The Erie -Lackawanna Railroad Co.	)	

QUESTION:

"Is M. J. Keegan, who was an extra employee when regularly assigned employees reverted to the extra list as a result of the Binghamton-Gibson coordination, entitled to a displacement allowance?"

FINDINGS:

Pursuant to an Implementing Agreement of August, 1959, Telegraphers work at Scranton was the subject of coordination. As a result, a regular position holder

was displaced and reverted to extra status, thereby reducing Claimant, Mr. M. J. Keegan, from the third to fourth seniority position on the seniority list from which extra work was assigned in order of seniority. Without controversy Mr. Keegan was in extra-status both before and after the coordination. Carrier paid him a displacement allowance from November 1959 through April 1960 when it discontinued doing so on the ground that he had "return(ed) to the same relative position on the extra board, (and) he is considered at that time as not being in a worse position with respect to his compensation or working conditions."

Carrier now justifies the denial of subsequent claims on the ground that no extra employee is eligible for a displacement allowance; it also, despite the terminology of its own statement just quoted, denies that there was a Telegrapher's extra board on this property. The former payments to Mr. Keegan, it asserts, were made under a mistaken construction of the Washington Agreement which should not prejudice its position here. Apparently that "mistaken" interpretation, which was followed for a considerable time, corresponds to the interpretation which I give to Sections 6 and 7 as regards the eligibility of extra employees as more fully presented in Docket No. 108. While the Carrier is not foreclosed by its former view, that former view has some value as evidence of practice under Section 6. For the reasons set forth in Docket No. 108, the Carrier's ground for denial is rejected; it abandoned, as it had to, the ground that by regaining the third seniority position the Claimant had overcome the adverse effect of the coordination.

It also is worthy of comment that the Claimant's test period average monthly hours were 113.10; in other words, during the twelve months prior to his adverse effect in which he had employment he had worked 25 hours a week, showing a very substantial attachment to his work as a Telegrapher for the Carrier.

As there is no dispute that Mr. Keegan's lowered compensation was caused by the coordination, the only issue being that of eligibility, it follows *that* his claim was improperly denied.

DECISION:

The Carrier violated the Agreement when it denied Claimant Keegan a displacement allowance; contrary to Carrier's contention, Mr. Keegan was eligible for such an allowance as an employee who worked extra both before and after the coordination.

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
AFL—CIO—CLC

C. L. DENNIS International President

The Modern Union ..On The Move

File 469-Z-11

Subject: Washington Job Protection Agreement - Awards - Section 13 Committee

Circular No. 43-69

May 29, 1959

ALL RAILROAD GENERAL CHAIRMEN

Dear Sirs and Erothers:

On April 29 and 30, 1969, Referee David O. Dolnick handed down decisions in eight Section 13 Committee dockets that he had heard on January 27 and 28, 1969. Copies of these decisions are attached for your files and information.

The only case involving Clerks is Docket No. 136 involving the Memphis Union Station Company. In this docket. Referee Dolnick deviated from the decision of Referee M. C. Bernstein in Docket No. 140 involving about the same issue. You will recall that in Docket No. 140 Referee Bernstein reversed previous holdings that were set forth in Dockets 47, 51 and 59. Referee Dolnick reasoned that at the time the Memphis Union Station transaction occurred the carriers were entitled to rely upon the decisions in Dockets 47, 51 and 59. He indicates that the carriers had no notice before April 1, 1964 that the interpretations set out in those awards would bc changed. In view of his reasoning in this case, it is my opinion that notwithstanding the denial decision in Docket No. 136, the decision in Docket No. 140 is still co&rolling with respect co transactions of the nature covered by Docket No. 140.

Sincerely and fraternally,

C. L. Dennis

International President

cc: Grand Lodge Officers
Regional & District Representatives
Organizers
File 469-5(144)
Docket No. 136

SECTION 13 COMMITTEE
AGREEMENT OF MAY 21, 1936, WASHINGTON, D. C.
(WASHINGTON JOB PROTECTION AGREEMENT)

PARTIES TO DISPUTE: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees

and

Memphis Union Station Company
Louisville & Nashville Railroad Company
Missouri Pacific Railroad Company
Southern Railway System
St. Louis-Southwestern Railway Lines
Illinois Central Railroad Company

QUESTION AT ISSUE: Claim of the System Committee of the Brotherhood that:

(a) The transfer of station work and services from the Memphis Union Station Company to the Louisville and Nashville Railroad Company, the Missouri Pacific Railroad Company, the Southern Railway System, the St. Louis-Southwestern Railway Lines and the Illinois Central Railroad Company is a coordination of separate railroad services and facilities and subject to the terms and conditions of the Washington Agreement.

(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 of the Washington Agreement when they coordinated Memphis Union Station work with Louisville and Nashville work, Missouri Pacific work, Southern work, St. Louis-Southwestern work and Illinois Central work without an agreement for the selection of forces from the employes of all the Carriers involved as required 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 coordinations involved.

FINDINGS: The Memphis Union Station, hereinafter referred to as Union Station, is a separate and distinct corporate entity, having been incorporated under the laws of the State of Tennessee in 1909. Five (5) operating Carriers (Specifically named

in the record), each own one-fifth of the capital stock of the Union Station Company. In November 1909 each of the same operating Carriers (each also a separate and distinct corporate entity) entered into a written agreement with the Union Station under which each agreed to use the Union Station facilities for their passenger trains. The Union Station performed such services for the operating Carriers as selling tickets, handling baggage, handling mail, passenger services, switching, repairs to equipment, etc. In other words, those operating Carriers became tenants of the Union Station Company and paid agreed upon fees to the Union Station for the services rendered.

Illinois Central Railroad Company never had and does not now have a proprietary interest in The Memphis Union Station Company. It never used the services of the Union Station, and it never was a tenant of the Union Station. The Illinois Central had had and now has its own passenger station at Memphis, known as Central Station.

Each Carrier, present and predecessor, including the Union Station, have had separate agreements with the Employes to this proceeding and with other labor organizations representing other crafts.

When the November 1, 1999 Agreement expired on April 1, 1964 the operating Carriers ceased to be tenants of the Union Station; all contractual relations were terminated; passenger service of those Carriers out of the Union Station ceased.

Effective April 1, 1964 the Louisville & Nashville Railroad Company became a tenant of the Central Station of the Illinois Central Railroad Company; the Missouri Pacific began to operate its passenger trains out of the Georgia Street facilities of Union Railway Company; Southern Railway System "performed its own passenger terminal services at its North Lauderdale Street Freight House at Memphis with its own employes"; St. Louis-Southwestern Railway Lines operated its last passenger train out of Memphis on October 31, 1952 and its last passenger train into Memphis on November 1, 1952. Union Station has performed no service for SSW since that date and Union Station employes performed no work for SSW since November 1, 1952.

Employes contend that there was a "coordination" under the Washington Job Protection Agreement because the Carriers abandoned the Union Station facilities on April 1, 1964 and transferred their passenger services to other facilities as above set forth.

At the outset, it should be noted that the Illinois Central never operated out of the Union Station and never had a proprietary interest in the Union Station corporate structure. There is no evidence in the record showing that the transfer of

the L&N passenger service to the Central Station of the Illinois Central was a "joint action...to unify, consolidate, merge or pool" the facilities of the two Carriers. L&N voluntarily became a tenant of the Illinois Central. It was neither a "joint action" nor a "coordination" contemplated in Section 2(a) of the Washington Job Protection Agreement.

St. Louis-Southwestern Railway Lines abandoned its passenger trains at Memphis on November 1, 1952. The Union Station performed no services for the SSW since then. The mere fact alone that the SSW remains a stockholder in the Union Station Company does not mean that it was a party to a "coordination" as defined in said Section 2(a). It did not unify, consolidate, merge or pool any of its physical property jointly with any of the other named operating Carriers or with the Union Station Company.

While it is not mandatory that arbitration precedents be followed, it is desirable that there be a consistency in the interpretation of an agreement. Docket No. 51 dealt with a very similar situation under the same Agreement. The Referee held that there was no "coordination" as contemplated in the Washington Job Protection Agreement. A comparable interpretation was made in Docket No. 47. Although in Docket No. 59, the Referee expressed some misgivings about the findings in Dockets Nos. 47 and 51 he followed their conclusions. He said:

> "In conformity with the prior decisions on similar issues in Dockets Nos. 51 and 47, I conclude that the transfer of the work of the Erie and Wabash from the C&EI to C&WI Bureau was not a coordination".

Upon these three well considered precedents alone it would have been desirable to conclude that the transactions of April 1, 1964 in this case were also not coordinations. But the Referee in Docket No. 59 reversed himself in Docket No. 140. To justify the application of the principles in one or the other precedents requires a careful analysis of the findings in each of the Dockets and a review of the contractual rules applicable to the interpretations of agreements. This Referee is not unwilling to accept the obligation and duty to do so. But another rule of contract interpretation exists in this case which makes a thorough detailed review of the basic holdings unnecessary.

The decision in Docket No. 140 was rendered long after April 1, 1964 and after this dispute was submitted to the Committee. The Carriers were aware only of the decisions in Dockets Nos. 47, 51 and 59. Taking cognizance of such a situation, the Referee in Docket No. 140 said:

> "In this case, Southern...might have argued that the interpretation of the Washington Agreement governing this kind of situation should not be changed without notice and that it was entitled to rely upon the interpretation of the agreement in Dockets 51, 47 and 59; and I would have agreed."

Each of the Carriers, parties to this Docket, cite the precedent decisions that this Committee had rendered at the time. All of them relied on the interpretations in Dockets Nos. 47, 51 and 59. For example, The Louisville and Nashville Railroad Company in its Statement dated August 28, 1968, says:

> "In deciding the course it should follow at Memphis on April 1, 1964, the L&N relied upon the decisions of this Section 18 Committee in Dockets Nos. 51, 47 and 59, the first two of which were dated January 6, 1958, and the last of which was dated June 7, 1961. On April 1, 1964, more than two years before Referee Dennstein rendered his decision in Docket No. 360, the L&N had a perfect right to rely upon the Committee's decisions in Dockets Nos. 51, 47 and 59. The L&N can and does argue that the interpretations of this Act should not be changed without notice."

Carriers are entitled to rely upon the interpretations in Dockets Nos. 51, 47 and 59. They had no notice before April 1, 1964 that the interpretations as set out in these awards would be changed. For this reason alone, it is the finding here that the transfer of work on April 1, 1964 as hereinbefore set forth was not a coordination under the Washington Job Protection Agreement.

AWARD

(a) For the reasons set forth in the Findings, there was no coordination under the Washington Job Protection Agreement.

(b) Since there was no coordination, no notice was necessary as prescribed in Section 4 of that Agreement.

(c) For the same reason, no agreement is required as provided in Section 5 of the same Washington Job Protection Agreement.

(d) Because of (a), (b) and (c) above, the Carriers are

not required to restore the status quo and apply the terms and conditions of said Agreement to the employes involved in this Docket.

Executed at Washington, D. C. this 29th day of April, 1969.

David Dolnick, Referee