Docket So. 147

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

PARTIES TO DISPUTE: United Transportation *Union,* Successor *to* Order of Railway Conductors. and Brakemen

and

Lehigh and Nev England Railroad Company
Central Railroad *Company* of *New Jersey*
Lehigh and New England Railway Company

QUESTION ATISSUE: 1. Messrs. Alvin Ceake, Carl Hill, Mahlon Stout, Willis Rinker and Lewis Hartocci, employees of the Lebigh and New England Railroad Company, were involved' in a coordination by the Lehigh and New England Railroad Company and the Contral Railroad Company of New Jersey, which occurred on November 1, 1961, and as employees continued in service and subsequently furlouphod aro, thoreforo, ontitlod to bo paid displacement and/or coordination allowances under Sections 6 and 7 of the Agreement of May, 1936, Washington, D. C.

2. Messrs. Geake, Hill, Stout, Rinker and Martocci, seek recovery of the reapactive bonefitr to which they uy ba entitled under the arrangaaents imposed September 28, 1961, by the Interstate Commerce Commission in Finance Docket 21155 for protection of employees advorsoly affected by the coordination.

FINDINGS: Carriers do not challenge the jurisdiction of the Section 13 Committee. They do say, howovor, that "in considering this case it should be borne in mind that thoro is not involved a 'coordination' in tho usual sense of that term". By "usual sense of that term" Carriers, perhaps, refer to that "coordination" accomplished as a result of voluntary "joint action by two or more carriers".

The "joint action" in this case cane about as a result of the issuance by the Interstate *Commerce* Commission of a Certificate -in Finance Dockets 21153, 21154 and 21155. That order, dated September 26, 1961, pornitted the Lehigh and New England Railroad Company to abandon a portion of its operations and it also permitted tho Lehigh and Now England Railway Company, a new corporation, and a subsidiary of the Central Railroad Company of New Jersey, to purchase soloctod portions of the property abandoned by the Lehigh and New England Railroad Company. A transaction, such as hero described, consummated by the Carriers pursuant to an ICC order, is a "joint action by two or more carriers" as contemplated in Section 2(a) of

the May, 1936, Xashington, D. C. Agreement. Employes of the Carriers were affected by "coordination" as provided in that Agreement.

Af fected employes, subsequently furloughed, aro not ipso facto entitled to displacement and/or coordination allowances. Section 7(d) of the same Agreement provides that "An employee shall not be regarded as deprived of employment in case of...[being] furloughed because ofreduction in forces due to seasonal requirements of the service..." While the record is somewhat spotty, the preponderance of the evidence contained therein shows that the claimants wore furloughed during the winter months, a condition-that existed prior to the "coordination". On June 13, 1962 Carrier wrote to the Employes, in part, as follows:.

> "I am suro you aro aware of the fact that ● mployment on the Lehigh and Now England Railroad has always been subject to seasonal and othor fluctuations in the volume of traffic. Tho coordination did not create this situation nor did it change it."

Employer have produced no convincing evidence to the contrary. Carrier's letter of March 28, 1962 is not inconsistent with this statement, nor door it contradict the evidence contained in Exhibit "A" in Carriers* Reply. A careful examination of the record shows that the claimants were furloughod because of seasonal fluctuations and a reduction in the volume of traffic.

Aside from tho fact that some of the affidavits produced by the Employer aro procedurally defective, the best evidence in the record shows that tho earnings of the claimants fluctuated monthly and dome of them had no earnings at all during the winter months of yoara prior to and after the coordination.

AWARD

(1) For the reasons stated in the Findings, Alvin Ceake, Carl Hill, Mahlon Stout, Willis Rinker and Lewis Martocci are not entitled to be paid displacement and/or coordination allowances as provided *in* the Agreement of May, 1936, Washington, D. C.

(2) The same claimants are not entitled to benefits prescribed by the Interstate Commerce Commission on September 28, 1961 in Finance Docket 21155 because they were not adversely affected by the coordination.

Executed at Washington, D. C. this 30 day of April, 1969.

David Dolnick, Referee

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

PARTIES TO DISPUTE: United Transportation Union, Successor To Brotherhood of Locomotive Firemen and Enginemen

and

New York Central System - Southern District

QUESTION AT ISSUE: (a) May the carrier unilaterally effectuate a "coordination" with the Alton & Southern Road at East St. Louis without serving a ninety (90) day notice upon the employee representatives as contemplated by Section 4 of the Washington, D. C. Agreement of May 1936?

(b) Nay the carrier unilaterally place into effect a plan of "coordination" with the Alton and Southern which does not provide for a "selection of forces from the employees of all the carriers involved" as required by Section St

(c) May the carrier escape payment of allowances described in Sections 6, 7, 8, 9 and 10 to adversely affected employees by the posting of bulletins describing the plan of "coordination" as interchange movements of cars to and from connecting lines?

FINDINGS: Employes contend that the "transfer of NYC yard and road operations in Brooklyn Yard at East St. Louis, Illinois to the Alton & Southern's Mitchell yard is a coordination as defined by Section Z(a) of the Washington Joh Protection Agreement of Hay 1936". This is based upon the allegation that prior "to June 4, 1964, the classification and switching of both inbound and outbound NYCKR freight trains, including interchange with connecting lines, was performed exclusively by NYC crews in drooklyn Yard. Subsequent to June 4, 1964, this work has been coordinated with the Alton and Southern operations in the Mitchell Yard, resulting in the annulment of two (2) NYCRR yard crew assignments."

A "coordination" as contemplated in the Agreement of May, 1936, Washington, D. C. results only from the "joint action of two or more carriers" consummated by voluntary joint agreement,

by ICC or other lawful *authorization*, or by indirect action tending to circumvent such a joint agreement. . Unilateral lawful action by one Carrier, without proof of an understanding that it is done to circumvent the obligations under the May, 1936 Agreement, is not such a "joint action" *even* though it may result in the abolishment of positions.

In 1936, the New York Central and the Alton and Southern reached an agreement under which the New York Central "both delivered cars in interchange movement to, and received cars from, the Alton and Southern Railroad in its Davis Yard within Cast St. Louis switching limits." The Alton and Southern agreed to pay to the Yew York Control 40 cents a car for all business interchanged. The fee was later *increased* to $1.67 a car. *On* June 3, 1964 the Alton and Southern terminated this arrangement and on June 4, 1964 wrote to tne New York Central as follows:

> "This will confirm advice given District Transportation Superintendent H. E. Ring during *conference* in my office June 3, 1964 that Alton and Southern Railroad will revert to former interchange point Mitchell, Illinois as soon as necessary arrangements can be completed."

Mitchell Yard is an Alton and Southern interchange with the New York Central, This is the record and this is the. only relevant evidence upon which Enployes rely. That evidence fails to reveal any semblance of justification that a "coordination" resulted. There is no proof of any "joint action" by the two Carriers. On the contrary, the record is crystal clear that the elimination of the interchange at the Davis Yard in East St. Louis resulted from the unilateral *action* of the Alton and *Southern* Railroad. The New York Central System was not a party to the change. It had no choice hut to comply with the direction from the Alton and Southern. And there is no evidence in the record that the method for the changeover was utilited by agreement of the two Carriers to circumvent the obligations prescribed in the May, 1936 Agreement, Washington, D. C.

The resumption of the use of the New York Central System Worcester Yard and the Alton and Southern Mitchell Yard as interchange yards for the two Cnrriors continued a practice that had existed since prior. to 1936.

For. the reasons herein set forth and upon all of the evidence in the record, there was no "coordination" between the New York Central System and the Alton and Southern Railroad and no ninety (90) day *notice* is required.

AWARD

For the reasons stated in the Findings, there was no "coordination" between the New York Central System - Southern District, and the Alton and Southern Railroad as contemplated by Section 4 of the Washington, 3. C. Agreement of May, 193b. No ninety (90) day notice war required.

Claim denied.

Executed at Washington, D. C. this 30th day of April, 1969.

David Dolnick, Neutral Referee

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

PARTIES TO DISPUTE: United Transportation Union, Successor to Brotherhood of Railroad Trainmen

and

Erie-Lackawanna Railroad Company

QUESTION AT ISSUE: The Carrier violated the agreement between the parties when it failed to accord a displacement allowance claimed by J. R. Osuch for the month of January, 1963, as provided in Interstate Commerce Commission Order entered September 13, 1960, I.C.C. Finance Docket 20707, which order made subject by reference to the employes' protective conditions imposed in the New Orleans Union Passenger Terminal Case 282-ICC-271.

FINDINGS:

Only one substantive issue exists. Were conductor positions available to claimant J. FL Osuch, during the month of January, 1963? The uncontroverted evidence In the record shows that Mr. Osuch could have displaced junior conductors on twelve different occasions during the month of January, 1963. The names of such junior conductors and the position for which Mr. Osuch failed to exercise his displacement rights are fully set out in the record. Hr. Osuch failed "to exercise his seniority rights to secure another available position" to which he was entitled under the then applicable working agreement as provided In Section 6 (a) of the Washington Job Protection Agreement. And there is no evidence that. the available positions would have required the claimant to change his residence or that those positions would produce compensation less than the compensation of the position held by Mr. Osuch at the time of the coordination. He was not in a worse position during January, 1363 than he was on the date of coordination, October 17, 1960, Section 7 (c) 2 is not applicable to the facts in this case.

AWARD

Carrier did not violate the Agreement of Nay 13, 1936, Washington, D. C. Claimant J. R. Osuch is not entitled to a displacement allowance because his reduced compensation in January, 1963 was not a "result of the coordination" within the meaning and intent of Section 6 (a) of the Washington Job Protection Agreement or as contemplated in the New Orleans Union Passenger Terminal Case 282-ICC-271.

Executed at Washington, D. C. this 12th day of June, 1969.

David Dolnicl:, Referee

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

PARTIES TO DISPUTE: United Transportation Union, Successor to Brotherhood of Railroad Trainmen

and

The Erie-Lackawanna Railroad Company

QUESTION AT ISSUE: The Carrier violated the agreement between the parties when it failed to accord a displacement allowance as claimed by W. E. Reusch for the month of September, 1963, as provided in Interstate Commerce Commission Order entered September 13, 1960, I.C.C. Finance Docket 20707, which order made subject by reference to the employes' protective conditions imposed in the New Orleans Union Passenger Terminal Case 282-ICC-271.

FINDINGS:

Claimant's status on the date of the merger was that of an extra trainman, a status he continuously occupied since he entered the employ of the former DL&W RR on May 24, 1900. As en extra trainman, Reusch's work opportunities and compensation was governed by the rise and fall of business conditions. During 1962 and 1963 rail traffic declined resulting in fluctuating employment for Mr. Reuscli. He was not adversely affected as a result of the merger.

AWARD

Carrier did not violate the Agreement of May 13, 1936, Washington, D. C. Claimant W. E. Reusch in not entitled to a displacement allowance because his reduced compensation in September, 1963 was not a "result of the coordination" within the meaning and intent of the Washington Job Protection Agreement or as contemplated in the New Orleans' Union Passenger Terminal Case 282-ICC-271.

Executed at Washington, D. C. this 12th day of June, 1969.

David Dolnick

David Dolnick, Referee

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

PARTIES TO DISPUTE: United Transportation Union, Successor to Brotherhood of Railroad Trainmen

snd

Lehigh and New England Railroad Company
Lehigh. and New England Railway Company
Central Railroad Company of New Jersey

QUESTION AT ISSUE: (1) Messrs. Earl Horn, John Fetsurka, Paul Mriss, Brotz Hubitsky, Alvin Geake, Harold Gangaware, Charles McIlhaney, Thomas Richmond, Ralph Stampone, Arthur LaBar and Monroe Berger, employees of the Lehigh and NW England Railroad Company, were involved in • coordinat ion by the Lehigh and New England Railroad Company and the Central Railroad Company of New Jersey, which occurred on November 1, 1961, • d as employees continued in service and subsequently furloughed are, therefore, entitled to bo paid displacement and/or coordination • llouancor under Sections 6 and 7 of tho Agreement of May, 1936, Washington, D. C.

(2) Messrs. Horn, Fetsurka, Mriss, Hubitsky, Geake, Gangaware, McIlhaney, Richmond, Stampone LaBar and Berger, seek recovery of the respective bonofits to which thoy may be entitled under t&o arrangements imposed Septombsr 28, 1961, by the Interstate Commerce Commission in Finance *Uockot* 21155 for the protection of employees adversely • *ffoctod* by coordination.

FINDINGS: The identical issue, involving tho same Carriers, and resulting *from* tho same coordination, is fully discussed *in* Docket No. 147. Conclusions and findings therein reached are applicable to this case and are hereby affirmed.

AWARD

(1) For the roarons stated in tho Findings In Docket No. 147, Earl Horn, John Fetsurka, Paul Mriss, Brotz Hubitsky, Alvin Geake, Harold Gangaware, Charles McIlhaney, Thomas Richmond, Ralph Stampone, Arthur LaBar and Monroe Berger are not entitled to be paid displacement and/or coordination allowances as

provided in the Agreement of May, 1936, Washington, D. C.

(2) The same claimants are not entitled to benefits prescribed by the Interstate commerce Commission on September 28, 1961 in Finance Docket 21155 because they were not adversely affected by the coordination.

Executed at Washington, D. C. this 30th day of April, 1969.

David Dolnick, Referee