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

PARTIES TO DISPUTE: The Railroad Yardmasters of America

and

Erie-Lackawanna Railroad Company

QUESTIONS AT ISSUE: Claims of Roland E. Taylor, who has been deprived of extra yardmaster work at Susquehanna, Pa. for compensation due under terms of the Washington Job Protection Agreement of May, 1936.
In accordance with Section 1 (c) of this Agreement Claims are filed for June 1961 through May, 1966, except March and April 1964 due to illness. We are reproducing as Exhibits here claims and correspondence, June, 1961 through May, 1962. Papers for subsequent months are on file. Attached arc:

Exhibit A, A-1, A-2, A-3; B; C; D; E; F, F-l; G, G-l, G-2; H, li-1, H-2, H-3, H-4, H-5, H-6; I, I-l, I-2, I-3, I-4, I-5; J, J-l, J-2, J-3, J-4, J-5, J-G; K, K-l; L, L-l, L-2, L-3; M, M-1; N, N-l, N-2, N-3; 0, O-l, O-2, O-3, O-4; P, Q, R, S, T and U.

FINDINGS:

Claimant Roland E. Taylor held a regularly assigned yard clerk position at Susquehanna Yard on October 17, 1960 when the merger between the Erie Railroad and the Delaware, Lackawanna and Western Railroad was effectuated.

The 4:00 P.M. to 12:00 Midnight yardmaster position at Binghamton, New York was' abolished on May 8, 1961. The incumbent displaced the yardmnster at Susquchnnna, Pennsylvania. Claimant, who was then an extra yardmaster, contends that the displacement of the regular yardmaster at the Susquehanna Yard reduced the amount of extra yardmaster work available to him. This, Employes say, placed him in a "worst position with respect to compensation," as provided in Section 6 (a) of the Washington Job Protection Agreement.

Section 6 (a) makes no specific distinction between regular and extra employes. Nor does such a distinction appear anywhere in the Washington Job Protection Agreement. But there is a difference in the connotation of "extra employes." An employe who has seniority in a craft may, because of a reduction in business, be on furlough and be entitled to extra work, or he may be on an extra board subject to call as needed. Whether such an employe is on furlough and entitled to extra work, or whether he is subject to call from the extra board, he has seniority in his craft and for all intents and purposes he is a "regular employe." He may have such a status in several crafts simultaneously, consistent with the seniority provisions in the scheduled agreement of each craft. It does not apply to an extra employe who has not acquired seniority in the craft.

Claimant Taylor had not acquired yardmaster seniority on the effective date of the coordination, nor did he acquire yardmaster seniority on May 1, 1961. He was not placed in a worse position as a result of the coordination. His regular, and only seniority position on the effective date of the merger was that of a yard clerk. And his right to that position was not disturbed.

AWARD

Claim denied.

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

David Dolnick, Referee

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

PARTIES TO DISPUTE: Seaboard Air Line Railroad Company
Richmond, Fredericksburg & Potomac Railroad Company

and

United Transportation Union, Successor To
Brotherhood of Railroad Trainmen

QUESTION AT ISSUE: (a) Does the Agreomont proposed by the Carriers, attached hereto as Carriers' Exhibit "D", moot the criteria set forth in the Washington Job Protection Agreement, particularly that part of Section 5, reading: "Each plan of coordination which results in the displacement of employees or rearrangement of forces shall provide *for* the selection of forces . from the employees *of* all the carriers involved on bases accepted or appropriate for application in the particular case;" in the coordination as hereinafter set forth *of* certain yard oporationr now sonarately conducted by tho Seaboard Air Line Railroad Company and the Richmond, Fredericksburg & Potomac Railroad Company?

(b) If the answer to (a) is "no", what agreement terms would be appropriate for application in this *particular* case?

FINDINGS: There is no diraproemont among the parties that a "coordination", as defined in Section Z(a) of the Agreement of May, 1936, kashinyton, D. C. exists. A merger of railroad facilities was effectuated. Proper written notice, fully complying with the provisions of Section 4 of that Agreement, was given to all interested representatives. Conferences were held; two proposed implementing agreements were submitted by the Carriers to the representatives of the affected employes; each has been rejected.

The proposed implementing agreement between the Carriers and the respective representatives of the affected employes, identified as Carriers' Exhibit "D", and attached to Carriers' Submission, fully complies with the provisions of the Washington Job Protection Agreement, particularly Section 5 thereof, however, that Agreement was proposed on March 8, 1967. The merger of the Seaboard Air Line Railroad and Atlantic Coast Line Railroad was effectuated on July 1, 1967. Since then yardmen have been hired who are not covered by the

merger agreement of November 5, 1966. If adversely affected by the coordination, they are entitled to protection afforded hy the Washington Job Protection Agreement. The proposod agreement herein identified as Exhibit "D" shall be amended to give protection to such eaployes hired on or after July 1, 1967.

AWARD

(a) The Agreement proposed by the Carriers, identified as Exhibit "D" and attached to Carriers' Submission shall be amended by adding paragraph (c) to Section 2 thereof to read as follows:

> "(c) Yardaon hired on or after July. 1, 1967 and *not* covered by the Merger Protective Agreement,.who may be adversely affected by the coordination, shall be afforded protection and shall be entitled to the benofits contained in the Washington Job Protection Agroeaont of May, 1936."

(b) As so amended, said Agreement meets tho criteria sot forth in the Washington Job Protection Agreement, particularly Section 5 thoroof.

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

David Dolnick

David Dolnick, Referee

Case No. 605-2-E

WJPA-DKT 162

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Brotherhood of Railroad Signalmen
and
Erie Lackawanna Railroad Company

QUESTION AT ISSUE: Claim that Worley C. Spain is entitled to all protective benefits accruing under the employe protective conditions of Interstate Commerce Commission Finance Docket No. 20707 and/or the Washington Job Protection Agreement of May, 1936 because he was adversely affected to the extent of having been reduced from a position of Supervisor of Communications and Signals to a position of Foreman of Maintainers, effective on or about October 1, 1964, as a result of the merger of the Erie Railroad Company and The Delaware, Lackawanna and Western Railroad Company, said merger approved by I.C.C. Finance Docket 20707

OPINION OF BOARD: This matter is before this Board by virtue of Section 3, Article. VI of the February 7 Agreement.

Claimant contends thnt he was entitled to the protective benefits of the Washington Joh Agreement because he was demoted as a direct result of the merger between the Erie Railroad and the Delaware, Lackawanna & Nestern Railroad. That merger took place some four years prior to Claimant's demotion.

Carrier contends that Claimant was not adversoly affected by the merger (or coordination), but instead as a result of reorganization and Claimant incompetence. The Organization rejects such possibilities and asserts that Claimant was adversely affected solely due to the merger between the two carriers.

An examination of the record discloses that to meet the requisite standards of proof necessary to support the claim that he was adversely affected by the merger.

AWARD

The Claim is dismissed.

Nicholas H. Zumas
Neutral Member

Dated: Washington, D. C.
June 24, 1969

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

PARTIES TO DISPUTE: United Transportation Union, Successor to Switchman's Union of North America

and

Southern Pacific Company and Chicago, Rock Island and Pacific Railroad Company

QUESTION ISSUE: (1) Whether the various arrangements described in the "Statement of Facts" set forth below constitute "coordinations" within the meaning of Section 2 (a) of the Agreement of May, 1936, Washington, D. C.

(2) If the answer to Question No. 1 is 'in the affirmative, may the carriers place the said coordinations into effect prior to the time agreements comprehended by Section 4 and 5 of the Washington Agreement have been reached following the posting of ninety (90) days' notices and the holding of conferences as prescribed in said Sections 4 and 5?

(3) If the answer to Question No. 2 is in the negative and the carriers placed the said coordinations into effect without notice, negotiation or agreement as required by Sections 4 and 5, should the carriers now be required to comply with the provisions of Section 4 and 5 and all employees affected by the coordinations be made financially whole from the date of their adverse effect until the effective dote of agreements executed pursuant to Sections 4 and 5

FINDINGS:

Prior to January 1, 1967 the Southern Pacific operated the yard, together with station and maintenance force, at Tucumcari, New Mexico. Southern Pacific employes switched bad order cars found in through trains, exchanged and turned engines and cabooses, and switched some traffic into blocks. Commencing January 1, 1967 passenger trains (since discontinued entirely) were run through Tucumcari and commencing February 15, 1967 freight trains were run through Tucumcari. From these dates forward yard crews were progressiv reduced and finally discontinued at Tucumcari. Thereafter, yard work previously performed by Southern Pacific employes at Tucumcari, was done by other Southern Pacific and Rock Island employes on their respective properties.

The industry practice of "cooperation" between railroads in running through trains does not affect the specific provisions of the Washington Job Protection Agreement. A "coordination" as defined in that Agreement may result from *such a* cooperative endeavor. It depends on when and how that "cooperation" became effective.

Article V of the June 25, 1964 Agreement in no way amends or modifies the specific obligations in the Washington Job Protection Agreement.

Neither the SP nor the RI unilaterally decided to run their trains through Tucumcari. It was the "joint action" of the two carriers that resulted in the decision. And it has been established by the Section 13 Committee that the "joint action" need not be in writing.

When the two carriers jointly decided to run through Tucumcari with their locomotives and cabooses they pooled " in part their separate railroad facilities." More efficiency and better customer service may have resulted from this joint action, but efficiency and better service alone does not avoid liability to employes affected by coordination. The action of the two carriers is clearly a "coordination" as defined in Section 2 (a) of the Washington Job Protection Agreement.

Carriers argue that the decision in Docket 88 should be applied. That decision is clearly distinguishable. It held that a pooling of crews was not a "coordination" as defined in Section 2 (a). Here we have a pooling of "separate railroad facilities." Locomotives and cabooses are separate facilities of the two carriers used interchangeably over their respective lines. The use of these facilities in through service deprived the SP employes at Tucumcari yard of employment. They were affected by coordination.

Through service alone may not be a "coordination." But through service resulting from joint action of two carriers wherein locomotives are used interchangeably over their respective lines is a "coordination," Locomotives are not cars; they are instruments that propel a train from one location to another. They constitute a "train." The Book of Transportation Rules of many railroads define a "train" as "An engine or more than one engine coupled, with or without cars, displaying markers." A "train" is certainly a facility contemplated in Section 2 (a).

Since the joint action of the carriers is a coordination, they are obliged to comply with the provisions of Sections 4 and 5 of the Washington Job Protection Agreement.

AWARD

1. The arrangement of the two carriers as set forth in the findings constitutes a "coordination" within the meaning of Section 2 (a) of the Agreement of May, 1936, Washington, D. C.

2. Carriers may not unilaterally place the coordination into effect. They are first required to serve notice as set out in Section 4 and provide for rearrangement of forces as required in Section 5 of said Agreement.

3. All employes affected by the coordination shall be made financially whole from the date or dates when they were so adversely affected until the Carriers have fully complied with the provisions of Sections 4 and 5 of the Agreement of May, 1936, Washington, D. C.

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

David Dolnick

David Dolnick, Referee

Agreement of May, 1936, Washington, D.C.
(Washington Job Protection Agreement)

Dissent of Carrier Members to Award in Docket Go. 163

The Referee in this docket has made an award which so distorts and misapplies the Washington Job Protection Agreement thrt the Carrier representatives feel it is ndcessary to file a dissent thcrcto.

The Washington Job Protection Agreement was executed over thirty years ago by practical railroad men, end in large measure has been interpreted and applied by the parties with only a limited area of dispute requiring decision by the Section 13 Committee. The tern "railroad facilities" used in Section 2(a) has always been understood and applied es referring only to substantial fixed property or establishments, and not to equipment such as tools, or to rolling stock such as locomotives, cars, cabooses, and equipment. This interpretation is clearly supported by the negotiating history as recorded in testimony given at the time the Washington Job Protection Agreement was negotiated. This Section 13 Committee has consistently held in well reasoned and sound awards, involving situations where locomotives and/or cabooses were run through over two railroads, that the arrangement did not constitute a "coordination" as that term is defined in Section 2(a) of the Agreement. See awards No. 47, 88, and 148 made respectively by Referees Gilden, Bernstein, and Dolnick. With no supporting precedent and in the face of the consistent and well reasoned authority, Mr. Dolnick now reverses himself in a matter of a few weeks in his award in this Docket No. 163.

The Carrier members of the Section 13 Committee for the reasons summarized above are obliged to record their dissent to the award in Docket 163 and make it clear that they cannot permit it to stand unchallenged.

This dissent has been unanimously adopted by the Carrier members of the Section 13 Committee.

W. E. Bracewell

Chairman
Carrier Members Section 13 Committee
Agreement of May, 1936, Washington, D.C.

Washington, D.C.
June 17, 1959

WJPA DKT 164

Award No. 110
Case No. SG-19-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE: Brotherhood of Railroad Signalmen
and
(Former) Pennsylvania Railroad Company

QUESTION AT ISSUE: Claim that Mr. A. L. Appleby, Maintainer C. & S., C. 6 S. Seniority District No. 16, who was adversely affected March 20, 1963 as a result of the abandonment of the Rochester Branch between Hinsdale and Wadsworth Junction effective February 26, 1963, be reimbursed for all expenses incurred as provided in the New Orleans Conditions. Especially, Sections 4, 7, and 9 of the New Orleans Conditions, for displacement, loss of wages, travel expenses, meals and lodging, moving expenses account of change of residence nnd any expenses or loss in sale of home, etc., due to abandonment referred to above.

OPINION OF BOARD: Certain portions of trackage, known as the Rochester Branch, were abandoned in Fcbrunry, 1963. At the tire Claimant was the C & S Maintain& at Mt. Morris, N. Y. and resided at Leicester, N. Y. about 4 miles away. In March, 1963, Claimant elected to displace a junior signalman in the Camp Car Train at Olean, N. Y. and continued to maintain is main his re: Leicester. In une, 1964, Claimant was awarded the C & 3 Maintainer position at East Aurora 43 miles from Leicester. tte then sold his home in Leicester and moved his residence to Holland, N. Y. This claim is for the loss incurred in the sale of the house; travel, moving and other expenses related to the move. The basis for the claim is thnt Claimant was odvcrscly affected as a direct result of thc Rochester Branch abandonment, and was entitled to such compensation under the terms of the New Orleans Conditions, particularly Section 4, 7; and 9.

The question here is whether, under the circumstances, Claimant's change of residence was required as a direct result of the Rochester Branch abandonment. Remuneration under the New Orleans Agreement is premised on a "required" change as a result of the abandonment.

The Board finds that where, as here, an employe continues in employment after an abandonment and later voluntarily bids on another position necessitating a change of residence, it is not a change required as a direct result of the abandonment.

AWARD

The Claim is denied.

Nicholas H. Zumas
Neutral Member

Dated: Washington, D. C.
June 24, 1969

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

St. Louis-San Francisco Railway Company
Northeast Oklahoma Railroad Company

QUESTION AT ISSUE: (A) Claim of the Northeast Oklahoma Railroad Company General Grievance Committee of the Brotherhood of Railroad Trainmen that the Carriers are in violation of the Washington Job Protection Agreement of May, 1936 by their failure and refusal to comply with and apply provisions of the Agreement of May, 1936, to the train and engine service employees of the former Northeast Oklahoma Railroad Company when the work of the NEO operating employees at Eagle-Picher Central Mills located a t Cardin, Oklahoma, the Missouri Pacific interchange work at Corona, Kansas and the Missouri-Kansas-Texas interchange work at Columbus, Kansas was transferred and coordinated with the work of the Afton-Parsons Subdivision of the St. Louis-San Francisco without the required Section 4 notice or implementing agreements.

(B) Carrier violated the terms and conditions of the Washington Job Protection Agreement when they failed and refused to apply the terns and conditions of the Agreement for the protection of the former NEO train and engine service employees affected by the coordinations.

(C) The Carriers violated the terms and conditions of the Washington Job Protection Agreement when they coordinated the former NEO work with the Frisco work without agreement as contemplated and required by Section 5 of the Agreement.

(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 and shall make whole all the operating employees of the former Northeast Oklahoma Railroad Company affected thereby as if said coordination had not taken place pending compliance with Section 4and5 of the Agreement.

FINDINGS:

Carrier admits that effective "January 14, 1964, the Frisco (SL-SF) Railway obtained control of the Northeast Oklahoma Railroad Company pursuant to ICC approval" and that effective "at close of business December 31, 1966 the Frisco merged into itself the N.E.O. pursuant to ICC approval, and this latter company thereafter ceased to exist as a corporation and as a railroad carrier." Because "the Frisco merged into itself," says the Carrier, there was no "joint action of two or more carriers" as provided in Section 2 (a) of the Washington Job Protection Agreement and thus no "coordination."

Prior to December 17, 1963 Eagle-Picher Company owned and controlled the capital stock of Northeast Oklahoma Railroad Company (hereinafter referred to as the N.E.O.) Pursuant to the order of the Interstate Commerce Commission issued on December 17, 1963, the St. Louis-San Francisco Railway Company (hereinafter referred to as the Frisco) purchased the capital stock of the N.E.O. from Eagle-Picher Company. The N.E.O. became a subsidiary of Frisco. Each corporation remained and continued to function as an individual entity.

But on December 22, 1966, the ICC authorized the merger of the N.E.O. and Frisco. It resulted in a merger of two distinct corporate entities into one corporate entity. N.E.O. ceased to exist on December 31, 1966 because of the joint action of two corporations. Who owned the capital stock is unimportant. The stockholders and directors of each corporation approved and consented to the action. Two carriers participated in the merger. A "coordination resulted within the meaning and intent of Section 2 (a) of the Washington Job Protection Agreement. And this Committee has jurisdiction.

As a result of this coordination, work was shifted, facilities and services of separate stations were pooled, and NEO train and engine service employes were adversely affected.

Disputes arising out of "a particular coordination, including an interpretation, application or enforcement of any of the provisions of the Washington Job Protection Agreement may be

referred to the Committee by either party.Section 13 does not require the mutual consent Of the parties for the Committee to accept jurisdiction.

Since employes are affected by "coordination" as defined in Section 2 (a) of this Agreement, this dispute is properly before this Committee.

AWARD

(A) For the reasons stated in the findings, a "coordination" within the meaning and intent of the Agreement of May, 1936, Washington, D. C. resulted from the joint action of the Northeast Oklahoma Railroad Company and the St. Louis-San Francisco Railway Company.

(B) The Carriers violated the terms and conditions of the Washington Job Protection Agreement because they failed to serve notice of coordination as provided in Section 4 thereof.

(C) The Carriers violated the terms and conditions of the Washington Job Protection Agreement as provided in Section 5 thereof.

(D) The Carriers shall restore the status quo and apply all the terms and conditions of the Washington Job Protection Agreement to the coordinations and shall make whole all the operating employees of the former Northeast Oklahoma Railroad Company affected thereby as if said coordination had not taken place pending compliance with Section 4 and 5 of the Washington Job Protection Agreement

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

David Dolnick, Referee

WJPA DKT-166

WITHDRAWN