DOCKET NO. 56 --- Decision by Referee Bernstein

Brotherhood of Railway & Steamship Clerks,)
Freight Handlers, Express and Station Employees)
VS.) PARTIES TODISPUTE
The Pennsylvania Railroad Company)

QUESTION: Whether or not the closing of the City Ticket Office of The Pennsylvania Railroad Company, located in the General Motors Building, 3044 West Grand Boulevard, Detroit, Michigan, and the transferring of the work of selling tickets and related clerical work to the employees of the Fort Street Union Depot, Detroit, Michigan, all effective March 1, 1958, constitutes a coordination within the meaning of the Agreement of May, 1936, Washington, D. C., and if so, the failure of the Carrier to apply the provisions of this Agreement to the employees affected.

FINDINGS: On March 1, 1958 the Carrier closed a City Ticket Office in Detroit. The Carrier's tickets also were sold and information concerning Carrier's trains was available at the Union Depot before and after the closing.

The Organization asserts that the closing of the City Ticket Office resulted in the "coordination" of its facilities and services with those of the Union Depot, another carrier. The Pennsylvania Railroad asserts that the closing of the City Ticket Office was a unilateral act requiring no "joint action by two or more carriers" within the definition of "coordination" provided in Section 2(a) of the Agreement.

There is no showing that there was any explicit joint action. Nor is there any showing that there was any service performed at the City Ticket Office whose discontinuance there would require any consequent "action" on the part of the Union Depot. It follows that the element of "joint action", required to constitute a "coordination", is lacking.

DECISION: The closing of the Detroit City Office by the Pennsylvania Railroad Company was not a "coordination".

DOCKET NO. 57 --- Decision by Referee Bernstein

The Order of Railroad Telegraphers)
vs.) PARTIES TO DISPUTE
The New York Central Railroad Company)

QUESTION: Does the arbitrary coordination of the work of the position of the Agent-Operator, New York Central Railroad Company at Sharon, Pennsylvania, with that of the position of the Pittsburgh & Lake Erie Railroad Company Freight Agent at the same location, without agreement with the organization, constitute a violation of the Agreement of May, 1936, Washington, D. C.?

FINDINGS: It is undisputed that a coordination took place at Sharon, Pennsylvania, between the facilities of the Carrier and the Pittsburgh & Lake Erie Railroad Company. The Carrier discussed the proposed changes with the Organization. The Organization contends that it did not receive proper notice and further that there was no open-minded discussion and bargaining, but only a statement of the change the Carrier had decided to make.

No agreement was reached by the parties and the Carrier put into operation the coordination plan under which a member of the Organization was excluded from the coordinated facility.

For the reasons stated in Docket No. 70, the Agreement does not contemplate nor permit the unilateral effectuation of coordination plans. The Agreement requires a plan agreed upon by carrier and employee parties. In the absence of such an agreement, the Agreement requires resort to the Section 13 Committee.

DECISION: In the absence of an agreement between the Carrier and the Organization, it was a breach of Section 5 of the Agreement to put the coordination plan into operation unilaterally.

DOCKET NO. 58 --- Decision by Referee Bernstein

The Order of Railroad Telegraphers)
vs.) PARTIES TO DISPUTE
Norfolk and Western Railway Company)

QUESTION: Does a displaced employee, who is entitled to a "displacement allowance" in accordance with Section 6 of the Agreement of May 1936, Washington, D. C., forfeit such allowance if he elects to exercise his seniority on a position producing less compensation than the position held by him at the time of the coordination which does not require a change in residence, in lieu of accepting a position that does produce compensation equal to that of his former position, the acceptance of which does require a change in residence?

The Committee unanimously agrees:

FINDINGS: An employee who is continued in service comes under the protection of Section 6(a) so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules and practices to obtain or retain a position which produces compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination. Such an employee does not forfeit his protection if he declines to take a position requiring a change in residence but takes or retains an available position, even if it produces less compensation, which does not require a change in residence. If, at the time he is first adversely affected by the coordination or at any later time within the period of protection under Section 6(a), he fails to exercise his seniority rights to secure an available position which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate Of pay and compensation exceeding those of the position which he elects to take or retain, he shall thereafter be treated for the purposes of Section 6 as occupying the position which he elects to decline.

DECISION: The question is answered in the negative. The employees involved are entitled to displacement allowances determined by the application of the above Findings to the facts in their respective cases.

DOCKET NO. 59 --- Decision by Referee Bernstein

Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees	)	
vs.	)	PARTIES TO DISPIJTE
Chicago & Eastern Illinois Railroad Company	)	
Chicago & Western Indiana Railroad Company	)	
Erie Railroad Company and	)	
Wabash Railroad Company	)	

QUESTION: Is the transfer of the Information and Reservation work of the Chicago & Eastern Illinois Railroad Company, the Erie Railroad Company and the Wabash Railroad Company in Chicago, Illinois, to the Chicago. & Western Indiana Railroad Company, on or after May 1, 1958, which prior thereto had been performed by the C&EI, a "coordination" as that term is used in the Agreement of May, 1936, Washington, D. C.?

FINDINGS: (a) The C&EI operated an Information 6 Reservation Bureau in Chicago where it supplied information and reservations for its own trains. It performed the same services through its own employees for the Erie and the Wabash under contractual arrangements. C&EI found the financial contributions of the other carriers inadequate and this arrangement was discontinued on May 1, 1958. Instead, the Erie and the Wabash entered into an arrangement whereby the C&WI performed the information and reservation operations formerly supplied through the facilities of the C&EI.

As to this part of the dispute, the question is whether the transfer of the work and services formerly performed through one facility (C&EI Bureau) to another facility (the C&WI Bureau) and combined with the work the services of the latter is a "coordination". A major factor is that the employees who lost the work are employees of C&EI and not employees of the Erie and the Wabash whose operations and services were combined with those of the C&WI.

As an original proposition I would have no hesitancy in deciding that this was a coordination and that the employees were due the benefits of the Agreement. Operations and services formerly performed through one facility were combined with operations and services of another carrier. As a result employees lost jobs. The fact that the Erie and the Wabash obtained the performance of these operations and services through the employees of other Carriers under contract arrangements should not be controlling. It makes good law and good sense that what cannot be done directly cannot be done indirectly.

Had Erie and Wabash employees been performing the work which was combined with that of the C&WI there undeniably would have been a coordination and those employees adversely affected would have been eligible for the benefits Of

the Washington Job Protection Agreement. This seems to be the general kind of situation in which the Agreement was meant to operate. Here Carriers combined their operations and services with those of another Carrier in the interests of economy and efficiency. It is the purpose of the Agreement to facilitate such coordination and, also, to cushion its impact upon employees.

The decisions of two prior cases lead to a contrary conclusion. In the Atlanta Joint Terminals Case (Docket NO. 51, Award No. 5 - - Referee Gilden) and the CNW case (Docket No. 47, Award No. 6 -- Referee Gilden) it was held that employees of carriers which were not immediate parties to the coordination were outside the protections of the Agreement and that as to the carriers who lost the contracted work there was no coordination. Such interpretations seem to be more formalistic than realistic. Nonetheless, some language of the Agreement (e. g., the first sentence of Section 4 and the first sentence of Section 7) lends a modicum of support to the proposition that the benefits of the Agreement are limited to the employees of Carriers "contemplating" and "participating" in coordinations. Other provisions using broader terminology, such as "No employee of any of the carriers involved in a coordination . . .", (Section 6 a) seem to refer to the same kinds of employees. A narrow or broad reading is possible, for the Agreement is less than clear. The two prior decisions employ the narrow, restrictive interpretation.

While the following of precedents is not an essential of arbitration in general or the special procedures of this Agreement, consistency in the interpretation of the Agreement is desirable. Precedents should be followed if they are not based on mistake or are not without any basis in the language interpreted. Otherwise, arguable issues would never be deemed settled and disagreements would he multiplied and the Agreement would be without fixed content. It always lies within the power of the parties to remedy misconstructions and inadequacies of the Agreement.

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 the Wabash from the C&EI to C&WI Bureau was not a coordination.

(b) On May 1, 1958, another change was made in the operation of the C&EI Bureau. Prior to May 1, it had been open from 8AM to 10PM; thereafter it was open only from 8:30 AM to 5 PM. Formerly, the C&EI diagrams had been transferred at 10 PM to the C&WI Bureau; after May 1, the transfer was made at 5 PM and the C&WI rendered its services through its employees for the additional five and a half hours.

There can-be little doubt that this transfer of work constituted a coordination of operations and services of the C&EI, formerly performed through its own separate facilities, with those of the C&WI. While similar work had been performed by the C&WI for the C&EI, this transfer was a new and additional combination of operations and services and therefore was a new and additional coordination. (See Docket No. 68).

DECISION: (a) The transfer of information and reservation work formerly performed by the Chicago & Eastern Illinois Railroad Company for the Erie Railroad Company and the Wabash Railroad Company to the Chicago and Western Indiana Railroad Company was not a "coordination".

(b) The transfer of information and reservation work, formerly performed for itself by the Chicago & Eastern Illinois Railroad Company to the Chicago & Western Indiana Railroad Company from 5 PM to 10 PM and from 8 AM to 8:30 AM daily was a "coordination".

DOCKET NO. 60 --- Decision by Referee Bernstein

Brotherhood of Locomotive Firemen & Enginemen)
vs.) PARTIES TODISPUTE
New York Central Railroad Company, Southern District)

QUESTION: Claims of Hostlers Edward Heckert, H. C. Shaw, Henry Letterle and Eugene Farkas for compensation under the Washington Job Protection Agreement, dated May 21, 1936, due to loss of regular employment as hostlers on the New York Central Railroad, Southern District account of closing of the Linndale Enginehouse facilities at Cleveland, Ohio, effective December 5, 1954.

FINDINGS: In 1954, the Linndale, Ohio Enginehouse of the New York Central Railroad's Southern District, also known as the Big Four, was closed. Its remaining functions were transferred to Carrier's Western District.' Both the Big Four and the Western District are "leased lines" of the New York Central Railroad,

The Organization contends, and the Carrier denies, that this transfer constituted a coordination. The Organization argues that the Big Four maintains separate seniority rosters and has other attributes of an entity separate from other parts of the New York Central System so that it is one carrier and the Western District is another.

The definition of "coordination" requires "joint action by two or more carriers".

Section 3(b) provides:

> "Each carrier listed and established as a separate carrier for the purposes of this agreement, as provided in Appendices 'A', 'B' & 'C', shall be regarded as a separate carrier for the purposes hereof during the life of this agreement;. . ."

Appendix A lists "The New York Central Railroad Company" as a carrier in column 1. In an immediately adjoining column captioned "Properties end Operations included in the authorization as part of, and to be considered as part of, the carrier listed in Column 1" there appears: "All leased lines".

In sum, the Agreement provides very specifically which are and which are not separate carriers for the purposes of this Agreement. Quite explicitly "All leased lines" were designated "as part of, and to be considered as part of" the New York Central Railroad Company.

No amount of argument can change the Agreement concluded by the parties in collective bargaining. It is quite reasonable for them to treat various parts of the carriers' systems in different ways for different purposes, e.g. for seniority one way and for the Washington Job Protection Agreement another.

Section 3(c) reinforces this conclusion in providing:

> "It is definitely understood that the action of the parties hereto in listing and establishing as a single carrier any system which comprises more than one operating company is taken solely for the purposes of this agreement. . ."

The contention of the Organization is at odds with the specific provisions of the Agreement.

DECISION: The closing of the Linndale Enginehouse on the Southern District and the transfer of its remaining work to a facility on the Western District was not a "coordination".

DOCKET NO. 61 --- Decision by Referee Bernstein

Switchmen's Union of North America)
vs.) PARTIES TO DISPUTE
The Salt Lake City Union Depot & Railroad Company)

QUESTION: The abandonment of ALL Salt Lake City Union Depot and Railroad Company regular assigned Switchtender positions, effective 11:00 P. M., Thursday, August 13, 1959, and, effective at the time and on the date of the abandonment, assigning the former duties rendered; and former responsibilities fulfilled, by the formerly regular assigned switchtenders to be rendered and fulfilled by, and with, employees of foreign Railroad Lines; who have not, and cannot, acquire, possess, or accumulate seniority as a Switchtender employee of the Salt Lake City Union Depot and Railroad Company.

FINDINGS: Prior to August 13, 1959, switchtenders of The Salt Lake City Union Depot & Railroad Company provided crossing protection and switchtending services for Denver & Rio Grande Western Railroad Company, Western Pacific Railroad Company and Union Pacific Railroad Company trains on the Union Depot facilities,

The crossing protection work was rendered unnecessary by the installation of automatic devices newly permitted by ordinance. The switchtending work was performed after August 13, 1959 by the train crews of the carriers using the Union Depot facilities.

The Organization contends that this shift of work constituted a coordination. Neither the language nor the purpose of the Agreement governs the abolition of tasks by one carrier and their resumption by carriers for which they were being performed. (See Dockets Nos. 25, 26 and 38 -- Referee Gilden). It is beyond the jurisdiction of the Section 13 Committee to decide whether such a transfer was permissible under the Carrier's rules agreement.

DECISION : The discontinuance of the position of switchtenders and the resumption of the performance of their duties by employees of Carriers using the Depot facilities was not a "coordination".

DOCKET NO. 62 -- Decision by Referee Bernstein

Brotherhood of Railway & Steamship Clerks,)
Freight Handlers, Express & Station Employees)
vs.) PARTIES TO DISPUTE
The Chesapeake and Ohio Railway Company)

QUESTION: the Carrier violated and continues to violate provisions of Agreement between The Chesapeake & Ohio Railway Company, Chesapeake District, The Chesapeake & Ohio Railway Company, Pere Marquette District (formerly The Pere Marquette Railway Company) and its Employees represented by The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes for each District signed July 22, 1954, effective August 1, 1954, and more specifically Section 27 with respect to Washington Agreement of May 21, 1936, and job stipulations of Interstate Commerce Commission Finance Docket No. 15228,. when it failed to pay to Frank John Sana the difference between the monthly average of his total time paid for during period July 1, 1953 and June 30, 1954 ($523.771232 hours) and compensation received in his subsequently held positions (Yard Clerk A-171/Yard Clerk A-230). Claim applicable to all employees involved in the coordination and continued in service under similar conditions and withour proper adjustment as required.

FINDINGS : On August 1, 1954 the parties entered into a coordination agreement involving facilities in Chicago, Illinois. This was one of a series of coordinations and agreements growing out of the 1947 merger of The Chesapeake and Ohio Railway Company and The Pere Marquette Railway Company. The parties adopted as the test period July 1953 through June 1954.

In th-is coordination no employee was deprived, of employment. Indeed, two additional clerks were added to the force. No employee was continued in service at a rate of pay lower than that received at the time of the coordination,

However, the employee used as an example, Mr. Frank John Sana, while being paid a rate no lower than he received at the time of the coordination, received lower compensation in some months than the "average monthly compensation" of the "test period". The dispute here invokes Sections 6(a) and 6(c); for convenience the full texts follows:

> "Section 6(a). No employee of any of the carriers involved in a particular coordination who is continued in service shall, for a period not exceeding five years following the effective date of such coordination, he placed, as a result of such coordination, in a worse position with respect to compensation and rules governing working conditions than he occupied at the time of such coordination so long as he is unable in the normal exercise

"of his seniority rights under existing agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination, except, however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline."

* * * * * * * * * * * * * * * * * * * *

"(c) Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee and his total time paid for during the last twelve (12) months in which he performed service immediately preceding the date of his displacement (such twelve (12) months being hereinafter referred to as the "test period") and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and average monthly time paid for, which shell be the minimum amounts used to guarantee the displaced employee, and if his compensation in his current position is less in any month in which he performs work than the aforesaid average compensation he shall be paid the difference, less compensation for any time lost account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for during the test period."

In simplified form the Organization contends that whenever an employee's monthly compensation drops below the average monthly compensation of the test period, as prescribed by Section 6(c), he is entitled to a displacement allowance.

The Carrier contends that so long as an employee has a position - full time position - with a rate of pay equal to or greater than that he received at the time of the coordination, he cannot be eligible for a displacement allowance.

I believe. that each position oversimplifies the actual provisions of the Agreement.

All parts of the Agreement should be read together and as harmoniously as possible. Usually all language in an Agreement serves some purpose, although this hornbook maxim is modified by the realistic proposition that some provisions of agreements are redundant. Which is the case depends upon the provisions and possibly their history; the ultimate conclusion is a matter of judgment.

In this case, the judgment is not difficult to make. Section 6(a) and Section 6(c) each serve a different function, although they are interdependent. As contended by the Carrier, Section (a) prescribes the protections to be given

employees "continued in service" and the conditions under which they will qualify for the displacement allowance whose formula is provided *by Section 6(c).*

That formula is to be applied to the twelve month period (the "test period") preceding the time when an employee is adversely affected by the coordination. The formula guarantees that he shall receive at least the average monthly ccmpensation of the "test period". This is so even if after the coordination he works less than the "average monthly time paid for" during the test period. If the employee works more than the "average monthly time paid for" he is to receive the full benefit of that additional work at his then present rate in addition to the guarantee.

Clearly the function of the Section 6(c) test is to insure to the employee both the "compensation" guaranteed by Section 6(a) and whatever he earns in hours worked in excess of "average monthly time paid for". This "compensation" is the product of this rate of pay, any arbitraries and the amount of time that he worked. It is a commonplace of this industry that certain jobs normally involve overtime, e. g. for a sixth day's work when an unassigned employee is not available or for usual and recurrent, or at least frequent, overtime on given days. Such-overtime at premium pay is desired and considered a prerequisite of the position. It seems quite clear that in determining whether an employee is in no "worse position with respect to compensation" after a coordination, the formula is to reflect elements of compensation in addition to the "rate of pay".

The device employed is an "average" of the "last twelve months in which (the employee) performed service" preceding the adverse effect upon him -- thereby reflecting the fluctuations in such compensation that normally occur in the course of a year, e. g. seasonal variations. Obviously, the average will serve only to approximate an equivalence in compensation "before" and "after" coordination, Generally the device is for the protection of the employee. In the normal and usual case, applyingthe 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 due* to some cause unrelated to the coordination, the allowance would not be due. For this reason clearly demonstrable abnormalities in the test period which are absent after the coordination would negate the coordination as the causative factor,

From this discussion it may be seen that neither "rate of pay" nor the "test period" average earnings is dispositive. The Agreement makes "compensation" the test of "worse(ned) position" and the test period formula provides the normal and usual yardstick of compensation. But, the eligibility of an employee for an allowance depends upon whether any of the difference in compensation is a result of the coordination. Once the eligibility is shown all the difference between a month's compensation after the coordination and the "test period" average is due the employee. By adopting the average test, the parties undoubtedly anticipated that some few windfalls would occur.

In Mr. Sana's case it is undisputed that he had abnormally high earnings in the test period due to the fact that he frequently worked more than one position,

Doubling up may be a normal incident of a position -- but the situation must be a rarity. Here it was due to the prospect of the coordination and the Carriers understandable desire not to hire new employees before the coordination. Where such a clear showing of abnormal earnings is made, the prima facie showing is overcome. There may be complicated situations in which the lower compensation is the result of both an abnormal situation before a coordination and the coordination itself. It is sufficient for Section 6(a) to show that any part of the decrease in compensation is caused by the coordination for an employee to qualify for the full difference between the test period average and actual compensation under the formula.

The tests for "worse(ned) position" are applicable only to the first adverse effect of a coordination, Once the employee is shown to be within the area of employment adversely affected by a coordination he is entitled to the benefits of the five year protective period provided by Section 6(a). This subject is more fully discussed in Docket No. 67, which is to be read in conjunction with this decision in order to ascertain the rights of employees under Section 6.

DECISION: (a) Employees may be due displacement allowances even if they are in positions carrying a rate of pay equal to or higher than that received at the time of coordination. Eligibility is established of a month's compensation (for a number of hours equal to "average time paid for") is less than that of the "average monthly compensation" for an equal number of hours and any part of the deficit is attributable to effects of the coordination.

(b) Frank John Sana is not entitled to a displacement allowance because there is no proof that his post-coordination compensation was lower than the "average monthly compensation" (for the number of hours equal to "average time paid for") as a result of the coordination,

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DOCKET NO. 63 -- Decision by Referee Bernstein

Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees
vs.
The Chesapeake and Ohio Railway Company

PARTIES TO DISPUTE

QUESTION: the Chesapeake and Ohio Railway Company violated and continues to violate applicable terms of its Agreement of April 1, 1958, with its Clerical Employees, provisions of Washington Agreement of May 21, 1936, and stipulations set forth in Interstate Commerce Commission Docket No. 15228 when beginning April 1, 1958, it refused and continues to refuse to apply to its employees the beneficial provisions of documents above referred to as a result of displacement of its employees, or where employees are deprived of employment as a result of coordination of its facilities with those of the Pere Marquette Railway Company, and

(b) That the Chesapeake & Ohio Railway Company shall promptly apply provisions of documents referred to in Section (a) of this claim beginning as of April 1, 1958, and continuing as required to all employees involved in coordination covered by Agreement effective April 1, 1958, and in connection with "Better Service" - "Recreation" and "Railroad Y.M.C.A." matters, and in particular those employees displaced from their own regular positions by the return of Mr. James Granville Williams, Supervisor of Recreation, on April 1, 1958, to his former seniority district and roster and subsequent displacement of junior employees as a result of said return. Displacements herein referred to shown in "Note" next following Statement of Claim in Employees' Exhibit "C".

FINDINGS: In 1947, the Chesapeake and Ohio Railway Company and The Pere Marquette Railway Company merged. Thereafter they were known as the "Chesapeake District" and the "Pere Marquette District" of the C & 0.

From 1923 to 1947, Mr. James G. Williams was a clerical employee of the c & 0. In 1947 he was promoted to an "official" position; this promotion was unrelated to the merger.

Mr. Williams, whose title was "Supervisor Recreation" was in charge of the C & O's Better Service, Recreation & Railroad YMCA programs with headquarters at Richmond, Virginia. Two others, Messrs. Tresnon and Sale, also were assigned to this work; they too were headquartered at Richmond where the clerical force doing the work of these activities was stationed.

In about April, 1957, Messrs. Williams, Tresnon and Sale were assigned specific territories for carrying on the Better Service, Recreation and Railroad YMCA activities. Mr. Williams was assigned to the Northern Region, with headquarters in Detroit. The clerical force engaged in this work remained in Richmond.

In August, 1957, the Carrier gave notice of intent to coordinate the work of the clerical force engaged in the Better Service, Recreation and Railroad YMCA activities with the work of other clerical employees on both the Chesapeake and Pere Marquette Districts. Early in the negotiations it was agreed to apply the Washington Job Protection Agreement to the clerical employees involved and a detailed agreement was signed April 1, 1958.

Me&s. Williams, Tresnon and Sale were not made the subjects of that agreement. However, toward the end of 1957, it was decided by the Carrier to retrench on the work done by the three, to eliminate part of it, and to distribute what remained of it among superintendents of the various districts. There is some disagreement as to the amount of Mr. Williams' former work assigned to the Regional Manager at Detroit.

Effective March 1, 1958, Mr. Williams' position as "Supervisor-Recreation" ended and he exercised his seniority rights -- preserved by the Agreement with the Clerks for promoted employees -- and obtained a clerical position on the Freight Traffic Roster in Richmond. Mr. Williams displaced one employee and set in motion a series of displacements.

The Organization contends that Mr. Williams lost his position as "Supervisor-Recreation" as a result of a coordination and that his reentry into the clerical ranks caused displacements attributable to the coordination thereby

qualifying the adversely affected employees for the protection of the Washington Job Protection Agreement.

The Carrier asserts that the abolition of Mr. Williams' position and the distribution of his remaining work was not a coordination and that, in any event, the transfer of work among "officials" not subject to a rules agreement is not subject to the Washington Agreement.

The last proposition is not tenable. The subject matter of the agreement is "coordination". Sections 1, 2(a), 3(a) and others do not limit the applicability of the Agreement to "coordination" of work of employees. If a coordination adversely affects employees, then the Agreement applies. Nor need the employees be represented by the organization parties to the Agreement. See Section 3(a) and Docket No. 67.

But, it must be shown that the adverse effect upon employees is the result of a coordination. This the employees have not shown.

There was a coordination of the work of clerical employees. Whereas all-of the clerical work for Better Service, Recreation and Railroad YMCA had been done at Richmond before April 1, 1958, it was thereafter coordinated with work of employees on both Districts.

No such coordination of supervisory work took place in 1958. Perhaps the earlier assignment of Mr. Williams to Detroit was part of a coordination of such supervisory work. No such contention is made there was no adverse effect upon clerical employment. The work done by Messrs. Williams, Sales and Tresnon was curtailed, and the remainder distributed among other officials. There is no showing that any of the work formerly done by Mr. Williams from Detroit was merged or consolidated or pooled with work on another District (i. e. treating each District as a carrier for the purposes of Section 2(a) as the parties did in the case of the clerical work).

DECISION: The reentry of Mr. J. G. Williams into the clerical force from his former official position was not occasioned by a coordination; the resulting displacements of employees were not caused by a coordination.

DOCKET NO. 64 -- Decision by Referee Bernstein

The Erie Railroad Company and)
The Delaware & Hudson Railroad Corporation)
vs.) PARTIES TO DISPUTE
The Order of Railroad Telegraphers)

QUESTION: Are certain telegraphers who were, prior to February 1, 1956, employed Eric Railroad Company and who, pursuant to Memorandum of Agreement dated January 12, 1956 between Erie Railroad Company, The Delaware and Hudson Railroad Corporation and The Order of Railroad Telegraphers elected to and did transfer to and become telegraphers employed by The Delaware and Hudson Railroad

Corporation as a direct result of the purchase of the Erie's Jefferson Division by the D&H and who were subsequently furloughed from the D&H by reason of the installation and operation of centralized traffic control by the D&H and said Jefferson Division, entitled to benefits, under the protective conditions prescribed by the Interstate Commerce Commission in its order dated December 6, 1955 in Finance Docket No. 18966 authorizing the sale by Erie to D&H of said Jefferson Division?

FINDINGS: (a) The Organization challenges the jurisdiction of the Section 13 Committee and the Referee.

It contends that the protective conditions contained in the authorization of the transaction between the carriers by the Interstate Commerce Commission provided for arbitration of disputes arising under those conditions to the exclusion of the Section 13 procedure of the Washington Agreement once the Organization invoked the arbitration provisions of the ICC ordered conditions.

The ICC required the protective conditions known as the "New Orleans Union Passenger Terminal Conditions". In turn, the New Orleans Conditions combine provisions of the Washington Job Protection Agreement and Conditions 4 to 9 of the "Oklahoma Conditions". The Organization asserts that its dispute with the Carriers arises under the "Oklahoma Conditions" and that it has a right to arbitration under Condition 8 which provides:

> "In the event that any dispute or controversy arises with respect to the protection afforded by the foregoing Conditions Nos. 4, 5, 6, and 7, which cannot be settled by the carriers and the employee, or his authorized representatives, within 30 days after the controversy arises, it may be referred by either party, to an arbitration committee for consideration and determination, the formation of which committee, its duties, procedure, expenses, et cetera, shall be agreed upon by the carriers and the employees, or his duly authorized representatives."

The Carriers have declined to arbitrate.

It can be seen that the arbitration committee, its procedure, etc., require agreement of the parties. Section 13 of the Washington Agreement provides that if the parties fail within a specified time to agree upon a referee either side may request the National Mediation Board to appoint one. Also, there are differences of substance between the Oklahoma Conditions and the provisions of the Washington Agreement.

The Carriers do not deny that the Organization properly invoked Condition 8 and they do not deny that they have refused to agree to arbitration -- indeed they did so on the record during the hearing before me. They merely assert that conditions imposed by the ICC do not preclude resort to the Section 13 procedure of the Washington Agreement.

This jurisdictional question must be resolved first for, if the Committee and the Referee do not have jurisdiction of the Carriers' submission under the Washington Agreement, the merits of the dispute may not be considered by me.

In Docket No. 27 (Referee Gilden) the Carriers' contention was somewhat similar to that made by the Organization here. There it was argued that the Section 5(2)(f) of the Interstate Commerce Act, as amended by the Transportation Act of 1940, Act of September 18, 1940, 54 Stat. 906-907, displaced the Washington Job Protection Agreement. That contention was rejected and it was held that the statute and the Washington Agreement can exist side by side and apply to the same transaction. In that case the ICC had issued an order, Finance Docket 13085 (252 ICC 49), and the Referee held that the benefits obtained under the order were a proper offset to benefits conferred for the same adverse effect under the Washington Agreement.

It is of some significance that the decision was made in the face of an outstanding ICC order imposing protective conditions. This means that the decision in the earlier case was based not merely on a consideration of the statutory provision but on an order imposing protective conditions as well. Indeed, the "Award" specifically recited that the Washington Agreement was operative notwithstanding both the Act and the ICC order. While the matter apparently did not come up in the earlier case, it is a matter of interest that the ICC order contained an arbitration clause indistinguishable from Condition 8 of the Oklahoma Conditions. 252 ICC 49 at 67.

Both Carriers in this case assert that the sale of the Jefferson Division by the Erie to the D&H resulted in a coordination. The Organization preferred not to take a position on that question but did not assert that there was not a coordination. The sale resulted in the putting together, the merging of substantial facilities of both Carriers. Purchase and sale is a common method employed for mergers. It is concluded that this transaction was a "coordination".

It is not for the Referee to remedy the non-observance of Condition 8 of the Oklahoma Conditions. Nor would it be appropriate, as urged, to apply the "Oklahoma Conditions" as the standard for decision of the merits. Such actions are beyond the authority given by the Washington Agreement. In view of the earlier decision in Docket No. 27, which makes sense, it is concluded that this dispute is within the competence of the Committee and the Referee as one involving a coordination.

The Organization seeks to distinguish Docket No. 27 from this case on the ground that in the earlier case the controversy was whether the substantive provisions of the Washington Agreement were applicable despite the 1940 enactment whereas in this case the question is whether the procedure of the Washington Agreement survives the statute and orders issued under it. If similar and overlapping substantive rules for employee protection can exist together by virtue of the Agreement and such orders then, in the absence of some authoritative direction that the Section 13 procedure is displaced, the procedure of the Agreement and such orders can coexist. The Section 13 procedure accompanies the Washington Agreement provisions. Additional protective provisions require some specified procedure to be made operative - hence the specification of arbitration. The language of the order apparently makes that procedure available also for the enforcement of the Washington Agreement provisions. There is nothing unusual about having two forums available for the enforcement of one right. Nor is it unusual to have parallel, duplicating proceedings involving the same or similar issues in the absence of express prohibitions of such duplication. The Carriers invoked the Section 13 procedure of the Washington Agreement, which the

Organization concedes is ordinarily available to it. While that availability may seem inequitable in the light of the Carriers' refusal to arbitrate as provided in the ICC order, the Referee does not have equity powers to withhold the procedures of this Agreement.

It is perhaps stating the obvious that the conclusions reached in this case on the merits are not dispositive for purposes of a case arising under the ICC ordered conditions which may involve different questions.

(b) In fact the Carriers invoke that part of the ICC order requiring observance of the Washington Agreement conditions.

The record does not show that the telegraphers were adversely affected at the time of the coordination. Nor is there proof that the installation of CTC, which was the immediate cause of the job loss, was related to the coordination.

The coordination was effectuated in January, 1956. In July, 1956, the D&H filed an application to install the CTC on its Pennsylvania-Susquehanna Division, which now included the trackage sold by the Erie. The ICC approved the CTC installation in September, 1956; installation began in November, 1956 and progressed to completion in June, 1958.

The Organization argues that "but for" the sale, the jobs rendered unnecessary by the installation of CTC would not have been affected. Obviously, the installation of CTC was the direct cause of the job loss. Without the sale, the CTC installation could not have been made. The coordination was a condition of the cause, not the cause. Was the job loss nonetheless a "result" of the coordination? Logic gives no sure guide to the answer. A practical answer seems to be that the condition of the cause is itself a cause if they were closely related in time or planning -- this is essentially the Organization's argument.

The record fails to show such a connection. It was asserted that the D&H must have planned or anticipated the CTC installation at the time of the coordination. Such an assertion requires a basis in demonstrable fact, such as that the plans existed at the time of the coordination or were decided upon immediately afterward and related in the Carrier's plans to the coordination. Lacking some additional factual basis in the record, the events do not follow one upon the other so closely as to supply the intimacy of relationship needed to make the CTC part and parcel of the coordination -- and hence, jointly with the coordination, a cause of the job loss.

The time sequence does not compel an inference that the installation was planned or anticipated at the time of the coordination. Other inferences, e. g., that the installation was fully engineered for the D&H Division and that its extension to the newly acquired branch was a simple matter requiring little planning, are possible.

The Organization also argues that if the telegraphers who followed their jobs to the D&H had elected not to shift -- as they were entitled to decide -- they would have been eligible for Washington Job Protection Agreement benefits and hence it is illogical to deny them benefits because they followed the work. The contention does not fit any provision of the Agreement. If the D&H knew when the election was presented that the jobs would be lost to the CTC in a short time, the argument would have force -- but the record contains no such showing.

The Organization suggested that even if the coordination did not cause the job loss (a conclusion it did not concede), nonetheless the telegraphers were adversely affected by the coordination because it contracted the number of positions to which they could move.

Under the agreement under the ICC Conditions, the telegraphers had flow back rights to the Erie and had seniority for the D&H area covered by the branch. The number of jobs subject to their seniority rights were not diminished by the coordination, so that this contention fails.

DECISION: The Erie Telegraphers who transferred to the D&H who subsequently lost their positions due to installation of CTC on the division sold by the Erie to the D&H are not entitled to the benefits of the Washington Agreement as their worsened position has not been shown to be a result of coordination.

DOCKET NO. 65 -- Decision by Referee Bernstein

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees
vs.
The Chesapeake and Ohio Railway Company

PARTIES TO DISPUTE

QUESTION: (a) The Carrier violated and continues to violate the Agreement between the parties when it failed and continues to fail to pay to all employees entitled thereto, a "Displacement Allowance" as provided in the Washington Agreement of May 1936.

(b) The Carrier shall pay to all employees who have been in the past, or may be in the future, entitled to a displacement allowance under implementing agreements and the Washington Agreement of May 1936.

(Note: The individuals involved in the claim and amounts due each to be determined by-means of a joint check of the Carrier's records).

FINDINGS: The Major issue in this dispute is the same as that in Docket No. 62 between the same parties. The Findings and Award of that case apply equally to the question of eligibility for a displacement allowance in this case.

In addition there is a controversy over the appropriate method for computing the allowance under Section 6(c). It is a little hard to believe that after a quarter century of application of this Agreement there is not a standard or generally accepted formula for applying the Section 6(c) formula. But the record does not contain evidence of such a practice so that it is necessary, apparently, to treat the issue as a novel one.

There is no dispute as to the method of applying the formula in cases in which employees earn less than the average monthly amount of the "test period".

The question is how to compute the "compensation" attributable to the "average monthly time paid for" and for hours worked in excess of the average for the period after coordination, Boiled down to essentials, the employees would treat all hours of the "average monthly time paid for" as if they were only straight time work and would allocate any overtime hours to those in excess of the number of hours for which there is a guarantee. The Carrier would treat any hours in excess of the "average monthly time paid for" as if they were only straight time. The difference in method, and hence interpretation of Section 6(c), becomes somewhat more clear from the following comparison.

Example : Mr. Smith had a position rated at $16.15 per day before coordination and $16.16 after coordination. His "test period" average compensation was $360.48 a month; the "average monthly time paid for" was 152.83 hours a month, In a month after coordination, Mr. Smith worked and was paid as follows:

22 days pro rata @ $17.36 per day	$381.92
1 holiday pay pro rata @ $17.36 per day	17.36
1 day at punitive rate @ $17.36 per day	26.08
Total, 192 hours Earnings	$425.36

The employees would apply the Section 6(c) formula as follows:

184 hours actually worked (23 days x 8 hrs. per day) less 152.83 test period hours = 31.17 hours.

31.17 hours x 2.17 per hour.	$ 67.64
8 hours at punitive rate of $3.26 per hour.	26.08
Average monthly compensation (for 152.83 hrs).	360.48
Guaranteed amount	$454.20
Compensation allowed.	425.36
Amount Employees contend Smith still due	$ 28.84

The Carrier would apply the Section 6(c) formula as follows:

Guarantee for 152.83 hours	$360.48
Hours worked in excess of average test period hours : 31.17 @ $2.17 per hour	67.64
Total.....	$428.12
Amount paid by Carrier	425.36
Difference Carrier says would be due if Smith were entitled to a displacement allowance (which Carrier says he was not entitled to).	$ 2.76

The Carrier position has some support in the Latter part of the section providing "he shall be compensated in addition (to the guarantee) at the rate of the position filled for any time worked in excess of the average monthly time paid for during the test period." Under one reading "at the rate of the position" would mean straight time. But this is not the only nor the most reasonable interpretation. This part of the provision can be read as merely stating what rate shall be used, leaving to ordinary practice the computation of the earnings. This Latter reading recommends itself as in harmony with the scheme of Section 6 (c).

As the discussion in Docket No. 62 indicates, the "test period" formula was designed to reflect the influence of arbitraries and overtime in the computation of "average monthly compensation." To this pre-coordination average is to be compared the post-coordination earnings for an equal number of hours worked. In

order for the amounts to be comparable both should include the same elements and in proportions which resemble each other as much as possible. Overtime is included-in arriving at the "average monthly compensation"; overtime should also be included in that with which the average is to be compared. But it does not follow that all overtime should be put into that part of the post-coordination earnings with which the average is to be compared nor wholly excluded from the excess.

The touchstone is comparability - comparability with the period for which there is a minimum guarantee. The guarantee in the example is for an amount for 152.83 hours most of which were worked straight time and some possibly at overtime. So, the proper post-coordination period, the comparable period, should be the first 152.83 hours worked in a month. This will reflect the average amount of straight time and the amount of overtime in the comparable period. Whatever overtime is worked in the excess hours should be computed at overtime rates.

In the absence of an agreed-upon method of computation, this is the application of Section 6(c) which, it seems to me, best accords with its language and purpose.

DECISION: (a) Employees may be due displacement allowances even if they are in positions carrying a rate of pay equal to or higher than that received at the time of coordination. Eligibility is established if a month's compensation (for hours equivalent to the average time paid for) is less than that the "average monthly compensation" and any part of the deficit is attributable to effects of the coordination.

(b) In applying the guarantee of Section 6(c), the hours upon which the guarantee is based, i. e., the hours whose earnings are to be compared with the "average monthly time paid for", shall be those first occurring in the month being compared. The overtime occurring in those hours are to be included in the computation of the guarantee. Any overtime hours worked subsequent to the hours for which the guarantee applies are to be computed at the overtime rate.

DOCKET NO. 66 -- Decision by Referee Bernstein

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees
vs.
Pacific Electric Raiiway Company

PARTIES TO DISPUTE

QUESTION: . E. B. Scoggins is entitled to allowance prescribed in Section 9 Of the Agreement of May, 1936, Washington, D. C.

2. Allowance prescribed in Section 9 of the Agreement of May, 1936, Washington, D. C. shall now be accorded E. B. Scoggins by the Pacific Electric Railway Company.

FINDINGS: Claimant, Mr. E. B. Scoggins, was displaced from his position by an employee who Lost his position due to a coordination. An employee is "deprived of his employment" under Section 7 (c) 2.

> "When the position he holds on his hone road is not abolished but he Loses that position as a result of the exercise of seniority rights by an employee whose position is so abolished as a result of said coordination, or by other employees, brought about as a proximate consequence of the coordination, and if he is unable by the exercise of his senicrity rights to secure another position on his home road or a position in the coordinated operation."

Mr. Scoggins obviously met the first condition.

The question is whether he also meets the second condition - inability, despite the exercise of seniority rights, to secure another "position".

Mr. Scoggins tried and failed to obtain several positions. It is claimed that he then elected to take a lump sum separation allowance. The Carrier contends that-the claimant did not effectively make such an election before he was offered a "pos it ion" on the clerks' extra board. The Organization asserts that the offer of the "position" was not made until after the election under Section 9 and that the proffered status is not a "position" within the meaning of Section 7 (c) 2.

The claimant first gave notice of his election to take a separation allowance on April 16, 1959, after attempting without success to obtain several jobs by the exercise of seniority. At that time he was assigned to a position that was subject to bidding. This election clearly did not meet the second condition. Mr. Scoggins again became unassigned on May 1, 1959, having been employed on April 30. It is contended that again on April 30, after work, he requested separation and only then was offered a "position" on the "extra board".

The Carrier established that Mr. Scoggins would have received the most senior position on the extra board and that employees on the extra board enjoyed full time employment and compensation generally equivalent to, and sometimes greater than, that of regularly assigned employees. It also appears that the extra board is not the result of negotiation and agreement.

The Committee seems agreed than an extra board assignment can qualify as a position. But, it is contended, if the extra board is not established and governed by a rules agreement an assignment cannot be deemed a "position" for purposes of Section 7 (c) 2.

This distinction does not turn upon anything in the Washington Agreement. That Agreement is to provide protection for employees who lose their jobs entirely or are left with jobs inferior in compensation or conditions as a result of a coordination. Such employees are to receive a "coordination allowance" (if they Lose all emplcyment) or a "displacement allowance" (if they maintain employment but with less compensation fcr comparable periods of work).

The principal purpose of the Agreement is to cushion the economic distress of employees who try but are unable to cbtain a "position".

The extra board hero was not established by agreement but was apparently an accepted and established set of jobs. Its legitimacy is not the concern of this Commit-tee; perhaps it is the proper subject of challenge elsewhere. This Committee is for the determination of the rights of carriers, employees and their representatives under this Agreement; and other considerations are quite incidental. Whether other non-negotiated extra board assignments would qualify as positions under the Washington Agreement could only be decided upon the characteristics of each factual situation.

Suffice it to say that in this case the practical equivalent of a full time job was offered before the claimant was out of work by reason of inability to obtain a position with the carrier. In such a situation the purposes of the Agreement are not greatly served by any mechanical or rigid test of whether the election to separate may be made on the last day of work and before another position is available. Section 7 (c) 2 requires the loss of one position and the unavailability of another. The two are required in combination. If the employee has an opportunity for full time employment in categories in which he has established seniority before he goes off the payroll he has the obligation to accept it. Here the offer of the position came during a day on which he worked and was paid. In such a situation reasonable doubts are to be resolved in favor of employment and the minimizing of losses to both employees and carriers. The offer of the position, I find, prevented the claimant from satisfying both conditions of Section 7 (c) 2.

DECISION: Mr. E. B. Scoggins is not entitled to an allowance under Section 9 because he was not deprived of employment inasmuch as a position, an extra board assignment, was available to him before he lost his prior position.

DOCKET NO. 67 -- Decision by Referee Bernstein

Brotherhood of Railway and Steamship Clerks,)
Freight Handlers, Express and Station Emplcyees)
vs.) PARTIES TO DISPUTE
Erie Railroad Company)

QUESTION: It is the position of the Brotherhcod that:

(1) Mr. A. w. voss, an employee of the Erie Railroad, was involved in the coordination of the passenger stations of the Erie Railroad and the Delaware, Lackawanna and Western Railroad at Jersey City and Hoboken, New Jersey, which occurred on or about October 13, 1956, and as an employee "continued in service" is, therefore, entitled to be paid a displacement allowance under Section 6 of the Agreement of May, 1936, Washington, D. C.;

(2) As an employee involved in the consolidation and "continued in service", Mr. A, W. Voss is entitled to be paid a displacement allowance equal to the difference between his monthly earnings on any position he has held or will hold during the protective period provided in Section 6 and his average monthly earnings during the "test pericd" as defined in Section 6 (c). (File 17.2 Consolidations: Erie-DI&W - Hoboken, N. J.)

FINDINGS: On October 13, 1956, there was a coordination of facilities by The Erie Railroad and the Delaware, Lackawanna & Western Railroad. Mr. A. W. Voss was Ticket Agent at the Erie's Jersey City passenger station, a facility which was to be closed as part of the coordination plan.

Mr. Voss was "continued in service" in the position he held at the time of coordination until March, 1958.

Sometime prior to March, 1958 (probably about April 1957), Mr. Voss was offered and declined the position of Freight & Ticket Agent at Port Jervis, which is 88 miles from Hoboken. In March 1953, Mr. Voss was appointed Ticket Agent at Paterson, New Jersey. This, his prior position and that at Port Jervis were "appointive" and not subject to any rules agreement.

Mr. Voss lost the Paterson position on January 31, 1959, when it was combined with that of Freight Agent because of cancellation of a government mail contract and a decline in passenger business. Thereafter by exercise of his seniority, he obtained the position of Ticket Clerk. Each change resulted in a lower rate of pay.

The issues raised are:

(1) Is the holder of an appointive position not covered by a rules agreement entitled to the benefits of the Washington Job Protection Agreement when he otherwise qualifies?

(2) Did the position offered at Port Jervis, 88 miles from the claimant's original work place, "require a change of residence" within the meaning of Section 6 (a)?

(3) Is the claimant, who had been adversely affected by the loss of his position at Jersey City, entitled to a displacement allowance for the period after the later loss of the Paterson position which was not abolished as part of the coordination but because of a decline in business within the five year protective period of Section 6 (a)?

(4) Was a timely claim made for benefits based upon the loss of the Paterson position or was it barred by the time limits of the Agreement of August 21, 19541

(1) The Agreement applies and its benefits are available to employees who are not covered by a rules agreement. This is the meaning and fntendment of Section 3 (a) which provides:

> ". . . No coordination involving classes of employees not represented by any of the organizaticns parties hereto shall be undertaken by the carriers parties hereto except in accord with the provisions of this agreement or agreements arising hereunder."

(2) The obligations and rights of an employee continued in service are fully and precisely set forth in the Findings in Docket 58 and that formulation governs here. Under the test set forth in that case, the claimant was not obligated to accept a position requiring a change of residence if another position not

requiring a change of residence was available even if the latter paid a lower rate than the former.

In the ordinary case, a distance of 88 miles would "require a change of residence" withinthe meaning of Section 6 (a). It would require at least an hour and a half, or more likely two hours, of travel in each direction each day. While a small percentage of people can be found who do travel for such periods every work day, the time required is too great and too onerous to be considered as normal commuting. It follows that Mr. Voss could decline the Port Jervis position, take a lower rated position available to him nearby and maintain his eligibility for a displacement allowance.

(3) The claimant, while he held the position at Paterson, was eligible for a displacement allowance for any month in which his earnings fell below those of the "test period". As already described, the loss of the Paterson position was due to cancellation of a mail contract and a decline in passenger business.

Apparently the argument is made that because the loss of the Paterson position was not a direct "result of such coordination" the wage losses occasioned by it are not to be the basis of a benefit under the Agreements.

It would be strange if an employee, demonstrably displaced by a coordination as the claimant was, would be entitled to a displacement allowance for one job but, upon the loss of it, would become ineligible for an allowance when he only could obtain a job which produced even less compensation.

The employee was one "continued in service" who lost his position "as a result of such (a) coordination". Section 6 (a) makes it clear that "for a period (of) five years following the effective date of such coordination" he shall not be "in a worse position with respect to compensation" so long as he is unable by the exercise of seniority to obtain a position which produces as much or more compensation. If the best job he could obtain produces less "compensation" than the "test period" guarantee, the displaced employee is entitled to the benefits of Sections 6 (a) and (c).

The five year protection period for a displaced employee would make little sense and provide little protection if each subsequent loss of earnings in the period had to be directly related to the coordination. It is the first adverse effect-f a coordination which makes the employee eligible for the benefits of Section 6 (See Section 2 (c)). Thereafter the protection of the Agreement is his for the specified five years in the ordinary case.

(4) Mr. Voss lost the Paterson position on January 31, 1959. Claim for benefits asserted to be due as a result of lowered compensation was not made until February, 1960. The Carrier contends that the claim is barred by the time limit provisions of the Agreement of August 21, 1954. The Organization asserts that the "statute of limitations" provisions of the 1954 Agreement are not applicable and have never been applied to the disputes arising under the Washington Agreement.

The Carrier presented no instance of the application of the 1954 time limits to this kind of case. None of the fifteen cases before me bears the slightest indication that the time limits were a factor in the handling of the dispute by any of the parties.

NO provision of the 1954 Agreement is presented in support of the contention.

The 1954 Agreement does not cover all of the parties to the Washington Agreement. The application of the 1954 time limits to some and not to others would seem sufficiently out of the ordinary to require specific language for its accomplishment.

It follows that the claim for benefits which may be due for compensation losses sustained after separation from the Paterson position '(factual questions to be settled by the parties by payroll checks) was timely.

DECISION: A. W. Voss is entitled to a displacement allowance for each month of a period of five years after March, 1958, in which his compensation for the number of hours equal to the average monthly time paid for during his test period (3/57-2/58) was below the average monthly compensation of the test period.

DOCKET NO. 68 -- Decision by Referee Bernstein

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees
vs.
Chicago, Rock Island and Pacific Railroad Company and The Kansas City Terminal Railway Company
) PARTIES TO DISPUTE

QUESTION: (a) -Alleged failure and refusal of Carriers to comply with and apply the provisions and intent of "Agreement of May, 1936, Washington, D. C." with respect to affected clerical and office employees in the coordination of Ticket Offices handling ticket sales and accounts of the Chicago, Rock Island and Pacific Railroad Company and the Kansas City Terminal Railway Company at Kansas City, Missouri.

(b) --Request of the Brotherhood that the provisions of said agreement be fully applied by the Carriers to all involved employees of both Carriers.

FINDINGS: In August 31, 1959 the Chicago, Rock Island & Pacific Railroad Company closed its City Ticket Office in Kansas City, Missouri, and purportedly transferred the work done there and the services offered at that location to a new City Ticket Office located upstairs in the Union Terminal Building. In fact, only a small stock of tickets was kept on hand in the new office. Only a few hundred dollars in ticket sales were made in the new City Ticket Office compared with several thousands of dollars in ticket sales monthly at the former City Ticket Office. After a few months even this small stock of tickets was no longer maintained in the upstairs office.

Before and after the closing of the old City Ticket Office Rock Island tickets were sold at the Union Depot Office (operated by the Kansas City Terminal Railway Company). The Carrier's records show the following dollar sales for the

one month before and the two months after the change in 1959 as compared with the same months a year earlier:

	Year 1959		Year 1958	
August	Depot Ticket Office	$63,721	Depot	$58,103
	City " "	23,176	CTO	20,354
		$86,897		$78,457
Sept.	Depot Ticket Office	$55,896	Depot	$40,092
	City " "	244	CTO	11,987
		$56,140		$52,079
Oct.	Depot Ticket Office	$55,181	Depot	$37,277
	City " "	584	CTO	12,007
		$55,765		$49,284

It is quite clear that the shutdown of the City Ticket Office resulted in a negligible transfer of ticket sales to the upstairs office in the Terminal Building, but did result in a very substantial shift of sales and services from the old office to the Union Depot Ticket Office.

In fact, operations and services formerly performed at the City Ticket Office were performed after its shutdown by the Union Depot Ticket Office. As in Docket No. 56 Carriers contend that no "joint action" is involved. As a practical matter, however, The Kansas City Terminal Railway Company, another Carrier, undertook the operations and services formerly performed by the Rock Island through separate facilities, in combination with its other operations and services. This is sufficient "joint action" to meet the requirements of a "coordination".

In addition, the Terminal Company is the result of prior and continuing joint action by the Rock Island and other Carriers. But for such joint action, the Rock Island could not have shut down its City Ticket Office with the assurance that its tickets would continue to be sold, The joint action already in existence made the shutdown feasible. The Union Depot Ticket Office was itself the result of prior joint action - the combining of ticket, information and reservation services of several carriers, including the Rock Island. When the City Ticket Office was closed and several thousands of dollars of monthly ticket sales were shifted to the Union Depot Office, there was an additional combining of operations and facilities.

The transfer of the work of the City Ticket Office required action by both the Rock Island and the Terminal Company by which they, in fact, consolidated or merged operations and services formerly performed through separate facilities. The transfer was an addition to the past joint action under which the Terminal Company was brought into being.

DECISION: The discontinuance of the Rock Island City Ticket Office and the transfer of its operations and services to the Kansas City Terminal Railroad Company Ticket Office constituted a "coordination".
