DOCKET NO. 69 --- Decision by Referee Bernstein

The Order of Railroad Telegraphers)
vs.) PARTIES TO DISPUTE
The St. Louis Southwestern Railway Company and)
The Southern Illinois & Missouri Bridge Company)

QUESTION: Do the changes and modifications in operations, services and facilities of the Southern Illinois & Missouri Bridge Company, as set forth in the joint application to the Interstate Commerce Commission by the St. Louis Southwestern Railway Company, the Missouri Pacific Railroad Company and the Southern Illinois & Missouri Bridge Company, identified as BS-Ap-No. 14574, constitute a "coordination" under the provisions of Section 2 (a) of the "Agreement of May, 1936, Washington, D. C."?

FINDINGS: The Southern Illinois & Missouri Bridge Company has been jointly owned by The St. Louis Southwestern Railway Company (The Cotton Belt) and the Missouri Pacific Railroad Company for a considerable time. Tiie Bridge Company's main-property consists of the bridge which crosses the Mississippi River and connects the trackage of the two owning carriers. For years locomotives and trains of both carriers have operated over the trackage of the other and have used the bridge in going from one property to the other. The Bridge Company does not own or operate any locomotives or cars.

Prior to the changes in operations which are the subject of controversy here, the Bridge Company owned and operated a tower which contained levers controlling switches, one on Cotton Belt property, which govern access to a Ccttcn Belt Yard and the crossover between the Bridge Company track and the Cotton Belt track,

The change in controversy involved the extension of a Central Traffic Control system, operated from a Cotton Belt location, to the area formerly controlled by the levers of the Bridge Company's tower.

The Organization asserts that this was a coordination and that the Bridge Company employees adversely affected are entitled to the benefits cf the Agreement.

The Carrier asserts that the change was not a coordination because the Bridge Company is not a "carrier" within the meaning of the Agreement. Both Sections 2 (a) and 3 (a) require action by "two or more carriers" in order to bring the agreement into operation. Section 2 (b) defines "Carrier" as one listed in the appendices or "any carrier subject to the provisions of Part I cf the interstate Commerce Act".

The Bridge Company is not listed as a carrier party in the appendices. The Cotton Belt asserts and presents authority to the effect that the Bridge Company is not a carrier subject to Part I of the Interstate Commerce Act. 'The Organization does not effectively deny or refute this. Instead, the Organization seeks to show that the Bridge Company is subject to the Railway Labor Act, the Railroad Retirement Act and the Railroad Unemployment Insurance Act. Of course, the applicability of these other statutes, either singly or in combination is no substitute for Part I of the Interstate Commerce Act, which the Agreement specifies as the test of coverage.

The Cotton Belt applied to the Interstate Commerce Commission for permission to install the devices at issue and the Bridge Company was made a party to the application. It is quite clear that The Cotton Belt was required to obtain approval, but nothing in the record demonstrates that the Bridge Company was required to join as a carrier of the class specified in the agreement.

The Organization argues in the alternative that the change was a "coordination" of facilities of The Cotton Belt and The Missouri Pacific. However, that coordination--including formation of the Bridge Company is--many decades old. The control and switch and traffic arrangements were of long standing and no new combination was effected. The modernization of long-integrated facilities does not constitute a "coordination". The shift of location of the control device does not change the fact that the coordination of facilities had been effectuated long before. That element did not turn the modernization into a new and additional coordination.

DECISION: The extension of the Central Traffic Control System of the St. Louis Southwestern Railway Company as a substitute for certain traffic control devices of the Southern Illinois & Missouri Bridge Company, already integrated with-the former's facilities, was not a "coordination".

DOCKET NO. 70 -- Decision by Referee Bernstein

Southern Pacific Company (Pacific Lines) and)
Pacific Electric Railway Company)
vs. PARTIES TO DISPUTE
Brotherhood of Railroad Trainmen
Brotherhood of Locomotive Engineers I
Brotherhood of Locomotive Firemen & Enginemen, and)
Order of Railway Conductors and Brakemen)

QUESTION: (1) Would the arrangement described in the facts which follow constitute-d "coordination" 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 affirmative, may the carriers involved place the coordination in effect prior to the time that an agreement comprehended by Section 5 of the Washington Agreement has actually been reached between the carriers and the organizations of the employees affected; provided not less than ninety (90) days have elapsed from date of written notice served and posted in accordance with Section 4 of the Washington Agreement; and provided further, that conference (conferences) have been held upon the basis prescribed in Sections 4 and 5 of the Washington Agreement and the parties have reached an impasse?

FINDING: (a) Pacific Electric owns and operates a three mile line of railroad which is not connected with other parts of that Carrier but is physically connected with Scuthern Pacific. Pacific Electric equipment and employees operate on its own track picking up cars, which enter from Southern Pacific track, from interchange tracks.

Pacific Electric & Southern Pacific desire to have Southern Pacific employees conduct the operations on Pacific Electric's three miles of line. The Carriers contend that this is a coordination made permissible by the Washington Job Protection Agreement. They are willing co apply the protective conditions to all adversely affected employees.

The Organizations contend that the proposed combination is not a "coordination" because it is the combination of unlike things, and hence is not made possible by the Washington Agreement. (See Docket No. 57, below).

Section 2 (a) provides:

> "The term coordination as used herein means joint action by two or more carriers whereby they unify, consolidate, merge or pool in whole or in part their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities."

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

It follows that the Carriers' proposed integration is a "coordination".

(b) The second question presented is: If the notice and conference provisions of Section 4 are carried out fully and in good faith, does Section 5 require an agreement of the parties as a condition of putting a coordination into effect; and failing to agree, is the only recourse to the Section 13 Committee for a resolution of the impasse and directions for putting the coordination into effect?

Section 5 of the agreement provides:

> "Bach plan of coordination which results in the displacement of employees or rearrangement of forces shall provide for the selection of forces from the employees cf all the carriers involved on bases accepted as appropriate for application in the particular case; and any assignment of employees made necessary by a coordination shall be made on the basis of an agreement between the carriers and the organizations of the employees affected, parties hereto. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with Section 13."

A literal reading of Section 5 seems to require an agreement as an absolute condition. It says: ". . . and any assignment of employees made necessary by a coordination shall be made on the basis Of an agreement. . ." Only one alternative is given:

"In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with Section 13."

Such an interpretation is consistent with the scheme of the Railway Labor Act which requires that any changes in the rules agreements may be put into effect only after following the procedures of the **Act.** They can be lengthy, but nonetheless a unilateral change cannot be made by either carriers or employees until the procedures are fully observed.

As pointed out in argument, the Washington Job Protection Agreement permits changes by carriers in work assignment that are not possible under rules agreements. But there is nothing in the Agreement which indicates or hints that such changes can be introduced through unilateral action not permitted by the rules agreements.

If the element of delay seems to strengthen the hand of an obdurate party, the way is open to invoke the powers of the Section 13 Committee which has in the past directed the proper basis' for implementing coordinations. E.g., See Docket No. 4.

The Committee was not asked to decide the merits of the work assignment dispute.

DECISION: (a) The proposed change of operations whereby The Southern Pacific Company's employees would operate equipment of the Pacific Electric Railway Company over the latter's tracks is a "coordination."

(b) The Agreement does not permit the unilateral effectuation of a coordination plan without an agreement between the Carriers and the representatives of the employees affected. Failing agreement, the proper procedure is recourse to the Section 13 Committee.

- ----------

RESUBMITTED DOCKET NO. 70 --- Decision by Referee Coffey

Southern Pacific Company (Pacific Lines) and	)	
Pacific Electric Railway Company	)	
vs.	)	PARTIES TO DISPUTE
Brotherhood of Locomotive Engineers	)	
Brotherhood of Railroad Trainmen	)	
Brotherhood of Locomotive Firemen and Enginemen	)	
Order of Railway Conductors and Brakemen	)	

QUESTION: Referee Bernstein in Award issued June 7, 1961 provided as follows: "The Agreement does not permit the unilateral effectuation of a coordination plan without an agreement between carriers and the representatives of the employees affected. Failing agreement, the proper procedure is recourse to the Section 13 Committee."

No agreement having been reached, Carriers resubmit.

FINDINGS: The parties hereto are signatories to the Agreement of May, 1936, Washington, D. C. (Washington Job Protection Agreement).

On the basis of the entire record, all of the evidence and reasonable inferences, I find and determine that:

The Bernstein Award, referred to above, further held "that the Carriers' proposed integration is a 'coordination'" within the meaning of Section 2(a) of the Agreement, supra.

That decision is final and binding on the parties to this dispute, as provided in Section 13 of said Agreement.

Accordingly, said decision cannot now be collaterally attacked to divest this Committee of its continuing jurisdiction to settle and adjust an unresolved dispute involving failure of the parties to agree on "a plan of coordination" as contemplated by Section 5 of said Washington Agreement for making the particular "coordination" effective.

DECISION: Carriers' proposed Implementing Agreement (Exhibit No. 2, Carriers' ex parte resubmission) is in all things appropriate as a basis for making the changes consequent upon "coordination" effective without further delays, except for some possible failure to show proper recognition for the equity that the employees of the Pacific Electric have in the service that is being transferred to the Southern Pacific Company (Pacific Lines).

In the submissions and on oral argument, the representatives of the employees principally urged and emphasized that this Committee should reverse its previous decision, with Referee Bernstein participating, and did not indicate that they were insisting upon the Pacific Electric employees participating in the coordinated operation. Also, the record does not show the employees of the Pacific Electric have requested that the proposed agreement provide for their participation in the coordination operation.

Nevertheless, the very heart of the Agreement of May, 1936, Washington, D.C. is the equitable consideration that 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 the basis deemed appropriate for application in the particular case.

On the other hand, the work that is being transferred in the instant case is. in some degree, seasonal and, at most, would hardly sustain a full crew or crew; if arrangements were made for them to follow the work.

Moreover, the Pacific Electric employees could not possibly go to the Southern Pacific Company and enjoy the same seniority rules which they presently are enjoying. Nor could they enjoy the same rates of pay. Pacific Electric employees are under yard rates of pay and the Southern Pacific employees involved are under road rates of pay.

It is also a matter of record that, despite repeated attempts on the part of carriers to permit the organizations to do so, no attempt has been made by them to determine participation between the employees of the two Carriers involved in the coordinated operation, a fact from which I am compelled to draw the inference that the Pacific Electric employees are not interested in following the work,

This is not hard to understand on a record which shows that Pacific Electric employees would have much to lose and practically nothing to gain in that connection.

Reasoned as above and the further fact that any of the Pacific Electric employees who may be adversely affected would be fully protected under the provisions of the Washington Job Protection Agreement, I am of the opinion that the equities they have in the work are thereby fully protected.

Upon continued failure of the parties to agree, within thirty days from the receipt hereof, upon an appropriate basis for selection and assignment of forces from among participating Carriers, the "coordination" may thereafter be made effective on terms that are being proposed by Carriers.

Further negotiations thereafter are dependent upon the due processes of law, contract, or for making other changes in rules, practices and rates of pay by mutual consent.

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

Committee Established Under Section 13
Referee's Findings and Decisions
Dated Chicago, Illinois, March 19, 1963
(A. Langley Coffey, Referee)

Dockets 70 (Resubmitted), 71, 73, 74, 75, 78, 79,
88, 89, 90, 92, 95, 98, 99, 100.

GENERAL DISSENT

The comments and decisions of the Referee in this docket of cases are so foreign to the literal reading the purposes and intent of the Agreement of May, 1936, Washington, D. C., commonly known as the Washington Job Protection Agreement, that the employee representatives of the Section 13 Committee, although many of them do not approve of the filing of dissents in normal cases, feel so strongly in connection with these decisions that they unanimously decided that it was necessary to file a vigorous general dissent in this docket of cases and they also agree with the dissents filed in the individual cases, namely Dockets 70, 90 and 98 and Dockets 73, 92, 95 and 100. Dissents could very well be filed in several other cases in this docket but the individual dissents we are filing are limited to the glaring mistakes which the Referee made.

We realize that this Agreement was written 27 years ago and by practical railroad men - laymen. if you please - and it means what it says. Its purposes are spelled out and its benefit provisions are sufficiently clear for practical railroad men to know what they mean. A case does arise occasionally which the Agreement may not cover clearly but there were only two such cases in this docket. It was intended that the Agreement be interpreted by laymen not by legalistic minds which through mental gymnastics can make white turn into black.

It was apparent during the course cf the hearings and discussions that the Referee did not understand the Agreement nor its purposes even though it was explained in detail and on numerous occasions. It would appear that the Referee determined what he believed would be equitable in his own judgment and evaluation cf the cases regardless of the Agreement provisions and then twisted the provisions of the Agreement to justify his determinations.

Some of his decisions exceed the authority of the Section 13 Committee. In other cases where the provisions of the Agreement sustained the contention of the employees, he said he did not believe the Agreement was intended to function in that manner. In still other cases he added words to the Agreement and then interpreted the Agreement with his words added. In my forty years' experience as a negotiator and interpreter of agreements, I have never seen any agreement mutilated to the extent the Washington Job Protection Agreement has been mutilated by this Referee. The dissents on individual cases follow the docket on which dissent has been filed.

This general dissent and the individual dissents have been unanimously adopted by the employee members of the Section 13 Committee.

G. E. Leighty

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

St. Louis, Missouri
October 14, 1963

DISSENT - RESUBMITTED DOCKET NO. 70

STATEMENT OF FACTS: Page 3 of the Carriers' brief dated January 15, 1962, contains the following description of Resubmitted Docket NO. 70:

> "N&therefore, in Sections 5 and 13 of said Agreement of May 1936, and pursuant to paragraph (bj of award under Docket No. 70 of the above entitled Committee, the Carriers respectfully request that the said Committee direct the proper basis and conditions under which the proposed coordination shall be permitted to be made effective."

On pages 6 and 7 of the Carriers' supplementary brief handed Referee A. Langley Coffey on December 11, 1962, somewhat different issues are described:

"Reduced to its simplest terms, your assignment is basically to:

(a) Interpret the provisions cf Section 5 of the Washington Agreement to clarify the question as to whether Section 5 contemplates and is limited to an agreement covering assignment of employees only, or an agreement covering assignment of employees and the rates cf pay, rules and working conditions attached to such employees."

Section 5 of the WJPA provides that:

"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 carriers involved on bases accepted as appropriate for application in the Particular case; and any assignment of employees made necessary by a coordination shall be made on the basis of an agreement between the carriers and the organizations of the employees affected; parties hereto. In event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with Section 13." (Underscoring added).

DISSENTING OPINION: In Carriers' brief of January 15, 1962, a plea was entered urging that the Section 13 Committee "direct the proper basis and conditions under which the proposed coordination shall be permitted to be made effective." (Underscoring added).

On December 11, 1962, after considering various and devious means to confuse the record, the Carriers then changed the disputed issues of January 11, 1962, and requested Referee A. Langley Coffey to "interpret Section 5 of the Washington Agreement to clarify the question as to whether Section 5 contemplates and is limited to an agreement covering assignment of employees only, or an agreement covering assignment of employees and the rates of pay, rules and working conditions attached to such employees." By a clever play on words the Carriers then attempt to further confuse the record by charging the Organizations with abortive attempts to expand the scope of an agreement under Section 5 to include rules, rates and working conditions. Carriers allege and admit that changes in rules, rates and working conditions can only be accomplished through the processes of the Railway Labor Act. With this, the Organizations agree as evidenced by the formal Section 6 Noticesreferredtd in the record.

A realistic evaluation of the situation should readily convince even the most skeptic that a "coordination" of this type would require agreement on other rule changes in addition to the allocation of forces. For example, Pacific Electric operating yard service employees have contractual and exclusive rights to perform all switching service on the San Fernando Branch. On the other hand, Southern Pacific employees, who will be required to switch the San Fernando Branch under the Carriers' proposed plan of operations, are road crews paid on a mileage basis and have no contractual obligation to perform yard service on a foreign carrier without an additional day's compensation. To contend that yard service under contract to one group of employees can be arbitrarily transferred to road crews of

another carrier through the media of the WJPA without changes in other existing rules, would do violence to the required procedures of the Railway Labor Act. (See Findings and Conclusions of the United States District Court for the District of Columbia dated May 14, 1963 - Civil Action No. 2381-62-BLF&E vs. Southern Ry. et al).

From Carriers' "Exhibit No. 1" attached to and made a part of the supplementary brief handed Referee Coffey on December 11, 1962, it is interesting to note that the Carriers' plan for "assignment of employees" of "all Carriers involved" contemplates that:

> "4. Concurrent with the effective date of coordination, work now performed by Pacific Electric freight crews on Pacific Electric San Fernando Branch will be performed by Southern Pacific crews in accordance with existing Southern Pacific rules and practices governing the operating territory involved."
>
> "5. Concurrent with the effective date of the coordination, Pacific Electric freight assignments now established to perform work on Pacific Electric San Fernando Branch will be abolished and Pacific Electric employees affected thereby shall exercise seniority in accordance with applicable provisions of the working Agreements in effect between the Pacific Electric and its employees represented by the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen."

Despite the persuasive arguments advanced by the Carriers, reason makes it next to impossible to arrive at the conclusion that the foregoing proposed agreement covers an appropriate "assignment of all carriers involved". Perhaps a more accurate description of the proposed agreement could appropriately be termed as an "arbitrary transfer of work from one group cf employees to another." Section 5 of the WJPA patently preserves the contractual right of employees to follow their work and participate in the "coordinated" operations. Any other construction would render the WJPA meaningless.

Items 4 and 5 of Carriers' Exhibit No. 1, herein quoted, amply illustrate the ambiguity of their December 11, 1962 amended position. Pseudo agreements are therein advanced imploring the Referee to hold that any agreement under Section 5 of the WJPA must deal solely with the "allocation of forces", and does not require changes in "rules, rates and working conditions". Further, that such rule changes, if considered at all by the Carriers, must be handled by the Employees in accordance with the procedures of the Railway Labor Act, separate and apart from the instant proceedings. While the Organizations do not entirely disagree with such theory, it must be said with certainty that Items 4 and 5 cf Carriers' Exhibit NO. 1 are designed to combine "allocation of forces" with "rules, rates and working conditions".

In summary, the BLF&E feels that the Referee in deciding Resumbitted Docket No. 70 on March 19, 1963, exceeded the authority vested in him under Section 13 by writing new rules never contemplated by the original framers of the WJPA. Further, that such new rules violate the principles of the Railway Labor Act and border on compulsory servitude. Candor compels the conclusion that the Referee either did not read the record or is incapable of serving in an unbiased capacity. Therefore, the BLF&E desires to protest with all the vehemence at our command.

DOCKET NO. 71 --- Decision by Referee Coffey

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

QUESTION: Whether or not the closing of the two stations of the Pennsylvania Railroad Company, 3984 Station located at Port Norfolk, suburb of the City of Portsmcuth, and the City Office 3980 Station located at the foot of High Street, Portsmcuth, Virginia and the transferring of the work to the various employees of the Norfolk & Portsmouth Beltline Railroad at Sewells Point, Virginia, Buell, Virginia and Army Base, Norfolk, Virginia and to the various employees of the Chesapeake & Ohio Railroad at Sewells Point, Virginia and Brooke Avenue, Norfolk, Virginia, 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: The parties hereto are signatories to the Agreement of May, 1936, Washington, D. C., (Washington Job Protection Agreement).

On the basis of the entire record, all the evidence, and reasonable inferences, I find and determine that:

Station 3984, Port Norfolk, Virginia, was closed on or about April 6, 1955. Station 3980, Portsmouth, Virginia, was closed on or about September 1, 1959.

Prior to April 6, 1955, this Carrier conducted a floating operation from its float bridge at Port Norfolk of cars delivered at Port Norfolk by the Norfolk & Portsmouth Belt Railroad (N&PB) destined tc Brooke Avenue, a Chesapeake & Ohio (C&O) float bridge, from which point the cars were delivered to shippers' sidings by the C&O. This floating operation involved services not only with regard to cars which had been moved on the Pennsylvania Railroad but also traffic of other railroads serving Norfolk with the exception of the C&O and Southern, which had their own car float service. Effective April 6, 1955, this Carrier's service was discontinued.

Carrier had met with its employees on September 15, 1952 for the purpose of discussing a rearrangement or adjustment of forces for permitting said Carrier to abandon Port Norfolk and for transferring the work to the N&PB and the C&O to perform at Sewells Point, Virginia, and the C&O to handle the float operation from Sewells Point to Brooke Avenue, Norfolk, Virginia.

The C&O would not agree to the terms proposed and, on September 23, i952, the Pennsylvania's employees advised they would not be bound by agreement made September 16, 1952.

This Carrier and the C&O did later come to terms as evidenced by an instrument in writing, dated March 10, 1955 (Employees' Exhibit E), referring to discontinuance of Carrier's car float operation between Port Norfolk and Brooke Avenue, to "be taken care of entirely by tariffs" without "agreements or contracts covering the float service."

On September 1, 1959, the work at the Portsmouth Feight Agency (Station 3980) was combined with that of the Norfolk Agency (St. Julian Avenue Freight Station) and the two agencies fully consolidated whereas prior thereto they were partially consolidated under the same agent.

DECISION: When the notice contemplated by Section 4 of the Washington Job Protection Agreement is not given, the joint action that also is contemplated by sail Agreement need not be established by direct evidence that two or more carriers actually came together and entered into a formal agreement to undertake a particular "coordination", but they will be bound by acts and conduct which show chat a "coordination" was, in fact, carried out.

The abandonment by one carrier of its facilities and the utilization of the separate facilities of another carrier or carriers in furtherance of operations or services to which the abandoned facilities had been devoted will be closely scrutinized as to the cause and effect of diverting business and traffic involving work in which the employees have an equity.

In the instant case the evidence is sufficient to support a reasonable inference that the Pennsylvania could not have abandoned its floating operations under prevailing conditions without an understanding between Carriers to "be taken care cf entirely by tariffs" without "agreements or contracts covering the float service".

The closing of Station 3984, Port Norfolk, involved joint action by two or more carriers which constituted a "coordination" as that term is defined in Section 2(a) of the controlling Agreement.

There is insufficient proof of casual connection or effect between the closing of Station 3980, Portsmouth, and the discontinuance of the floating operation at Port Norfolk. Therefore, the closing of that station was not the result of joint action fcr effectuating a "coordination", as that term is defined in Section 2(a) of the controlling Agreement.

DOCKET NO. 72 --- Withdrawn by Carrier

Erie Railroad Company)
vs.) PARTIES TO DISPUTE
John Thomas Tobin (Individual))

QUESTION: Is John Thomas Tobin, formerly employed as an electrician in Passenger Car Department of the Erie Railroad Company at Jersey City, New Jersey, prior to October 13, 1956, date of coordination, and later employed as an electrician in the Passenger Car Department of the Delaware, Lackawanna and Western Railroad Company, as result of coordination, entitled to separation allowance under Section 9 cf the Washingron Agreement of May 21, 1936?

DECISION: Withdrawn by Carrier.

DOCKET NO. 73 --- Decision by Referee Coffey

Erie Railroad Company)
vs.) PARTIES TO DISPUTE
Michal Pukaluk (Individual))

QUESTION: Is Michal Pukaluk, who worked as a laborer in the Marine Department of the Erie Railroad Company at Jersey City, New Jersey, prior to December 13, 1958, date of abandonment of ferry service, entitled to separation allowance under Section 9 of the Washington Agreement of May 21, 19361

FINDINGS: Carrier party to the dispute and International Brotherhood of Firemen & Oilers, the collective bargaining agent for Michal Fukaluk, claimant herein, are signatories to the Agreement of May, 1936, Washington, D. C. (Washington Job Protection Agreement).

Mr. Pukaluk filed his claim personally and was represented by an attorney of his choice.

On the basis of the entire record, all of the evidence, and reasonable inferences, I find and determine that:

Claimant is shown on the roster of Watchmen and Laborers-Marine Department, with a seniority date of December 31, 1948. On December 9, 1958, his job was abolished effective December 12, 1958, as the result of a "coordination" within the meaning of Section 2(a) of the Agreement, supra.

On February 6, 1959, claimant was offered a position as laborer in the Jersey City Locomotive Shop and at that time he refused this position and stated he wanted severance allowance pay, but later agreed to accept the work which had been offered him. He was instructed to report on February 16, 1959, which he did, but again refused to go to work, assigning his reason for the refusal that he had no assurance that the employment tendered carried any guarantee of permanency,

An undated letter was received by Carrier from claimant by registered mail on January 9, 1959, the pertinent part of which reads:

> "Effective on date of December 13, 1958 I was furloughed on account of total abandonment of the Erie Railroad Company Ferry.
>
> Please accept this as my application for whatever severance pay I may be entitled to under the provisions of the Washington Job Protective Agreement dated May, 1936."

Claimant still holds seniority on the Erie roster for Watchmen and Laborers Marine Department.

DECISION: Claimant is not eligible to receive a "separation" allowance under Section 9 of the aforementioned Washington Job Protection Agreement, but this decision is without prejudice to any other protective benefits he may be able to establish if there are others to which he can lay claim under said Agreement.

DISSENT - DOCKET NO. 73

Claimant Pukaluk was furloughed by the Carrier on December 13, 1958 and was therefore "deprived of employment" as a result of the transaction approved by the Interstate Commerce Commission. He was, therefore, at that time entitled to receive a "coordination allowance" as provided in Section 7, or at his option could, "at the time of coordination" resign and accept in a lump sum a "separation allowance" as specifically stipulated in Section 9.

Claimant Pukaluk is of foreign descent, being practically illiterate, and has a difficult time understanding the English language. Yet on January 9, 1959, just twenty-sight days after he had been deprived of employment, he had delivered to the Superintendent by Registered United States Mail, a letter stating that he had been furloughed effective December 13, 1953 account of the total abandonment of the Erie Railroad Company Ferry and requested the Superintendent to accept his letter as an application for severance pay under the provisions of the Washington Agreement.

Pukaluk was deprived of employment (unemployed) commencing December 13, 1958 and continued to be unemployed at the time the application for a "separation allowance" reached management on January 9, 1959. This application most certainly was "timely" as the term "time of coordination" is used in Sections 2(c) and 9. However, Referee Coffey based his erroneous decision on the offer by the Carrier of unsuitable and temporary employment on February 6, 1959, twenty-eight days after the claimant had made an official request for a separation allowance.

All Organizations parties to the Washington Agreement vigorously dissent from this erroneous decision of Referee Coffey.

DOCKET NO. 74 --- Decision by Referee Coffey

Erie Railroad Company)
) PARTIES TO DISPUTE
Joseph F. Schasny (Individual))

QUESTION: Is Joseph F. Schasny, employed as leading laborer in the Marine Department of the Erie Railroad Company at Jersey City, New Jersey, prior to December 13, 1958, date of abandonment of ferry service, and as a laborer after that date, entitled to separation allowance under Section 9 of the Washington Agreement of May 21, 1936?

FINDINGS: Carrier party to the dispute and International Brotherhood of Firemen & Oilers, the collective bargaining agent for Joseph F. Schasny, the individual claimant herein, are signatories to the Agreement of May, 1936, Washington, D. C. (Washington Job Protection Agreement).

On the basis of the entire record, all of the evidence, and reasonable inferences, I find and determine that,:

Claimant herein obtained another position, "on his hone road or position in the coordinated operatic"" by the exercise of his seniority rights. He voluntarily left the position of his choice on May 8, 1959, without leave, to take employment in the Jersey City Uniformed Fire Department. He did not make a claim for monthly allowance in accordance with Agreement between Carrier and his collective bargaining agent.

DECISION: Claimant is not entitled to a separation allowance under Section 9 of the Washington Agreement of May il, 1936.

DOCKET NO. 75 --- Decision by Referee Coffey

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

QUESTION: Failure and refusal of Norfolk Southern Railway to comply with and apply the provisions of the Agreement of May, 1936, when it effected a "coordination" of its facilities at Wilson, North Carolina, with the Atlantic Coast Line Railroad commencing October 22, 1959.

FINDINGS: The parties hereto are signatories to the Agreement of May, 1936, Washington, D. C. (Washington Job Protection Agreement).

On the basis of the entire record, all the evidence, and reasonable inferences , I find and determine that:

At Wilson, North Carolina, the Norfolk Southern, as junior to the Atlantic Coast Line, had been required to contract to construct and maintain an interlocking signal plant at the point of intersection of the two railroads to protect the movement of both railroads through the crossing.

On October 22, 1959, the Norfolk Southern removed its mechanical interlocking machine and appurtenances at Wilson Tower, pursuant to arrangements to remotely control all interlocking facilities at this location from traffic-control machines on the Atlantic Coast Line Railroad, at the South Rocky Mount, North Carolina, dispatching office of that railroad, 15 miles distant.

The modifications consisted of the installation of 2 high controlled home signal; and 1 power-operated derail, change of 1 mechanically operated derail to pipe-connected power operation and removal of 2 mechanically operated home signals, on the Norfolk Southern; removal of mechanical interlocking machine from tower and all appurtenances at said interlocking.

Prior to modif ication, the interlocking plant at Wilson Tower was manually operated by operator-levermen assigned "around-the-clock" to manipulate the levers in the tower (among their ocher duties), so as to line up the interlocked crossover, on authority from the Coast Line dispatcher, communicated by telegraph (later telephone), at South Rocky Mount, for a Norfolk Southern rather than an

Atlantic Coast Line movement and to thereafter realign the interlocking after the move was completed.

All moves continue to be controlled by the Coast Line dispatcher. This communication work performed by operator-levermen, covered by the Norfolk Southern Telegraphers' Agreement, was eliminated, due to their positions having been abolished.

At present, when the Norfolk Southern desires to use the crossing a Norfolk Southern train service employee pushes a button in a control box located in the interlocking area. In automatic sequence there is removal of derails and proper signal indications. However, if the Atlantic Coast Line dispatcher does not concur in the Norfolk Southern's use of the crossover, the Coast Line dispatcher, by pushing a button on his control panel, cancels out the Norfolk Scothern movement.

Other duties formerly performed by operator-levermen at the Wilson Tower location to fill out their tours of duty were transferred to Atlantic Coast Line employees. The Atlantic Coast Line telegraphers are now performing all communication service.

DECISION: A "coordination" as defined by Section Z(a) of the Washington Job Protection Agreement was effected without the giving of Section 4 notices in accordance with said Agreement and the Carrier must now comply with all the terms of same as of the date any employee or employees were first adversely affected as a result of said "coordination".

DOCKET NO. 76 --- Withdrawn by Carrier

The Delaware, Lackawanna and Western Railroad Company)
vs.) PARTIES TO DISPUTE
The Order of Railroad Telegraphers)

Whether certain employees have been adversely affected as a result of, or in anticipation of, a consolidation of facilities between the Delaware, Lackawanna and Western Railroad and the Erie Railroad as authorized by the Interstate Commerce Commission in Finance Docket No. 199891

DECISION: Withdrawn by Carrier.
