

Award No. 230
Case No. TCU-82-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Missouri Pacific Railroad Company
TO THE) and
DISPUTE) Transportation-Communication Employees Union

QUESTIONS
AT ISSUE:

1. Does the transferring of any work performed by employees covered by the Linemen's Agreement (who are employees represented by the Transportation-Communication Employees Union) to employees not covered by that Agreement constitute a violation of Article III, Section 1? (Carrier File B-279-883 cc 279-406).
2. Did Carrier violate the Telegraphers' Linemen Agreement when it negotiated the work of line construction to an outside contractor without first following the procedures set forth in Article III, Sections 1 and 2?

OPINION

OF BOARD: The Organization has also filed with the Third Division its claim stated in the second Question that Carrier improperly contracted out work. That question cannot properly come before this Committee since it concerns an alleged violation of the Linemen Agreement. The jurisdiction of the Committee is restricted to the February 7, 1965, Agreement.

Article III of the February 7 Agreement in any case is not a provision setting forth employee rights and benefits. Its purpose is to endow carriers with the right to effectuate transfers that might otherwise be forbidden by schedule agreements. Article III does not require carriers to enter into implementing agreements. It enables them to do so as a means of effecting transfers.

If the transferring of work is improper, the February 7 Agreement is not violated. Only when protected employees are denied that Agreement's guarantees may it be invoked. In other words, what the Organization must show this Committee is how the February 7 Agreement's benefits were denied protected employees, and it has not done so in this case.

As it was presented, the first Question also concerns the right to contract, purely and simply. So far as the February 7 Agreement is concerned, Carrier can transfer work, contract out or take any other steps it chooses, but it must provide the benefits of that Agreement to protected employees. Thus the Organization's objection to Carrier's action can be processed only under the schedule agreement, for contracting out does not violate the February 7 Agreement, which contains neither scope rules nor seniority rules.

A W A R D

1. The answer to Question No. 1 is No.
2. The Committee is without jurisdiction to consider alleged violations of the schedule agreement.

See also, Section 13, Committee Decisions in Docket Nos. 48, 61, 78, and 98. For similar results, see SBA No. 605, Award Nos. 278, 400, and Interpretation Award No. 355. Based upon all of the foregoing, therefore, we find that Question A must be answered in the negative.

Turning to the remaining Questions at Issue, and the various positions urged by the Organization in handling on the properties, we have no hesitancy in finding that the Notice of Coordination served by the Carriers on April 2, 1980 (Attachment A hereto) complied with the requirements of Section 4 of the WJPA. Accordingly, Question B must be answered in the affirmative.

With respect to Question C, no where on the record before us has the Organization demonstrated any way in which the Implementing Agreement proposed by Carriers on June 11, 1980 failed to comply with the criteria set forth in Section 5, or any other provisions, of the WJPA or the Agreement of February 7, 1965. Indeed, the record appears to support Carriers' position that the Implementing Agreement proposed on June 11, 1980 meets or exceeds

the requirements of the WJPA. BRAC urged at the Board hearing that Carriers did not "bargain in good faith" with respect to this Implementing Agreement and that the proposed creation of the "consolidated Data Processing Centers" is not a "coordination" within the meaning of that term in the WJPA. Neither of those belated de novo theories find support in the evidence of record and neither constitutes a bar to the adoption of the Implementing Agreement essentially as proposed by Carrier on June 11, 1980. The Organization urges that it was "justified" in seeking certain additional improvements in the proposed Implementing Agreement, specifically a provision to amend the Scope Rule coverage of the controlling Clerks Agreements with the involved Carriers. We do not express or apply any opinion or value judgement as to the "justification", propriety or general worthiness of such proposals. Such questions likely are beyond the realm of our competence and without doubt are beyond the reach of our jurisdiction. Whatever the merits of such proposals, we do not have the authority to engraft upon an Implementing Agreement which otherwise meets the requirements of Section 5 of the WJPA such additional conditions. See Section 13, Committee Decisions, Docket Nos. 90, 119 and 161. As noted in Award 230 of this Board supra, our authority is limited to reviewing the application and interpretation of the Agreement of February 7, 1965 and the WJPA to the extent therein incorporated. Due to the passage of time since June 1980, we strongly recommend that Section 3 of the proposed Implementing Agreement of June 11, 1980 be amended and updated so that the positions and incumbents referenced in Exhibit A of that Implementing Agreement are provided applicable protection for a five (5) year period from the effective date of the Agreement. With these amendments we are compelled to answer Question C in the affirmative.

AWARD

- 1) The answer to Question A is No.
- 2) The answer to Question B is Yes.
- 3) With the recommended revision and updating of Section 3 and Exhibit A, referenced herein, the answer to Question C is Yes.
- 4) The answer to Question D is that the reference to "January 1, 1986" in Section 3 must be amended so as to provide five (5) years protection from the effective date of the Implementing Agreement; and Exhibit A thereto must be amended to reflect the positions and incumbents as of the effective date of said Agreement.



Dana E. Eischen, Neutral Member

Date: January 10, 1983

Award No. 2300
Case No. TCU-82-W

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TO THE) and
DISPUTE) Transportation-Communication Employees Union

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Award No. *230*
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2. The Committee is without jurisdiction to consider alleged violations of the schedule agreement.


Milton Friedman
Neutral Member

Washington, D. C.
November *16*, 1970

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