NATIONAL RAILWAY LABOR CONFERENCE

1225 CONNECTICUT AVENUE, N.W., WASHINGTON, D. C. 20036/AREA CODE: 202—659-9320

WILLIAM H. DEMPSEY, Chairman M. E. PARKS, Vice Chairman
H. E. GREER, Director of Research J. F. GRIFFIN, Administrative Secretary D. P. LEE, General Counsel

January 14, 1974

Dr. Murray M. Rohman
Professor of Industrial Relations
Texas Christian University
Fort Worth, Texas 76129

Mr. Milton Friedman
850 Seventh Avenue
New York, New York 10019

Mr. Nicholas H. Zumas
1990 M Street, N. W.
Washington, D. C. 20036

Gentlemen:

This will supplement our previous letters with which we forwarded to you copies of Awards of Special Board of Adjustment No. 605 established by Article VII of the February 7, 1965 Agreement.

There are attached copies of Award Nos. 373 to 375, inclusive dated January 11, 1974 rendered by Special Board of Adjustment No. 605.

Yours very truly,

J. F. Griffin

cc. Chairman, Employees National Conference Committee (10)
Messrs. C. L. Dennis (2)
C. J. Chamberlain (2)
M. B. Frye (2)
H. C. Crotty (2)
J. J. Berta (2)
R. W. Smith (2)
R. K. Quinn, Jr. (3)
W. F. Euker
T. F. Strunck

Award No. 373
Case No. CL-21-SE

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE)

Ota D. Thomas, et al, Employees
vs.
Illinois Central Railroad; Illinois Central Hospital Association; Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes

QUESTIONS AT ISSUE:

a) Whether or not the Disputes Committee has jurisdiction to hear a dispute where the dispute is not submitted by the Railway or by the Union?

b) Whether the former employees who did not sign the Mediation Agreement (providing for the Disputes Committee), may submit a matter to arbitration?

c) Whether or not the Disputes Committee would have exclusive jurisdiction of the matter where the I. C. Hospital Association and the Union, join into an alleged agreement, dated January 11, 1967, to attempt to destroy the job protection rights of the employees, previously provided by the Mediation Agreement dated February 7, 1965? (identified as STIDD #11).

d) Alternatively, in the event the Disputes Committee should accept jurisdiction of the matter, which is respectfully denied, because the agreement merely provides machinery for the Union or the Carrier to submit the matter to the Disputes Committee, but alternatively, if this Disputes Committee should decide that the individual employees must submit the matter to arbitration, that the Disputes Committee decide whether or not the plaintiffs, were employees of the IC Railroad, and, if so, whether or not they are entitled to severance benefits.

e) Whether or not the plaintiffs, as employees of the Hospital Association, are entitled to benefits, inasmuch as the Hospital Association is a department of the Illinois Central Railroad and has been, historically, a department of the Illinois Central Railroad?

f) Whether or not the Union may deprive employees of basic rights, such as job protection rights, as provided by the Mediation Agreement and the Washington Job Protection Agreement, particularly, in view of the fact that co-ordination and/or mergers have been made, and the Railway Retirement Act provides protection for persons rendering professional or technical services, and is integrated into the staff of the employer, 45 USC 228A, Sec. 1(c).

g) Whether or not the Railroad may abolish the jobs of personnel employed by the Illinois Central Hospital in New Orleans, by selling the site to the Louisiana Dome Commission for a substantial profit in violation of the Job Protection Agreements?

h) Whether the Illinois Central Hospital employees are employees of the Illinois Central Railroad?

i) Whether the Union, BRAC, may enter into an agreement with the Illinois Central Hospital Association and destroy the basic job protection rights of the Union employees without due notice to the employees and conceal this fact from the employees?

j) Whether or not the acts of the Board may be reviewed on questions of collusion between the Railroad and the Union?

k) Did the Union properly represent the employees when they entered into the agreement in 1967, destroying the job protection rights of the employees, which were bestowed upon them under the Mediation Agreement of 1965?

OPINION OF BOARD: In order to grasp the thrust of the instant matter, it is essential that we review the relevant background material so that we can focus our analysis upon the various allegations contained herein.

There are two groups of employees involved in this dispute. One group, composed of thirty-three employees, was not represented by any labor organization, and comprised various classifications such as nurses, orderlies, cooks, maids, housekeepers, pharmacists, lab technicians, utility man, etc. A second group, consisting of nine employees, was represented by BRAC and they were classified as bookkeeper, clerk, laundress, cleaning woman, porter, stenographer, etc. All forty-two Claimants were employed by the Illinois Central Hospital Association at its hospital located in New Orleans, Louisiana. Subsequently, the site where the hospital was located was sold to the Louisiana State Dome Commission and the premises vacated. On August 13, 1970, these employees were notified that their positions were abolished and their services terminated as of September 1, 1970, when the hospital was closed. In essence, the Claimants contend that they were actually employed by the Illinois Central Railroad and not by the Hospital Association. Therefore, as employees of the Railroad, they were entitled to the protective benefits of the February 7, 1965 National Agreement. Hence, the thrust of the Claimants is to the effect that pursuant to the provisions of the February 7, 1965 Agreement, they are entitled to the following, to wit:

> "Thus, the employees of the I.C. Railroad, including the co-plaintiffs herein, were guaranteed to be retained in railroad service, as protected employees and their occupations would be secure, and that they would not be placed in a worse position (Article IV), and in the event of any termination of employment, pursuant to Article V, page 7, a lump sum separation allowance would be computed by reference to a schedule set forth in Section 9 of a Washington Job Protection Agreement. See (STIDD #10.)."

Consequently, when the various positions of Claimants were abolished and Claimants were terminated, without severance benefits, they sought legal counsel to aid them in securing severance benefits. Thus, they allege the following, viz:

"Therefore, in an effort to circumvent and avoid the payment of the severance benefits due to the Railroad employees, the Railroad, through its alter ego, Illinois Central Hospital Association, entered into an artifice on January 11, 1967, to avoid payment of the severance benefits. This constitutes fraud on the rights of these employees.

"It is obvious that a conspiracy was entered into between the Railroad and the Union, in order to avert disbursements to these Railroad employees who originally signed job application employment forms with the Illinois Central Railroad. This is collusion and a fraud upon the basic rights of all employees.

"Previous attempts have been made to have the Administration Boards consider this matter. See Gemeinhardt Affidavit, and Gemeinhardt Exhibits 8, 9, 10, 11 and 12, requesting administrative hearings before the Mediation Board and the Railway Adjustment Board."

On December 31, 1970, the attorney for Claimants wrote the National Mediation Board with regard to "the possibilities of having one of your hearing examiners to come to New Orleans to afford us a hearing." On January 25, 1971, the NMB replied that it "- - - is not authorized by the Railway Labor Act to assume jurisdiction over disputes of the nature outlined in your letter; as it is our understanding that the matter involves the question of severance benefits to individuals whose jobs were abolished because of the closing of the Illinois Central Hospital."

On August 27, 1970, the Director of Labor Relations of the Carrier replied to a letter addressed by counsel of Claimants, as follows:

"Your clients have left you with a misapprehension as to the nature of their relationship with the Illinois Central Railroad Company. They are not IC employees and never have been -- unless, of course, one or more of them may have at one time worked for the railroad in the course of their working lives and then severed their employment relationship.

"Your clients apparently are employees of the Illinois Central Hospital Association, which is an entity separate and apart from the Illinois Central Railroad Company."

"Your clients have no seniority rights with the Illinois Central Railroad Company, none is covered by labor agreements in effect between the Illinois Central Railroad Company and labor unions, and they do not receive salary checks from the Illinois Central Railroad Company."

"Parenthetically, I have had considerable experience in administering the provisions of the Washington Job Protection Agreement of 1936 and your position under this Agreement is puzzling. The Agreement of 1936 applies only to coordination of facilities by two or more railroads and its appropriateness to the situation described in your letter is completely obscure. For your information, a copy of that Agreement is enclosed herewith."

On March 1, 1971, counsel for Claimants wrote our Disputes Committee alleging as follows, to wit:

"I have abundant evidence indicating that these people filed job applications with the railway and not the hospital association, which is a creature of convenience for the railroad. Accordingly, I would like to have our grievances ventilated immediately. Kindly advise when we may have a hearing, as it appears the Mediation Board has declined jurisdiction, as set forth in Mr. Tracy's letter."

On March 31, 1971, the Disputes Committee stated, in substance, that the procedure of the Agreement dated January 11, 1967, between BRAC and the IC Hospital Association is applicable, and the proper course was to pursue it with the Hospital Association.

On June 15, 1971, counsel then wrote the Hospital Association "We call upon you to designate any authorized representative who may be available to mediate this matter."

In addition, correspondence was exchanged between counsel for Claimants and BRAC. The gist of the reply from BRAC indicated that the Hospital Association, as an employer, never signed the WJPA of 1936; and, further, "- - - same would not afford any type of benefits in this particular instance because there is no coordination or merger of facilities between 'carriers'." Moreover, counsel was advised by letter from BRAC dated November 17, 1970, "- - - our organization has no agreement with the railroad affecting Hospital Association employes, it is impossible for me to furnish you with a copy thereof."

Thereafter, in frustration, counsel filed an action for damages in the United States District Court, Eastern District of Louisiana, on behalf of Claimants, against the Railroad, Hospital Association and the Organization as co-defendants, in the sum of $52,500,000; and included therein was the sum of $2,500,000 as "reasonable attorneys fees."

On September 20, 1972, on argument before the Court in response to a Motion for Summary Judgment filed by the three co-defendants, the Court directed as follows:

> "IT IS ORDERED that this matter be, and the same is hereby, CONTINUED until Wednesday, January 24, 1973; the plaintiffs and defendant Illinois Central Railroad Co. are ordered to utilize this period to submit this matter for arbitration at the earliest practicable date."

Contrary to Claimants' allegation of artifice and fraud between the Carrier and the Organization, the Carrier alleged the following facts:

On June 23, 1922, the Carrier and BRAC negotiated directly their first collective bargaining agreement for the class or craft which the Organization is entitled to represent. This Agreement, as revised and amended, never covered employees of the Hospital Association. In fact, prior to 1953, employees of the Hospital Department "performing work of the clerical class or craft originally were not covered by any labor agreement." Thereafter, pursuant to authorization cards signed by more than a majority of such employees, the Chief Surgeon recognized the Organization as the bargaining representative and the first Agreement was negotiated effective January 1, 1955, for that craft or class of employees as contemplated under Section 2, Fourth, of the Railway Labor Act. Further, the Carrier as a Member of the National Conference Committee authorized the NRLC to negotiate on its behalf with the Organizations; and this culminated in the February 7, 1965 National Agreement, with the five Non-Ops. Thereafter, the Hospital Association and the Organization herein, BRAC, negotiated a separate Agreement on January 11, 1967, "patterned after, but significantly different from, the Mediation Agreement of February 7, 1965." Thus, the substance of Carrier's argument may be gleaned from the following, to wit:

> "It is clear from the Barfield affidavit that employees of the clerical class or craft in the Illinois Central Hospital Association and those on the Illinois Central Gulf Railroad are and always have been in different bargaining units. Railroad clerical employees have had an agreement with BRAC since 1920; Hospital employees since 1955. BRAC negotiated separately with the Hospital Association since the initial agreement, and never at any time bargained with Railroad on behalf of Hospital clerical employees. Agreements on behalf of clerical craft employees between the Railroad and BRAC have never been

applied to anyone except Railroad employees; agreements between BRAC and the Hospital Association have never been applied to anyone except Hospital Association employees."

Furthermore, for hypothetical purposes, the Carrier argues that assuming Claimants were included within the purview of the February 7, 1965 National Agreement, they would still not be entitled to the benefits of Article V thereof. "The option to take separation pay becomes available only when an implementing agreement has been made covering a transfer of work or rearrangement of forces, and a protected employee who has 15 or more years of employment relationship is requested by the Company pursuant to the implementing agreement to transfer to a new point of employment requiring a change of residence." In the instant matter, "there was no transfer of work or rearrangement of forces and no employee was requested to transfer to a new point of employment. Furthermore, there is no showing that all, or any, of the claimants had 15 or more years of service."

The Organization, in support of its position, concedes that of the forty-two Claimants involved in this matter, it did represent nine employees in the second group. Further, since June 23, 1922, it has represented the Class and Craft called Clerks by virtue of a collective bargaining agreement negotiated with the Illinois Central Railroad. At no time has the aforementioned Agreement ever been applied to the employees of the Illinois Central Hospital Association. Effective January 1, 1955, this Organization was recognized as the bargaining representative for the employees of the Illinois Central Hospital Association (formerly known as Illinois Central Hospital Department); and a collective bargaining agreement was negotiated with the Hospital Association as a separate and distinct employer -- without the Carrier participating in such negotiations.

Thereafter, as a result of obtaining protection for employees of the Carrier, as reflected in the February 7, 1965 National Agreement, the Organization sought to obtain similar protection for the bargaining unit composed of employees in the Hospital Association. In addition, despite the contention of Claimants' counsel, the February 7, 1965 Agreement, "did not contemplate continued employe protection in the event an employer ceased operation."

Following lengthy negotiations, an Agreement was finally consummated between the Hospital Association and BRAC on January 11, 1967. Included therein and pertinent to the instant matter is the language contained in Article V, which "specifically relieved the employer, i.e., Illinois Central Hospital Association, of any continuing liability for protected employes in the event the Association Hospital at which said employes were employed discontinued operation." In effect, neither the January 11, 1967 Agreement, nor any Agreement negotiated on behalf of the Hospital Association employees, ever provided for severance pay on termination of employment.

Interestingly enough, BRAC asserts that during the fifteen years the Organization represented the employees in the bargaining unit of the Hospital Association, various increases in wages and fringe benefits were obtained for them. By the same token, "Claimants who are not and were not represented by BRAC raised no objections that the Agreements negotiated for and in behalf of the employes represented by BRAC were applicable to them."

Inasmuch as "Claimants are not within the Craft and Class of employes represented by BRAC employed by the Illinois Central Railroad Company," the February 7, 1965 Agreement, is not applicable to these Claimants. BRAC argues further that for hypothetical purposes it is assumed Claimants were included within the provisions of the February 7, 1965 Agreement, they still would not meet the necessary criteria for severance pay as contained in Article V thereof. The requirements are fifteen or more years of service; a transfer of work or rearrangement of forces that would require an implementing agreement; and as a result of such implementing agreement was requested by the Carrier to transfer to a new point of employment which would result in a change of residence. In fact, the Claimants were not requested to transfer to a new place of employment, nor was an implementing agreement negotiated. Furthermore, the provisions of the WJPA of 1936, are not applicable herein. The purpose of that Agreement "was to provide protection to railroad employees affected by railroad 'coordinations,' as defined in the Agreement, so as to limit the adverse effects of railroad mergers or consolidations ---."

Thus, the Organization argues that the Railroad and Hospital Association are separate entities; and Claimants are entitled to the protective benefits negotiated between the Organization and the Hospital Association, as contained in the January 11, 1967 Agreement. These benefits do not include separation pay upon termination of employment, hence, the instant matter should be denied.

We believe that we have accurately reflected the various contentions raised by the parties herein. Hence, inasmuch as Claimants have posed a jurisdictional defense, it is essential that, initially, we address our analysis to this facet. In this regard, several of the Issues are directed thereto, specifically, a), b) and c). Basic to Claimants' argument is the contention that the signatories to the February 7, 1965 National Agreement, were the various Organizations and Carriers, therefore, our Board is not a proper forum. However, the relief sought by Claimants is premised on Article V of the February 7, 1965 Agreement. In view of this, during the argument before Judge West of the United States District Court, on the defendants' Motion for Summary Judgment, he directed the parties to proceed to arbitration before our Board; and correctly concluded that our Board had sole jurisdiction of disputes pertaining to said Agreement. Furthermore, both the Carrier and the Organization have ceded jurisdiction to us, in the event such was needed. In addition, individual Claimants have appeared previously, through counsel, before our Board in the same manner as these Claimants. See Award Nos. 146, 243, 261, 266 and 282.

Moreover, it should be noted that while Claimants have posed a jurisdictional defense, they have not appeared specially before us, but rather, proceeded to argue the instant claim on its merits. Notwithstanding the absence

of a special appearance, Claimants would only seek to attack our jurisdiction in the event the award was adverse to them. On the other hand, were the award in their favor, they would be prepared to wholeheartedly accept it. Thus, in this posture, the alleged attack upon our jurisdiction is baseless and ill-founded. In our view, an alleged claim based on benefits contained in the February 7, 1965 Agreement, emanating from any aggrieved party, is properly before us. See Article VII, Section 1.

At this juncture, we are prepared to analyze the merits of the contentions of Claimants. The basic thrust is predicated upon the fact that they were employees of the Railroad, as evidenced by the fact that most of the communications addressed to them were contained on Illinois Central stationery, to wit: Group Insurance Policies, information pertaining to employee benefits, passes, sick leave forms, financial condition, etc. Hence, counsel argues adroitly that these claimants were actually employed by the Carrier, rather than the Hospital Association.

Thus, the crux of the instant dispute is bared. What is the significance of a bargaining unit? Is it possible to have different classifications, or a class or a craft, in separate bargaining units, of the same employer? Does a collective bargaining agreement negotiated with a recognized bargaining unit apply to a different bargaining unit of the same Carrier or Company? In order to resolve these questions, it is essential to focus our attention on the parameters of a bargaining unit.

Whether it be under the National Labor Relations Act of 1935, as amended, or the Railway Labor Act of 1926, as amended, a bargaining unit signifies that the employees included therein have a community of interest. Hence, the RLA depicts this in terms of a class or craft; and within a single Carrier there are numerous classes or crafts and each is a separate bargaining unit with a separate collective bargaining agreement. The most fundamental and elementary factor lacking in the arguments advanced by Claimants is the failure to accept the grasp of the functions of a bargaining unit. The Claimants argue, therefore, inasmuch as they were employees of the Hospital Association which was controlled by the Carrier, automatically, they were clothed with the protective benefits contained in the February 7, 1965 National Agreement. Why? The answer is based upon their being employees of the Hospital Association which is controlled by the Carrier.

The glaring fallacy of this argument is self-evident. However, in our effort to place this matter in proper perspective, we shall attempt to clarify and remove any doubts relative to this aspect.

As previously indicated, the Organization has represented the clerical craft on this Carrier since 1922. The Agreements negotiated for this craft, within the bargaining unit, had no impact on any other bargaining unit. Therefore, when a separate bargaining unit was recognized for the Hospital Association employees and an Agreement negotiated in 1955, the Hospital Association employees, for the first time, became covered employees. Covered to what extent? Not under the Agreement previously negotiated for the Carrier bargaining

unit, but rather under the Agreement for the Hospital Association bargaining unit. Even assuming, but not conceding that they were all employees of the Carrier -- nevertheless, they were insulated in separate bargaining units and governed by separate collective bargaining agreements.

In this posture, therefore, how is it possible for Claimants to argue that they are entitled to the benefits negotiated for the Carrier bargaining unit consisting of the clerical craft? Would the reverse be true? Could the clerical craft of the Carrier bargaining unit be entitled to the benefits flowing from the Agreement negotiated with the Hospital Association bargaining unit, assuming they were more beneficial? Of course not!

Furthermore, Claimants contend that they had acquired a vested right under the February 7, 1965 National Agreement, negotiated between the bargaining unit of the Clerical craft and the Carrier, which was destroyed when the Organization and the Hospital Association negotiated the protective Agreement for the Association Bargaining unit in January, 1967. What vested right did they acquire under the February 7, 1965 Agreement? None! That Agreement did not pertain to them. How is a collective bargaining agreement negotiated? The essence of such an Agreement is predicated upon compromise -- the give and take between respective parties; and the culmination is a recognition of their respective interests. Hence, the Agreement negotiated in January, 1967, was patterned on the February 7, 1965 National Agreement, but differed to the extent involved in the separation pay allowance.

In this regard, we would note herein our Award No. 352, dated April 18, 1973, wherein the following is contained, to wit:

> "One other aspect requires further comment. It is the Carrier's position that where a facility is completely closed down, protective benefits are not applicable."

> "Before our Board, however, the Organization adamantly insisted that even if there were a 100% decline in business, the Carrier would still be required to retain at the minimum, 5% of its force, predicated on Article I, Section 3, viz!"

> "In a situation where a facility is completely shut down, how could the recall provision apply? Thus, it is evident that the parties did not contemplate a complete cessation when they negotiated Section 3 of Article I."

In our view, Award No. 352, is relevant to the instant dispute. Even assuming, hypothetically, that Claimants were entitled to the benefits of the February 7, 1965 Agreement, such benefits are not applicable where a facility is completely closed.

Furthermore, Claimants argue that they are entitled to the benefits of the February 7, 1965 Agreement, under the theory of third party beneficiaries. Our answer is simple and direct. In order to prevail, Claimants are required to show that the provisions of the February 7, 1965 Agreement, were intended for their benefit, as well as being specifically named therein. Neither one of these conditions is present.

Another argument raised by Claimants is, that as a result of the merger between IC and CM&O, they are entitled to the protection of the Washington Job Protection Agreement of 1936. However, they omit one important word -- "affected" --. They were not affected employees as a result of the merger.

One further issue has disturbed us -- Issue i); as well as Issue j). Although Claimants have posed the question, they have failed to present a single iota of proof in support of same. True, Claimants have alleged colorful terms, such as artifice, fraud and clandestine means. Nevertheless, what did the Organization have to gain by such action? What motivation could have prompted the Organization to indulge in such tactics? None has been alleged, nor has any been alluded to by the slightest inference or implication.

Moreover, at the oral argument before our Board, the Neutral Member posed the question as to the ramifications contained in Issue j). Claimants' counsel responded that the reference therein to the Board was not intended to reflect upon the Referee. Rather, the collusive aspects were confined to the Railroad and the Union, thereupon, the matter was dropped.

In summary, we have carefully analyzed the various arguments of the respective parties and concluded that the instant claim lacks merit and warrants a denial.

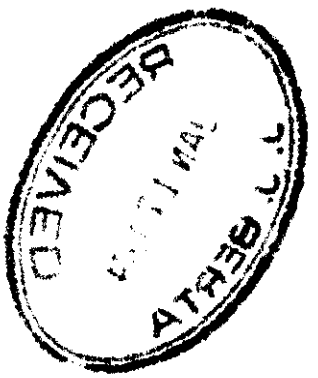
Award:

The answer to the Issues is as follows:

a)-affirmative
b)-affirmative
c)-affirmative
d) Not applicable, however, even if plaintiff claimants were employees, they are not entitled to severance benefits.
e) Negative
f) Not applicable per Opinion.
g. Not applicable per Opinion.

h) Not applicable per Opinion.
i) Not applicable per Opinion.
j) Negative per Opinion.
k) Affirmative per Opinion.

Murray M. Rohman
Neutral Member



Dated: Washington, D. C.
January 11, 1974