AWARD NO. 406
Case No. CL-107-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) Los Angeles Union Passenger Terminal
TO ) and
DISPUTE ) Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes

QUESTIONS AT ISSUE:

1. Does the substitution of data covering "total linear feet of mail handled" for the term "both gross operating revenue and net revenue ton miles" as those terms are used in Article I, Sections 3 and 4 of the Agreement of February 7, 1965, provide an appropriate measure of volume of business of the Los Angeles Union Passenger Terminal for this craft?

2. If the answer to Question No. 1 is affirmative should an Agreement proposed by Terminal, attached hereto as Terminal's Exhibit "G", be entered into by Respondent's representatives in disposition of this matter?

OPINION OF BOARD:

The Carrier is a Terminal Company jointly owned by the Southern Pacific Transportation Company (Pacific Lines), the Atchison, Topeka and Santa Fe Railway Company, and the Union Pacific Railroad Company which Terminal Company was established in 1939 in order to consolidate into one Terminal the passenger train service of the foregoing Carriers. By Agreement signed October 5, 1965 the Terminal Company and the Organization agreed to apply the provisions of the February 7, 1965 National Agreement (including the Interpretations dated November 24, 1965) to employees represented by the Organization at the Terminal. One of the Interpretations referred to is as follows:

> "Question No. 4: How does the decline in business formula apply to short lines or terminal companies for which data concerning net revenue ton miles or gross operating revenues may not exist?
>
> "Answer to Question No. 4: Short lines or terminal companies for which data covering net revenue ton miles or gross operating revenues may not exist should enter into local agreements for the purpose of providing an appropriate measure of volume of business which is equivalent to the measure provided for in Article I, Section 3."

When the parties mutually agreed to the foregoing Interpretation they did so inasmuch as short lines and terminal companies do not have gross operating revenues or net revenue ton miles by which the parties could

measure any decline in business. Question and Answer No. 4 require the parties to enter into a local agreement for the purpose of providing an appropriate measure of volume of business which is equivalent to the measure provided for in Article I, Section 3 of the February 7, 1965 National Agreement. The record before us evidences that on several occasions the parties have attempted to enter into such a local agreement but to no avail. Both the Organization and the Terminal Company have proffered criteria which they consider a substitute decline in business formula but said proposals were not acceptable to the other side. For example, the Terminal Company offered an alternate criteria for gross operating revenue as follows:

Total baggage storage collections
Total excess baggage collections--prepaid and collect
Total Red Cap handling charge collected

and they offered an alternate criteria for net revenue ton miles as follows:

Total linear feet of mail handled
Total pieces of baggage handled
Total number of cars handled

For their part, the Organization offered a criteria that consisted of the gross operating revenue and net revenue ton miles of the three proprietary Carriers.

It is noteworthy that the three proprietary Carriers no longer operate passenger train service into the Terminal inasmuch as the National Railroad Passenger Corporation (Amtrak) assumed operation of all passenger trains into and out of the Terminal on May 1, 1971. Moreover, the United States Postal Service is constructing a new mail handling facility located separate and apart from the Terminal property which, when completed, will virtually eliminate the volume of mail formerly handled by the Terminal Company's Mail and Baggage handlers who are represented by the Organization.

It is the Terminal Company's position in the instant dispute that inasmuch as the parties have reached an impasse in implementing a local agreement as contemplated by the February 7, 1965 National Agreement, including the Interpretations dated November 24, 1965, that this Board should now break this impasse. They are requesting that this Board order the parties to submit to binding Arbitration, or in the alternative, they are requesting this Board to draft a substitute formula for the parties as was done in Award No. 297.

Inasmuch as the Carrier involved herein is a Terminal Company as that term is used in Question No. 4 of the Interpretations dated November 24, 1965, it is incumbent upon the parties to this dispute to execute a local agreement providing an appropriate measure of volume of business which is equivalent to the measure provided for by Article I, Section 3 of the February 7, 1965 National Agreement, i.e. gross operating revenue and net revenue ton miles. It was the intent of the drafters of the National Agreement, of course, that such a local agreement would best reflect an appropriate measure of a decline in the volume of business which would be equivalent to the criteria established by the February 7, 1965 Agreement.

While this Board is not unmindful of the conclusions reached by the Board in Award No. 297 which Award adopted the Carrier's proposal relative to a substitute formula agreement and incorporated same into the collective bargaining Agreement between the parties, nonetheless it is our considered opinion that Award No. 297 clearly represents a minority view. Rather, we find that the vast majority of Awards that have been rendered by this Board have adopted the position that this Board lacks authority to execute binding agreements for the parties when they are unable to do so themselves. (cf. for example, Award Nos. 155, 213, 262, and 265) The February 7, 1965 Agreement, including the Interpretations dated November 24, 1965, requires the parties to enter into a local agreement which agreement would supply a substitute criteria for that enunciated in the National Agreement. It did not vest this Board with authority to impose such an agreement when the parties themselves are unable to mutually agree to such a substitute criteria. Moreover, we cannot find that the record supports the Terminal Company's contention that the Organization herein has no intention of voluntarily agreeing to a resolution of this dispute by entering into a local agreement. Furthermore, we do not find that there has been exhaustive and comprehensive bargaining on the parties' part in an endeavor to reach a local accord. Accordingly, we shall not adopt the Terminal Company's position by imposing their proposed substitute criteria on the parties.

AWARD:

We shall remand the instant dispute to the Organization and the Terminal Company admonishing them to make every good faith effort to execute a local agreement as they are required to do.

Questions at Issue have been disposed of by the Opinion of the Board.

Robert M. O'Brien
Neutral Member

Dated: Washington, D. C.
March 17, 1977