NATIONAL RAILWAY LABOR CONFERENCE

LABOR RELATIONS DEPARTMENT

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January 19, 1979

3231-AGR
2-7-65
SBA-605
AWDS. 414-417

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Gentlemen:

There are attached copies of Awards Nos. 414 to 417 inclusive dated January 15, 1979, rendered by Special Board of Adjustment No. 605 established by Article VII of the February 7, 1965 National Agreement.

Very truly yours,

J. F. Griffin

cc: Chairman - Employes National
Conference Committee
Messrs:
Fred J. Kroll (10)
Ole M. Berge
R. T. Bates
R. W. Smith
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W. F. Euker
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Award No. 414
Case No. CL-113-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Allied Services Division/Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express & Station Employes

and

Western Weighing and Inspection Bureau, Atchison, Topeka and Santa Fe Railway Company, Missouri Pacific Railroad Company, Fort Worth and Denver Railway Company, Chicago, Rock Island and Pacific Railroad Company, Houston Belt and Terminal Railway Company

QUESTIONS AT ISSUE: (1) Did the Carriers violate the terms and provisions of the Washington Job Protective Agreement when they decoordinated demurrage and storage work from the Western Weighing and Inspection Bureau and concurrently effected a coordination with the Houston Belt and Terminal Railway Company without serving the notice required by Section 4 thereof and negotiating an agreement covering said coordination.

(2) If question No. 1 is answered in the affirmative, shall the Carriers be required to enter into an agreement for the purpose of applying protective benefits and conditions set forth in the Washington agreement of May 1936.

OPINION OF THE BOARD: Prior to August 15, 1924, each of the Railway Companies (or their predecessors) involved in this dispute, operated in the Houston, Texas, Terminal area, performing their own demurrage and storage work. Effective August 15, 1924, these Carriers established the Houston Demurrage and Storge Bureau, the purpose of which was to take over and perform work relating to their demurrage and storage. Effective December 1, 1934, the Houston Demurrage and Storage Bureau was dissolved and the work previously performed by it was transferred to the Western Weighing and Inspection Bureau. Thus, subsequent to December 1, 1934, each of the respective Carriers involved herein placed all work relating to demurrage and storage with the Western Weighing and Inspection Bureau. The Carriers involved in this dispute are the Atchison, Topeka and Santa Fe Railway Company; the Chicago, Rock Island and Pacific Railroad Company; the Fort Worth and Denver Railway Company; the Missouri Pacific Railroad Company; and the Houston Belt and Terminal Railway Company.

Under date of December 1, 1976, the aforementioned Carriers notified the Western Weighing and Inspection Bureau that effective January 1, 1977, they were withdrawing from participation in the Bureau at Houston, Texas, and that effective January 1, 1977, their demurrage work would be performed by the employees of the Houston Belt and Terminal Railway Company. When the Brotherhood of Railway, Airline and Steamship Clerks (hereinafter referred to as the Organization) became aware of the foregoing it immediately sent a mailgram to these Carriers requesting that a conference be held for the purpose of negotiating an implementing agreement in accordance with Article III, Section 1 of the February 7, 1965 Agreement, and/or Article VI, Section 3 of that Agreement. The Organization apprised the Carriers that, in its view, inasmuch as they were transferring work from the Western Weighing and Inspection Bureau to the Houston Belt and Terminal Railway Company in Houston, Texas, this constituted a coordination as defined by the Washington Job Protection Agreement.

It is the Organization's positon that the Carriers involved in the instant dispute jointly advised the Western Weighing and Inspection Bureau on December 1 , 1976, that they were taking their demurrage work away from the Western Weighing and Inspection Bureau and that such work would be performed, effective January 1, 1977, by the Joint Freight Agency forces of the Houston Belt and Terminal Railway Company. The work in question involved billing and collecting from the shippers in the Houston area and distribution of the receipts from those collections to the Carriers involved herein. Prior to January 1, 1977, the Western Weighing and Inspection Bureau sent out the billing of the demurrage charges for the shippers, whereas subsequent to this date this work was performed by the Houston Belt and Terminal Railway Company. The Organization contends that when the Carriers jointly took this demurrage work from the Western Weighing and Inspection Bureau and concurrently contracted with the Houston Belt and Terminal Railway Company to perform this work, this constituted a coordination as that term is used and defined in the May, 1936 Washington Job Protection Agreement. Inasmuch as this constituted a coordination as defined in Section 2 of the Washington Job Protection Agreement, the Organization submits that the Carriers involved were required to enter into an agreement for the purpose of applying the protective benefits and conditions set forth in that Agreement.

The carriers answered, inter alia, that the demurrage work in question merely returned to the Houston Belt and Terminal Railway Company from which it had originated on August 1, 1924. The Carriers assert that they simply retrieved the demurrage work from the Western Weighing and

Inspection Bureau pursuant Article VII of the Agreement dated June 1, 1925, which Agreement had originally given this work to the Houston Demurrage and Storage Bureau, and subsequently to the Western Weighing and Inspection Bureau effective December 1, 1934. The Carriers maintain that returning demurrage work to the Houston Belt and Terminal Railway Company, effective January 1, 1977, was nothing more than the Houston Belt and Terminal Railway Company retrieving work which it had previously performed for the Carriers involved herein. This, according to the Carriers, did not constitute a coordination as that term is used in Section 2 of the Washington Job Protection Agreement. There was, accordingly, no obligation for them to enter into an implementing agreement with the Organization in order to provide protective benefits and conditions which are set forth in the Washington Agreement of May, 1936.

It is undisputed that the May, 1936 Washington Job Protection Agreement was intended to make applicable to those employees affected by a coordination, the protective benefits and allowances provided by that Agreement. However, Section 1 of the Washington Job Protection Agreement makes it clear that the intent of the Agreement was to provide this protection only when changes in employment in the Railroad Industry were solely due to and resulting from such coordination. Section 2(a) of the Washington Job Protection Agreement defines the term coordination as follows:

> 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.

After carefully considering the arguments and evidence submitted by all the parties involved in the instant controversy, it is the considered opinion of this Board that there was no coordination involved herein as that term is defined in Section 2(a) of the Washington Job Protection Agreement. In the view of this Board there was simply no joint action by two or more carriers to consolidate their separate facilities or to consolidate any of the operations or services previously performed by them. This Board holds that merely because the Carriers involved herein removed their demurrage work from the Western Weighing and Inspection Bureau and transferred it to the Houston Belt and Terminal Railway Company, this conduct did not meet the definition of a coordination as set forth in Section 2(a) of the Washington Job Protection Agreement. There was no unifying, consolidating, merging or pooling separate railroad facilities or operations or services previously

performed by these Carriers. Rather they were merely transferring their demurrage work from one agent to another agent.

This Board deems it significant that all the Carriers involved herein had divested themselves of demurrage work as early as 1924 when the Houston Demurrage and Storage Bureau entered into a contract with these Carriers to perform their demurrage work in the Houston Terminal area. As noted heretofore, this demurrage work was subsequently turned over to the Western Weighing and Inspection Bureau in 1934. Insofar as we can discern no demurrage work was performed by these individual Carriers subsequent to 1924.

It is our view that when the Houston Belt and Terminal Railway Company retrieved this work, effective January 1, 1977, it was merely taking back work previously performed by it for the individual Carriers prior to 1924. It retained the right to retrieve this work by virtue of Article VII of the June 1, 1925 Agreement. It has been held by this Board that taking back of work is not a coordination as defined by the Washington Job Protection Agreement.

From the record at hand, we conclude that when the Carriers notified the Western Weighing and Inspection Bureau that they would require the Joint Freight Agency forces of the Houston Belt and Terminal Railway Company to perform demurrage work effective January 1, 1977, there was no consolidation of services or operations previously preformed by them since they had divested themselves of this demurrage work at least since 1924, long before the effective date of the Washington Job Protection Agreement. There was thus no de-coordination or coordination of separate railroad facilities, operations or services effective January 1, 1977. Accordingly, since there was no coordination as that term is defined in Section 2(a) of the Washington Job Protection Agreement, there was therefore no obligation on the Carriers to enter into an implementing agreement with the Organization.

AWARD:

Question No. 1 answered in the negative.
Question No. 2 answered in the negative.

Robert M. O'Brien, Neutral Member

Dated Washington, D. C.
January 15, 1979.