AWARD NO. 466
Case No. SG-40-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE )

BROTHERHOOD OF RAILWAY SIGNALMEN
and
SOUTHERN PACIFIC TRANSPORTATION COMPANY
(WESTERN LINES)

QUESTION AT ISSUE

Were Signal Foreman F. Suddarth, Signalmen G. Shappard, L. House, T. Fudge, F. Belmont and D. Smoot adversely affected under Sections 6 and 8 of the Washington Job Protection Agreement dated May 1936 when the Southern Pacific Transportation Company arbitrarily moved these employees headquarters from Macy Street Yards to the Spring Street Signal Shop on February 15, 1983?

OPINION OF BOARD

Claimants are former Pacific Electric Railway Company ("Pacific Electric") employees. Pursuant to authority granted by the Interstate Commerce Commission ("ICC"), that railroad was merged into the Carrier effective August 13, 1965. The signal employees of Pacific Electric continued to be covered by the collective bargaining agreement (effective September 1, 1949, as amended May 16, 1951) that had existed between the Organization and Pacific Electric, despite the change in corporate structure.

On August 24, 1978, the Organization and the Carrier executed an Implementing Agreement, to be effective September 1, 1978, whose intent was to "unify, consolidate and merge the separate signal services, facilities and functions" of the Pacific Electric with those of the Carrier. The

Agreement provided for the cancellation of the collective bargaining agreement which had existed with the Pacific Electric, for the merging of the territory of Pacific Electric with the Carrier's Los Angeles Division, and for the consolidation of the seniority rosters of the two railroads in the Los Angeles Division.

Both prior to and for more than four years after the merger, Claimants reported to the Macy Street Yard where yard track and shop facilities were maintained. The Carrier maintained another facility at Spring Street, approximately 1.5 to 2 road miles away, at which it had signal shop facilities.

There came a time when the Southern California Rapid Transit District acquired a portion of the Macy Street Yard and advised Carrier that it planned to engage in a construction project there which would deny automobile access to the Carrier's signal facility at the Yard. Following that notification, Claimants were advised that they would commence using the Spring Street facility as their headquarters point (i.e., the point to which they would report, among other things).

The Organization contends that Claimants are adversely affected employees and are entitled to labor protection benefits pursuant to the Washington Job Protection Agreement which benefits would compensate them for the alleged added inconvenience of reporting to Spring Street instead of to the Macy Street Yard. The Organization maintains that the merger is a consolidation or coordination as defined in the Washington Job Protection

Agreement and that the movement of Claimants' headquarters point placed them in a worse position with respect to rules governing their working conditions and deprives Claimants of benefits attached to their previous employment, both of which are prohibited by the Washington Job Protection Agreement. The Organization asserts that the adverse effect suffered is that Claimants must commute to work by new, more costly means of transportation and that the new commute requires the driving of extra miles through extremely heavy traffic which takes additional time and effort.

The Carrier rejects the position of the Organization. The Carrier contends that the move from Macy Street Yard to Spring Street is unrelated to the merger. Therefore, the Claimants are not adversely affected by the merger because there is no causal connection (or nexus) between the merger and the complained of action. The Carrier also points out that nothing besides the headquarters point changed for Claimants, that is, there was no consolidation of duties, signal gangs or office space. Therefore, the Claimants were not adversely affected by the move, whatever the cause. The Carrier contends that the organization has failed to show any rule violated and argues that, factually, the relocation of the headquarters point by two road miles was done to meet the legitimate needs of the Carrier. The Carrier also disputes the method by which the Organization computed the amount claimed by Claimants.

Section 1 of the Washington Job Protection Agreement provides:

> That the fundamental scope and purpose of this agreement is to provide for allowances to defined employees affected by coordina-

tion as hereinafter defined, and it is the intent that the provisions of this agreement are to be restricted to those changes in employment in the Railroad Industry solely due to and resulting from such coordination. Therefore, the parties hereto understand and agree that fluctuations, rises and falls and changes in volume or character of employment brought about solely by other causes are not within the contemplation of the parties hereto, or covered by or intended to be covered by this agreement.

Section 6(a) provides:

> No employee of any of the carriers involved in a particular coordination who is continued in service shall, for a period not exceeding five years following the effective date of such coordination, be placed, as a result of such coordination, in a worse position with respect to compensation and rules governing working conditions than he occupied at the time of such coordination so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination, except however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline.

Section 8 provides:

> An employee affected by a particular coordination shall not be deprived of benefits attaching to his previous employment, such as free transportation, pensions, hospitalization, relief, etc., under the same conditions and so long as such benefits continue to be accorded to other employees on his home road, in active service or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

The Washington Job Protection Agreement was clearly intended to protect railroad workers from various specified injuries suffered as a result of the

merger, consolidation or coordination by the railroad by which they were employed. The Implementing Agreement was intended to "unify, consolidate and merge" the signal operations of the Carrier and the Pacific Electric. This is one of the actions covered by the Washington Job Protection Agreement. But before an employee can avail himself of labor protection benefits, he must show that he was adversely affected by the action. The Organization has failed to establish that by substantial, credible evidence in the record.

The record indicates that Claimants were required to change their headquarters point at a time chronologically after the Implementing Agreement. The Organization has not established the adverse effect of that change. All it has shown is that, perhaps, Claimants will need to commute a different way to their headquarters. This may or may not be adverse depending on a variety of factors not explored in the record. Further, no benefit such as the "free transportation, pensions, hospitalization, relief" listed in Section 8, has been identified by the Organization as having been taken away by the action of the Carrier. The Board finds that no benefit has been taken away because whatever Claimants lost, if anything, by the Carrier's action was not an incident of employment such as the benefits listed in Section 8. In addition, the Organization has not credibly shown that there was a causal connection between the Implementing Agreement and the change of headquarters points. Indeed, the record indicates that the change in headquarters points was the result of the actions of the Southern California Rapid Transit District and had nothing to do with the Implementing Agreement. The mere fact that the change of headquarters points

followed the Implementing Agreement does not establish that the change was caused by the Agreement. Moreover, it does not establish the adverse effect of the change.

In the absence of the Organization proving the adverse effect or the causal connection between the Implementing Agreement and the change of headquarters, there can be and is no entitlement to protection benefits in accordance with the Washington Job Protection Agreement.

AWARD

The answer to the question is "no."

Nicholas Zumas

Nicholas H. Zumas, Neutral Member

Date: 1-4-89