PLB NO. 1

PROCEEDINGS PURSUANT TO PUBLIC LAW 89-456

In the Matter of Issues in Dispute between Southern Pacific Company and Switchmen's Union of North America	Opinion and Award

DETERMINATION OF QUESTIONS CONCERNING ESTABLISHMENT AND JURISDICTION OF PUBLIC LAW (SPECIAL ADJUSTMENT) BOARD AFTER APPOINTMENT OF A PROCEDURAL NEUTRAL BY NATIONAL MEDIATION BOARD

APPEARANCES:

For the Carrier:

William R. Denton, General Attorney

PUBLIC LAW BOARD NO. 1:

Mr. John R. Burge,	Party Member designated by Switchmen's Union of North America
Mr. L. D. Bush,	Party Member designated by Southern Pacific Company
Mr. J. Keith Mann,	Neutral Member appointed by the National Mediation Board

PUBLIC LAW BOARD NO. 1

Between

Southern Pacific Company

and

Switchmen's Union of North America

OPINION BY NEUTRAL MEMBER MANN

1. Introduction.

The Board convened in Stanford, California on October 25, 1966, and in San Francisco, California on December 19, 1966, January 4, 1967 and January 10, 1967 with all members present at all sessions of the Board as follows:

John R. Burge,	General Chairman, Switchmen's Union of North America, Member designated by Representative (Organization)
L. D. Bush,	Assistant Manager of Personnel, Southern Pacific Company, Member designated by Carrier
J. Keith Mann,	Neutral Member, appointed by the National Mediation Board

The persons listed below appeared before the Board and made statements regarding the question of including on the Docket of the special board of adjustment certain cases which may involve the interests of third parties and, to the extent developed hereafter, requested or commented upon the provisions in any agreement establishing such board which they deemed necessary for the protection of third parties:

January 4, 1967, A.M.

Mr. George P. Lechner, Vice President, Order of Railway Conductors and Brakemen
Mr. Jewell Edgar Teague, Secretary, General Grievance Committee, SP-Pacific Lines, Representing Brotherhood of Railway Trainmen

January 4, 1967, P.M.

Mr. Robert C. Inman, General Chairman, Railroad Yardmasters of North America, Inc.
Mr. John B. Blazin, General Secretary-Treasurer, Railroad Yardmasters of North America, Inc.

Pursuant to Public Law 89-456, 89th Congress, H.R. 706, June 20, 1966, Switchmen's Union of North America requested Southern Pacific Company to join in an agreement establishing a special adjustment board to consider and dispose of a large number of claims pending before the National Railroad Adjustment Board (hereinafter referred to as NRAB) or referable thereto.

The parties were in agreement with respect to the basic procedure to be followed by the board and to including in the docket to be submitted to the board approximately two hundred forty cases which had been pending before the NRAB for more than one year, some for as long as seven years. However, they were unable to agree with regard to certain matters and under the provisions of the Act they requested the appointment of a neutral by the National Mediation Board. The disputed matters concerned

the consideration of five cases in which the interest of third parties are allegedly involved. It was the Carrier's view that the special adjustment board could not consider these latter five cases unless the agreement setting up the board permitted the entire dispute, including the interests of the third party, to be determined in the same proceeding. The Carrier further contended that in order to bind the third parties such parties had to have notice and full opportunity to appear and present their cases.

The Union originally took the position that the cases in dispute did not involve third party interests and therefore did not require special proceedings. It is the Union's contention that in any event all cases that have been pending at the NRAB for more than one year must be brought back for determination by a special adjustment board upon the request of either party. From the outset, however, the Switchmen have consented that the underlying agreement provide that third parties receive notice and be afforded an opportunity to be heard if their interests are found to be involved when the Board is constituted to hear disputes on their merits.

Officials of the Order of Railway Conductors and Brakemen, the Railroad Yardmasters of North America, and the Brotherhood of Railroad Trainmen wrote to this Board expressing their view that the interests of their Unions were involved in the disputed cases.

The first two Unions requested the right to appear before this Board and express their views. The third Union requested that the claim of the Switchmen not be considered without provision being first made for the protection of all interested parties. Representatives from each of these Unions were given an opportunity to appear before this "procedural" Board and present their respective positions as to what provisions they would wish to be included for the protection of all interested parties if the disputed cases were docketed.

Representatives of the Order of Railway Conductors and Brakemen and the Brotherhood of Railroad Trainmen were agreeable to the docketing of cases involving what they consider to be the interests of their Unions provided the rules of the Board granted third parties adequate notice, the right to appear and an opportunity to be heard. They indicated an intention to participate in the proceeding on the merits and to present evidence and argument in support of their claims. The separate presentations by ORCB and BRT Representatives also referred in part to the considerations that leaving cases at the First Division of the NRAB does not solve the problems of delay and running claims and to a preference for having disputes determined by boards on the property closer to the facts and circumstances.

However, the Representatives of the Railroad Yardmasters of

North America took the position that the disputes which involved their Union should not be heard by the special adjustment board. They maintained that, under the circumstances, the cases involving the Yardmasters should be decided only by the appropriate Division of the NRAB.

No inference should be or was drawn by this Board that these helpful discussions constituted consent to joinder in these proceedings on the part of the third party Organizations appearing.

During these proceedings the three Members of the Board unanimously agreed upon paragraphs 1 through 6 of the attached proposed Agreement establishing a special adjustment board. Paragraph four is of special relevance to so-called "third party" disputes:

> 4. The Board shall hold hearings on each claim or grievance submitted to it and due notice of the hearings shall be given. The determination that a third or additional party may have an interest in a dispute may be made by the Board as constituted with the procedural Neutral Member or as constituted with the Neutral Member to consider and dispose of the dispute. Where it is determined that a third or additional party may have an interest in a dispute, such third or additional party will be given notice of the time and date the dispute will be heard and an opportunity to appear before the Board on such date and present their case in a manner consistent with the procedures adopted by the Board. The Neutral Member of the Board shall be one of the two or more members of the Board determining whether a notice of hearing will be given to third or additional parties and shall be one of the two or more members of the Board rendering an award in a dispute where notice of hearing has been given to third or additional parties.

With respect to the problem of consideration of disputes involving third party interests, the members of the Board designated by the Carrier and Union were in disagreement regarding the inclusion of

paragraph 7 of the Carrier's proposed agreement. The paragraph proposed by the Carrier is as follows:

> 7. No decision shall be rendered in a dispute involving one or more third parties unless it is resolved completely as to all parties involved. The decision shall interpret each and every agreement involved in a manner consistent with each and every other agreement involved. The decision must be binding upon all parties to be valid. A third party shall not be bound by a decision unless it has had notice and an opportunity to appear and present its case on an equal basis with all other parties.

There are essentially two basic problems raised by paragraph four on which the Board has reached tentative agreement and by the specific language proposed by the Carrier quoted above. First is the question of whether or not a special adjustment board established under Public Law 89-456 has authority to bind third parties, and if so, whether such powers can be exercised constitutionally. Second, there is the question of whether or not, assuming third party cases are determined, the special adjustment board can be ordered in advance to interpret each union-management contract "in a manner consistent with each and every other agreement involved". A third possible problem raised by the Carrier's proposed paragraph seven, the requirement of notice and opportunity to be heard, seems clearly to have been resolved by the agreed upon paragraph 4 above.

11. Discussion

A. <u>Docketing and Disposition of Disputes Involving Third Parties.</u>

The basic question presented here is whether or not the special

adjustment board established in this agreement may be given power to deal with the rights of third parties. If the answer to this question is "yes", a statement that third parties will be bound by the decision of the Board, as proposed by the Carrier, would be desirable if not mandatory. There is no reason not to make it clear to all concerned that third party interests may be bound if consideration of such cases would require this result. Indeed, if a third party is given notice and appears, but is not made aware of the intention of the Board to bind him, the notification might be insufficient to meet the standards of due process. A party who believes he is appearing merely as a witness may prepare and present information in a far different manner than one who comes before the Board as a party who may be bound by the decision.

This brings us to the crucial issue of whether this Board can take and decide these third party cases, a question which does not appear to have been directly decided under Public Law 89-456 (see also Federal Register Title 29, Chapter X, part 1207), and which may have far-reaching consequences as to the nature and forum for adjudication of this type of so-called minor dispute in the railroad industry.

At the outset it should be recognized that when there is a dispute regarding assignment of work presented, a special adjustment board must either have the power to bind all disputants in a single proceeding or it cannot consider the dispute at all.

This conclusion follows directly from Transportation-Communication Employees Union v. Union Pacific Railroad Co., 385 U.S. 157 (December 5, 1966), which held that when presented with a jurisdictional dispute under an existing contract the NRAB must join the third party union in the proceeding before it and dispose of the entire matter. A special adjustment board to be established under Public Law 89-456 provides nothing more than an alternative forum for disputes which have heretofore gone to the NRAB, and is intended to alleviate the huge backlog of cases pending before the NRAB. That the latter was the intent of Public Law 89-456 seems clear from the House and Senate Reports. H.R. 1114, pp. 3-13, 89th Cong., 1st Sess. (1965); S.R. 1201, pp. 1-3, 89th Cong., 2nd Sess. (1966). In this sense a special adjustment board is derivative of the NRAB. Its decisions have the same binding effect and are subject to the same limitations on review as those of the NRAB itself. H.R. 1114, supra at 16.

The legislative history of Public Law 89-456 seems clearly to indicate that there was no intent on the part of Congress to grant a special adjustment board powers in excess of those which the NRAB itself can exercise. It would seem to follow directly from the T-CEU case that a special adjustment board does not have the power to decide such a case between only two of the parties, leaving the third party rights to be determined in an independent proceeding. If Public Law 89-456 is interpreted to prohibit final adjudication of rights other than those of the carrier and the particular

organization which set up the special board, the T-CEU case would require a holding that the special adjustment board could not consider the case at all. Otherwise the special board would have the power to make determinations which the NRAB now has no power to make, and could thus thwart the Supreme Court's articulated policy favoring expeditious settlement of the entire dispute.[1]

While Congress' intent seems obviously not to give special adjustment boards more power than the NRAB itself, there is little indication that Congress intended special boards to have any less power than the NRAB. The basic justification for establishment of special boards is the fact that there is such a long delay before

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[1] The question of whether or not jurisdictional disputes arising under contracts which have voluntary arbitration clauses should be decided in a single proceeding requiring the presence of a third party union has recently been the subject of considerable debate in legal periodicals. See Jones, Autobiography of a Decision: The Function of Innovation in Labor Arbitration, and the National Steel Orders of Joinder and Interpleader, 10 U.C.L.A. L. Rev. 987 (1963); Bernstein, Nudging and Shoving All Parties to a Jurisdictional Dispute into Arbitration: The Dubious Procedure of National Steel, 78 Harv. L. Rev. 784 (1965); Jones, On Nudging and Shoving the National Steel Arbitration into a Dubious Procedure, 79 Harv. L. Rev. 327 (1965). Professor Edgar Jones has taken the position that an arbitrator presented with what is essentially a three party dispute should exert substantial pressure on the contracting union to seek a court order joining the non-participating union. Whether or not the procedure suggested by Professor Jones is sound for the situation with which he was confronted, in the substantially different context of grievance settlement in this industry the Supreme Court has construed the Railway Labor Act to be best effectuated by determination of these conflicting claims in a single proceeding.

an NRAB determination can be obtained. The need to eliminate delay in cases involving jurisdictional disputes is certainly no less than that in cases involving other disputes over which the special board has power.

There are two decisions, Sadler v. Union R. Co., 123 F. Supp. 625 (W.D. Pa. 1954), and Sadler v. Union R. Co., 125 F. Supp. 912 (W.D. Pa. 1954), which might be cited as indicating that a special adjustment board should not have jurisdiction over disputes involving third parties. The board in the Sadler cases had been set up by voluntary agreement under Railway Labor Act §3 Second, and the Court felt that one not a party to the agreement could not be bound by it. The court stressed the fact that there was no mutuality of contract with regard to the third party. In the present case the board is established under express statutory authority, reflecting a new Congressional policy regarding on-the-property determination of minor disputes pending before, or referable to, the NRAB. A special adjustment board will be set up at the request of either party. If, as in the instant case, the parties cannot agree as to rules of procedure, those matters are to be determined by a Neutral. Under these circumstances it can hardly be said that the Sadler decisions which turned on contract law are controlling. Furthermore, it is important to note that much of the Sadler opinions was concerned with the fact that the third party had received

inadequate notice of the proceedings and had no notion that it could conceivably be bound by them. These latter infirmities would not be present under the procedure to be adopted in the present agreement.

It is true that the language of Public Law 89-456 could be interpreted as providing that the disputes to be heard by a special board will be between the parties to the agreement only. For example the Act states, "Such awards (of the special adjustment board) shall be final and binding upon both parties to the dispute . . ." (Emphasis added.). It must be noted, however, that when Public Law 89-456 was passed the T-CEU case had not been decided. At that time disputes before the NRAB regarding work assignment could, and normally were, decided between management and only one union even though the other union would not be bound by the proceeding and could later seek an inconsistent determination. (See the dissenting opinion of Justice Fortas in T-CEU case; see also 65 Mich L. Rev. 386, 387-388 (1966).) Thus when Public Law 89-456 was considered Congress had no reason to focus specifically on the problem now before this Board.

Furthermore, §3 First (m) of the Railway Labor Act provides for awards to be "final and binding on both parties to the dispute. (Emphasis added.) This wording clearly seems to envision only two parties. Yet, the Supreme Court in the T-CEU case did not consider the presence of the word "both" as an obstacle to

its decision. The Court was aware of Public Law 89-456 since the majority, in footnote 4 of its opinion, referred to certain changes which the Act had brought about. Because the statutory use of the word "both" posed no problem in the T-CEU case it should not be read to present an obstacle here.

Legislative history on the question of whether Congress intended special adjustment boards to consider these three-party disputes is sparse. Nevertheless, what there is indicates that the members of Congress assumed that such disputes would arise and be dealt with by special adjustment boards. In the House Report it was stated:

> . . . Some concern was expressed during the hearings by witnesses representing the carriers that the mechanism established by the bill could be used by one union for the purpose of raiding the membership of another. The committee feels that there is no cause for apprehension on this score, since all persons involved are expected to utilize and apply this legislation in good faith in accordance with its purpose and intent. This means that neither a union nor a carrier can properly demand the establishment of a special board with jurisdiction so broad as to invade the jurisdiction of another union as heretofore customarily respected in the establishment of special boards by voluntary agreement; should any party do so the party upon whom demand is made would be expected to refuse to agree to such jurisdiction. Such refusal would then force a jurisdictional determination by a neutral designated as provided in the bill. The neutral, in turn, would be expected to determine the jurisdiction of the board so as not to invade the established jurisdiction of another union. H.R. 1114 supra at 14.

While one way of reading this language would suggest a

decision against consideration by a special adjustment board of cases involving the interests of a thirty party union, a careful examiniation of the House hearings and the testimony upon which the quoted statement apparently is based indicates that what the Committee was concerned with was not eh problem of jurisdictional disputes involving assignment of the work, but rather the question of unions with overlapping memberships competing with each other for members by establishing special boards to deal with individual claims. The difficulty envisioned is the raiding of membership because only the statutory representative can present the claim of an employee to its special board.

Mr. J. E. Wolfe, Chairman of the National Railway Labor Conference, stated the problem to one Committee, using the following hypothetical situation:

> . . . The Order of Railway Conductors and Brakemen is the duly accredited bargaining agent on railroad A. But 40 per cent of the conductors on railroad A are affiliated with the Brotherhood of Railroad Trainmen. Of course, this is hypothetical, but nevertheless, circumstances just exactly similar to this are prevalent throughout this industry on practically all railroads. Now, the ORCB, the bargaining agent could request a special board. The carriers would have a mandatory statutory obligation to agree . . .
>
> That means that all the claims that the BRT is handling for their conductor members would have to go to the Adjustment Board because the BRT is not the statutory bargaining agent for conductors.
>
> Now, the ORCB would get expeditious handling of its claims to the great disadvantage of the other organization. Hearings on H.R. 701, 704, 706, before the Subcommittee on Transportation and Aeronautics of the Committee on Interstate and Foreign Commerce; House of Representatives, 89th Congress, 1st Sess. (1965) 199.

When read in light of the problem which was placed before that Committee it is clear that the statement in the House Report is not intended to prohibit special boards from dealing with jurisdictional disputes regarding work assignment. See Note, 48 Ind. L. J. 109, 119-120 (1966). This position is further supported by the fact that the issue was raised by the carriers, who, with regard to jurisdictional disputes, have continually pressed for a system requiring all such disputes to be determined in a single action binding all parties affected. See 65 Mich. L. Rev. 386, 388-390 (1966).

Thus it is evident that two strong policies have recently developed which must be taken into consideration in attempting to decide how Public Law 89-456 should be interpreted: first, the legislative intent to cut down the long delay in determining these labor disputes generally, and second, the Supreme Court's construction of the Railway Labor Act in the T-CEU case requiring resolution of jurisdictional dispute cases in one proceeding. These two policies can only be effectuated in cases involving jurisdictional disputes brought before this Board by interpreting Public Law 89-456 to allow this Board to bring all parties before it and to decide the rights of all parties in a single proceeding.

The only issue which then must be considered is whether there is some constitutional objection to requiring a third-party union to join in the proceedings before the Board as constituted

under the agreement. The most frequently raised constitutional question in cases of this type is whether or not the third party had adequate notice of the proceeding and a full opportunity to be heard. Clearly, where no notice is given the third party cannot be bound. Hunter v. Atchison T. & S. F. Ry., 171 F.2d 594 (7th Cir. 1948). As has previously been pointed out, Paragraph 4 of the agreement of the parties herein fully provides for notice and opportunity to be heard.

A final constitutional problem, and a crucial one, stems from the fact that the third party has no official power over the selection of the board or the determination of its procedures; and further than one member of the board will be the representative of a union at least rival to the particular dispute and characterized as a "party" or "partisan" member. (Fed. Reg. Title 29, Ch. X, part 1207.1 (a))

It is obvious that a carrier and a union cannot voluntarily set up a board with powers between them to adjudicate the rights of third parties. See, e.g., Edwards v. Capital Airlines, 176 F.2d 755 (1949), cert. denied, 338 U.S. 885 (1950). Even if the third party has full right to appear and to be heard, the fact that the only members of the board represent participants in the case robs the proceeding of objectivity and renders it void, much in the same way that a jury in a courtroom proceeding cannot be composed of relatives of one of the parties. On the other hand,

if a board is set up in a manner which preserves objectivity, the fact that a party, although appearing at the procedural stage, did not have a vote in the establishment of the board is not necessary to its jurisdiction over him.[12]

In the present case the rights of third parties in controversies before the Board are sought to be protected by that clause of paragraph 4 of the agreement providing:

> The Neutral Member of the Board shall be one of the two or more members of the Board determining whether a notice of hearing will be given to third or additional parties and shall be one of the two or more members of the Board rendering an award in a dispute where notice of hearing has been given to third or additional parties.

Under this provision no decision may be rendered adjudicating the rights of third parties unless the neutral member of the three-man board is a member of the majority. In this respect the case is clearly distinguishable from Edwards v. Capital Airlines, supra, in which there was no neutral member of the panel and the outside party had no representative on the panel, or a case in which, although a neutral is a member of the panel, the neutral's vote is not required for a decision as to the third party rights.

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[12] Compare the fact that a court, for example, may obtain power over any person who sets foot within the state in which it sits even though the person does not live in that state and had no power to vote for or against the judge or to determine the manner of his selection or the procedures of his court. James, Civil Procedure §12.2 (1965).

In the latter situation management and the union could combine to defeat the rights of third parties. This problem could not arise under the plan in the instant case. In other words, whenever a third party's interests are at stake the neutral member of the Board controls the decision.

The case of Arnold v. United Air Lines, Inc. 296 F.2d 191 (7th Cir. 1961), supports the validity of the procedure adopted herein. There, the Carrier and the Union each had representatives on a special board established under Railway Labor Act, Title II, Sec. 204, pursuant to an agreement which provided for a neutral in the case of a deadlock. In order to preserve the rights of a third party, the representatives of the Carrier and the Union agreed at the outset of the hearing to deadlock, and immediately requested the appointment of a neutral to whom they left the decision. The Court held that the procedure met the requirements of due process.

In voluntary industrial arbitration situations involving a third party, tradition and prudence dictates the more conventional view that a party can only be bound by consent. Moreover, it is the practical as well as customary function of grievance adjudication to settle disputes, not create them. However, in evaluating the validity and sense of the procedure adopted in this case, one must consider as well the alternative method of adjudication were the special adjustment board to fail to take jurisdiction over any cases involving asserted third party interests. Such cases would then have to be decided by the NRAB in a single proceeding pursuant to the T-CEU case. Unless special procedures are adopted following T-CEU, the NRAB panel which would hear such a case

would consist of an equal number of representatives from the carriers and the union members selected from the crafts over which the particular division has jurisdiction. No neutral member is required in the absence of a deadlock. Further, and most significant, is the fact that the structure of the NRAB is such that one of the unions could have a representative on the panel while the other might not due to its classification in a different division.

Although some writers in criticizing the lower court in the T-CEU case had argued that such a proceeding would be inequitable, e.g., 65 Mich. L. Rev., supra, at 389-390, the Supreme Court upheld the District Court's decision holding that joinder of the third party was required. Under these circumstances it would seem that the procedure to be adopted in the instant case is at least as objective with regard to third parties as that before the NRAB itself, and thus is clearly constitutional.[13]

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[13] With the inclusion of the special provision giving control to the neutral in cases involving third party rights the situation here becomes strikingly parallel to impleader actions under Rule 14 of the Federal Rules of Civil Procedure. Under this rule a defendant to an action can join a third party whom the defendant claims is liable for any claims defendant is ordered to pay plaintiff. If defendant could not bring in such a third party but had to pursue him in an independent action, defendant would be faced with the possibility of inconsistent decisions. The federal courts, recognizing the necessity of such a procedure to protect defendant, have permitted such third parties to be brought in even when the normal rules of jurisdiction would prohibit defendant from bringing his claim against the third party as an independent action. 3 Moore, Federal Practice ¶14.26.

A possible objection to the special provision adopted herein is that Public Law 89-456 specifically provides: "Any two members of the board shall be competent to render an award." Although the provision could be read to permit any two members, regardless of whom they represent, to render a decision, thus prohibiting the plan set out in this case, it seems more reasonable to read the words simply to make it clear that unanimity is not required. The ordinary dispute to which this Act was directed is bilateral in character. It is obvious that if organization and carrier representatives can agree in such cases, the need for the special wording is eliminated because there is no need whatsoever for a neutral. It follows then that Congress wanted to make it clear that the neutral and any one of the parties could decide a dispute, even though the other party representative on the panel did not agree. Finally, the fact that the provision states that any two members are competent to render an award need not necessarily preclude the parties from naming one of the members who must be included. The provision on which all Members of this Board are agreed seems in complete harmony with the intent of Congress.

Therefore the special adjustment board, under the procedures set out in the agreement, has the statutory and constitutional power to bind third parties in cases where this action is necessary to a complete determination of the rights of the Switchmen's

Union and the Southern Pacific Company; hence the agreement should contain the following provision:

> 7. Decisions or Awards of the Board shall be final and binding on the parties subject to the provisions of the Railway Labor Act, as amended by Public Law 89-456. No decision shall be rendered in a dispute involving one or more third parties unless it is resolved as to all parties involved. If in a judicial proceeding an award is held not binding on one or more of the parties to the dispute, including third parties, the award shall be deemed not binding on any of the parties. In addition to the notice required by paragraph four, copies of the agreement establishing this special board of adjustment and any accompanying opinions shall be sent within ten days of execution to all parties alleged to have a third party interest in docketed cases.

This provision, coupled with the provision requiring the Neutral to be one of the majority rendering a decision would also allow the Neutral to determine that the matter was such that the special board of adjustment should not decide a case because in his view the third party's rights could not adequately be protected. Whenever a dispute involving third parties cannot be determined by the Board under its agreed rules the case would be returned to the NRAB for adjudication.

B. Interpretation of Agreements

The Carrier proposes that the agreement setting up the special adjustment board contain a provision requiring that in cases involving third parties "The decision shall interpret each and every agreement involved in a manner consistent with each and every other agreement involved." This quoted provision is too

broad in its terms. The basic reason for a rule permitting all rights to be determined in a single proceeding is to prohibit two totally inconsistent determinations, both of which cannot possibly be enforced. Thus, as pointed out in the T-CEU case, the evil to be eliminated is separate determinations that two unions are each entitled to do the same work. Prior to the T-CEU case the carriers were subject to such conflicting orders and then faced the dilemma of violating one of the orders no matter what they did unless they could renegotiate with one of the unions. See 65 Mich. L. Rev. 389-90 (1966). The T-CEU case prevented this kind of a conflict. At the same time the T-CEU case recognized the possibility that that management might have obligated itself in such a manner that two unions were entitled to do the same work under their contracts. The irreconcilable cannot be reconciled. In such a case the Court specifically stated that the carrier might be responsible to pay for idleness caused by awarding the work to another union. In other words the contracts between the Carrier and each of the Unions need not, and indeed should not, necessarily be read to be consistent completely with one another. Otherwise the Carrier could avoid liability clearly called for by one of its contracts. Therefore the clause in question should not be included. It would seem that the T-CEU case properly established the law in this area and that no provision is required.

III. AWARD

1. The following cases shall be included on the Docket of Public Law Board No. 1, a Special Adjustment Board established by the attached agreement:

Docket Nos. 37 481
38 359
39 373
40 619
40 743

2. The agreement establishing such Board shall include the following provision:

> Decisions or Awards of the Board shall be final and binding on the parties subject to the provisions of the Railway Labor Act, as amended by Public Law 89-456. No decision shall be rendered in a dispute involving one or more third parties unless it is resolved as to all parties involved. If in a judicial proceeding an award is held not binding on one or more of the parties to the dispute, including third parties, the award shall be deemed not binding on any of the parties. In addition to the notice required by clause four, copies of the agreement establishing this special board of adjustment and any accompanying opinions shall be sent within fifteen days of execution to all parties alleged to have a third party interest in docketed cases.

/s/ John R. Burge
John R. Burge

/s/ L. D. Bush
L. D. Bush

/s/ J. Keith Mann
J. Keith Mann

Attachments: Agreement and
Attachment "A"

PUBLIC LAW BOARD NO. 1

Dated at San Francisco,
California, this 17th day of March, 1967.