JJB

Case No. 1 of PL Board No. 7 is attached for your information in the event you do not already have it. Although this was a 2-6-65 Agreement dispute, we understand that theparties agreed to submit it to a P.L. board with Mr. Dorsey as Chairman.

HCC

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TRANSPORTA

EMP.

No. 1

GREAT NORTHERN

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APPEARANCES:

MESSRS. A. R. Lowery, J. W. Smith, I. C. Ellis, F. C. Rose.
for the Organization

MESSRS. C. M. Illg, D. H. Burns.
for the Carrier

BEFORE:

John H. Dorsey, Chairman and Neutral Member
Thomas C. DeButts, Carrier Member
James W. Whitehouse, Organization Member

OPINION OF BOARD

Statement of the Case

Pursuant to Agreement of the parties, executed December 8, 1966, and in compliance with Public Law 89-456 (80 Stat. 208) and Rules and Regulations promulgated by National Mediation Board, by authority of the Railway Labor Act, as amended (45 U.S.C. 151-163), this Public Law Board is duly constituted.

The issue presented is:

> "In what circumstances, if any, do the rules, agreements, interpretations and settlements between the Carrier and the Union including Article III of the Mediation Agreement (Case A-7128) dated February 7, 1965 and the interpretations thereto dated November 24, 1965 require conference and agreement as a prerequisite to the consolidation of stations and/or agency positions at separate locations."

By agreement of the parties hearings were held in Chicago, Illinois. The parties filed Submissions and were afforded full opportunity to be heard, to introduce relevant evidence, to present oral argument and to file briefs. The parties waived the filing of briefs.

The Agreement of the parties specifys that:

> "... the Board shall continue in session until the matter submitted to it under this Agreement is disposed of, which shall be within thirty (30) days after date of this Agreement or within such other period of time as the parties otherwise may agree."

By stipulation of the parties, in the course of the hearing, this time limitation was stricken.

FINDINGS AND CONCLUSIONS

I. Background

On February 7, 1965, the nation's railroads, represented by the National Railway Labor Conference and the Eastern, Western and Southeastern Carriers' Conference Committees and the Employers' National Conference Committee, which groups included the Great Northern Railway Company, herein called Carrier, and the Transportation - Communication Employees Union, herein referred to as Organization, entered into a National Agreement, Mediation Case A-7128, under the terms of which the employes represented by the five organizations employed by the Carriers, party to the Agreement, were provided with stabilization in their employment and many other benefits under conditions specified.

Inter alia, the February 7, 1965 Agreement contains a provision which reads:

"ARTICLE III - IMPLEMENTING AGREEMENTS

Section 1 -

The organizations recognize the right of the carriers to make technological, operational and organizational changes, and in consideration of the protective benefits provided by this Agreement the carrier shall have the right to transfer work and/or transfer employees throughout the system which do not require the crossing of craft lines. The organizations signatory hereto shall enter into such implementing agreements with the carrier as may be necessary to provide for the transfer and use of employees and the allocation or rearrangement of forces made necessary by the contemplated change. One of the purposes of such implementing agreements shall be to provide a force adequate to meet the carrier's requirements."

Soon after that Agreement was executed the parties found themselves in disagreement as to when Article III, Section 1, mandated "implementing agreements". Through the process of collective bargaining the parties, on November 24, 1965, agreed upon an interpretation which in pertinent part reads:

"ARTICLE III - IMPLEMENTING AGREEMENTS

The parties to the Agreement of February 7, 1965, being not in accord as to the meaning and intent of Article III, Section 1, of that Agreement, have agreed on the following compromise interpretation to govern its application:

1. Implementing agreements will be required in the following situations:

(a) Whenever the proposed change involves the transfer of employes from one seniority district or roster to another, as such seniority districts or rosters existed on February 7, 1965.

(b) Whenever the proposed change, under the agreement in effect prior to February 7, 1965, would not have been permissible without conference and agreement with representatives of the Organizations."

* * *

"2. * * *

When a carrier makes a technological, operational or organizational change which does not require an implementing agreement, employes affected by such change will be permitted to exercise their seniority in conformity with existing seniority rules."

Notwithstanding that interpretation the parties herein find themselves in a dispute as to when an implementing agreement "may be necessary" within the contemplation of Article III, 1(b) of the November 24, 1965 Interpretation. The dispute pertains to "dualization" or "consolidation" of agency stations--the rearranging of agency work at two or more adjacent open stations being served by full time agents, so that only one agent is assigned to the work at the two or more stations on a regular part-time basis during his assigned working hours; the consequence being the abolishment of agent positions the work of which is merged in the "dualization"

II. Position of Organization

The Organization admits that Carrier by virtue of Article III, Section 1, of the February 7, 1965 Agreement has the contractual right to "dualize" agencies. But, it says it may not do so unilaterally when an implementing agreement is required; and, it points to Article III, Sections 2, 3 and 4 of the Agreement which, when an implementing agreement is "necessary", require: (1) notice from Carrier to Organization; (2) conference and agreement; and (3) in the absence of agreement referral to a Disputes Committee, all within prescribed time limitations. Further, Organization admits that when no implementing agreement is "necessary" Carrier may unilaterally effectuate the "dulization". However, the thrust of Organization position is that "dualization" by its very nature creates changes in hours, working conditions, increased work load and setting

appropriate rate of pay that make necessary an implementing agreement as an indispensable condition precedent to effectuating a "dualization".

III. Position of Carrier

Carrier argues that: (1) Article III of the February 7, 1965 Agreement and the Interpretation of November 24, 1965, must be interpreted in connection with rules of the existing Schedule Agreement; (2) Carrier's management prerogative to abolish a position of agent or create a "dualized" position is not circumscribed by the Schedule Agreement or any other agreement; (3) the historical past practice on the property has been for Carrier to create a new position and thereafter, upon request, to bargain with the Organization concerning rate of pay, hours and working conditions; (4) in a "dualization" the contractual rights of the affected employes, on the property, are not impaired; (5) an implementing agreement is required by the February 7, 1965 Agreement only to cure some existing contractual or legal bar to Carrier excercising "the right of the carriers to make technological, operational, and organizational changes" vested by Article III, Section 1, of that Agreement.

IV. Resolution

As stated, supra, Organization admits that Article III, Section 1, of the February 7, 1965 Agreement vests Carrier with the right to "dualize" agencies: (1) unilaterally, if no implementing agreement is "necessary"; and (2) if the parties reach an impasse as to the content of

a "necessary" implementing agreement, after compliance with Sections 2 and 3 of that Article than upon resolution of the differences by the Disputes Committee as provided in Section 4 of the Article.

The language in Article III which gives rise to the dispute before us is:

> Section 1. "The organizations signatory hereto shall enter into such implementing agreements with the carrier as may be necessary to provide for the transfer and use of employees and the allocation or rearrangement of forces made necessary by the contemplated change. One of the purposes of such implementing agreements shall be to provide a force adequate to meet the carriers requirements." (Emphasis supplied.)

Then in Section 4 which establishes the jurisdiction of the Disputes Committee:

> "... The issues submitted for determination (to the Disputes Committee) shall not include any question as to the right of the carrier to make the change but shall be confined to the manner of implementing the contemplated change with respect to the transfer and use of employees, and the allocation or rearrangement of forces made necessary by the contemplated change." (Emphasis supplied.)

Note the like language in both Sections 3 and 4 as to the objectives to be attained by an implementing agreement.

The parties, on November 24, 1965, agreed that the meaning of the phrase "as may be necessary" as used in Article III, Section 1, of the February 7, 1965 Agreement is inter alia:

> "Whenever the proposed change, under the agreement in effect prior to February 7, 1965, would not have been permissible without conference and agreement with representatives of the Organization." (Emphasis supplied.)

This we construe as meaning that in the absence of any bar existing prior to February 7, 1965, founded in rules, past practice on the property, contract or law, an implementing agreement is not necessary.

1. Rules and Past Practice

In Award No. 1 of Special Board of Adjustment No. 603 (January 13, 1965) involving the parties herein and the right of Carrier to unilaterally "dualize" agencies it was held:

> "We think it is clearly recognized by the weight of authority of well-reasoned Awards of the Third Division and Special Boards of Adjustment that, in the absence of rules or practices to the contrary, (and we find none here) where the work at given agency stations declines to such an extent that there is no longer a substantial amount of work to be performed on a position at one agency location, such work may be consolidated with the work at another agency location where the work has similarly declined."

This we hold to be binding case law that there are no rules or practices on this property which estop Carrier from "dualizing" agencies without prior conference and agreement of the parties. Indeed, from our study of the record in this case we would come to the same conclusion if the issue was before us de novo.

During the hearing Organization attacked Award No. 1 because it did not appear therein that that Board considered the following rule of the Schedule Agreement:

> "RULE 2. Compensation New or Changed Positions.
>
> (a) When new positions are created for which rates of pay are not herein established, or existing positions enumerated in the wage scale are materially changed as to duties or commissions, compensation will be arranged, by mutual agreement between the Management and the Organization, in conformity with positions of the same class, or most similar thereto, on the same seniority district."

This argument is without merit in that during the hearing in the instant case the Organization admitted that it was the practice on the property for Carrier to unilaterally create new positions or materially change the duties of an existing position; then, upon request of Organization the parties would ex post facto confer and agree on "compensation". This rule and past practice in its interpretation and application, therefore, do not make "necessary" an implementing agreement within the contemplation of Article III, Section 1, of the February 7, 1965 Agreement.

We find that all the rights and entitlements of employes vested in them by Schedule Agreement and practice on the property are unimpaired by Carrier unilaterally effectuating a "dualization"by virtue of Article III, Section 1, of the February 7, 1965 Agreement. Therefore, the rules and practices on the property do not present a bar to effectuating a "dualization" without an implementing agreement as a condition precedent.

2. Contracts and Law

Organization adduced no contracts, other than those referred to herein, relevant and material to the issue presented.

No law was cited by Organization which estops Carrier from unilaterally effectuating a "dualization". We are cognizant that in some states the approval of a state agency must be obtained before a carrier can reduce the hours of service at an agency location. This is a bar to "dualization" which must be dissolved with or without an implementing agreement; it cannot be set aside by agreement of the parties.

We find no contract or law which makes an implementing agreement "necessary" within the contemplation of Article III, Section 1, of the February 7, 1965 Agreement. But, whether an implementing agreement is or is not necessary there remains the statutory duty of the parties to bargain in good faith concerning wages, hours and working conditions as mandated in the Railway Labor Act.

3. Conclusions

Adjudicating the question presented:

> "In what circumstances, if any, do the rules, agreements, interpretations and settlements between the Carrier and the Union including Article III of the Mediation Agreement (Case A-7128) dated February 7, 1965 and the interpretations thereto dated November 24, 1965 require conference and agreement as a prerequisite to the consolidation of stations and/or agency positions at separate locations."

we find that Article III, Section 1, of the February 7, 1965 Agreement requires conference and agreement as a prerequiste to the consolidation of stations and/or agency positions at separate locations in the following circumstances:

1. WHENEVER THE PROPOSED CHANGE INVOLVES THE TRANSFER OF EMPLOYES FROM ONE SENIORITY DISTRICT OR ROSTER TO ANOTHER, AS SUCH SENIORITY DISTRICTS OR ROSTERS EXISTED ON FEBRUARY 7, 1965; AND,
2. WHENEVER THE CONTEMPLATED "DUALIZATION" WOULD BE IN VIOLATION OF RULES OF THE SCHEDULE AGREEMENT OR OTHER AGREEMENTS IN EFFECT PRIOR TO FEBRUARY 7, 1965; OR, WOULD CONTRAVENE ESTABLISHED PAST PRACTICES ON THE PROPERTY.

A W A R D

As per Conclusions set forth in Part IV(3) of Opinion, supra.

JOHN H. DORSEY, Chairman

J. W. Whitehouse

J. W. WHITEHOUSE, Employe Member

T. C. De Butts

THOMAS C. DE BUTTS, Carrier Member

Dated at Chicago, Illinois this 14th day of February, 1967

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

TO) and

DISPUTE) THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

Case No. CL-5-W
Award No. 1

FINDINGS:

Special Board of Adjustment No. 605 was established on May 11, 1965, by an agreement of the parties signatory to the National Agreement of February 7, 1965; namely, those carriers represented by the National Railway Labor Conference and the Eastern, Western and Southeastern Carriers' Conference Committees, and certain of their employees represented by Employes' National Conference Committee, Five Cooperating Railway Labor Organizations. The Board was empowered to hear and render awards in disputes submitted by the parties in accordance with the provisions of Article VII of the aforesaid National Agreement.

The parties here are signatories to the February 7, 1965, National Agreement and the dispute has been submitted in accordance with Section 3 of Article VII thereof. Accordingly, the Board has jurisdiction of the parties and the matter at issue.

The following has been submitted by the Brotherhood of Railway Clerks for resolution by this Board:

QUESTIONS AT ISSUE:

(1) Are Santa Fe employes with a seniority date of October 1, 1962 and earlier, who prior to August 1, 1965 were engaged in the handling of National Carloading Corporation freight at the Corwith House #1, Chicago, Ill., entitled to protection under the

February 7, 1965 Stabilization Agreement?

(2) *If so, shall employes qualifying for protection thereunder be returned to the payroll of the Santa Fe and compensated according to the provisions of Article IV of the February 7, 1965 Stabilization Agreement?*

Section 1 of Article I of the aforesaid National Agreement contains criteria and standards for qualifying as a protected employee so as to become eligible for the benefits of job security and protection of work rights. Employees so qualifying are to be retained in service "...unless or until retired, discharged for cause, or otherwise removed by natural attrition." The term "employee (s)" as used in this section obviously means a person or persons in an employment relationship with a carrier party to that agreement.

In the light of the foregoing, the real issue upon which this case turns is whether that group of persons described in Question (1) as "Santa Fe employes" may properly be treated at this time as "employees" within the meaning, intent and application of Section 1 of Article I of the National Agreement.

The Board finds the evidence of record supports the conclusion that the employment status of these employees was judicially determined to have shifted from the Santa Fe Railway Company to another corporation not party to the February 7, 1965, National Agreement. This determination was a result of a successful suit by the Brotherhood of Railway Clerks in August of 1965 to obtain enforcement of its contract of February 5, 1957, with Santa Fe and ~~Universal~~ National Carloading Corporation under which the latter agreed to "take over" those Santa Fe employees then engaged in freight handling at Corwith Warehouse No. 1 if and when ~~Universal~~ National Carloading rather than Santa Fe decided to perform that work on its own account. On August 6, 1965, the

U.S. District Court for the Northern District of Illinois found that the Brotherhood's complaint stated a cause of action and entered an order which, inter alia, enjoined National Carloading from withdrawing or impairing the seniority rights of the members of the Santa Fe group and from employing new employees until all employees on the combined Santa Fe-National seniority roster had been employed by National Carloading, and required National Carloading and/or its sister subsidiary Panda to employ those on the Santa Fe-National "as needed" with full seniority rights unimpaired.

The main thrust of the pleadings and testimony of the Brotherhood in the record of the case was that the Santa Fe group of employees was entitled as a matter of contractual right to become employees of National Carloading Corporation. The Court agreed and, in effect, so found by ordering the employment of those employees by National Carloading.

Accordingly, this Board finds that the order of the Court constituted a severance of the employment relationship theretofore existing between the Santa Fe Railway Company and the affected group of its employees here involved. Such severance is a bar to their inclusion as protected employees coming within the purview of Article I, Section 1 of the National Agreement of February 7, 1965.

AWARD

The answer to the questions submitted is "No".

William H. Chaney
Chairman

LABOR MEMBERS DISSENT TO AWARD NO. 1

of

SPECIAL BOARD OF ADJUSTMENT NO. 605

This Award was made through gross error. The Board exceeded its jurisdiction by not confining itself to the issue submitted; by deciding an issue not submitted; and, by writing an additional exception, rejected by the parties in contract negotiations, to the existing agreement.

In addition to exceeding its jurisdiction, as above set forth, the Board improperly and without jurisdictional authority passed on matter pending in U.S. District Court for the Northern District of Illinois, Civil Action No. 65 C 1199, and improperly implemented the Court's decision to include matters not before the Court.

There is no basis in jurisdiction for this Award.

January 31, 1967.

In the

United States Court of Appeals

For the Seventh Circuit

SEPTEMBER TERM, 1968 — APRIL SESSION, 1969

No. 17184

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES,
Appellant,

v.

SPECIAL BOARD OF ADJUSTMENT NO. 605, and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

MAY 8, 1969

Before DUFFY, *Senior Circuit Judge,* KILEY and SWYGERT, *Circuit Judges.*

SWYGERT, *Circuit Judge.* This appeal presents the issue whether an award of a board of arbitration created by private agreement between parties subject to the Railway Labor Act is to be accorded judicial review in a federal court on the same basis as provided in the Act for the awards of statutory arbitration boards. In light of our holding with respect to this jurisdictional question, we need not reach the subsidiary issue whether the arbitration award in this case should be set aside.

Petitioner, the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, filed a petition in the district court seeking review of an award of a board of arbitration created by contract and designated Special Board of Adjustment No. 605. The petition alleged that the award had been entered pursuant to the provisions of the Railway Labor Act, 45 U.S.C. §§ 151-188 and that jurisdiction to review was conferred upon the court by Section 3, First (q) of the Act, 45 U.S.C. § 153, First (q).

The district court entered summary judgment in favor of the defendant, The Atchison, Topeka and Santa Fe Railway Company. *Brotherhood of Railway Clerks* v. *Special Bd. of Adj. No. 605,* 286 F.Supp. 397 (N.D.Ill. 1968). The court held that it was without jurisdiction to review the award in question and that even if it had jurisdiction, the pleadings failed to establish any sufficient ground for review.

The controversy which gave rise to the disputed arbitration proceeding grew out of a complicated bargaining history. In July 1944, National Carloading Corporation, a freight forwarder, located its loading operations on a site served by the Chicago and North Western Railway Company. National's employees doing freight handling work were transferred at that time to C&NW's payroll and a C&NW-National joint seniority roster was established which maintained employees' seniority rights with both companies.

Although this arrangement prevailed during the ensuing years, in 1956, after it became known that National contemplated another transfer from the C&NW facility to a warehouse owned by Santa Fe, the Brotherhood demanded that Santa Fe enter into a joint seniority roster agreement similar to that which had been in effect with C&NW. Consequently, Santa Fe, National, and the Brotherhood entered into a tripartite agreement on February 5, 1957 whereby the parties stipulated that the freight handlers then on the C&NW payroll would be transferred to Santa Fe without loss of seniority. The February 5 agreement further provided:

> 6. The National Carloading Corporation agrees that in the event the work transferred from the C&NW to the Santa Fe is returned to National, the latter will take over the employees then employed by Santa Fe in the combined National-Santa Fe seniority district without loss of their seniority.

Subsequently, the freight handlers on the C&NW payroll were transferred to Santa Fe and performed National's dock work without incident until mid-1965, when National announced that it intended to exercise its right to resume supervision of this work itself on August 1, 1965. Employees who had been performing National's freight handling were informed that they could submit new employment applications and be considered for employment. When National did not find it necessary to employ all the freight handlers previously carried on the joint Santa Fe-National seniority roster, the Brotherhood claimed that those not employed by National were still technically employed by Santa Fe and thus entitled to the benefits of an industry-wide job protection agreement which had been executed on February 7, 1965 by the National Railway Labor Conference, Santa Fe's bargaining agent, and the Employees' National Conference Committee, which represented the Brotherhood. On the basis of a provision in the February 7 agreement relating to job stabilization benefits for "protected employees," the Brotherhood asserted that the employees who had not found employment with National were to be retained by Santa Fe in their jobs and protected from loss of earnings "until retired, discharged for cause, or otherwise removed by natural attrition."

Santa Fe contended that its employment relationship with the freight handlers in question had been severed by operation of paragraph 6 of the February 5, 1957 tripartite agreement by virtue of the fact that the dock work involved had been taken back by National and hence the freight handlers were not "protected employees" within the definition of the February 7 agreement.

Because the parties were unable to resolve their dispute, the Brotherhood submitted it to the "Disputes

Committee" as provided in the February 7, 1965 Agreement.[1] In its submission to the committee created in response to the request, designated "Special Board of Adjustment No. 605," the Brotherhood advanced two specific questions:

(1) Are Santa Fe employees with a seniority date of October 1, 1962 and earlier, who prior to August 1, 1965, were engaged in the handling of National Carloading Corporation freight at the Corwith House #1, Chicago, Illinois, entitled to protection under the February 7, 1965 Stabilization Agreement?

(2) If so, shall employees qualifying for protection thereunder be returned to the payroll of the Santa Fe and compensated according to the provisions of Article IV of the February 7, 1965 Stabilization Agreement?

Board No. 605 considered the questions and concluded from the two collective bargaining agreements presented, the tripartite agreement and the February 7 Agreement, that employment of the bargaining unit had shifted from Santa Fe to National when National took back its freight handling work. Thus it found that the employees were not "protected employees" within the meaning of the February 7 Agreement and were not entitled to benefits.

Thereafter, the Brotherhood filed a petition for review in the district court which is the subject of this appeal. The district court entered summary judgment for the defendant Santa Fe. We affirm the judgment.

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[1] Article VII, Section 1 of the February 7 Agreement provides:

Any dispute involving the interpretation or application of any of the terms of this agreement and not settled on the carrier may be referred by either party to the dispute for decision to a committee consisting of two members of the Carriers' Conference Committees signatory to this agreement, two members of the Employees' National Conference Committee signatory to this agreement, and a referee to be selected as hereinafter provided. The referee selected shall preside at the meetings of the committee and act as chairman of the committee. A majority vote of the partisan members of the committee shall be necessary to decide a dispute, provided that if such partisan members are unable to reach a decision, the dispute shall be decided by the referee. Decisions so arrived at shall be final and binding upon the parties to the dispute.

It is our opinion that the district court correctly determined that it did not have jurisdiction to review the claims presented. The first provision of the Railway Labor Act relied upon by the Brotherhood to press its claim of jurisdiction is Section 3, First (q), 45 U.S.C. § 153, First (q). That provision was part of a package of amendments to Section 3 enacted by Congress in 1966. The two basic objectives behind adoption of these amendments were (1) to eliminate the backlog of claims pending before the National Railroad Adjustment Board, and (2) to provide equal opportunity for limited judicial review of NRAB awards. 1966 U.S. Code Cong. & Admin. News, 2285-86. The part of Section 3, First (q), upon which the Brotherhood relies reads:

> If any employee or group of employees . . . is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award . . . then such employee or group of employees . . . may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. . . . The court shall have jurisdiction to affirm the order of the division or to set it aside, in whole or in part, or it may remand the proceeding to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.

The district court properly concluded that only awards of regular divisions of the NRAB are within the purview of the section and that consequently its jurisdiction to review an award of the "Disputes Committee" created under the February 7 Agreement is precluded.

Section 3, Second of the Act, which, in pertinent part, provides for the creation of "special boards of adjust-

ment" to consider and decide grievance-type disputes which otherwise could be submitted to the NRAB is inapplicable to the instant case. That section, even if otherwise applicable, cannot be the basis of jurisdiction here since it vests authority in the district courts only to enforce but not to review awards of special boards.

The plain wording of Section 3, First (q) relates only to statutory boards. The Special Adjustment Board No. 605 is not a statutory board at all but solely the product of a contract between private parties. Board No. 605 is a common law board of arbitration established by parties who happened otherwise to be subject to the Act. Not every form of arbitration in the railroad industry is subject to the review provisions of Section 3 of the Railway Labor Act. Even though the creation of Board No. 605 was sanctioned by the Act, it was not a statutory board and therefore not subject to the review provision of Section 3, First (q).

The second jurisdictional basis proposed is that this cause arises under 28 U.S.C. §§ 1331 and 1337. As authority, petitioner calls our attention to the Supreme Court's decision in *International Association of Machinists* v. *Central Airlines, Inc.*, 372 U.S. 682 (1963). That this case is inapplicable to the dispute before us is apparent if we keep in mind the fact that Board No. 605 is a contractual and not a statutory board. In *Central Airlines*, the parties agreed to establish a system board of adjustment to resolve grievance disputes. The Supreme Court, in ruling that awards of an airline system board of adjustment can be enforced in a federal court, made it clear that agreements to submit matters to these boards were not permissible but mandatory. The court observed:

> The parties were placed under the statutory duty of establishing and utilizing system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes arising under existing contracts. *Id.* at 686.

In the case at bar, neither party was directed by the Act to establish the "Disputes Committee." This committee was created by contract and was not a statutory board like that involved in *Central Airlines*. For the

same reason, the two other cases cited by the Brotherhood involving statutory boards are inapposite. *Northwest Airlines, Inc.* v. *Air Line Pilots Association,* 373 F.2d 136 (8th Cir. 1967), and *Dominguez* v. *National Airlines, Inc.,* 279 F.Supp. 392 (S.D.N.Y. 1968).

There is no overriding equitable ground for finding a source of jurisdiction here. The result of this case cuts both ways, neither labor organizations nor railroads can petition a federal court to review a private arbitration board's award.

Likewise the decision here is consistent with the national labor policy of avoiding court review of the merits of arbitration awards rendered under collective bargaining agreements. *United Steelworkers of America* v. *American Mfg. Co.,* 363 U.S. 564 (1960).

The decision of the district court is affirmed.

A true Copy:

Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit.

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