

**NATIONAL RAILROAD ADJUSTMENT BOARD**

THIRD DIVISION

Award Number 20906  
Docket Number CL-20685

William M. Edgett, Referee

(Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and  
( Station **Employes**

PARTIES TO DISPUTE: (

(Norfolk and Western Railway Company (Lake Region)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood  
(GL-7513), **that:**

1. Carrier **violated** the Agreement between the parties when effective May 18, 1973, and each Monday, Wednesday and Friday thereafter **it** required the Penn Central Agent at Morgan Run, Ohio to give train **orders** and clearance **forms** to C&E Brewster to Zanesville upon their arrival **at** Morgan Run to use when called at approximately **8:45 P.M., from Zanesville,** Ohio to Brewster after being cut out at Zanesville, Ohio.

2. Carrier shall now be required to compensate Agent-Telegrapher W. A. Dodd, Coshocton, Ohio, for a minimum call for each Monday, Wednesday and Friday, commencing May 18, 1973, and continuing until the violation is corrected.

OPINION OF BOARD: On the dates of claim, the Penn Central Agent-Operator at Morgan Run, Ohio, delivered train orders and clearance card for the **return** trip of the South local, Zanesville to Brewster.

'The claim alleges a violation of Rule 66, which reads:

RULE 66 - TRAIN ORDERS

"**Only employes** covered by this agreement and train dispatchers will be permitted to handle train orders **or** clearance forms, subject to the following provisions:

1. When **train orders** are received **or** copied by **employes** other **than** those specified above at stations **or** locations where **employes covered** by this agreement are **employed**, the senior qualified **employe** at the point involved shall be promptly notified by the Chief Dispatcher and paid for a minimum call.

2. **Except** in emergencies, when **employes** other than those specified above are required to receive **or** copy train **orders** at stations **or** locations where no qualified **employes** under this agreement are employed, the Chief Dispatcher will promptly notify **and** pay a minimum call **to**

"the senior qualified employe at the nearest location in the seniority district involved where one or more qualified **employes** under this agreement are employed. For the purposes of this rule, emergencies are defined as storms, fogs, washouts, high water, wrecks, slides, snow blockages, accidents, failure of fixed signals or train control, danger to life or property requiring **immediate** attention, and hot boxes, engine and equipment failure, and break-in-two's which were not **fore-seen** prior to train passing or leaving last open communication station.

3. When an employe under this agreement is instructed by proper authority to clear train or trains before going off duty and leave clearance forms or train orders in some specified place for those to whom addressed, such employe shall be paid a minimum call.

It is understood, however, that clearance forms or train orders may be delivered by any employee under this agreement and by train dispatchers.

4. Only one minimum call will be paid under either 1 or 2 above for all train orders or clearance forms handled in the territory and time period of the minimum call to be paid."

Carrier asks dismissal of the claim on the basis that the Employees have cited rules before the Board which **were not** cited on the property. The Rules in question are **Rule 1 - Scope; Rule 35 - Notified or Called; and Rule 70 - Effective Date and Changes**. Even if the employees did not cite the above Rules on the property their citation before the Board does not furnish grounds for dismissal. The facts relied upon here have been clearly presented and, incidentally, are not in dispute. The theory of violation rests on the asserted violation of Rule 66. The citation of additional rules has not changed or altered the claim. The claim before the Board is the same as the claim presented on the property. Carrier has had full opportunity to argue the application of the cited rules before the Board. Carrier's principal defense on the merits of the claim is that **the Penn Central Agent-Operators are "joint employees"** of Carrier, although they are on the Penn Central payroll. There is some question about proof in that connection but in view of the specific language of the Agreement that question may be set aside.

It is true that at least **one**, and possibly other, cases have approved the handling of train orders in similar fact situations. However, the attention of the Board has not been directed to any case which has dealt with the same facts and **Rule** provisions. **Rule** 66 is specific, and clearly restricts handling of train orders to "employees covered by this agreement." Although there may be a joint agency agreement, and, as Carrier states, the Agent-Operators may be subject to investigation for rule violations; they are not covered by the **Agreement** between **BRAC** and NW as that term is generally understood. Therefore, as provided by **Rule** 66, they may not handle train orders.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employes** involved in this dispute are respectively Carrier and **Employes** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the **Agreement** was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A. W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 16th **day** of January 1976.