

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20917  
Docket Number CL-20842

Louis **Norris**, Referee

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

PARTIES TO DISPUTE: (

(Terminal **Railroad Association of St. Louis**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-7636) that:

1. **Carrier** violated and continues to violate the **Agreement between** the parties when, **commencing on** November 30, 1972, it removed the work of operating remote control interlocking machine at **SH Tower**, Venice, Illinois, from the Scope thereof and assigned it to **employees** not covered thereby (Carrier's File **013-255-13**).

2. Carrier shall, as a result, compensate the senior idle Telegrapher, extra in preference, eight hours' pay at the rate of **Leverman-Operator**, which he would have received if permitted to perform this work, for each shift commencing **November 30, 1972** until the **violation** is corrected.

OPINION OF BOARD: The Statement of Claim sets forth generally the nature of the dispute here involved. Its reference, however, to removing "the work of operating remote control interlocking machine" at **SH Tower** is somewhat misleading. Actually **two** types of machines are involved. The first being a remote control interlocking machine (RCM, for brevity) operated by **Towermen** or **Levermen** "by means of levers" under the general direction of a Train Dispatcher. Such work has normally been performed by **Levermen** Operators under their **Agreement** with **Carrier** dated October 1, 1957 (the **controlling** Agreement in this dispute..)

The second machine is a newer and more complicated machine, installed on the property of this Carrier for the first time on **November 30, 1972**. This is a **Centralized Traffic Control System (CTC)** controlling the movement of trains by automatic signal device from a designated point, superseding time tables and use of train orders. The latter machine is operated automatically by push button method and **not** "by means of levers".

Basically, it is Petitioner's contention that the disputed work belongs exclusively to the **Levermen** Operators under the Scope Rule of their 1957 Agreement; that the work involved is identical; and that the CTC merely replaced the **RCIM** without changing the nature of the work.

Carrier responds that the installation of the CTC machine constituted work different in nature from the **RCIM** and eliminated the need for

the **Leverman** Operator position at **SH** Tower, without reduction **in** force; that it is well established that where a CTC panel is located in an office **in which** Train Dispatchers are employed, said panel is to be operated **by** Train Dispatchers; **a&t**hat such work is specifically covered by the Scope Rule of the Train Dispatchers Agreement with effective date of **January 1, 1965**.

obviously, the Train Dispatchers Organization is an Interested party **in** this dispute. Accordingly, pursuant to invitation of this **Board**, the latter Organization has Piled its written Submission, which is **now** part of the record before us and which is basically in accord with Carrier's position as stated above.

Hence, due **process having** been observed and complied with, we deem it to be within the jurisdiction of this Board to **resolve** this dispute on Its merits, with **binding** effect upon both Organizations and upon Carrier. The foregoing conclusion on the principle of "due process" is **fully** supported in Award **No. 1, P.L.B. No. 964, citing T.-C.E.U. vs. Union Pacific R. co., 385 U.S. 157, (U.S. Supreme Court, 1966)**. Before proceeding to the merits, however, reference is made to several general principles of construction which Petitioner asserts are **controlling in** this dispute.

We do not quarrel with the concept that this **Board** is not clothed with authority to revise, delete from or add language to the controlling Agreement. This **Board** has consistently adhered to this principle **in innumerable** prior Awards and has **no intention** to depart therefrom in rendering this decision.

Petitioner urges **further** that **the** place of performance of work determines the craft or class of **employees** to whom It belongs. However, **Awards 864, 2693, 14907 and 14884**, cited by Petitioner, deal with **entirely dissimilar** factual situations **and do not** support the latter contention which, **in any event,, is not** determinative of the issues in **this case**.

Additionally, we do **not** dispute the general principle, or the voluminous precedents cited by Petitioner **in** support thereof, that **positions or work once within the Agreement cannot** be removed therefrom **arbitrarily** or unilaterally and the work assigned to persons excepted from the Agreement. The correlative to this **principle, however,** is the controlling procedural rule that **each agreement and each Scope Rule must be separately reviewed as against the particular facts of each case**. Thus, we can ascertain whether or not the disputed work is **in** fact within the specific coverage of the particular Scope **Rule** and whether one **Organization** or another has exclusive rights thereto.

In this context, we do not find the cases cited by Petitioner germane to the dispute **now** before us. Thus, for example, **Award No. 5787** is a discipline case; **No. 1314** deals with clerical work assigned to others

in violation of the Agreement; **No. 7129** relates to clerical work which was being performed by Clerks "at the time the Scope Rule was agreed upon"; **No. 7168** deals with transfer of covered work solely because of **Carrier's "transfer from Boston to Chicago"**; **No. 7349** similarly relates to transfer of location; **No. 2253** dealt with violations of a specific **Memorandum Agreement**; **No. 11127** dealt with **assignment** to others of clerical work **"exclusively"** covered by the Clerks **Agreement**; and **No. 11586** related to **reassignment** of work in violation of a specific Scope Rule.

Moreover, we have **no** quarrel with Petitioner's contention that the Agreement supersedes Carrier's **operating rules** or general orders, nor with the cited supporting precedents. **However**, this general principle must be weighed against **inherent prerogatives of Management**; for example, the **discontinuance** of Specific positions and **reassignment** of job functions where not specifically restricted by the Agreement. **But** this is not the main issue before us in this dispute. What is here involved is resolution of a long standing jurisdictional dispute as to CTC operation; more specifically, application to the **disputed** work of the separate **Agreements** of Carrier with the Clerk-Telegraphers **and** with the Train Dispatchers, respectively, and of their respective Scope Rules.

This brings us directly to the basic issues which are at the core of this dispute; i.e., the Scope **Rules** of both Organizations. The Scope Rule of the Train Dispatchers Agreement reads as **follows**:

"ARTICLE 1

(a) - SCOPE:

The rules of this agreement shall govern the hours of service, compensation and **working** conditions of all persons who perform service as train dispatcher. The term 'train dispatcher' as used herein shall include trick, relief, and extra dispatchers.

(b) - DEFINITION - TRICK DISPATCHERS, RELIEF DISPATCHERS, EXTRA DISPATCHERS:

This class **includes positions in** which the duties of incumbents are to be **primarily responsible** for the movement of trains by train orders, or otherwise; to supervise **forces** employed in **handling** train orders; to keep necessary records incident thereto; and to perform related work.

**Note:** **Nothing in** this **Section (b)** shall be **considered as changing** the present work jurisdiction of train dispatchers.

"(c) - RETITLING POSITIONS:

Established positions shall **not** be **discontinued and new** ones created **under** a different title **covering** relatively the same class or work, which will have the effect of reducing rates of pay or evading the application of these rules."

It is true, as contended by the Train Dispatchers, that "the **movement** of trains by train orders, or otherwise" is included in the above **Scope Rule, but we find no specific provision therein that the disputed work is exclusively theirs to perform, nor does the quoted Scope Rule constitute an "exclusive work reservation rule", particularly as to the work here in issue.**

For facility of comparison, we quote the Clerk-Telegraphers' Scope Rule:

"ARTICLE 1  
**SCOPE**

(a) It is agreed by and between the **Terminal Railroad Association of St. Louis** and The **Order of Railroad Telegraphers** that the following shall govern the employment and working conditions of employees coming within and **performing** the duties of the following **classifications:**

Train Directors  
**Teletype** Operators  
Train **Order** or **Bulletin Board** Operators  
Telegraphers or Telephone Operators (except Switchboard Operators)  
**Towermen or Levermen - Traveling Towermen**  
**Towermen-Operators or Levermen-Operators**  
**Staffmen**  
**Printer Operators (punching, transmitting or receiving)**  
**Any** combination of two or **more** of the herein **named** classifications and occupants of any other positions listed in the wage schedule.

(b) This agreement shall **not** apply to the operation of printer teletype machines used solely for the purpose of communicating between offices on this **Terminal** property where such **machines** are not located in telegraph offices and provided such machines are not connected to reperforators, reprinters or through circuits.

"(c) The word 'employee as used in this **agreement** shall include **all** classifications and assistants thereto **named** in Paragraph (a), unless **a** specific classification or classifications are set forth. The word 'station' **means** the **location** at which an employee performs service.

(d) **Positions** covered by this agreement must be **filled** by employees coning within the scope of the agreement. The work covered belongs to the employees herein classified and shall not be **removed from** the scope except by **agreement** between the parties."

There then follows the Wage Schedule of the covered **employees**, but this neither enlarges nor **limits** the Scope Rule Itself. We note Petitioner's contention that subdivision "(d)" is a "special Rule", precise in nature, **in** that it states that "The work covered belongs to the **employees** herein classified". But we are constrained to point out that the "work covered" is not specifically described; **nor** is there any exclusive "work reservation rule" **or** any other specific provision in the Agreement which exclusively reserves the disputed work to the Clerk-Telegraphers.

We note, further, that there is no reference to "movement of trains" in the latter **Agreement**. **Further**, that there is no reference to CTC systems or operations in either Agreement.

In these **circumstances**, we have held repeatedly that where the Scope Rule is general in nature, as is the case here as to both Scope Rules, the burden of **proof** is on the Organization **claiming** the **work to** establish by **substantial** probative **evidence** that the **employees** it represents have performed such work **historically, traditionally** and exclusively, and **system-wide**.

See **Awards 10389** (Dugan), 13579 (Wolf), 15383 (Ives), 15539 (McGovern), **16609 (Devine)**, 18471 (O'Brien), 18935 (Cull), **19576 (Lieberman)** and **19969 (Roadley)**, among a host of others.

Neither Organization has sustained such burden of proof; nor can we conclude that the principle of "exclusivity" has been successfully established by either of the contesting Organizations. **Furthermore, in** similar **cases** before this **Board**, involving either or both of the **above-**quoted Scope Rules, the same conclusion as to non-exclusivity was reached.

See Awards 4452 (Carter), 4768 (Stone), 6224 (**McMahon**), **11821** (Christian), 14341 and 14342 (Perelson), and **19594 (Brent)**.

Petitioner cites several prior Awards as controlling here on the merits, only one of which is **somewhat** in **point**. That **Award, No. 18884** (Cull), **involved** a **CTC** system **and** precisely the sane Carrier and the **same**

Scope Rule of the Train Dispatchers as in this dispute. The claim presented by the **Train** Dispatchers was in fact denied, based on the conclusion that the **CTC** machine **did** "essentially the **same** work as was performed by the machine operated by the **Leverman** Operator at the West Market Street Tower before it was retired" and the fact that such work was performed by "three **Leverman** Operators on a seven day basis". However, there **was** no analysis of the Scope Rule in the latter opinion, nor any **reference** at all to prior Awards as precedent.

Curiously, the Referee did make the following statement:

"The issue in this case is a narrow one. It does not involve the jurisdiction of the Dispatcher at **SH** Tower over the movement of trains." (Emphas is supplied)

The latter conclusion seems **diametrically** opposed to the conclusion reached by **several Referees** in other Awards, which will be referred to in detail hereinafter. In any event, we consider Award **18884** as being limited to the **peculiar** facts and the "**narrow** issue" there involved. We do not consider it controlling **upon** this dispute, nor does it accord with the weight of authority on the principles governing the disputed work.

Carrier, on **its** part, cites some twenty-one prior Awards as precedent for its position. In the main, these are germane to this dispute and merit detailed analysis. Several of these Awards contain excellent analysis of the CTC **system**, the pertinent Scope Rules and the same disputed work, but they do not serve as **controlling** precedents. For, in each case, the question of the Board's **jurisdiction** was raised in relation to "jurisdictional disputes", and each **case** was "remanded" for "further negotiations" or for submission to the National **Mediation Board** for resolution of the jurisdiction Issue.

In the latter context, on "remand", we refer to Awards **4452**, 4768, **4769**, 8413, 8458, **8460**, **9209**, 10725, **14459** and 14461.

Award **9209 (McMahon)** is of significance in the respect that although it was found "**that** the operations here do not constitute CTC operations", the claim was **nevertheless remanded**. The Labor **Member**'s vigorous dissent agreed that the disputed work was not CTC, but stressed that it involved operation of switches and signals by means of levers from a central point, **which had** been so performed by **telegraphers** for **over** ten years, and thus was theirs to **perform**. (Emphasis supplied). Assumedly, had CTC been involved, which does not require operation by means of levers, no dissent would have been **filed**.

On the merits, we are not persuaded that recommendations in the last cited Awards, which remanded for "further negotiations", have had any

practical effect. The **same** issues continue to plague the Board, as witness the instant dispute in which we are faced with a **236** page Docket **and** a voluminous number of asserted precedents. Moreover, as pointed out above, both contesting Organizations are **now** properly before the Board. We are mandated, therefore, to resolve the issue.

The following cases **are** germane and bear materially upon the disputed work with which we are now concerned. **Thus**, in Award **8544** (McCoy) wherein the Telegraphers claimed the same disputed work, we held:

"In the case before us it appears that the Carrier has contracted with the Dispatchers for this work to be performed by dispatchers when the CTC machines are located in dispatchers' offices. **Since**, under the authority of Awards Nos. 4452 and 4768, the work is **not** exclusively that of the Telegraphers under their Scope Rule, the contract with the Dispatchers is valid and **does not** violate the Agreement with the Telegraphers. The claim **will** therefore be denied."

**Similarly in point** is Award 8660 (**Guthrie**), which denied the Telegraphers' claims to precisely the same type of CTC work, finding "**no** provision **in** the Telegraphers Agreement or **in** past practice on this property which gives the telegraphers exclusive right to this work". Additionally, we held that "where the CTC control board is located **in** a dispatchers' office the dispatcher operates the board, and where it is located in a telegraph office it is operated by a telegrapher under the direction of the dispatcher".

Award **10303** (Mitchell), involving the Telegraphers and the **identical** CTC system, **held precisely** to the same effect, citing Awards 4452, **8544** and 8660, *supra*. **Here**, the Telegraphers claim was again denied.

To the same effect, and on precisely the same issue, see Award **11161** (Moore), which denied the Telegraphers claim, **citing** Awards 4452, 4768, 854.4, 8660 and **10303**, **and** stating:

"**We** agree with those which hold that the Agreement was not violated."

**Also** to the **same** effect, see Awards **11821** (Christian), 14341 **and** **14342** (Perelson), **19068** (Dorsey), **19594** (Brent) and **19767** (**Rubenstein**).

We conclude, therefore, that where, **as** here, the CTC control board is located in the dispatcher's office the assignment of the disputed work to dispatchers is in accord with the Train Dispatchers Agreement and is not in violation of the Telegraphers' Agreement. We concur with those who hold

"that the Agreement was mt violated."

Accordingly, on the basis of the entire record, on the above **findings** and conclusions, and in **view** of the **controlling** weight of authority, we are compelled to deny this **claim**.

**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 **Employees** involved **in** this dispute are respectively Carrier **and Employees** 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 mt violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order **of** Third Division

ATTEST:

A.W. Paulson  
Executive Secretary

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