RATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21326
THIRD DIVISION Docket Number CL-21390

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, (Freight Handlers, Express and Station Employes
(The Baltimore and bhio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7949) that:

(1) Carrier violated the Agreement between the parties when, on April 30, May 5 and 11, 1974, it required and permitted employes not covered by the Agreement located at Lima, Ohio to use a telephone and push-button for the purpose of blocking trains, thereby performing the work of a Block Operator, and

(2) Carrier shall, as a result, compensate Agent-Operator G. A. Fitch (3) three hours at pro rata rate for each date of April 30, May 5 and 11, 1974.

OPINION OF BOARD: The essential facts involved in this matter are not in dispute. On each of the Claim dates, train service employes desired to move their trains against the current of traffic at the end of double track at North Lima, Ohio. In accordance with instructions in the applicable Timetable, these employes telephoned the train dispatcher at Deshler, Ohio for protection. The dispatcher then provided signal protection at the north end of the trackage involved and authorized the train crew to use a push button in the phone booth to activate a permissive signal at the south end of the trackage so that their train could make the movement.

Petitioner asserts that the Carrier had previously abolished three Block-Operator positions at the location in question and that the work in question constituted 'blocking trains" and should have been performed by a "Block-Operator" (a position embraced by the Scope Rule) rather than by non-agreement personnel. Petitioner argues that the character of the work is of paramount importance and in this instance it was clearly the blocking of trains and was therefore covered not only by the Scope Rule but by Rule 65. Rule 65 provides in part:

"Train Orders - Clearance Forms - Blocking Trains

Copying train orders, clearance forms or blocking trains at stations where an employe qualified to do so under this agreement is employed will be confined to such employe (provided he is available and can be promptly located). When such an employe is not used

in conformity with this rule he shall be promptly notified by Chief Dispatcher and paid three hours 'at pro rata rate. This rule does not apply to Train Dispatchers performing such duties at/or in the vicinity of the dispatcher's office location in the normal course of their regular duties.

Except in emergencies, when employes not covered by this agreement are required to copy train orders, clearance forms or block trains at a location where no qualified employe covered by this Agreement is employed, the proper qualified employe at the closest location where a qualified employe covered by this agreement is employed shall be promptly notified by Chief Dispatcher and paid three hours at pro rata rate."

Carrier states that‘the positions referred to by Petitioner were abolished in 1931 and since that time non-agreement personnel have been using the push button at this location to activate the signal, as herein, without protest by Petitioner. Carrier asserts that the use of the push button does not constitute blocking trains and further, trainmen do not block trains on its property.

Petitioner cited a number of Awards of this Division as well as Public Law Boards in support of its position herein. It must be noted that all of those Awards were rendered in relation to the predecessor agreement between the parties which had a quite different Train Order Rule (Rule 35) which included severe restrictions on the use of the telephone by other than Telegraphers to communicate with Dispatchers. It is evident that the authorization for the use of the push button must be secured by telephone - and hence is not separable in the sense that push button operation is not independent of the use of the telephone. It is noted, incidentally, that the Claim herein refers specifically to the use of the telephone and push button "...for the purpose of blocking trains....".

We have recently considered a dispute involving an almost identical' issue and the same parties: Award 21074. In that Award (referring to Award 12768) we said that the most essential function in the blocking of trains is the decision that the train may move into the block, which decision was not made by the train crew personnel in that dispute. Similarly, herein, there was no indication of any decision making by the train crew, and certainly no decision to use the push button independently of instructions from the dispatcher. In many previous cases we have found that using the telephone to obtain permission to use certain track does not constitute the copying of train orders (or blocking trains) and we find no reason herein to depart from that conclusion (See Awards 21074, 15003, 11161 and 14028 among others. It

is noted that the Organization denied the validity of the assertion by Carrier that push buttons has been in use at this location since the 1930's without objection by the Petitioner. However, we note that no evidence to the contrary was ever presented by Petitioner during the handling of this dispute. Certainly the continued use of the system at this location for over forty years does not give credence to the proposition that the use of the push button and phone system was customarily reserved to employes covered by the Agreement.

Based on the entire record of this dispute, and in view of our decision in the previous case, which has not been shown to be palpably erroneous, we must conclude that there has been no violation of the Agreement in this case.

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 not violated.

A W A R D

Claim denied.

RATIONAL RAILROAD ADJDSTMENTBOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1976.