

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21577
Docket Number CL-21228

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: {
(Brotherhood of **Railway**, Airline and Steamship Clerks
(Freight Handlers, Express and Station **Employees**
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-7834) that :

(1) Carrier violated the Agreement between the parties **when**, on November **14**, 15, 16, 17, 18, 19, 20, **21**, 22, 23, 24, 25, 26, 27, 28, 29, 30 and December 1, 1973, at various times, it required and **permitted** employees not covered thereby to copy **train** orders and/or clearance forms at **Rossford** Yards, Ohio, and

(2) Carrier **shall**, as a result, **compensate** each named employee one three (3) hour pro rata payment for **each** date and incident listed as follows:

- (a) P. M. George - November 14, 14, 14, **16**, 16, 25, 25, 25, 25, **26**, 26, 26, 26, 26, 27, 27, 27, 27, 28, 28, 28, 30, 30, **30**, **30**, and 30, 1973.
- (b) G. L. **Romano** - November 15, 15, 1.6, **18**, 18, 18, 18, 19, 19, 19, 19, 20, 20, **20**, **21**, **21**, **21**, **21**, **22**, 23, 23, 23, 24, 24, 25, 25, 26, 29, 29, **30** and 30, 1973.
- (c) L. J. Becker - November 15, 15, 15, **15**, 15, 17, 18, 18, 18, 18, 19, 19, 19, 20, 20, **21**, **21**, **21**, 22, 22, 23, 23, 23, 23, 23, **24**, **24**, **24**, 27, 28, 28, 28, 28, 29, 29, **29**, 30, 30, 30, December 1, 1 and 1, 1973.
- (d) W. **T. By-rum** - November 15, 15, 15, **15**, 17, 17, 18, 18, 18, 18, 19, 19, 19, 20, 20, 20, 20, **21**, **21**, **21**, 22, 22, 22, 22, **22**, 23, 23, **24**, **24**, 24, 24, 25, 25, 25, 25, 26, 26, 26, 26, **26**, **27**, **27**, 27, 28, 28, 28, 29, 29, 29, **29**, 29 and December 1, 1, 1, 1 and 1, 1973.

OPINION OF BOARD: This dispute relates to train orders and arises from the allegation that the Carrier violated Rule 65 of the Agreement when it permitted and required train orders and clearance forms to be copied by employees (conductors, yardmasters, and **trainmasters**) not covered by the Agreement, at a location (Rossford Yard, Ohio) where no **qualified** employee covered by the Agreement is employed. The Claimants are **operators at Bates Tower, Ohio**, which is located on the Carrier's Cincinnati line, in South Toledo, Ohio, about 1.7 miles **from Rossford Yard**.

The **train orders** fall into two categories. One category involves orders issued by the Toledo **Terminal Railroad** Train Dispatcher at Toledo to govern the movements of trains of this Carrier (hereafter sometimes **B&O**) and of the **C&O** over the tracks of the Toledo Terminal **Railroad Company (TTR)**; these orders were received and copied by the Operators at Bates Tower who transmitted the orders by phone to **Rossford Yard** where the orders were copied by conductors, **yardmasters**, and **trainmasters** and delivered to the crews of the **trains** to which addressed. The other category involves orders issued by the **B&O Train Dispatcher** at Deshler, Ohio, to **impose** speed restrictions over the so-called **High-Speed Main**, north of Bates Tower; these "slow orders," which were addressed to "**Yard Engines**" at **Rossford Yard**, were received and copied by the Operators at Bates Tower who **transmitted** the orders by phone to **Rossford Yard** where they **were allegedly** copied by **yardmasters** and **trainmasters** and **delivered** to the yard engines to which addressed.

Rossford Yard, formerly a **B&O** facility, has been operated as a **C&O** facility since its coordination in January 1968 and its clerical force since the coordination has been covered by the **C&O Agreement**. The Operators at **Bates Tower** were not included in the 1968 coordination of **Rossford Yard**, because they were not covered by the Clerks Agreement at that time; thus, **Bates Tower** was and is a **B&O** facility. **Trains** of the **B&O** and the **C&O** operate into and out of **Rossford Yard**, and to and from the tracks of the **TTR**. Movements over the **TTR** are governed by train order authority and its belt trackage around the City of Toledo is used by the other railroads in Toledo to handle interchange movements between each other. Transfer crews departing **Rossford Yard** for other locations around Toledo had always (until this dispute) secured **train** order authority for these movements from the **TTR Dispatcher** through the **Operator** at Bates Tower. Because the **Operator** at Bates Tower controls the switches which govern the movement onto the **TTR** tracks just south of **Rossford Yard**, the **B&O** has considered it necessary to have the **Bates Operator** transmit train orders to **train** crews needing authority to move their trains from **Rossford** to other locations around Toledo. This procedure did not cause any dispute when the handling of train orders at Bates Tower was governed by Article 35 of the former Telegraphers' Agreement. However, on June 4, 1973, the current consolidated Clerk-Telegrapher Agreement became effective and Article 35 of the Telegraphers' Agreement was supplanted by the rule in issue in this dispute, **Rule 65**.

The Organization states that the TTR train orders were not subject to dispute under Article 35 of the former Telegraphers' Agreement because, **during** the period of that Agreement's application, the involved **train** crews were within the confines of Bates Tower "station limits" which **made it permissible** for such crews to copy train orders **communicated from** the Tower. **The Organization** states further that **upon adoption** of Rule 65 the Carrier declared the Tower "station limits" **null and void**, whereupon the three-hour payment rule in Rule 65 **became** applicable to the copying of TTR train orders at **Rossford** Yard. The Carrier does not dispute that the **TTR train orders** were copied as alleged at **Rossford** by employees not covered by the Agreement, and that no qualified employee covered by the Agreement is employed at **Rossford** Yard. **However**, the Carrier says that these orders are not covered by Rule 65 because the orders were "foreign line train orders governing movements over a foreign line" and were "copied by foreign **line** employees;" and that the Operators at Bates Tower have **been** used to relay TTR **train** orders to crews departing **Rossford** as a result of a contract between the Carrier **and** TTR and not because of **any requirement** in the Agreement.

Rule 65, in pertinent part,, reads as follows:

"**Copying** train orders, **clearance forms** or blocking trains at stations where an employee **qualified** to do so under this agreement is employed will be confined to such employee (provided he is available **and can** be promptly located). When such **an** employee 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.

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

The foregoing text does not **contain** any language which suggests that the TTR **train** orders are not intended to be covered by the text **and** it is concluded on the whole record **that** these orders are within the purview of Rule 65 of the Agreement. Bates Tower was operated **as a joint** office for the conduct of the **business** of the **B&O** and the **TTR** and the Operators at the **Tower handled** the TTR train orders as part of their **assigned** duties as

employees of the **B&O**. Since, as the Carrier states, the Bates Tower operator handled the **TTR** orders by virtue of a contract between the **B&O** and **TTR**, the **TTR** might well have originally possessed the right to perform all of the work relating to the orders; however, because of the contractual arrangements between the **B&O** and **TTR**, the **B&O** Operators at Bates Tower did in fact handle the **TTR** orders and the conductors, yardmasters, and trainmasters did in fact copy such orders at **Rossford** Yard. Also, it is immaterial that no **B&O** employee could be employed at **Rossford** Yard because the clerical force there had been under the **C&O Agreement** since **Rossford's** coordination in 1968. This consideration, self-evidently, could have been the subject of negotiation between the parties, since the coordination of **Rossford** occurred long before **Rule 65** became effective in 1973. However, as written, **Rule 65** does not provide an exception relating to this consideration and the Board is not empowered to write one. In sum, the circumstances simply do not provide any plausible basis for segregating the **TTR** orders from all work performed at Bates Tower by the **B&O** Operators, in order to find that such orders are "foreign line" orders not covered by **Rule 65** of the Agreement. The Carrier-cited authorities on "foreign line" train orders have been examined and found not to be applicable to the herein facts. Common to all of these authorities, Awards Nos. 10922, 13924, and 17348, is the fact that none of the work of handling the involved train orders was performed by an employee covered by the Agreement of the complaining Organization. Here, the **TTR** orders were in fact handled by the **B&O** Operator at Bates Tower, an employee covered by the Agreement of the herein complaining Organization. Such handling was the direct result of the contract between the **B&O** and the **TTR**, and although a different fact result could have flowed from different contractual arrangements, the Agreement must be applied to the handling of the orders as evidenced by the facts which actually arose. The claims concerning the **TTR** train orders are accordingly found to be meritorious and they will be sustained.

The remaining issue concerns the slow orders issued by the **B&O** dispatcher concerning movements of yard engines in **CTC** territory. The Carrier cites Award No. 21124 for the proposition that train orders are not required in **CTC** territory, and then proceeds to argue that, since the Organization has not adduced evidence to prove that the slow orders were required to be copied, the Organization has not met its burden of proof to demonstrate that such orders were in fact copied at **Rossford** by the yardmasters and trainmasters. The Organization, on the other hand, argues inferentially on the basis of the Carrier's Operating Rules that the slow orders were copied at **Rossford**. Both parties, in treating this issue, have presented their positions with less clarity than desirable and both parties reach their ultimate conclusions by indirection. The Carrier acknowledges that speed restrictions cannot be imposed by the automatic signals that govern train movements generally in **CTC** territory and thus to this extent the record suggests that the disputed slow orders were in fact communicated in some manner to the crews

of the affected trains. **However, the Carrier has made an evidenciary challenge** on this issue **and** although the **Carrier's** overall argument is somewhat equivocal, the fact remainsthatthe evidenciaryburden rests **on**the Organization and not the Carrier. The **Organization's citation** of the Operating Rules does not constitute evidence and the record is barren of any direct evidence which establishes that the slow orders were copied by the yardmasters **and** trainmasters at Rossford; consequently, the claims concerning the **B&O** slow orders will be dismissed for **failure** of proof.

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 end 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; end

That the Agreement was violated.

A W A R D

Claim sustained as per opinion with respect to the train orders issued by the Toledo **Terminal** Railroad **Train** Dispatchers; otherwise the claim is dismissed on **evidenciary** grounds.

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

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 17th day of June 1977.