

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22970
Docket Number CL-22290

Dana E. Eischen, Referee

PARTIES TO DISPUTE: ((Brotherhood of **Railway**, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
(Central **Vermont** Railway, Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-8484**)
that:

(1) Carrier violated the **Agreement** when **commencing on November 1, 1976**, and continuing thereafter, it required and/or permitted employees, who are not covered by said Agreement, to cancel Manual Block System clearances, which are train orders governing the movement of trains **over** the Winooski subdivision.

(2) Clerk E. E. Bocheleau shall now be allowed two (2) hours pay, at the **overtime** rate of the Essex **Jct.** Mobile Agent position, for November 1, 1976, and for each subsequent day the violation occurred until February 9, 1977, Clerk H. G. Howard shall now be allowed two (2) hours pay, at the **overtime** rate of the Essex **Jct.** Mobile Agent position, for February 10, 1977, and each subsequent day the violation occurred **until April 12, 1977**, when the violation was corrected.

OPINION OF BOARD: Carrier has a single track running off the **main** line at Essex **Jct., Vermont**, and continuing to Burlington, Vermont, which is known as the Winooski Subdivision. For many years Carrier maintained a first shift Operator's position at Essex **Jct.**, Vermont, whose duties included handling train orders **covering** train movements on the Winooski Subdivision. Also headquartered at Essex **Jct.** was a Mobile Agent who was responsible for the Agency work between Georgia, Vermont, and **Bolton**, Vermont. **On** June 30, 1976 these two positions were consolidated. Effective July 1, 1976, the Essex **Jct.** Mobile Agent was assigned the duties previously performed by the Essex **Jct.** Operator, and continued to do so until October 31, 1976. On that date Carrier issued a new timetable which established a Manual Block System for the Winooski Subdivision. The Manual Block System established an M.B.S. clearance which replaced the Form H train order on the Winooski Subdivision. The clearance authorized trains to occupy and use a certain track between specific points.

Prior to initiation of the Manual Block System, conductors on trains leaving Winooski Subdivision would annul their train orders with the Essex **Jct.** Mobile Agent. ~~titer~~ **its** initiation, ~~enginemen~~ on trains leaving the Winooski Subdivision were required and/or permitted to cancel their M.B.S. clearance by contacting train dispatchers direct via long distance radio from Essex **Jct.**, Vermont, by-passing the Mobile Agent. This procedure was abandoned by Carrier effective April 12, 1977 when trains leaving Winooski Subdivision began **cancelling** their M.B.S. clearance through the Essex **Jct.** Mobile Agent.

On December 8, 1976, **continuous** claim effective ~~Nwember~~1, 1976 was filed by the Organization on behalf of the **incumbent** of the Mobile Agent position, based on the proposition that Manual Block System clearances are train orders and should be handled in accordance with Article 76 of the Working Agreement. Article 76 reads in part:

"ARTICLE 76

Handling Train Orders

76.1 No employee, other than covered by this agreement and Train Dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available, **or** can be promptly located, except **in** emergency in which case the employee will be paid for the call."

Upon analysis of the entire record before us, we find persuasive the **Organization's** argument that for purposes of Article 76.1 **M.B.S.** clearances are the equivalent of train orders. See Awards 3-6863; 3-12702; **3-10435**; 3-10534; 3-10699; 3-11297. It is important to note in **that** connection that the territory in question is not CTC territory.

Based upon all of the foregoing we shall sustain the claim of the period of violation November 1, 1976 to April 12, 1977. Carrier arguments regarding appropriate damages were untimely raised and not joined on the property; accordingly the "penalty" allegation cannot be considered by us.

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;

Award **Number** 22978
Docket **Number** CL-22290

Page 3

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. Paulose
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1980.