

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24862
Docket Number CL-24007

Herbert Fishgold, Referee

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

PARTIES TO DISPUTE:

(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9386)
that:

(1) Carrier violated, and continues to violate, the Clerk-Telegrapher Agreement when, beginning March 14, 1976, and continuing, it causes and permits employees not covered thereby to perform work around-the-clock seven (7) days per week in connection with the operation of receiving teletype units and similar devices used for receiving communications, including tearing off and separating message reports of cars, at Evitts Creek Yard Office, the Eastbound Hump Yard Office and the Westbound Hump Yard Car Retarder Office, which are three (3) locations at Cumberland, Maryland, and

(2) Carrier shall, as a result, compensate each employee named, as indicated, eight (8) hours' pay at the pro-rata rate for each date listed, and continuing, as follows:

Evitts Creek Yard Office

7:00 AM to 3:00 PM - B.M. Hill	- March 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, 31; April 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30; May 3, 4, 5, 6, 7, 1976 and each subsequent date Monday through Friday of each week until the violations cease.
3:00 PM to 11:00 PM - S.J. Swisher	- March 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, 31; April 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30; May 1, 4, 5, 6, 7, 1976 and each subsequent date Tuesday through Saturday of each week until the violations cease.
11:00 PM to 7:00 AM - R.L. Shepherd	- March 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30; April 2, 3, 4, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30; May 1, 2, 3, 4, 7, 8, 9, 10, 1976 and each subsequent date Friday through Tuesday of each week until the violations cease.
7:00 AM to 3:00 PM - J.M. Emerick	- March 20, 21, 27, 28; April 3, 4, 10, 11, 17, 18, 24, 25; May 1, 2, 8, 9, 1976 and each subsequent Saturday and Sunday of each week until the violations cease.

- 3:00 PM to 11:00 PM - K.G. Rotruck - March 21, 28; April 4, 11, 18, 25; May 2, 9, 1976 and each subsequent Sunday of each week until the violations cease.
- 3:00 PM to 11:00 PM - C.S. VanMeter - March 15, 22, 29; April 5, 12, 19, 26; May 3, 10, 1976 and each subsequent Monday of each week until the violations cease.
- 11:00 PM to 7:00 AM - D.W. Hanekamp - March 17, 18, 24, 25, 31; April 1, 7, 8, 14, 15, 21, 22, 28, 29; May 5, 6, 1976 and each subsequent Wednesday and Thursday of each week until the violations cease.

East Bound Hump Yard Office

- 7:00 AM to 3:00 PM - T.L. Householder - March 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31; April 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 24, 25, 26, 27, 28; May 1, 2, 3, 4, 5, 8, 9, 10, 1976 and each subsequent date Saturday through Wednesday of each week until the violations cease.
- 3:00 PM to 11:00 PM - R.A. Shrout - March 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31; April 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29; May 2, 3, 4, 5, 6, 9, 10, 1976 and each subsequent date Sunday through Thursday of each week until the violations cease.
- 11:00 PM to 7:00 AM - J.K. Hunt - March 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, 31; April 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30; May 1, 4, 5, 6, 7, 8, 1976 and each subsequent date Tuesday through Saturday of each week until the violations cease.
- 7:00 AM to 3:00 PM - G.H. Mechem - March 18, 19, 25, 26; April 1, 2, 8, 9, 15, 16, 22, 23, 29, 30; May 6, 7, 1976 and each subsequent Thursday and Friday of each week until the violations cease.
- 3:00 PM to 11:00 PM - R.R. Wagner - March 19, 20, 26, 27; April 2, 3, 9, 10, 16, 17, 23, 24, 30; May 1, 7, 8, 1976 and each subsequent Friday and Saturday of each week until the violations cease.
- 11:00 PM to 7:00 AM - M.E. Roberts - March 14, 15, 21, 22, 28, 29; April 4, 5, 11, 12, 18, 19, 25, 26; May 2, 3, 9, 10, 1976 and each subsequent Sunday and Monday of each week until the violations cease.

- 7:00 AM to 3:00 PM - G.C. Fisher - March 15, 16, 17, 21, 22, 23, 24, 27, 28, 29, 30, 31; April 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 1976 and each subsequent dates Saturday through Wednesday of each week until the violations cease.
- 3:00 PM to 11:00 PM - P.G. Liller - March 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31; April 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30; May 1, 2, 5, 6, 7, 8, 9, 12, 1976 and each subsequent dates Wednesday through Sunday of each week until the violations cease.
- 11:00 PM to 7:00 AM - E.E. Gaus - March 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, 31; April 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30; May 3, 4, 5, 6, 7, 10, 11, 12, 1976 and each subsequent Monday through Friday of each week until the violations cease.
- 7:00 AM to 3:00 PM - J.W. Hemmis - March 18, 19, 25, 26; April 1, 2, 8, 9, 15, 16, 22, 23, 29, 30; May 6, 7, 1976 and each subsequent Thursday and Friday of each week until the violations cease.
- 3:00 PM to 11:00 PM - K.G. Rotruck - March 15, 16, 22, 23, 29, 30; April 5, 6, 12, 13, 19, 20, 26, 27; May 3, 4, 10, 11, 1976 and each subsequent Monday and Tuesday of each week until the violations cease.
- 11:00 PM to 7:00 AM - C.M. Beckman - March 20, 21, 27, 28; April 3, 4, 10, 11, 17, 18, 24, 25; May 1, 2, 8, 9, 1976 and each subsequent Saturday and Sunday of each week until the violations cease.

OPINION OF BOARD: This dispute, one of six involving the same issue between the parties, concerns the Carrier's right to permit Yardmasters and/or Trainmen to "tear off" a list of freight cars, a "switch list," from a receiving machine following transmittal by use of telecommunications printers at Cumberland, Maryland.

By way of background, on May 5, 1976, Carrier established a Terminal Service Center at Cumberland, Maryland. Similar data centers have been established at various other terminals throughout the Carrier's system, and such data centers are essentially a consolidation of yard and agency functions into a central location where the same machinery and data are available. In most of the terminals where Carrier has established these new data centers, yard and agency personnel have been moved into the new Terminal Service Center, leaving only yardmasters in the individual yards.

The Carrier placed Kleinschmidt and Data Fax Communications receiving machines in Evitts Creek Yard Office and the Eastbound Hump Yard Office at Cumberland, Maryland and assigned operation to Yardmasters. The Carrier installed Data Fax equipment in the Westbound Hump Yard Retarder Office, and assigned operation to Trainmen.

The organization contends that by so doing, the Carrier is causing and permitting employees not covered by the Clerks-Telegraphers Agreement to operate such communication receiving devices, including the work of removing (tearing off) and separating message reports of cars from such devices.

The dispute involves the parties' Scope Rule and Rule 67, Printing and Telegraph Machines. Claims that the Yardmaster's tearing off the list and separating the copies violated Rule 67 began to be received on all Carrier's properties. Since the dispute could not be resolved on the property, the Organization processed a December 1975 claim in the Cincinnati yard office and presented it to this Board for adjudication. The Board sustained the claim in Award 22912 (Kasher) which, however, reduced the claim of eight hours pay "for work that took just a few seconds to perform" to a three-hour call.

Thereafter, this Board, with this Referee sitting, in Award 24861 - the first of the six pending disputes involving the same issue - after reviewing Award 22912 and the contracts, arguments and facts in Award 24861, concluded that the opinion reached in Award 22912 was correct. In so doing, this Board determined that, contrary to the Carrier's argument, Article 36 was not adopted unchanged in Rule 67 as regards the issue in dispute, and that read in the context of Rule 75, "the express and ambiguous language of Rule 67, with no stated exception comporting with the Carrier's argument," does not allow Yardmasters to "tear-off" and/or "separate" switch lists.

Having found the claims to be sustained, this Board next addressed the question of appropriate remedy. In agreeing with Referee Kasher's remedy of three-hour call pay in Award 22912, this Board noted that while "some may regard such payment as excessive,"

"...the clear meaning of language may be enforced even though the results are harsh or contrary to the original expectations of one of the parties. In such cases, the result is based upon the clear language of the contract, not upon the equities involved."

Continuity in the interpretation of contract rules is highly desirable, and such interpretations should not be overruled without strong and compelling reasons. There is nothing presented in the consideration of the instant decision which in any meaningful way can serve to distinguish the rationale of the decision in this dispute from that in Award 22912 since it involves interpretation of contract language. The parties are the same, the agreement is the same, and the facts are virtually identical. Having assessed the intent of the parties as evidenced by the contract language, we conclude that the opinion reached in Award 22912, as confirmed in Award 24861, is the correct one.

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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1984