

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26507
Docket Number CL-26184

Robert W. McAllister, Referee

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

PARTIES TO DISPUTE: (
(Central Vermont Railway, Inc.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:
(GL-9964)

(a) Carrier violated the Agreement when effective July 6, 1982, it abolished the Essex **Jct.** Mobile Agent position and continuing thereafter it required and/or permitted employees, who are not covered by said Agreement, to handle (receive, copy and deliver) train orders at Essex **Jct.**, Vermont.

(b) Carrier shall now be required to compensate the Spare Telegrapher standing first out, or if no spare telegraphers are available, the senior available qualified regularly assigned employee eight (8) hours pro rata rate of the Essex **Jct.** Mobile Agent for July 6, 1982, and each subsequent date."

OPINION OF BOARD: On July 6, 1982, the Carrier eliminated the Mobile Agent position at Essex Junction, Vermont. Most of the remaining duties of the job were redistributed to other employees working elsewhere through the system under the Agreement. **However**, when necessary, some train order work continued to be completed at Essex Junction. After July 6, 1982, trains would stop at Essex Junction from time to time, and conductors would enter the station and copy their own train orders directly from the dispatcher.

The Organization contends that having conductors at Essex Junction copy train orders directly from dispatchers is a violation of its revised Scope Rule. The Carrier admits that on occasion conductors, when at this station, copy train orders directly from dispatchers, but contends the work involved is not exclusively reserved to the Organization on a systemwide basis. Under the provisions of Article 76, the Carrier indicates it may have train order work completed by others not covered by the Agreement. With the elimination of the Mobile Agent position, Essex Junction became a station at which no operators were employed.

The revised Scope Rule became effective April 1, 1980. **It** is a type of rule that-has become know" in the industry as a "position **and/or** work" scope rule. **It** reads in part:

"1.1 These articles shall govern the hours of service and working conditions of the following class of employees, subject to the exceptions noted.

1.2 Agents, ~~Mobile~~ Agents, Agent-Telegraphers, Agent-Telephoners, Telegraphers, ~~Telegrapher-~~ Clerks, Telephone-Clerks, Telephone Operators, Towermen, Chief Telegrapher, Remote Control Operators.

1.4 Positions and/or work referred to within the scope of this agreement belong to the employees covered thereby, and nothing in this Agreement shall be construed to permit the removal of positions or work from the application of these rules, except by agreement between the parties signatory hereto."

Article 76, the Rule the Carrier relies on, has as its subject the handling of train orders. It was included within the Agreement before the revised Scope Rule was added on April 1, 1980. It reads as follows:

"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.

76.2 If the emergency occurs at a closed station overtime call shall be paid to the spare telegrapher who is standing first **out.**"

There are a number of Awards of this Division, along with various Public Law Boards, dealing with scope rules similar to the one herein. These Awards reserve to employees that work which was assigned **under** the Agreement at the time the rule was adopted. On this property, Award 4, PLB 3178 involves the Agreement provision now before us. Award 4 stated:

"Moreover, the Scope Rule of the Agreement - Article 1.4 - specifically requires that 'positions and/or work' within the scope of the **Agreement** may not be removed from its rules without the consent of both parties. Where both 'positions and/or work' are encompassed under the Scope Rule, the Organization need not prove **that** the work at issue has been performed exclusively by members of its bargaining unit. (See Awards Nos. 21581 and 20382.)"

Accordingly, the contention of the Carrier that the Organization is obligated to prove exclusive **systemwide** entitlement to the work is not well founded.

Notwithstanding the terms of the new Scope Rule and the decision in Award No. 4 of PLB 3178, the Carrier has extensively argued that Rule 76 and two Awards interpreting that Rule must control the situation at Essex Junction. The two decisions are Award 22781 of this Division and Award 3 of the Public Law Board 2756.

It is noted that both decisions involved Claims that predated April 1, 1980, the date of **the** revised Scope Rule. Their value as authoritative precedent, thus, is limited.

The Carrier has argued that the revisions made to Article 1, the Scope Rule, did not revise Article 76. We agree with this. But, Article 76 only has application to situations involving stations at which telegraphers are assigned. In this regard, the comments of the Carrier before PLB 2756 are noteworthy, as follows:

"If the train order had been copied by the conductor at a location where an operator was employed, the operator would have been eligible to be paid for a call. If the train order had been copied by a conductor outside of the hours of duty of the operator at a point where an operator was employed (a closed station) the spare telegrapher standing first out would have been eligible to be paid for the call. Article 76 is clear and unambiguous in its wording and contemplates offices where an operator is employed."

Subsequent to July 6, 1982, Essex Junction became a station at which no telegrapher was employed. Accordingly, it is our opinion that the Scope Rule was violated at Essex Junction when the Carrier allowed train order work that had previously been assigned under the Agreement to be performed by individuals not covered by the Agreement. It is also our opinion that Article 76 does not apply to the situation **at** Essex Junction because the location is no longer a station where an operator is employed and available.

The Claim of the Organization seeks eight hours, pro rata pay for the first out spare telegrapher and, if none are available, for the senior qualified **regular employee**, for July 6, 1982, and each subsequent date thereafter. Train order work is the only item of work that is alleged to not have been properly reassigned under the Agreement after the Mobile Agent's position was abolished. The record establishes this work does not occur on a regular basis. Additionally, the time involved is minimal. Under the circumstances, it seems the remedy **request** is excessive.

In other situations, the parties have a long history of paying a call when Agreement provisions are breached. We note, for example, that Award 4 of PLB 2756 required the payment of **a call** for violation of the Scope Rule involved. Similar type payments seem appropriate here.

We will, therefore, sustain the Claim for payment of a call for each date that an employee not covered by the Agreement handled a train order at Essex Junction subsequent to July 6, 1982. Payment to be made to the Claimants indicated in Item (b) of the Statement of 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 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 9th day of September 1987.