

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association  
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

"Please allow 8 hours pay at Time and One-Half for January 7, 1988 [also January 8, 14, 15, 21, 22, 1988] as I was home and available and not called to work entering freight and passenger consists into the CETC computer" [Carrier file NEC-ATDA-SD-86]

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

In this case, the Organization asserts that the Carrier violated "Rule 1 - Scope" when employees, other than Dispatchers, entered data directly into a computer. The Rule in question reads in pertinent part:

"Rule 1 - Scope

(a) \*\*\*

(b) \*\*\*

(c) Definition of Trick, Relief and Extra Train Dispatcher Positions. This class includes positions in which the duties of incumbents are to be primarily responsible for the movement of trains over a defined territory by train orders, or otherwise; to supervise forces employed in handling train orders, to keep necessary records incident thereto; to perform related work as may be assigned by the Chief or Assistant Chief Dispatcher.

(d) \*\*\*

(e) This Scope, Rule 1, is intended to retain for employees covered by this Agreement the same work jurisdiction said employees had on the former Penn Central Railroad. It is not the intent of Corporation to apply this Scope, Rule 1 in such manner as to divert work covered by Rule 1, from employees covered thereby."

Pursuant to Section 153, First (j) of the Railway Labor Act, as amended, notice was given to the Transportation Communications International Union (TCU) of this Claim since that Organization was a possible party of interest. The TCU filed an intervening brief.

In the Fall of 1987, the Carrier implemented its Centralized Electrification and Traffic Control (CETC) system. In this system certain data or information (such as freight and passenger consists) is entered into the CETC system through computer terminals by a Data Access Clerk. Prior to the implementation of CETC, this data was given to Dispatchers who manually recorded it on their respective train sheets. The Dispatchers continue to use the data in connection with their responsibility for a train's movements.

While a voluminous record has been developed in this case, reflecting the complexity of the issues raised, the main issue is the question of whether the act of entering ("inputting") data into the computer record by Clerks or others has eliminated the work of Dispatchers to maintain the permanent record of train movement. These tasks, it argues, have been an integral part of the "related work" contemplated in "Rule 1 - Scope."

The Board has carefully reviewed the record, including the many Awards cited by the parties. We note from this review that certain materials and arguments have been presented for the first time to this body. Pursuant to our mandate, these "first time" materials have not been considered in our deliberations.

With respect to those matters properly before us, we find that while the procedural contentions are not without some merit, this case is best resolved on its merits.

Clearly, the Organization, in its vigorous defense of this Claim is rightfully concerned with what it views as an erosion of its work. What has occurred is that, in those sections of the Carrier's network where CETC was implemented, train sheets were eliminated. The data that formerly had been placed on the train sheets by the Dispatcher is now placed directly into the computer by the Data Clerk. However, the Dispatcher continues to use the data in the performance of his duties.


In summary, there was an elimination of an intermediate step in the processing of data, and we find no violation of the Agreement under the facts presented.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1991.

5th Div  
Mark Dist  
2-28-91  
+ Dissents

Labor Member's Dissent  
Award No. 28640 - Docket TD-28719

Dissent to this award is necessary for a number of reasons.

First, improved methods of performing a particular job function, in and of themselves, do not serve as the determining factor when considering the class of employee that the work accrues to.

Third Division Award No. 20703 -

"The Board has consistently followed a well established principle that the character of the work performed by a machine would determine the craft from which its operator was drawn. See Awards 4546, 4547, 13517, 14004, 19038, 19542 and Second Division Awards 244, 1829, 3405."  
[underlining added]

Third Division Award No. 22421 -

"This Board has consistently held that the purpose for which work is performed determines the craft."

Public Law Board No. 2555-Award No. 1 -

"The Board finds that the thrust of this case must devolve upon the primary or core issue that the work being performed is Yardmaster work, rather than as to the instrumentality being utilized to perform the work."  
[underlining added]

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Labor Member's Dissent  
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The nature of this disputed work, involved the maintenance of the Carriers permanent record, via the computer keystroke entering of train identification, engine numbers, crew names, reporting times and car counts into the Carrier's "CETC" computer system. Clearly, the entering of this information pertains to the movement of trains and is the type of work that falls within the confines of Scope Rule 1(c).

Second, Scope Rule 1(e) retained "...for employees covered by this Agreement the same work jurisdiction said employees had on the former Penn Central Railroad."

The Organization, during on the property handling of this dispute, presented numerous statements from several experienced Train Dispatchers proving that the work at issue was performed by Train Dispatchers when working for the former Penn Central Railroad.

For reasons clear only to the majority, these statements were either discounted or dismissed entirely.

Third, Award 28640 finds that "...there was an elimination of an intermediate step in the processing of data..." and therefore found "...no violation...".

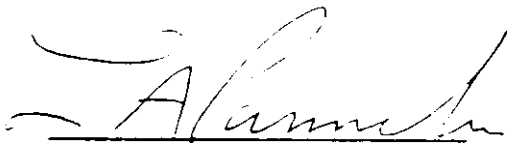
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When a contractual obligation exists, as herein,  
elimination of an intermediate step is a violation of the  
Agreement.

Third Division Award No. 26137

"...Whatever may be the Carrier's intent, the  
elimination of the 'Middle Man' in this instant  
case is a violation of the Agreement."

Therefore, I dissent.

  
L. A. Parmelee  
Labor Member