Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30458
Docket No. CL-29765
94-3-91-3-148

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(CSX Transportation, Inc. (former Seaboard Coastline Railroad)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10553) that:

1. Carrier violated the Agreement when, by bulletin dated November 10, 1989, it improperly abolished Position Nos. 104, 200, 313 and Relief position and improperly transferred the duties previously handled by the occupants of these positions to the craft of Yardmasters, including Trainmasters and other employes.

2. As a result of the aforementioned violation, the Carrier shall now be required to compensate Clerks P.I. Martin (Position No. 104), M.J. Corbitt (Position No. 200), J.E. Griffin (Position No. 313) and J. McIntosh (Relief) eight (8) hours' pay at the time and one-half rate of pay each day account forced to work out of assigned hours.

3. In addition, the Carrier shall also be required to reestablish the assignments improperly abolished, returning the work to the craft of employes from whom it has been improperly removed.

4. This claim will begin on November 17, 1989, and will continue each day until the disputed work is returned."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

The dispute in this case involved the United Transportation Union - Yardmaster Department as a possibly interested third party. In compliance with the Uniform Rules of Procedure adopted by the Board, effective January 1, 1988, the UTU-Yardmaster Department was invited to file a written Submission in connection with the dispute. The Yardmaster Department, however, declined to make such a presentation.

The genesis of this claim is found in Carrier's November 17, 1989 abolishment of the Operator positions and their concurrent closing of the Operator's office located at Baldwin, Florida. Following the abolishment of these positions, the Organization filed a penalty claim on December 4, 1989, which was as set forth in the Statement of Claim supra.

The Agreement provisions which are of concern to the Board in our consideration of this dispute are as follows:

"RULE 1 - SCOPE

* * *

(d) Positions or work covered under this Rule 1 shall not be removed from such coverage except by agreement between the General Chairman and the Director of Labor Relations. It is understood that positions may be abolished if, in the Carrier's opinion, they are not needed, provided that any work remaining to be performed is reassigned to other positions covered by the Scope Rule."

"RULE 64 - HANDLING TRAIN ORDERS

* * *

Rule 64 - Handling Train Orders - is cancelled and in lieu thereof the following shall govern:

'No employee, other than covered by this schedule and train dispatchers, will be permitted to handle train orders at telegraph or telephone offices where a qualified employee is employed and is available or can be promptly located, except in an emergency, in which case the employee will be paid for the call. At offices where two (2) or more shifts are worked, the qualified employee whose tour of duty is nearest the time such orders were handled will be entitled to the call.'"

"MEDIATION AGREEMENT, CASE A - 11569
DATED APRIL 15, 1986

* * *

ARTICLE IV - DIRECT TRAIN CONTROL

The purpose of this Article is to provide the terms and conditions under which a carrier may implement procedures for the direct control of train movements and/or related rail operations.

Section 1 - Implementation

(a) When a carrier determines to implement the direct control of train movements and/or related rail operations without the involvement of a BRAC-represented employee, it will give not less than forty-five (45) days' written notice, specifying the territory to be governed and the effective date of implementation, to the General Chairman and to the employees who will be affected thereby by posting such notice on accessible bulletin boards.

(b) In the application of Section 1(a) it is understood that the provisions for handling communications (train orders, communications of record, lineups, block or report trains, receive or forward written messages, etc.) contained in the various rules or practices under the BRAC collectively bargained agreements will not apply in the territory designated as direct train control territory. Such rules or practices shall continue to apply on territory not so designated as direct train control territory.

Section 2 - Protection

(a) An employee who has seniority as of the date of this Agreement whose job is abolished or who is displaced as a result of the implementation of direct train control, will be granted protection for a six (6) year period not to exceed the employee's years of service, in accordance with the New York Dock Conditions prescribed by the I.C.C. in certain railroad transactions except that there will be no requirement for an implementing agreement. An employee who is subject to an employee protective agreement or arrangement will have the option of electing to keep the protective agreement or arrangement in effect or to accept the protection provided herein. Such election must be made within thirty (30) days of the date the employee's job is abolished or the employee is displaced. If the employee elects the protection provided herein, then at the expiration of such period he shall revert to and be covered by the preexisting employee protective agreement or arrangement, provided he still maintains an employment relationship at that time.

(b) During the first six (6) months following implementation of direct train control in a specific territory, if a protected employee described in Section 2(a) hereof, who has elected the protection provided herein, is unable to secure a position not requiring a change in residence through the exercise of seniority under existing agreements, such employee may be offered a position in the clerical craft at the nearest location where carrier can productively utilize his services. Such employee shall be given thirty (30) days written notice of such offer, copy to the General Chairman, and must elect one of the following options prior to the expiration of the notice:

(i) To accept the offer,

(ii) Resign from all service and accept a lump sum payment computed in accordance with Section 9 of the Washington Job Protection Agreement of May 1936 at the daily rate of the position to which assigned, or his protected rate, whichever is higher*, or

(iii) To be furloughed with suspension of protective benefits during the furlough.

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* Note: If an employee requests separation pay under the above provisions he shall be paid within thirty (30) days of termination of employment and such payment will be in addition to any vacation and sick leave allowances due the employee as of the date of his separation. Seventeen (17) months union dues will be deducted form the separation payment.

In the event an employee fails to make such an election, he shall be considered to have exercised option (3). Employees accepting a job offer that requires a change of residence will be entitled to the benefits provided in Article I, Sections 9 and 12 of the New York Dock Conditions or such benefits as may exist in the collective agreement or arrangement in effect on the involved carrier provided there is no duplication. Employees who transfer to another seniority district under the provisions of this Agreement will have their seniority dovetailed into the appropriate roster.

(c) The following change of residence definition shall apply:

A 'change of residence' as referred to herein shall only be considered 'required' if the new reporting point of the employee would be more than thirty (30) normal highway miles via the most direct route from the employee's point of employment at the time affected, and the new reporting point is further from the employee's residence than his former point of employment.

(d) In the event it becomes necessary to create a clerical position to assist train dispatchers in the handling of clerical work associated with direct train control, such newly created position will be subject to and covered by the existing agreement in effect between the individual railroad and BRAC.

Section 3 - Savings Provision

(a) Nothing in this Article is intended to restrict any of the existing rights of a carrier.

(b) This Article shall become effective 15 days after the date of this Agreement except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representative on or before such effective date. On those carriers where Direct Train Control agreements are in effect as of the date of this Agreement, such agreements shall remain in effect unless or until changed or modified by the parties thereto."

In Its progression of this claim, the Organization argued that after the abolishment of the Operator positions at Baldwin, Carrier improperly transferred work which had formerly been performed by the Baldwin Operators to Yardmasters, Trainmasters and others in violation of both the Scope Rule and Rule 64. It contended that Carrier's use of a Yardmaster to make delivery of any communication of record in connection with train movements to either yard or road train and engine crews violated Train Order Rule 64 whether or not the communication was copied or was generated by the Train Dispatchers in the Central Dispatching office. The Organization continued by insisting that under the provisions of Article IV of the 1986 National Agreement, "if the relay of a train order was required a Clerk-Operator would have to be used." It contended that the 1986 National Agreement did not grant "authority for Yardmasters or other employes not covered by the Agreement to handle communications in connection with train movements."

The Carrier presented a multi-faceted position to the Board. It insisted that the Board lacks jurisdiction to order the reestablishment of the abolished positions. It contended that the portion of the claim which relates to Claimants working outside of their assigned hours is fallacious for the reason that each Claimant, following the abolishment of their positions, exercised seniority to and performed service on other positions for which they were properly compensated. It argued that Yardmasters have always handled direct communications with Train Dispatchers and with train and engine crews and have done nothing different in this case. It says that "Trainmasters and other employes" were not in any way involved in any of the communications cited by the Organization as being violative of the Agreement and that the Organization produced no evidence to the contrary. Carrier posits that it had, in fact, served proper notice as required by the 1986 National Agreement specifically designating the territory here involved as being under the Direct Train Control jurisdiction and that Article IV of the April 15, 1986 National Agreement specifically permitted the train control handling which was accomplished in this case. Finally, Carrier argues that the claims are excessive in any event because, at most, the "Yardmaster simply advised his crews that there was a slow order in Baldwin Yard. This certainly does not constitute an eight-hour overtime payment on a continuous daily basis."

The Board carefully examined and considered the several Awards which have been cited by the parties in support of their respective positions relative to the "positions or work" Scope Rule as well as Rule 64 - Handling Train Orders. Unfortunately, none of the citations has provided any assistance in the Board's determination of this dispute. None of the cited Awards concerns the provisions of Article IV of the April 15, 1986 National Agreement. The Board has not been directed to and is not aware of any arbitral decisions which have addressed the language, terms and conditions of Article IV of the 1986 National Agreement either on this or any other property.

The Board accepts as legitimate the contention of the Organization that exclusivity of performance is not a necessary condition in an application of the "positions or work" Scope Rule. That situation, however, is not a determinative factor in this case.

The record in this case supports as fact that Carrier did by proper notice dated May 29, 1986, and in compliance with the requirements of Article IV, Section 1(a) of the 1986 National Agreement, identify the territory here in question as being an area in which Carrier intended to implement the Direct Train Control provisions of the National Agreement. There is nothing in the record from the Organization to suggest or prove that the May 29, 1986 notice was not properly posted or was in any way deficient or defective. Therefore, the Board accepts as fact that the Direct Train Control provisions of the 1986 National Agreement were in effect on the territory in question when and after the Block Operator positions at Baldwin were abolished.

After the issuance of the Section 1(a) notice and the subsequent abolishment of the Operator positions, the provisions of Section 1(b) of Article IV of the National Agreement became fully operative. The clear and unambiguous language of Section 1(b) is far reaching in its application. It clearly provides that the parties to the National Agreement understood and agreed that <u>any</u> provision in <u>any</u> collectively bargained agreement or practice would not be applicable in territory designated as direct train control territory in connection with the handling of communications such as train orders, communications of record, lineups, block or report trains, receive or forward written messages, etc.

The framers of this National Agreement on both sides were learned, sophisticated railroaders. They were all well aware of what they were agreeing to. They carefully chose the words which were used to set forth their Agreement. The Board must presume that all parties to the Agreement were well aware of the possible implications which would be involved by application of the provisions of the Agreement. They obviously understood that there might be adverse effects from the application of this Agreement because they included as part of the Agreement specific provisions for the protection of employees adversely affected thereby. Article IV, Section 2 - PROTECTION is detailed in its application to employees whose jobs are abolished or who are displaced as a result of the implementation of the Agreement.

The degree of sophistication which is found in the language of Article IV of the 1986 National Agreement convinces the Board that if the parties had intended to limit the application of this Article IV to specific employees and to exclude other employees from the direct train control operations, they would have included references to such specific employees or would have stipulated such exclusions in the language of the Agreement. They did not do so and the Board has no authority to add such language or restrictions to the Agreement language.

The Organization presented to the Board two records of communications which, they say, support its arguments relative to the Yardmaster being the delivery conduit of the message. They point to the Release form dated November 23, 1989, which cancelled train bulletin 18016. The Board's examination of this Release form shows that the communication was addressed to "C&E Yardmaster Baldwin." Neither party has identified or explained the significance of the reference to "C&E." However, train bulletin 18016 which was cancelled by the Release form was also addressed to "C&E Yardmaster Baldwin" and contained orders, instructions and information which were of interest and informative to both Conductors and Engineers of train crews as well as to the Yardmaster. There is nothing in the file to prove that these messages were in any way violative of the provisions of Article IV, Section 1(b) of the 1986 National Agreement which "understood that the provisions for handling communications (train orders, communications of record, lineups, block or report trains, receive or forward written messages, etc.) contained in the various rules or practices under the BRAC collectively bargained Agreements will not apply in the territory designated as direct train control territory." (Emphasis added)

On the basis of the facts, circumstances and Agreement provisions which exist in this case, there is no basis for a sustaining award. The claim as presented is, therefore, denied.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.