

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21050
Docket Number CL-20792

Dana E. Eischen, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and
Steamship Clerks, Freight Handlers,
Express and Station Employees
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7595) that:

1. The Carrier violated the rules of the effective Clerks' Agreement particularly the Memorandum of Agreement, dated July 23, 1969, when on Wednesday, November 8, 1972, it required and/or permitted an employee not covered by the scope of the governing agreement to perform work covered by the scope thereof.

2. The Carrier shall now be required to compensate Input/Output Technician J. Cummings eight (8) hours' pay at the time and one-half rate of an Input/Output Technician's position for Wednesday, November 8, 1972.

OPINION OF BOARD: This claim is one of four (4) similar claims involving the use by non-clerical supervisory personnel of certain Cathode Ray Tube teleprocessing devices (RMS-3-SCR Output Display Modules and 2260 Scope Machines) which are an integral part of Carrier's computerized Car Control System. The display consoles consist of a keyboard and a television-like screen and apparently are similar to those used by airline ticket and reservation agents. The equipment at issue is used both for "Input" (placing information into or changing information already in the system) and "Output" (retrieving information from or making inquiries of the system). Each of the four (4) related claims (Dockets 20792, 20793, 20794 and 20795) involves Organization objections to a supervisor "retrieving" information from the system or making "inquiries" of the computer by using the display console keyboard together with certain "output" forms. In addition, the instant claim (Docket 20792) involves the Organization's assertion that a supervisor used an "input" form to change or revise data in the system. Except for the factual dispute in the first claim, and the different personnel and dates of the claims, there is little or no controversy on the record relative to the facts out of which the disputes arose. Each of the parties presented essentially identical respective positions and arguments for each of the four (4) cases and the dockets were argued concurrently before our Board by mutual stipulation. Accordingly, we shall set forth herein, but not in such detail in each of the related Awards, the relevant facts and Agreement citations common to each case.

At issue in each of these cases is the interpretation and application of certain provisions of the Clerks' Agreement, particularly a Memorandum of Agreement dated July 23, 1969. Both parties presented detailed

evidence relative to the bargaining history of this Agreement. From the undisputed record it appears that Carrier sometime in the early 1950's implemented an IBM punch-card system of car control known as Unit Car Record System. Thereafter, by letter dated March 17, 1969 Carrier notified the Organization, in accordance with the February 7, 1965 Job Stabilization Agreement, of Carrier's intention to establish a new computerized information and car control system. That letter listed items for discussion and invited a conference for the purpose of reaching an agreement. Among the items listed was one Item 6 which is of special significance in the instant disputes. In Item 6 Carrier proposed the following:

- "6. The provisions of Article 3 do not prohibit any employees from receiving information directly from an output device from the computer without the intervention of an I/O Technician."

Negotiations commenced on or about April 16, 1969 for an implementing agreement and the parties consummated a Memorandum of Agreement on July 23, 1969. The instant dispute in large part concerns Section 7 of that Agreement which reads as follows:

"Section 7. All teleprocessing devices referred to in this Memorandum of Agreement when utilized for the accomplishment of work heretofore performed by employees subject to the scope of the basic agreement, shall be operated exclusively by employees fully covered by all rules of the Clerks' Agreement."

The Scope Rule of the Clerks' Agreement referenced in Section 7 supra reads as follows:

" RULE 1

SCOPE AND WORK OF EMPLOYEES AFFECTED

(A) These rules shall govern the hours of service and working conditions of all employees engaged in the work of the craft or class of clerical, office, station and storehouse employees. Positions or work coming 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, nor shall any officer or employee not covered by this agreement be permitted to perform any clerical, office, station or storehouse work which is not incident to his regular duties.

"(B) Whenever any mechanical device used for handling, duplicating, recording, transcribing, transmitting or receiving written, typed, printed, graphic or vocal communications, reports or records, or any combination of these, within the same or between different cities, is utilized for the accomplishment of work heretofore performed by employees subject to the scope of this agreement, such mechanical devices shall be operated by employees covered by this agreement."

The Memorandum of Agreement of July 23, 1969 provided for a phased-in implementation of the new computerized Car Control System and established new positions of Input/Output Technician (I/O Technician). Following execution of the July 23, 1969 Agreement the record indicates that Carrier bulletined and filled the IOT jobs at a uniform rate of pay and listing the following principle duties:

"To accept and review data from all sources; operation of any teleprocessing device necessary for Input to or Output from the computer; disseminate information to any inquiring source and perform miscellaneous clerical duties as required.

Must be qualified and efficient in the use of teleprocessing equipment for Input or Output to the computer; have working knowledge of codes and operating instructions for the car control and information system; be responsible for the teleprocessing equipment in their use; and be aware of the proper procedures to be used in the event of their malfunction or failure."

From the record before us it appears that almost immediately upon implementation of the Car Control System in September 1969 disputes arose relative to nonclerical personnel using the display consoles. In its submission to our Board, Carrier cited a letter of February 15, 1972 in that connection as follows:

"Subject: Miscellaneous Grievances - Elgin,
Joliet and Eastern Railway Company

Mr. N. W. Kopp, Director of Labor Relations
Elgin, Joliet and Eastern Railway Company
P. O. Box J
Chicago, Illinois 60690

Dear Sir:

In conference on February 14, 1972, we discussed the following grievance cases and advised you that we would withdraw these cases from any further consideration with the distinct under-

"standing that such withdrawals will not prejudice our contentions nor restrict the filing and handling of subsequent claims which pertain to the same or similar subjects:

<u>Our Case No.</u>	<u>Carrier's Case No.</u>
J-1942	KC- 1-71
J-1946	KC- 5-71
J-2029	ZC-80-71

However, the Carrier did agree that Section 7 of the July 23, 1969 Memorandum of Agreement would be fully complied with in the future and that employees of other crafts as well as employees occupying partially or fully excepted positions and/or officials would be instructed to refrain from operating all teleprocessing devices referred to in said Memorandum of Agreement for the accomplishment of work heretofore performed by employees subject to the scope of the basic agreement.

If the foregoing correctly sets forth our understanding, please sign in the space provided and return a copy to me.

Yours truly,

WM. B. MURPHY /s/
General Chairman

ELGIN, JOLIET AND EASTERN RAILWAY
COMPANY

N. W. KOPP /s/
N. W. Kopp
Director of Labor Relations "

The settlement of earlier claims notwithstanding, further disputes arose and the instant claim was filed on November 29, 1972 alleging that Trainmaster M. J. Maday operated a teleprocessing device (RMS-3-SCR) from 5:15 p.m. to 6:40 p.m. on Wednesday, November 8, 1972 and used Forms 48, 61 (Output) and 15 (Input) to research old cars and to delete several cars from the data in the system. Claimant J. P. Cummings is an Input/Output Technician, 7-day position with regularly assigned hours 8:00 a.m. to 4:00 p.m., Friday through Tuesday, rest days Wednesday and Thursday. Thus, the disputed work was performed by the Trainmaster on Claimant's rest day outside of regular hours. The claim alleges a violation of Section 7 supra and seeks eight (8) hours at the overtime rate per Rule 43. The claim was denied on January 3, 1973 in a letter reading in pertinent part as follows:

" * * *

Because of the lapse of time from the alleged incident and the receipt of claim in my contact with Trainmaster Maday, he advised me that his recollection of the events of that particular day might be somewhat hard to come by. However, Mr. Maday advised me that his knowledge of the use of Form 15 is very limited and he feels that even at this date he would not be sufficiently familiar with the form to have used it at that time. Insofar as his use of Forms 48 and 61 which are inquiry forms, it is this Carrier's position that inquiries can be made of the System by any qualified employee since the computer tapes and discs constitute company records which are not restricted to specific positions or employees in their availability and/or usage. While Mr. Maday does not specifically recall using those formats on the date in question, if he did in truth use them, it would certainly fall within the course of his normal duties to ascertain locations of specific cars, etc.

For the reasons stated above, I find no violation of the Agreement in this instance and your claim, as it is presented is respectfully declined."

Each of the parties asserts that the clear and unambiguous language of Section 7 supports their respective positions. Thus, the Organization urges that the language of that Section reserves exclusively to employees covered by the Scope Rule of the Clerks' Agreement both input and output of information from the teleprocessing devices. On the other hand, Carrier insists that Section 7 of the Agreement of July 23, 1969 is identical in meaning and import to Item 6 proposed by Carrier for negotiation on March 17, 1969 supra. Thus, Carrier maintains that Section 7 gives to IOT employees exclusive claim only to the Input function and does not prohibit any other employee from receiving information directly from an Output device from the computer without intervention of the I/O Technician. Thus, the issue before us is joined.

Because of the phrase "when utilized for the performance of work heretofore performed by employees subject to the scope of the basic Agreement" each of the parties also has presented argumentation relative to past practice. Carrier maintains that supervisory personnel traditionally have done "car tracing" as part of their duties and that, therefore, "inquiry" of the computer is nothing more than clerical work incidental to their supervisory duties. The Organization contradicts this position and maintains that clerical employees have the exclusive right by practice as well as

Agreement language to operate the mechanical devices used for "handling....
..transmitting or receiving.....reports or records....."

Carrier resists the claims essentially on the grounds that manipulating the keyboard to call up car records by supervisors is 1) synonymous to flipping through IBM cards and 2) in any event is "incidental" clerical work and part of supervisory duties of car tracing. Moreover, Carrier insists that the parties mutually agreed by Section 7 that supervisors and other non-clerical employees could receive information directly from an output device from the computer without the intervention of an I/O Technician. Upon close analysis of the record facts and the clear language of the Agreement we are unable to accept this view.

The record does suggest, as Carrier contends, that car tracing and response to customer and operating department inquiries, are appropriate supervisory responsibilities and have been performed by supervisors in the past. But that assertion does not reach the issue herein. The issue before us does not involve the supervisor's use of data and records in car tracing but rather the means by which the data is obtained by the supervisors. Neither the historical record nor the express language of the Agreement support Carrier's view that physical manipulation of the computer keyboard using an output form is incidental to a supervisor's regular duties. Such activity is precluded by the express terms of Rule 1(a) - Scope. Moreover, Section 7 reserves such operation of teleprocessing devices to employees under the Clerks' Agreement. Carrier's assertion that Section 7, in words or substance, incorporates its bargaining demand in Item 6 supra simply is not supported in this record. Indeed, a more logical and reasonable conclusion is to the contrary, i.e. that Section 7 as finally agreed upon represents a rejection of Carrier's bargaining position. The language of Section 7 is clear and unambiguous and we have no doubt that the Agreement precludes supervisors or employees other than those under the Clerks' Agreement from operating the teleprocessing devices whether for Input or Output purposes.

The record before us is persuasive that Trainmaster Maday utilized the RMS-3-SCR for both Input and Output. The Organization's eyewitness testimony that he worked the keyboard and used Form 15 (Input) stands undenied and answered only by Maday's statement that he feels he would not have been familiar enough with that form to have used it, and the claim that he used Forms 48 and 61 (Output) on the keyboard to retrieve data essentially stands admitted on this record. The work in question was performed on Claimant's rest day and the measure of damages sought herein was not contested by Carrier and appears appropriate in the circumstances. We shall sustain the 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1976.