

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21074  
Docket Number CL-21010

Irwin M. Lieberman, Referee

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

PARTIES TO DISPUTE: (

(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7723)  
that:

(1) Carrier violated the Agreement between the parties when on June 5, 6, 6, 7, 8, 9, 11, 12, 13, 14 and 15, 1973, it required and permitted train service employees not covered thereby, to request and receive permission to cross their train over the main tracks and to report their train clear of the main track thereby performing work of blocking trains and exchanging other information relating to the movement of trains at Lodi, Ohio, to the train dispatcher over the telephone via the operator at GN Tower, Greenwich, Ohio, and

(2) Carrier shall, as a result, compensate C. R. Taddeo, incumbent Agent-Operator at Nova-Lodi, Ohio, three (3) hours pay at pro rata rate for each date of June 5, 6, 6, 7, 8, 9, 11, 12, 13, 14 and 15, 1973.

OPINION OF BOARD: Claimant was assigned as Agent-Operator in a dual capacity: he performed service at Nova, Ohio 8:00 A.M. to 2:00 P.M. and at Lodi, Ohio from 2:30 P.M. until 4:00 P.M. Mondays through Friday (rest days Saturdays and Sundays). Carrier operated a train known as the Willard-Wooster Local over the main line to Lodi and then over a branch line to Wooster, returning daily reversing the route. On the trip to Wooster the Conductor reported his train clear of the Eastbound Main Track at Lodi; on the return trip he had to secure permission to come off the branch at Lodi, cross over the Eastbound Main Track and move westward to Willard. In both cases the Conductor used a telephone adjacent to the Wooster Branch switch at Lodi. If Claimant (the Nova-Lodi Agent) was at Lodi, the Conductor contacted him and he in turn contacted the Dispatcher at Akron for appropriate instructions to be given to the Conductor. In the event that Claimant was not at Lodi at the time that the Conductor needed to contact the Dispatcher, the Conductor telephoned the Operator at GN Tower (about twelve miles east of Nova) who in turn contacted the Dispatcher at Akron and relayed instructions to the Conductor. The Claims herein are for those instances in which the Conductor telephoned the Operator at GN Tower rather than Claimant, who was not available.

Petitioner relies on the Scope Rule as well as Rules 4(b-2) and 65 of the applicable Agreement in support of its position. The Scope Rule is cited primarily because "Operators", "Block Operators" and "Telephone Operators" are listed therein and it is argued that the work in connection with those classifications cannot be arbitrarily removed by Carrier and assigned to other employees. Rule 4(b-2) and the Understanding pertaining to that Rule provide:

"(b-2) Where work is required by the Management to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee."

"Understanding

\* \* \* \* \*

(2) When overtime is necessary to perform work that is assigned to several positions but not exclusive to any single one, preference will be given in the order shown to:

(a) the incumbents of the positions on which the work is intermingled in seniority order

(b) qualified employees in the bureau in seniority order

(c) qualified employees in the office in seniority order

(d) qualified employees on the roster in seniority order."

Petitioner contends that this Rule was violated in that the work at issue was a part of Claimant's regular assignment and should not have been performed by a train service employee. Further, this rule specifies how work that is assigned to several positions will be assigned when it cannot be performed within regular assigned hours.

Rule 65 provides (in pertinent part):

"Train Orders - Clearance Forms - Blocking Trains.

Copying train orders, clearance forms, or blocking trains at stations where an employee qualified to do so under this agreement is employed will be confined to such employee (provided he is available and can be promptly located). When such an employee is not used in conformity with this rule he shall be promptly notified by Chief Dispatcher and paid three hours at pro rata rate. This rule does not apply to Train Dispatchers performing such duties at/or in the vicinity of the dispatcher's office location in the normal course of their regular duties.

"Except in emergencies, when employees not covered by this agreement are required to copy train orders, clearance forms or block trains at a location where no qualified employee covered by this Agreement is employed, the proper qualified employee at the closest location where a qualified employee covered by this agreement is employed shall be promptly notified by Chief Dispatcher and paid three hours at pro rata rate."

The Organization contends that the term "blocking trains" means the same thing under Rule 65 as it did under the previous Agreement in Article 35. In this case, it is urged that the blocking of trains was performed by the use of telephone and the work in question is confined to employees covered by the Agreement; when such employees are deprived of their functions, under Rule 65 a penalty-payment is mandatory. Petitioner insists that the work in dispute has historically and exclusively, on a systemwide basis belonged to employees covered by the Agreement. A number of examples of prior disputes and settlements as well as Awards of this Board have been cited.

Carrier argues that Article 35 of the predecessor Agreement preserved the use of the telephone to covered employees, which is quite different from the provisions of Rule 65, and Petitioner, by this Claim is attempting to extend the Agreement to restore the old proviso. Carrier states that the action of the Conductor in contacting the Operator at GN Tower for permission to occupy the track and to report his train in the clear did not constitute a "train order" or "blocking of trains": ergo, this action did not violate any of Claimant's rights. Carrier admits to having paid Claimant herein a two hour call whenever a Conductor used the telephone to contact an Operator at GN Tower, based on Award No. 244 of Special Board of Adjustment 355 which was rendered in 1964. These payments were discontinued on June 4, 1973 upon the effective date of the current Agreement, when Article 35 was superseded by Rule 65. Article 35 provided:

"USE OF TELEPHONE.

It is not the disposition of the Railroad to displace operators by having trainmen or other employees operate the telephone or other devices for the purpose of blocking trains, handling train orders or messages, except in case of such emergencies as interruption or suspension of service by reason of wrecks or the forces of nature or where life is endangered. Use of the telephone or other devices by other employees under this exception may only be continued until an employee covered by this agreement can be made available. This Article does not restrict switching crews primarily engaged in revenue service from using the telephone or other

devices at the ends of passing sidings or spur tracks where no operator position has existed since July 1, 1928, to communicate with the nearest operator on duty, provided the number of separate times that the telephone or other device is so used at any one location shall not exceed four (4) in any eight (8) hour period, nor does it restrict any crews from using the telephone or other devices to communicate within station limits with the operator."

Carrier argues that Rule 4(b-2) does not support the Claim in that it does not preclude Carrier from assigning clerical work to more than one employee; in fact the provisions of Section 2(a) of the Understanding (supra) contemplate the assignment of work to more than one position. Carrier avers that the bulk of the communications between the Conductor at Lodi and the Dispatcher at Akron had been handled through the Operators of GN Tower since November 1, 1965. A principal point is made that the current (consolidated Clerk-Telegrapher) Agreement contains no rule restricting the use of telephone to clerical employees. In fact, it is urged that there was no requirement in the current Agreement that the Conductor communicate with the Dispatcher through any Operator.

Rule 65 is restricted to "...copying train orders, clearance forms or blocking trains...." which is significantly different from the provisions of Article 35 of the predecessor Agreement which stressed the operation of the telephone for "...the purpose of blocking trains, handling train orders or messages....". It is clear that practice and precedent involving Article 35 are not controlling insofar as Rule 65 is concerned.

The principal question to be resolved in this dispute is whether or not the actions of the Conductor in phoning the Operator at GN Tower for permission to come off the branch and use the main track and on the other leg of the trip to report his train clear of the main track constituted "blocking of trains" or "copying train orders". It is clear that there was no copying of train orders involved in the incidents. In Award 12768, we outlined the functions which must be present for blocking of a train to take place:

"In consideration of the foregoing discussion, it becomes apparent that there are several essential elements that must be present in order for a blocking of the train to take place. They are as follows:

1. The decision that the train may move into the block.
2. Communication with adjoining block operators and the dispatcher.
3. Recording all necessary information on the block sheet.
4. Obtaining information concerning the location and readiness of the train in question to proceed."

In the instant dispute the Conductor had nothing to do with authorizing the movement of other trains or even his own train. As we said in Award 12768 the most essential function involved in the blocking of trains is the decision that the train may move into the block; the Conductor herein had nothing to do with this decision. In many previous cases we have held that the use of the telephone by train service employees to report themselves clear or to obtain permission to use certain tracks does not constitute the copying of train orders (see Awards 15003, 11161, and 14028 for example); we reaffirm that position.

After careful examination of the facts, the arguments presented and the many cases cited, we can find no support for the position that the Agreement was violated. Based on the entire record, therefore, the claims must be denied.

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 not violated.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Paulson*  
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1976.