NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21577
THIRD DIVISION Docket Number CL-21228

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks
(Freight Handlers, Express and Station Employes
(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7834) that:

(1) Carrier violated the Agreement between the parties when, on November 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and December 1, 1973, at various times, it required and permitted employees not covered thereby to copy train orders and/or clearance forms at Rossford Yards, Ohio, and

(2) Carrier shall, as a result, compensate each named employee one three (3) hour pro rata payment for each date and incident listed as follows:

(a) P. M. George - November 14, 14, 14, 16, 16, 25, 25, 25, 25, 26, 26, 26, 26, 26, 27, 27, 27, 27, 28, 28, 28, 30, 30, 30, 30, and 30, 1973.

(b) G. L. Romano - November 15, 15, 16, 18, 18, 18, 18, 19, 19, 19, 19, 20, 20, 20, 21, 21, 21, 21, 22, 23, 23, 23, 24, 24, 25, 25, 26, 29, 29, 30 and 30, 1973.

(c) L. J. Becker - November 15, 15, 15, 15, 15, 17, 18, 18, 18, 18, 19, 19, 19, 20, 20, 21, 21, 21, 22, 22, 23, 23, 23, 23, 23, 24, 24, 24, 27, 28, 28, 28, 28, 29, 29, 29, 30, 30, 30, 30, December 1, 1 and 1, 1973.

(d) W. T. Byrum - November 15, 15, 15, 15, 17, 17, 18, 18, 18, 18, 19, 19, 19, 20, 20, 20, 20, 21, 21, 21, 22, 22, 22, 22, 23, 23, 24, 24, 24, 24, 25, 25, 25, 25, 26, 26, 26, 26, 26, 27, 27, 27, 28, 28, 28, 29, 29, 29, 29, 29 and December 1, 1, 1, 1 and 1, 1973.

OPINION OF BOARD: This disputes relates to train orders and arises from the allegation that the Carrier violated Rule 65 of the Agreement when it permitted and required train orders and clearance forms to be copied by employees (conductors, yardmasters, and trainmasters) not covered by the Agreement, at a location (Rossford Yard, Ohio) where no qualified employee covered by the Agreement is employed. The Claimants are operators at Bates Tower, Ohio, which is located on the Carrier's Cincinnati line, in South Toledo, Ohio, about 1.7 miles from Rossford Yard.

The train orders fall into two categories. One category involves orders issued by the Toledo Terminal Railroad Train Dispatcher at Toledo to govern the movements of trains of this Carrier (hereafter sometimes B&O) and of the C&O over the tracks of the Toledo Terminal Railroad Company (TTR); these orders were received and copied by the Operators at Bates Tower who transmitted the orders by phone to Rossford Yard where the orders were copied by conductors, yardmasters, and trainmasters and delivered to the crews of the trains to which addressed. The other category involves orders issued by the B&O Train Dispatcher at Deshler, Ohio, to impose speed restrictions over the so-called High-Speed Main, north of Bates Tower; these "slow orders," which were addressed to "Yard Engines" at Rossford Yard, were received and copied by the Operators at Bates Tower who transmitted the orders by phone to Rossford Yard where they were allegedly copied by yardmasters and trainmasters and delivered to the yard engines to which addressed.

Rossford Yard, formerly a B&O facility, has been operated as a C&O facility since its coordination in January 1968 and its clerical force since the coordination has been covered by the C&O Agreement. The Operators at Bates Tower were not included in the 1968 coordination of Rossford Yard, because they were not covered by the Clerks Agreement at that time; thus, Bates Tower was and is a B&O facility. Trains of the B&O and the C&O operate into and out of Rossford Yard, and to and from the tracks of the TTR. Movements over the TTR are governed by train order authority and its belt trackage around the City of Toledo is used by the other railroads in Toledo to handle interchange movements between each other. Transfer crews departing Rossford Yard for other locations around Toledo had always (until this dispute) secured train order authority for these movements from the TTR Dispatcher through the Operator at Bates Tower. Because the Operator at Bates Tower controls the switches which govern the movement onto the TTR tracks just south of Rossford Yard, the B&O has considered it necessary to have the Bates Operator transmit train orders to train crews needing authority to move their trains from Rossford to other locations around Toledo. This procedure did not cause any dispute when the handling of train orders at Bates Tower was governed by Article 35 of the former Telegraphers' Agreement. However, on June 4, 1973, the current consolidated Clerk-Telegrapher Agreement became effecti and Article 35 of the Telegraphers' Agreement was supplanted by the rule in issue in this dispute, Rule 65.

The Organization states that the TTR train orders were not subject to dispute under Article 35 of the former Telegraphers' Agreement because, during the period of that Agreement's application, the involved train crews were within the confines of Bates Tower "station limits" which made it permissible for such crews to copy train orders communicated from the Tower. The Organization states further that upon adoption of Rule 65 the Carrier declared the Tower "station limits" null and void, whereupon the three-hour payment rule in Rule 65 became applicable to the copying of TTR train orders at Rossford Yard. The Carrier does not dispute that the TTR train orders were copied as alleged at Rossford by employees not covered by the Agreement, and that no qualified employee covered by the Agreement is employed at Rossford Yard. However, the Carrier says that these orders are not covered by Rule 65 because the orders were "foreign line train orders governing movements over a foreign line" and were "copied by foreign line employees;" and that the Operators at Bates Tower have been used to relay TTR train orders to crews departing Rossford as a result of a contract between the Carrier and TTR and not because of any requirement in the Agreement.

Rule 65, in pertinent part, reads as follows:

> "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.
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> "... when employees not covered by this agreement are required to copy train orders, clearance forms or block trains at a location where no qualifed 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 foregoing text does not contain any language which suggests that the TTR train orders are not intended to be covered by the text and it is concluded on the whole record that these orders are within the purview of Rule 65 of the Agreement. Bates Tower was operated as a joint office for the conduct of the business of the B&O and the TTR and the Operators at the Tower handled the TTR train orders as part of their assigned duties as

employees of the B&O. Since, as the Carrier states, the Bates Tower operator handled the TTR orders by virtue of a contract between the B&O and TTR, the TTR might well have originally possessed the right to perform all of the work relating to the orders; however, because of the contractual arrangements between the B&O and TTR, the B&O Operators at Bates Tower did in fact handle the TTR orders and the conductors, yardmasters, and trainmasters did in fact copy such orders at Rossford Yard. Also, it is immaterial that no B&O employee could be employed at Rossford Yard because the clerical force there had been under the C&O Agreement since Rossford's coordination in 1968. This consideration, self-evidently, could have been the subject of negotiation between the parties, since the coordination of Rossford occurred long before Rule 65 became effective in 1973. However, as written, Rule 65 does not provide an exception relating to this consideration and the Board is not empowered to write one. In sum, the circumstances simply do not provide any plausible basis for segregating the TTR orders from all work performed at Bates Tower by the B&O Operators, in order to find that such orders are "foreign line" orders not covered by Rule 65 of the Agreement. The Carrier-cited authorities on "foreign line" train orders have been examined and found not to be applicable to the herein facts. Common to all of these authorities, Awards Nos. 10922, 13924, and 17348, is the fact that none of the work of handling the involved train orders was performed by an employee covered by the Agreement of the complaining Organization. Here, the TTR orders were in fact handled by the B&O Operator at Bates Tower, an employee covered by the Agreement of the herein complaining Organization. Such handling was the direct result of the contract between the B&O and the TTR, and although a different fact result could have flowed from different contractual arrangements, the Agreement must be applied to the handling of the orders as evidenced by the facts which actually arose. The claims concerning the TTR train orders are accordingly found to be meritorious and they will be sustained.

The remaining issue concerns the slow orders issued by the B&O dispatcher concerning movements of yard engines in CTC territory. The Carrier cites Award No. 21124 for the proposition that train orders are not required in CTC territory, and then proceeds to argue that, since the Organization has not adduced evidence to prove that the slow orders were required to be copied, the Organization has not met its burden of proof to demonstrate that such orders were in fact copied at Rossford by the yardmasters and trainmasters. The Organization, on the other hand, argues inferentially on the basis of the Carrier's Operating Rules that the slow orders were copied at Rossford. Both parties, in treating this issue, have presented their positions with less clarity than desirable and both parties reach their ultimate conclusions by indirection. The Carrier acknowledges that speed restrictions cannot be imposed by the automatic signals that govern train movements generally in CTC territory and thus to this extent the record suggests that the disputed slow orders were in fact communicated in some manner to the crews

of the affected trains. However, the Carrier has made an evidenciary challenge on this issue and although the Carrier's overall argument is somewhat equivocal, the fact remains that the evidenciary burden rests on the Organization and not the Carrier. The Organization's citation of the Operating Rules does not constitute evidence and the record is barren of any direct evidence which establishes that the slow orders were copied by the yardmasters and trainmasters at Rossford; consequently, the claims concerning the B&O slow orders will be dismissed for failure of proof.

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 Employes involved in this dispute are respectively Carrier and Employes 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 as per opinion with respect to the train orders issued by the Toledo Terminal Railroad Train Dispatchers; otherwise the claim is dismissed on evidenciary grounds.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June 1977.