

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22046
Docket Number CL-21342

Dana E. Eischen, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7909) that:

(1) Carrier violated the Agreement between the parties, when on the dates of December 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 1973; January 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27, 1974, at various and multiple times, it caused, required and permitted employees not covered thereby to receive, repeat and deliver train orders and Clearance Form A's at Middletown Junction, Ohio, and

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

- (a) R. E. Brock - December 7, 10, 10, 11, 11, 12, 12, 13, 14, 14, 17, 17, 18, 18, 19, 19, 20, 20, 21, 21, 24, 24, 25, 26, 26, 27, 28, 31, 1973; January 1, 1, 2, 2, 2, 3, 3, 4, 4, 4, 7, 7, 7, 8, 8, 8, 9, 9, 9, 10, 10, 10, 11, 11, 14, 14, 15, 15, 15, 16, 16, 17, 17, 17, 18, 18, 18, 21, 21, 21, 22, 22, 23, 23, 23, 24, 24, 24, 25, 25 and 25, 1974.
- (b) J. A. McDaniels - December 7, 7, 8, 9, 9, 12, 13, 13, 14, 14, 15, 16, 16, 19, 19, 20, 20, 21, 21, 22, 22, 23, 23, 26, 26, 27, 27, 28, 28, 29, 29, 30, 30, 1973; January 2, 2, 3, 3, 3, 5, 5, 5, 6, 6, 6, 9, 9, 9, 10, 10, 11, 11, 11, 12, 12, 12, 13, 13, 13, 16, 16, 16, 17, 17, 17, 18, 18, 19, 19, 19, 20, 20, 20, 23, 23, 24, 24, 25, 25, 25, 26 and 26, 1974.

- (c) D. C. Waller - December 7, 8, 8, 9, 9, 10, 11, 11, 11, 12, 15, 15, 16, 17, 18, 19, 22, 22, 22, 23, 24, 24, 25, 25, 26, 28, 29, 29, 30, 31, 31, 1973; January 1, 5, 5, 6, 6, 6, 7, 7, 7, 8, 8, 8, 9, 9, 9, 12, 12, 12, 12, 13, 13, 14, 14, 14, 15, 15, 15, 15, 15, 18, 18, 19, 19, 19, 20, 21, 21, 22, 22, 22, 22, 22, 23, 26 and 27, 1974.
- (d) L. E. Prewitt - December 8, 8, 9, 10, 10, 11, 12, 13, 15, 15, 16, 16, 17, 17, 18, 18, 19, 20, 24, 26, 27, 29, 30, 31, 1973; January 3, 3, 3, 5, 5, 5, 6, 6, 7, 7, 8, 8, 8, 8, 9, 9, 10, 12, 12, 12, 13, 14, 14, 15, 16, 17, 19, 19, 20, 20, 21, 21, 22, 23, 24, 26 and 26, 1974.
- (e) D. Fugate - December 21, 23, 23, 27 and 28, 1973.
- (f) N. Woolum - December 13 and 14, 1973.
- (g) John Sullivan - December 22, 1973.

OPINION OF BOARD: This claim arose in December 1973 when Carrier initiated a new method for transmitting train orders to crews of "Hot Metal" trains operating out of the Armco Steel Company plant at Hamilton, Ohio to another plant of that Company at Middletown, Ohio. In making this movement the Armco crews operate over approximately nine miles of trackage on Carrier's Middletown Subdivision off the main line between Hamilton and Dayton, Ohio under a trackage-right agreement of several years' duration. Middletown Junction is the junction point of the Middletown Subdivision and the Armco Steel conductors receive their train orders there. No "qualified employee" covered by the controlling Agreement is employed at Middletown Junction. The nearest point where such employees are working is WR Tower (New River Junction), a telegraph office continuous seven days a week. Claimants are operators employed at WR Tower.

Effective June 4, 1973 the consolidated Clerk-Telegrapher Agreement supplanted prior separate contracts on the property. Under Article VIII of the National Mediation Agreement of February 25, 1971 many of the rules in the consolidated Agreement were "preferable" rules selected from one or the other of the antecedent contracts.

A rule which was new to the property, however, was borrowed from the Chicago and North Western/Telegrapher's Agreement and became Rule 65 of the new Agreement, replacing old Rule 35. To the extent pertinent in this case, Rule 65 reads as follows:

"RULE 65

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.

Emergencies as referred to in this rule are:

- (1) Storms, fogs, washouts, high water;
- (2) Wrecks, slides, snow blockages;
- (3) Accidents;
- (4) Failure of fixed signals or train control;
- (5) Hot boxes, engine and equipment failure, and break-in-two's;

all of which were not foreseen prior to train passing or leaving last open communicating station and which would result in serious delay to trains;

"(6) Danger to life or property requiring immediate attention.

Where an employee under this Agreement is instructed by train dispatcher or other authority to clear train or trains before going off duty, leaving clearance form or orders in some specified place for those to whom addressed, such employee shall be paid three hours at pro rata rate.

Delivering train orders will be confined to employees under this Agreement and train dispatchers."

Subsequent (and apparently prior) to adoption of Rule 65 and through December 6, 1973 the procedure by which Armco crews received their train orders from Carrier operators was as follows: 1) Armco Conductors at Middletown Junction telephoned the Operator at North Excello, Ohio (8.9 miles north), reported crew sign-up and engine information, and requested train orders and clearances to operate over the Middletown Subdivision; 2) the Operator at North Excello secured train orders and clearance forms from the Dispatcher at Dayton, Ohio; 3) the Operator at North Excello relayed the train order and clearance forms over the telephone to the Armco Conductor; 4) the Armco Conductor copied manually the train orders and clearance forms and then repeated same for verification to the Operator; 5) the Armco Conductor distributed the copied orders to the Engineer and the movement was executed. From the time Rule 65 became effective until December 7, 1973 the Operators at WR Tower were paid three (3) hours at the pro rata rate on claims filed account of the foregoing procedure.

Effective December 7, 1973 the procedure was changed by Carrier with the installation at New River Junction (WR Tower) and at Middletown Junction (the Armco Plant) of machines known as DEX Communicators. The DEX machines use normal telephone lines to transmit and/or receive electrostatic images of documents. A base machine capable of sending or receiving was set up at New River Junction and one which only received was installed at the Armco plant office. Thereafter a new procedure was established pursuant to instructions issued by the Chief Dispatcher. On and after December 7, 1973 the procedure has been as follows: 1) the Armco Conductor at Middletown Junction telephones the Operator at New River Junction, reports crew sign-up information and requests train orders and clearance to operate over the Middletown Subdivision;

2) the Operator at New River Junction secures train orders from the Dispatcher at Dayton, Ohio; 3) the Operator at New River Junction places the train orders he has just copied from the Dispatcher into the DEX Machine, activates the machine and two copies of the train order are transmitted over the telephone wires to the DEX machine at Middletown Junction; 4) the Armco Conductor removes the facsimile copies of the train orders from the DEX machine, reads and repeats the train orders for verification to the Operator at New River Junction; 5) upon verification of the train orders the Operator secures clearance Card Forms A from the Dispatcher and transmits same via the DEX to the Armco Conductor who removes the copies from his DEX receiver and repeats the clearance forms for verification to the Operator; 6) the Armco Conductor shares the orders and clearance forms with the Engineer and the movement is executed.

Since the inception of the new procedure Carrier has declined to pay the Operator at New River Junction the three (3) hours pro rata payment formerly made pursuant to Rule 65 under the old procedure. The instant claims were filed subsequently alleging violations of Rules 1, 65 and 67 of the June 4, 1973 Agreement. In later handling the General Chairman cited, in addition to those rules, Rule 18. The claims were denied at all levels of handling and come to us for final disposition.

Careful study of the record persuades us that Rule 65 is at the crux of this dispute and it alone constitutes even a colorable basis for the claims of three (3) hours at pro rata rate. Rule 1 is a general Scope Rule and standing alone provides no contractual base for the claims. Rule 18 goes to use of new machines or mechanical devices to perform work coming within the Scope of the Agreement and requires operation of same by employees covered by the Agreement. The Organization has not proven that anybody other than the Operator at New River Junction operates the DEX machines and accordingly no support for the claims may be found in Rule 18. Nor can Rule 67 be relied upon since in express terms it is nonapplicable to the instant dispute by its last sentence: "None of the foregoing applies to the handling of train orders or Forms A or any communication with a train dispatcher." Accordingly, the claims must rise or fall solely with reference to Rule 65.

Middletown Junction, the locus of the alleged violation, is a station at which no employee qualified under the Agreement is employed.

Therefore, Paragraph 2 of Rule 65 governs this case. Since there is no suggestion of "emergency" in the record the sole question presented with respect to Paragraph 2 is whether under the DEX procedure the Armco Conductor copied train orders or clearance forms. Also relied upon by the Organization is Paragraph 4 of Rule 65 which reads as follows: "Delivering train orders will be confined to employees under this Agreement and train dispatchers." Thus the other question presented in this case is whether under the DEX procedure the Armco Conductor delivered train orders.

Turning to the "delivery" aspect of the case we have reviewed the substantial body of antecedent awards presented by each of the parties as precedent. For the most part the parties argue by analogy from the authorities cited. Thus the Organization, relying upon a substantial number of Awards, contends that the DEX system is a modern-age equivalent of leaving a train order in a box to pick up after the operator is off duty. The problem with this argument by indirection is that Paragraph 4 of Rule 65 is not the "standard train order rule." Its language is more precise in that it speaks to "delivering" rather than "handling" and, Paragraph 3 of Rule 65 speaks directly to the point raised by the Organization so there is no justification to expand Paragraph 4 by inference in that respect. For its part the Carrier likens the "delivering" via the DEX machine to "delivery" in the pneumatic tube cases, all of which have denied the claims insofar as our record shows. See P.L. Bd. No. 193, Award No. 29; S.B.A. No. 305, Award No. 30; Award No. 13244. Aside from these analogies there is one antecedent Award which deals directly with the technology which we face herein. In holding that telecopier transmission of clearance forms and train orders by an Operator to a Conductor was not violative of employees' Agreement rights, Public Law Board No. 352 construed a "standard" train order rule which, if anything, lent more support to the Organization's position than would Paragraph 4 of Rule 65. In its Award No. 61, P.L. Bd. No. 352 stated in pertinent part as follows:

"Under the new procedure, the orders and forms are not delivered manually to the crews but are transmitted over the 2 1/3 mile intervening distance by the operator by means of a telecopier which was placed in the Tower beginning February 18, 1970. The operator in the Tower places his telephone in the cradle provided on the telecopier and inserts the clearance forms and train orders into its transmitter. Exact copies of these

"documents are then reproduced on the Receiver located in the Gentilly Yard office. The conductor acknowledges receipt and the operator notes that the documents have been delivered.

While there is no question but that the new process is economically and operationally desirable from Carrier's standpoint, the critical issue is whether or not it is compatible with Carrier's contractual commitments and trespasses on Telegraphers' rights.

In considering the question, several factors are persuasive. First, neither the Agreement nor any compelling evidence of established past practice on this property indicates that orders and clearances must in all cases be delivered manually by operators to crews. Second, the transmission involved flows directly from operator to conductor and no other craft or class intervenes. Third, no operator positions have been decreased because of the change in controversy, nor have any other crafts positions been increased as a result of that change. Fourth, the new procedure is practical and sensible from economic and operational standpoints.

Since all of the above factors are present here, no persuasive ground is perceived for sustaining the claim and requiring Carrier to transport crews 2 1/3 miles from Gentilly to the Tower to receive orders when the new procedure makes that course unnecessary and flagrantly uneconomical in terms of time and money. A different conclusion would be reached, however, if a dispatcher or clerk or any non-telegrapher transmitted or delivered the orders to conductors or in any way interfered with the direct flow of such communications from the operator to conductors.

The operator is still effectively handling train orders and delivering them to the crews, and conductors are not playing any appreciably greater role in the process than they formerly did.

We are not unmindful that, in considering the standard train order rule, the type now before us, many awards have held that "handling" contemplates "personal delivery."

"See, e.g., Third Division Awards 709, 2926 and 16616. Nevertheless, after carefully analyzing the situation, we are convinced that the conclusion we have reached is the correct one under the specific circumstances of this case. The new procedure does not undermine the parties' Agreement nor deprive telegraphers of work opportunities they previously possessed.

The claim will be denied. See Public Law Board No. 193 Award 29 and Third Division Award 13244 which upheld new procedures (delivery by pneumatic tube) where the flow between the operator and addressee was not interrupted."

Relying upon Public Law Board No. 352, Award No. 61, and rejecting the Organization's analogy to the "waybill box cases" we find no violation of Paragraph 4, of Rule 65 by the New River Junction operator using the telecopier to send train orders and clearance forms and the Conductor simply picking same up from the DEX receiver. Nor do we find persuasive the suggestion that the Conductor violates the proscription on delivery when he gives to his Engineer a copy of the orders. See S.B.A. No. 506, Award No. 12.

The only question remaining is whether the Armco Conductor under the DEX system "copies" train orders or clearance forms in contravention of Rule 65, Paragraph 2. Both before and after the introduction of the DEX equipment the Conductor repeated and verified the orders and forms with the Operator but this is not "copying." When used as a verb the word "copy" means to make an imitation of an original (piece of writing); to reproduce; to transcribe. Before the DEX machines the Conductor manually reproduced or transcribed the orders read to him by the Operator over the phone, i.e., he "copied" the orders. Under the DEX system the DEX transmitter operated by the New River Junction Operator "speaks" to the DEX receiver over the phone lines and the receiving machine copies the orders producing a facsimile which the Conductor merely picks up. By no stretch of the language or the imagination can we say that the Conductor is still copying the orders. That function which he formerly performed and which constituted the basis for the Rule 65 three-hour payments has been removed from him and is now performed by the DEX machine. So far as we can see, therefore, no "employee not covered by the Agreement" is copying train orders or clearance forms and consequently there is no violation of Rule 65, Paragraph 2. 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 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1978.