NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24863

THIRD DIVISION

Docket Number CL-24012

Herbert Fishgold, 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-9387) that:

(1) Carrier violated, and continues to violate, the Clerk-Telegrapher Agreement when, on July 9, 1977, and continuing, it requires and permits Yardmasters, employees not covered thereby, to perform clerical work around-the-clock seven (7) days per week, including the tearing off of reports of cars from teletype receiving units installed and in operation at Seawall and Stonehouse Cove Yards, Curtis Bay, Baltimore, Maryland, and

(2) Carrier shall, as a result, compensate the listed clerical employees at Baltimore, Maryland, each, eight (8) hours' pay for the shifts shown, seven days per week, commencing July 9, 1977, and continuing for so long as the violation exists:

Seawall Yard	Stonehouse Cove Yard
7:00 AM - 3:00 PM - C.E.Sturdivant	7:00 AM - 3:00 PM - A.A.Womack
3:00 PM - 11:00 PM - R.C.Conrad	3:00 PM - 11:00 PM - R.T.Carletti
11:00 PM - 7:00 AM - R.H.Lee	11:00 PM - 7:00 AM - J.L.Darden

OPINION OF BOARD: This dispute, one of six involving the same issue between the parties, concerns the Carrier's right to permit Yardmasters to "tear off" a list of freight cars, a "switch list," from a receiving machine following transmittal by use of telecommunications printers at Baltimore, Maryland.

By way of background, on July 1, 1977, Carrier established a Terminal Service Center at Baltimore, Maryland. Claimants had been assigned to positions in Curtis Bay Yard at locations known locally as Seawall and Stonehouse Cove prior to the movement of their work to the new Data Center on July 1, 1977. Effective close of business July 8, 1977, all clerical position at Seawall and Stonehouse Yards, Curtis Bay, Baltimore, Maryland were abolished. A Kleinschmidt communication receiving machine was put in both yards, and assigned operation to Yardmasters.

The organization contends that by so doing, the Carrier is causing and permitting employees not covered by the Clerks-Telegraphers Agreement to operate such communication receiving devices, including the work of removing (tearing off) and separating message reports of cars from such devices.

The dispute involves the parties' Scope Rule and Rule 67, Printing and Telegraph Machines. Claims that the Yardmaster's tearing off the list and separating the copies violated Rule 67 began to be received on all Carrier's properties. Since the dispute could not be resolved on the property, the Organization processed a December 1975 claim in the Cincinnati yard office and presented it to this Board for adjudication. The Board sustained the claim in Award 22912 (Kasher) which, however, reduced the claim of eight hours pay "for work that took just a few seconds to perform" to a three-hour call.

Thereafter, this Board, with this Referee sitting, in Award 24861 - the first of the six pending disputes involving the same issue - after reviewing Award 22912 and the contracts, arguments and facts in Award 24861, concluded that the opinion reached in Award 22912 was correct. In so doing, this Board determined that, contrary to the Carrier's argument, Article 36 was not adopted unchanged in Rule 67 as regards the issue in dispute, and that read in the context of Rule 75, "the express and ambiguous language of Rule 67, with no stated exception comporting with the Carrier's argument," does not allow Yardmasters to "tear-off" and/or "separate" switch lists.

Having found the claims to be sustained, this Board next addressed the question of appropriate remedy. In agreeing with Referee Kasher's remedy of three-hour call pay in Award 22912, this Board noted that while "some may regard such payment as excessive,"

> "...the clear meaning of language may be enforced even though the results are harsh or contrary to the original expectations of one of the parties. In such cases, the result is based upon the clear language of the contract, not upon the equities involved."

Continuity in the interpretation of contract rules is highly desirable, and such interpretations should not be overruled without strong and compelling reasons. There is nothing presented in the consideration of the instant decision which in any meaningful way can serve to distinguish the rationale of the decision in this dispute from that in Award 22912 since it involves interpretation of contract language. The parties are the same, the agreement is the same, and the facts are virtually identical. Having assessed the intent of the parties as evidenced by the contract language, we conclude that the opinion reached in Award 22912, as confirmed in Award 24861, is the correct one.

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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1984