Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37560
Docket No. CL-37582
05-3-02-3-646

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-12942) that:

I. "Claim of the System Committee of the TCU (CN01/1122) that:

a) The Carrier violated the terms of the Clerks' National Agreement dated April 15, 1986, specifically Direct Train Control and other Rules, when on March 27, 28 and 29, 2001, Carrier abolished Tower positions at Hohman Tower and failed to provide Direct Train Control benefits to the affected employees.

b) Claimants W. E. Doeing, E. Guerrero, F. A. Ochs, B. D. Philips and all other employees subsequently affected by the abolishment and subsequent exercise of seniority due to the closing of Hohman Tower, now be provided the election of DTC benefits beginning: Doeing 3/28/01, Guerrero 3/29/01, Ochs 3/28/01, Philips 3/27/01, ("and others" will be determined at a later date) as outlined in Article IV, of the 1986 Clerks National Contract.

II. "Claim of the System Committee of the TCU (CN01/1041) that:

a) The Carrier violated the terms of the Clerks' National Agreement dated April 15, 1986, specifically Direct Train Control and other Rules, when on November 21, 2000, Carrier abolished Tower positions at West Cumbo Tower, and failed to provide DTC benefits to the affected employees.

b) Claimants C. P. Kief, L. E. Lee, R. L. Wilson, J. Vargo, R. V. Campbell and all other employees subsequently affected by the abolishment and subsequent exercise of seniority due to the closing of West Cumbo Tower, now be provided the election of DTC benefits beginning November 21, 2000, as outlined in Article IV, of the 1986 Clerks National Contract. (CN 1041)

III. Claim of the System Committee of the TCU (CN01/1042) that:

a) The Carrier violated the terms of the Clerks' National Agreement dated April 15, 1986, specifically Direct Train Control and other Rules, when on September 24, 2000, Carrier abolished Tower positions at Miller Tower, and failed to provide DTC benefits to the affected employees.

b) Claimants J. Vargo, A. R. Brougham, B. S. Weller, R. V. Campbell and all other employees subsequently affected by the abolishment and subsequent exercise of seniority due to the closing of Miller Tower, now be provided the election of DTC benefits beginning September 24, 2000, as outlined in Article IV, of the 1986 Clerks National Contract.

IV. Claim of the System Committee of the TCU (CN01/1043) that:

a) The Carrier violated the terms of the Clerks' National Agreement dated April 15, 1986, specifically Direct Train Control and other Rules, when on October 22, 2000, Carrier abolished Tower positions at Miller Tower, and failed to provide DTC benefits to the affected employees.

b) Claimants G. E. Speis, W. R. Beall, D. A. Mentzer and all other employees subsequently affected by the abolishment and subsequent exercise of seniority due to the closing of Miller Tower, now be provided the election of DTC benefits beginning October 22, 2000, as outlined in Article IV, of the 1986 Clerks National Contract."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

As background, on July 23, 1998, CSXT and the Norfolk and Southern Railway Company received a formal decision from the Surface Transportation Board (STB) approving their acquisition and division of Conrail. In its Decision, the STB imposed conditions for the protection of affected employees as set forth in the 1979 New York Dock case (360 ICC 60). The claims presented in this case arose

from the closing of three of the Carrier's towers: Hohman Tower in Hammond, Indiana; West Cumbo in Tower, Martinsburg, West Virginia; and Miller Tower in Hedgesville, West Virginia. As part of the closing of those towers, the Carrier abolished the positions cited in the foregoing claims.

On April 19, 2001, following discussion of these matters by the parties, the Organization elaborated on its request for protection for the employees affected, as provided under Section 2 of Article IV – Direct Train Control, of the April 15, 1986 National Agreement. The language of that Article reads as follows:

"ARTICLE IV – DIRECT TRAIN CONTROL

The purpose of this Article is to provide the terms and conditions under which a carrier may implement procedures for the direct control of train movements and/or related rail operations.

Section 1 – Implementation

(a) When a carrier determines to implement the direct control of train movements and/or related rail operations without the involvement of a BRAC [TCU]-represented employee, it will give not less than forty-five (45) days' written notice, specifying the territory to be governed and the effective date of implementation, to the General Chairman and to the employees who will be affected thereby by posting such notice on accessible bulletin boards.

(b) In the application of Section 1(a) it is understood that the provisions for handling communications (train orders, communications of record, lineups, block or report trains, receive or forward written messages, etc.) contained in the various rules or practices under the BRAC collectively bargained agreements will not apply in the territory designated as direct train control territory. Such rules or practices shall continue to apply on territory not so designated as direct train control territory.

Section 2 – Protection

(a) An employee who has seniority as of the date of this Agreement whose job is abolished or who is displaced as a result of the implementation of direct train control, will be granted protection for a six (6) year period not to exceed the employee's years of service, in accordance with the New York Dock Conditions prescribed by the I.C.C. in certain railroad transactions except that there will be no requirement for an implementing agreement. An employee who is subject to an employee protective agreement or arrangement will have the option of electing to keep the protective agreement or arrangement in effect or to accept the protection provided herein. Such election must be made within thirty (30) days of the date the employee's job is abolished or the employee is displaced. If the employee elects the protection provided herein, then at the expiration of such period he shall revert to and be covered by the preexisting employee protective agreement or arrangement, provided he still maintains an employment relationship at that time.

(b) During the first six (6) months following implementation of direct train control in a specific territory, if a protected employee described in Section 2(a) hereof, who has elected the protection provided herein, is unable to secure a position not requiring a change in residence through the exercise of seniority under existing agreements, such employee may be offered a position in the clerical craft at the nearest location where carrier can productively use his services. Such employee shall be given thirty (30) days written notice of such offer, copy to the General Chairman, and must elect one of the following options prior to the expiration of the notice:

(i) To accept the offer,

(ii) Resign from all service and accept a lump sum payment computed in accordance with Section 9 of the Washington Job

Protection Agreement of May 1936 at the daily rate of the position to which assigned, or his protected rate, whichever is higher*, or

(iii) To be furloughed with a suspension of protective benefits during the furlough.

In the event an employee fails to make such an election, he shall be considered to have exercised option (3). Employees accepting a job offer that requires a change of residence will be entitled to the benefits provided in Article I, Sections 9 and 12 of the New York Dock Conditions or such benefits as may exist in the collective agreement or arrangement in effect on the involved carrier provided there is no duplication. Employees who transfer to another seniority district under the provisions of this Agreement will have their seniority dovetailed into the appropriate roster.

*Note: If an employee requests separation pay under the above provisions he shall be paid within thirty (30) days of the termination of employment and such payment will be in addition to any vacation and sick leave allowances due the employee as of the date of his separation. Seventeen (17) months union dues will be deducted from the separation payment.

(c) The following change of residence definition shall apply:

A 'change of residence' as referred to herein shall only be considered 'required' if the new reporting point of the employee would be more than thirty (30) normal highway miles via the most direct route from the employee's point of employment at the time affected, and the new reporting point is further from the employee's residence than his former point of employment.

(d) In the event it becomes necessary to create a clerical position to assist train dispatchers in the handling of clerical work associated with direct train control, such newly created position will

be subject to and covered by the existing agreement in effect between the individual railroad and BRAC.

Section 3 – Savings Provision

(a) Nothing in this Article is intended to restrict any of the existing rights of a carrier.

(b) This Article shall become effective 15 days after the date of this Agreement except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representative on or before such effective date. On those carriers where Direct Train Control agreements are in effect as of the date of this Agreement, such agreements shall remain in effect unless or until changed or modified by the parties thereto."

The Organization also cited Award 69 of Special Board of Adjustment No. 1011 involving TCU and Conrail. It disputed the Carrier's assertion at the claims conference that Award 69 formed a basis for denial of protection under Direct Train Control. The Organization contended "Award 69 addressed a period of time late 1986, in which no territory on the former Conrail System had been Direct Train Controlled." Specifically, the Organization provided copies of 1992 Notices that Conrail would, in fact, implement the provisions of Article IV – Direct Train Control on all Carrier lines effective September 17, 1992.

In its June 26, 2001 response to the Organization's April 19, 2001 letter, the Carrier pointed out that Article IV contained a "savings clause" (above) which provides that "[n]othing in this Article is intended to restrict any of the existing rights of a carrier." The Carrier maintained that this provision recognized the right of the Carrier "to apply pre-existing agreements and/or arrangements rather than implement the direct train control provision provided for therein." It further stated that in the instant claims, "the Carrier exercised this right and chose not to implement the 1986 direct control provision because such action was already permissible under the CSXT North Agreement."

In support of that position, the Carrier pointed to Rule 63 of the former Conrail Agreement, and insisted that there is no prohibition against Train Dispatchers communicating directly with trains. Section (a) of Rule 63 reads as follows:

> "(a) No employees other than covered by this Agreement and Train Dispatchers will be permitted to handle train orders except in cases of emergency."

Moreover, the Carrier disputed the Organization's claim that, despite the holdings of Award 69 of Special Board of Adjustment No. 1011, the Carrier had previously implemented the provisions of Article IV – Direct Train Control on its lines. The Carrier first countered that when it acquired Conrail, it did not carry over any Agreements, or commitments, that required it to implement the 1986 Direct Train Control provisions of the National Agreement on certain portions of the former Conrail property.

The Carrier added as well:

> "Moreover, and more importantly, the correspondence you rely on in support of your position was dated 1992. Award 69 of PLB 1011 was issued on December 2, 1994 – two years later. The validity of the Carrier's position is plainly apparent from the fact that there have been no locations on the former Conrail property where the direct train control provision of the 1986 Agreement has been implemented since Award 69 was rendered. Consequently, [we] know of no basis on which to afford employees DTC protection in these cases."

In its response, dated October 3, 2001, the Organization disagreed with the Carrier and cited the following three reasons:

> "Reason 1 – the CSX North Agreement, a combination of Agreements, did not exist in 1986, it was negotiated in 1999 and applied (with certain restraints) on the former B&O, C&O, and CR properties via the CR Implementing Agreement;

Reason 2 – CSXT chose to implement DTC throughout its operating divisions in 1986, as was its right, thereby modifying existing Train Handling Rules, changes in CBA applications which the Carrier has enjoyed since 1986; and

Reason 3 – the 'savings clause' you cite requires CSXT to notify the authorized employee representatives of its choice to preserve existing rules within 15 days after the signing of the 1986 National Agreement (see Article IV, Section 3, as well as Article V & VI all contain the savings clause). Without the prompt notification under the savings clause, DTC was contractually applied as mandated by the 1986 National Agreement."

In addition, the Organization quoted Article V, Sections 2 and 3 of the November 2, 1998 Conrail Implementing Agreement. The parts quoted by the Organization read as follows:

"Section 2 - . . . the substitution of the CSXT-North Agreement for the C&O/B&O agreements will not be construed to permit the removal of work that was covered by the C&O/B&O scope rules. . . .

Section 3 - . . . it is understood that all work performed by employees at such B&O locations on the date that the CSXT-North CBA is implemented shall become vested with the employees under the scope rule of the CSXT-North CBA and may not subsequently be removed except by agreement with the General Chairman."

Further, the Organization proposed, Rule 65, Section (a) of the B&O Agreement vested the work of handling train orders and other documents associated with the movement of trains to the employees represented by TCU. The Organization maintained that Article V of the parties' Conrail Implementing Agreement recognized the fact that certain work might be performed on the B&O that was not previously performed under the "positions and work" scope rule of the pre-1999 Conrail Agreement.

According to the Organization, Article V of the Conrail Implementing Agreement expressly prohibits the removal of B&O protected work from the employees except by agreement between the parties. Thus, it argued, controlling in this matter are the Conrail Implementing Agreement, the B&O Agreement and the Carrier's choice to implement DTC on its system in 1986.

The Carrier responded to the Organization's letter of October 3, 2001 on October 24, 2001. In that response, the Carrier noted that the Organization admitted that Rule 63 gave the Carrier the right to have Train Dispatchers directly control the movement of trains by voice transmission, train order or other approved means. Thus, the Carrier insisted, the Organization acknowledged that at locations where Rule 63 of the North Agreement is in effect, Article IV of the TCU 1986 Agreement is not applicable.

Moreover, the Carrier pointed out that, if read to its final sentence, Section (a) of Rule 65 of the former B&O Agreement states: "This Rule does not apply to Train Dispatchers performing such duties at/or in the vicinity of the Dispatchers' Office in the normal course of their regular duties." The Carrier also noted that Section (d) of that Rule reads: "Delivering train orders will be confined to employees under this Agreement and train dispatchers." Thus, the Carrier insisted, handling train orders directly with trains under the former B&O Agreement is shared work, not exclusively reserved to employees in the clerical craft.

Finally, the Carrier pointed out that Section 3 of the Conrail Implementing Agreement provides that because the B&O Agreement contained a general Scope Rule, all work performed by employees at B&O locations would be placed under the CSXT North Agreement and become vested with the employees under the Scope Rule of the CSXT North Agreement. In support of its position on this point, the Carrier quoted Article V, Section 3 of the Conrail Implementing Agreement, which reads as follows:

> "In the case of the B&O CBA (which contained a 'general' scope rule) being replaced by the CSXT-North CBA (which contains a 'positions and work' scope rule), it is understood that all work performed by employees at such B&O locations on the date that the CSXT-North CBA is implemented shall become vested with

employees under the scope rule of the CSXT-North CBA and may not subsequently be removed except by agreement with the General Chairman."

The Carrier concluded that under the scope of the CSXT-North Agreement, it does "not have any obligation to implement the direct train control provision of the TCU 1986 National Agreement prior to closing a tower," because under Rule 63 Train Dispatchers may also handle train orders. Further, the Carrier maintained that the "middleman" Tower Operator functions were merely eliminated; an issue that, the Carrier insisted, "was settled by Special Board of Adjustment No. 1011, in Award 69, dated December 2, 1994," in which the Board held that the Carrier "had the right to implement direct train control under the Conrail Schedule Agreement (Rule 63)."

Correspondence continued between the parties well into the following year, with neither party varying from its position. It was ultimately properly docketed for disposition.

The Board reviewed the voluminous record in this case. The essence of the controversy centers on whether the Carrier, now with ownership of portions of former Conrail property (CSXT-North) is bound by the 1986 National Agreement, specifically Article IV – Direct Train Control, with respect to the closing of the towers at issue and consequent job abolishments. The Carrier pointed out, without contradiction, that, "there have been no locations on the former Conrail property where the direct train control provision of the 1986 Agreement has been implemented since Award 69 was rendered."

The Organization's reliance on the "savings clause" of Article IV, which it argues "requires CSXT to notify the authorized employee representatives of its choice to preserve existing rules within 15 days after the signing of the 1986 National Agreement (see Article IV, Section 3, as well as Article V & VI all contain the savings clause) defies the facts of the root source of the current dispute – the Carrier's absorption of the properties now governed by the CSXT-North Agreement. The Organization insists that because the Carrier did not make "the prompt notification under the savings clause," DTC was contractually applied to CSXT-North as mandated by the 1986 National Agreement. Because CSXT had not

absorbed, nor perhaps even contemplated absorption of, the properties now constituting CSXT-North, it could not possibly have given notice on those properties in accordance with the savings clause.

The Board must, therefore look for guidance to the Conrail Implementing Agreement. As noted by the Board in Award 69 of Public Law Board No. 1011:

> ". . . the dispute in this case turns upon the question of whether under existing agreements other than the National Agreement the Carrier's actions contested by the Organization . . . were proper."

Both Rule 63 of the CSXT - North Agreement and Section 3(a) of Rule 65 of the B&O Agreement permit the Carrier to use Train Dispatchers to directly control the movement of trains. Moreover, the Organization has not provided any evidence to counter the Carrier's assertion that the work previously performed at the towers in question has disappeared.

At bottom line, the Board finds that under the Conrail Implementing Agreement and precedent Agreements absorbed therein, the Carrier is not bound by Article IV – Direct Train Control of the National Agreement. Thus, the claims must be denied in their entirety.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 20th day of July 2005.

LABOR MEMBER'S DISSENT TO
THIRD DIVISION, AWARD NO. 37560
Referee Elizabeth C. Wesman

With the rendering of the Arbitrator's decision in the instant case a dissenting opinion is required. This dissent is made necessary because the decision found in Award No. 37560 rests upon a basic misconception and misinterpretation of Article IV – Direct Train Control (DTC) of the 1986 National Clerical Agreement. Direct Train Control (DTC) provides for portions of a railroad to be divided into sections. Trains are authorized to enter and occupy these sections directly from the authority of the dispatcher. These sections are called DTC Blocks and defined by the Operating Rules as a length of track of defined limits, whose use is governed by verbal authority of a control station and not requiring train order authority.

The underlying misconception of the interaction of DTC operations with the boilerplate language found in all clerical agreements pertaining to the handling of train orders is made evident when Referee Wesman states:

> *Both Rule 63 of the CSXT - North Agreement and Section 3(a) of Rule 65 of the B&O Agreement permit the Carrier to use Train Dispatchers to directly control the movement of trains. Moreover, the Organization has not provided any evidence to counter the Carrier's assertion that the work previously performed at the towers in question has disappeared.*

We note the boilerplate language of Rules 63 and 65 may be found in all of our clerical collective bargaining agreements (CBA) and for good reason. Article VIII – Consolidation of Clerk-Telegrapher Work of the 1971 National Clerical Agreement provided carriers the ability to make work assignments interchangeable between Clerks and Telegraphers. Additionally, the separate Scope Rules of the Clerks and Telegraphers agreements became jointly applicable to all Clerks and Telegraphers.[1]

With all signatory carriers exercising the option provided by Article VIII, CBAs were consolidated along with the work of Clerks and Telegraphers (Operators). Certain telegrapher rules – such as Rules 63 and 65 – were placed in the revised merged CBAs and you will find them present in all active clerical CBAs to this date.[2]

On April 4, 1984 the National Railway Labor Conference served its Section 6 notice on this Organization to change and revise existing Clerical Agreements relative to wages, health and welfare, and work rules. Part II – Rules of this Section 6 notice sought to revise or eliminate existing rules and practices which placed "*Restrictions on handling*

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[1] The Transportation•Communications Employees Union (Telegraphers) merged with the Brotherhood of Railway and Airline Clerks (BRAC) in 1969. BRAC changed its name to the Transportation•Communications International Union (TCU) in 1987.

[2] See for instance Rule 41 of the C&O CBA and Rule 64 of the SCL CBA – 2 component Clerical Agreements of CSXT.

communications and operating any traffic control devices or communications devices."[3]

This new "voice control" of trains control sought to eliminate the restrictions on dispatchers directly dealing with train crews. Importantly, no carrier had the ability under applicable Scope Rules and work rules to bypass an operator and permit a train dispatcher to issue train orders to crews on line-of-road.

The end result of the carriers' notice was Article IV of the 1986 Agreement (DTC), which provided that various provisions *"for handling communications (train orders, communications of record, lineups, block or report trains, receive or forward written messages, etc.) contained in the various rules or practices under the BRAC collectively bargained agreement will not apply in the territory designated as direct train control territory."*

First, for the purpose of our discussion, the implication of the carriers' 1984 Section 6 notice and the resultant inclusion of DTC in the National Clerical Agreement speaks volumes. Clearly, prior to the 1986 National Agreement, carriers did not have the ability to bypass the telegrapher–operator in the issuance of train orders and messages of record in spite of what the Referee has implied in the instant dispute.[4]

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[3] Importantly, railroads that consequently when into reorganization and became Conrail and thereafter a portion of CSXT were:

Ann Arbor Railroad Company (AA)
Central Railroad Company of New Jersey (CNJ)
Chicago River & Indiana Railroad (CRI)
Erie-Lackawanna Railroad Company (EL)
Lehigh and Hudson River Railway Company (LHR)
Lehigh Valley Railroad Company (LV)
Lehigh and New England Railroad Company (LNE)
Pennsylvania-Reading Seashore Lines (PRSL)
Pennsylvania-New York Central Transportation Company
(Penn Central Transportation Company)
Reading Railroad Company

Each of these railroads were represented by the Carriers' Conference Committees in 1970/71 and are signatory to the Feb. 25, 1971 National Clerical Agreement (Case No. A-8853, Sub-No. 1).

[4] During this same period of time carriers were successful in negotiating an agreement with the UTU that allowed Conductors and Brakemen to copy train orders and/or voice dispatching instructions governing the movement of trains without having to pay the train crew an arbitrary payment for receiving direct from the Dispatcher voice dispatching instructions governing the movement of trains. Section 2 of the agreement stated: *"Conductors and brakemen may be required to copy train orders and/or voice dispatching instructions governing the movement of trains by any means of communications."*

Secondly, prior to DTC, direct communications between a Train Dispatcher and a crew was a clear violation of the CBA. Numerous Awards dealing with this interchange without telegrapher/operator involvement have universally held for the employees by awarding remedial compensation.[5] Back in 1984 the Carrier' Conference Committee was well aware of this fact and the negotiated relief from these restrictive work rules was DTC entitlement. Historic arbitral decisions dealing with the work rule restriction are:

Third Division Award No. 12623 (Dolnick) – "*If Carrier is permitted to use employees other than those covered by Telegrapher's Agreement to transmit communications of record whether by telegraph, telephone, or other means, then the fundamental purpose of the Agreement is nullified... Carrier may acquire the right to use such employees only by modification and amendment to the Agreement arrived at through collective bargaining 'as provided by the Railway Labor Act.'*"

Special Board of Adjustment No. 553 Award No. 43 (Ray) – "*...it is noted that the Union has taken the position in other cases on this property that the telegrapher with radio facilities should be the relay man between the party issuing or receiving the information and the train crew involved and to us this seems a reasonable proposition. The claim is sustained for one call payment...*"

Also, Award No. 56 of this same Board examined ten claims involving direct communication between the dispatcher and train crew. Referee Ray held: "*While none of these communications were train orders in the strict language of Rule 29(c), since they were not copied, they undoubtedly related to and affected the movement of trains...Before the advent of the radio-telephone, the instructions would have certainly have been issued to a Telegrapher who would transmitted them to the train crew. We hold, therefore, that the direct transmission of these messages by the dispatcher, violated the Agreement.*"

These are but a few of the seminal decisions interpreting craft right to the work of transmitting train orders and messages of record. Again, brought down to its logical application – DTC effectively abrogated the historic rights of TCU-represented Operators to issue train orders in exchange for its benefits. This relationship makes the observation that "*the work previously performed at the towers in question has disappeared*" inherently obvious.

It can be said without contradiction -- the 1986 National Clerical Agreement provided for the abrogation of CBA rules pertaining to train order handling by TCU represented employees conditional on application of DTC. As such, the abolishment of operators' assignments because of this abrogation or "*disappearance*" of our work triggered DTC – the two go hand-in-hand.

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[5] B&O Rule 65 (b) provides for a 3-hour payment "*when employees not covered by the CBA are required to copy train orders, clearance forms, authorities for motor car movements, secure line-up or train location report information or block trains at a location where no qualified employee covered by this Agreement is employed...*" This is precisely the restriction and penalty that implementation of DTC eliminated in exchange for a limited protective entitlement. Similarly, CSX North Rule 63 provides for a "call" penalty payment when an employee not covered by the Agreement copies a train order.

Cited to the Referee was the on-property decision of Public Law Board No. 5353, Award No. 2 (Exhibit F-1) wherein it was observed:

> *When Article IV of the 1986 Agreement was applied, as outlined by the company's May, 1986 Notice to the General Chairman at Richmond, the company was exercising a new privilege, recently obtained, to abrogate the jurisdictional rights which this craft had held over the work of the type which it had formerly possessed because of Rule 41 of the General Agreement. With the implementation of Article IV by the company the Clerks' craft lost work. Such is factually indisputable. There is simply no way of getting around such conclusion. The implementation of Article IV chipped away at some major functions of members of his craft at the locations in question. Without Article IV, the company would have been in potential violation of Rule 41 when it took work of the type at bar here away from the craft. Under the shield of Article IV of the 1986 Agreement it ran no such risk.* ***Such conclusion has the support of both logic and arbitral precedent.*** *In fact, when this craft filed a Rule 41 grievance against the company to test these waters in 1988, after implementation of Article IV in 1986 because of union concerns about the incremental removal of work from it jurisdiction...with no potential pay-off in sight for the quid pro quo it had agreed to in the 1986 Agreement when Article IV was negotiated, the company immediately, and at that point correctly, protected itself behind the shield of Article IV in order to defend its rights. It is true, as the record supports, that* ***the company then abandoned this argument when the positions from which the work had been removed, because of application of Article IV, were later abolished.*** *Then the company argued on the grounds of technological change and signal automation.* [Bold applied]

Nothing in the Carrier's argument in the instant case deviates from the observation made by PLB 5343 back in 1993. The facts are relatively the same with a minor change in the Carrier's argument from technological change to a "*saving clause*" in the 1986 Agreement. Award No. 37560 makes no reasonable connection between the 1986 implementation of DTC on the former B&O and Conrail properties with all the ancillary benefits reaped by the Carrier and today's tactical change in argument involving a second chance at the saving clause. That connection would be too elemental for the complex analytical decision offered in the name of sensibility.

Most troubling of all is the Referee's judgement that the CR Implementing Agreement and precedent Agreements absorbed therein provide the Carrier with some excuse not to honor it commitment to Article VI of the 1986 National Clerical Agreement. Taking this sort of dicta to its logical conclusion, the question arises as to what makes the Carrier apply any of the other elements of the 1986 Agreement to the workplace? Surely if it can be relieved of one portion of the 1986 Agreement, then it may also be relieved of others. The inference or suggestion of such is not only illogical, but contrary to far better reasoned Awards.

It would appear that by simple misconceived fiat the Referee has inadvertently decided to retroactively negate CSXT's 1986 implementation of DTC and its abrogation of our train handling rules for all those ensuing years. But the fact of the matter is that CSXT

has enjoyed the relief provided by DTC and has bypassed the Scope of our Agreement when it comes to the handling of train orders since 1986. In fact, CSXT has provided DTC to affected employees since its implementation of DTC – sometimes voluntarily and sometimes by the insightfulness of an arbitration board.

Nevertheless, what should have been a clear and straightforward application of an existing Agreement and commitment, has been contorted by Award No. 37560 by failing to recognize the obvious. The Employees aver that this decision fails to meet the test of reasonableness and holds no precedential value to matters concerning DTC as it is palpably in error.

Respectfully submitted

William R. Miller
TCU Labor Member, NRAB
August 10, 2005