

FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

39 South La Salle St., Chicago 3, Illinois.

The First Division consisted of Conductors' & Trainmen's Supplemental Board members and in addition Referee John A. Weeks when award was rendered.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

MISSOURI - KANSAS - TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Yardman R. R. Dye for minimum day at helper's rate October 18, 1946, account Yardmaster Walker performing switchmen's duties.

EMPLOYEES' STATEMENT OF FACTS: On October 18, 1946, about 2:30 P. M., on instructions of Yardmaster, the 7:00 A. M. coach engine, with a crew consisting of a foreman and two helpers, was required to perform service on the lead at Parsons, and was required to handle more cars than it was possible to pass signals with number of yardmen assigned to the crew, and in order to expedite the handling of the work, Yardmaster Walker assisted the crew in passing signals to the engineer. Or, in other words, performed the duties of an additional yardman while performing this service. Yardman R. R. Dye was first out on Yardmen's extra board at time Yardmaster performed this service, and filed claim for a minimum day at helper's rate account not called to perform the service, which claim has been declined by the Carrier.

POSITION OF EMPLOYEES: The Committee contends that the action of the Yardmaster in supplanting yardmen in this instance is in violation of the following articles contained in current Yard Agreement between the Carrier and the Brotherhood of Railroad Trainmen. Articles 3, 12, 23-(f)-(g)-(h) and Article 24, which read as follows:

ARTICLE 3.

"Eight (8) hours or less shall constitute a day's work."

ARTICLE 12.

"When yardmen are left unplaced through no fault of their own, they will receive pay for not less than a minimum day for each day so lost."

ARTICLE 23.

"(f) The seniority rights of yardmen will date from the time their names first appear on time slip.

(g) The right to preference of work, and promotion, will be governed by seniority in service.

(h) Yardmen leaving the service of their own accord, forfeit all seniority rights."

ARTICLE 24.

"(a) Extra men will work first in first out, holding a trick but one turn until all extra men have worked.

(b) Extra men will not be required to show up for work but once a day (local rulings shall be made governing time to show up) and will be called at all other times when needed.

(c) Extra men when called and not used, will be paid a minimum day and stand last out.

(d) When yardmen are short as much as \$3.00 for service performed in any one period, time check will be issued as soon as error is discovered."

We attach as Exhibit "A" copy of correspondence passed between the representatives of the Brotherhood and representatives of the Carrier covering handling of this claim, and call your attention to Superintendent Watts' letter of November 26, 1946, to Local Chairman J. M. Underwood, where he very readily admits a violation of the rules and requests that the claim be withdrawn.

In further support of our position, we call the Board's attention to the following Awards of the National Railroad Adjustment Board: 1193, 1315, 1316 and 1317, covering disputes on this particular railroad.

All data submitted in support of employes' position, as herein set forth, have been heretofore submitted to the Carrier or their duly authorized representatives.

The Committee desires to be represented before the Board when this case is set for hearing.

CARRIER'S STATEMENT OF FACTS: About 2:30 P. M., October 18, 1946, north yard, Parsons, Kansas, as 7:00 A. M. Coach Engine came up the Joy track with stock from the pens, Yardmaster instructed Foreman Shears to put the stock on East 10, then double 271 together through the East 9 crossover, go against East 11 and wait until south lead kicked a Nelagony tank to East 10, then drag East 11 and put it to East 10, then go against East 14 and come out up to the hold box cars and put them to East 10.

When they came out of East 14 they had 26 cars, including two hold tanks which they were not instructed to bring out when they were instructed to come out with the hold box cars, causing extra switching. Foreman Shears decided to kick the two hold tanks back, which the field men rode and tied down, in preference to putting them in train and perhaps having to throw them out after train was set, and placed balance on East 10, thus setting train No. 271. This put engine around curve at scale house, so engineer could not see signals of man following the engine who stayed at the East 9 switch, and yardmaster passed signals from the man following the engine to the engineer when the engine went around the curve at the scale house.

Carrier's Exhibit "A", attached, is copy of correspondence exchanged by the Petitioner and the Carrier covering this claim.

POSITION OF CARRIER: Petitioner contends in the third paragraph of his letter of February 24, 1947, Carrier's Exhibit "A", as follows:

"In view of the fact that Yardmaster Walker did, in accordance with acknowledgment of Mr. Watts, perform service for which

yardmen are employed and service which should have been performed by a yardman, and that it was performed by Mr. Walker account having a three-man crew perform service ordinarily performed by a five-man crew, it is our position that the claim should have been paid without question."

and in second paragraph of his letter of March 18, 1947, Carrier's Exhibit "A", Petitioner states:

"If you will review our letter of February 24, you will find we advised you that this was another instance where a crew, consisting of a foreman and two helpers, was required to perform service on the lead at Parsons in lieu of a crew consisting of a foreman and four helpers; that it was not possible for the crew of a foreman and two helpers to properly perform the service required of them and that yardmaster performed the duties of a yardman, or, in other words, made the third helper on this crew."

The claim in this particular case is, therefore, premised upon two separate and distinct bases—(1) that crew consisting of a foreman and two helpers was required to perform service on the lead at Parsons in lieu of a crew consisting of a foreman and four helpers; and (2) that it was not possible for the crew of a foreman and two helpers to properly perform the service required of them and that yardmaster performed the duties of a yardman.

As to (1): No specific agreement rule or understanding has been cited by the Petitioner to support his contention that all yard work on south lead at Parsons should be performed by a crew consisting of a foreman and four helpers. The contention of the Petitioner in this claim is similar to his contentions in the claims of Yardmen E. J. Parker, April 27, 1946; C. D. Carson and O. A. Cole, April 29, 1946, where 11:00 P. M. north lead engine and 3:00 P. M. coach engine with a foreman and three helpers each were used on south lead at Parsons. These claims were filed with the First Division, with this claim, and are covered by Carrier's submission dated June 5, 1947. Carrier's position in this claim with respect to yard crews switching on lead is the same as in the claims of yardmen Parker, Carson and Cole, and to avoid repetition the Carrier's submission of June 5, 1947, covering those claims is made a part of this submission and should be so considered, the same as if it were repeated here.

In this particular case, the lead engine was working on the south lead up above the crossover, and the 7:00 A. M. Coach Engine was working through the crossover off the south lead over onto the west lead doubling train together below the crossover. In other words, working two engines at one time to get two different trains set. It would be impracticable and physically impossible for the lead engine to perform all so-called lead work at all times or perform all yard work on the lead, and that has never been done, but other yard crews have been used for yard work on the lead with and without increasing the number of helpers on the regular crew as the occasion and necessity of the service required as shown in Carrier's submission of June 5, 1947, covering the claims of Yardmen Parker, Carson and Cole.

It is, therefore, evident, and the position of the Carrier, that the 7:00 A. M. Coach Engine was not required to perform service on the south lead, at Parsons, in lieu of the lead engine, as alleged by the Petitioner, but on the contrary it performed yard work on the south lead in addition to the lead engine, and that the use of yard crews, regardless of crew consist, for any and all yard work as conditions and service require, where lead engines are assigned, has heretofore always been considered, understood, recognized and agreed as permissible and proper under the provisions of the Yardmen's current agreement.

As to (2): The situation in this particular case was aggravated considerably as result of the fact that the crew brought two hold tanks out of East 14 in error, making it necessary to kick these cars back and causing extra switching and signals. If it had not been for this extra switching the crew should have been able to perform the work without any assistance, as the scale house where engineer passed out of sight of the man following the engine is about 25 car lengths from the East 9 switch where man following the engine remained to see signals given by the engine foreman, or not more than two signals would have been necessary. The action of the yardmaster in this instance was entirely voluntary on his part and not with the intention of violating any agreement rules. Under the circumstances in this case, the payment of the penalty claimed is unreasonable and unjustified.

Petitioner refers to Awards 1193, 1315, 1316 and 1317, involving the same parties and agreement, but the facts and circumstances in those cases are not similar or parallel to the facts and circumstances in this case. In Award No. 1193, Yardmaster Stott took charge of the crew while switching freight house, Kansas City. In Awards 1315 and 1316, employes other than yardmen performed pilot service. In Award No. 1317, Yardmaster performed switching on passenger train with road engine during absence of brakeman while no yard crew on duty. In each of these cases employes other than yardmen performed all of the work involved in those instances, while in this case Yardmaster only passed a few signals from the man following the engine to the engineer under extenuating circumstances, and most of these signals were the result of failure of crew to comply with instructions of the yardmaster.

Attention of the Division is invited to Award No. 1197, Docket 1806, involving the same parties and agreement, denying claim of a yard crew on basis of Findings, reading:

“FINDINGS: * * *

The use of roadmen to perform the work in question violates Article 1 Paragraph (i).

The evidence shows that Brakeman Skinner who performed the work was not on duty and it was done voluntarily, no instructions having been given for him to perform the work.

Under these circumstances the carrier should not be held responsible to the extent of being required to pay the penalty time claimed, but employes not on duty or roadmen on duty should be required by the carrier to refrain from performing work in violation of the yard agreement.”

The Carrier has at all times earnestly endeavored to require its employes to refrain from performing work in violation of any working agreement, and when this does occur has handled such cases for correction, but occasionally some employe unintentionally and unthinkingly will voluntarily perform some minor duties not required of him for which the Carrier should not be held responsible to the extent of being required to pay the penalty time claimed.

The Carrier respectfully requests that the Board deny the claim.

All data submitted in support of Carrier's position as herein set forth have been heretofore submitted to the employes or their duly authorized representatives.

The Carrier requests ample time and opportunity to except to any and all statements contained in the employes' submission and produce any and all evidence at the Carrier's disposal or otherwise to refute alleged facts and contentions made therein.

The Carrier desires oral hearing and to be represented thereat.

(Exhibits not reproduced.)

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The parties to said dispute waived hearing thereon.

Claim by yardman first out on the extra board for minimum day on account of the yardmaster performing switchmen's work.

A three man crew was switching a 26 car train. The engine was behind a scale house. The yardmaster assisted in passing signals to the engineer. This was a duty which should have been performed by another yardman. While this in and of itself is not a grave violation of the rules, it must not be permitted as it would encourage working smaller crews than ordinarily required and allowing them to accept assistance from whoever was available which might cause accidents.

The violation of the rules is admitted but a request is made for no penalty. However, it has been consistently held in previous awards that the chief means of redress by employes for violation of such rules is to file time claims.

AWARD

Claim sustained.

BY ORDER OF FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

ATTEST: (Sgd.) T. S. McFarland,
Executive Secretary.

Dated at Chicago, Illinois, this 29th day of January, 1951.