

NATIONAL RAILROAD ADJUSTMENT BOARD**FIRST DIVISION**

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION
(successor to Brotherhood of Railroad Trainmen)

GREEN BAY AND WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of Yard Foreman R. G. Van Ades-
tine claiming 100 miles or one yard day at Yard Foreman's rate of pay,
September 28, 1957, when a Sperry Rail Detector Car S132 was taken from
the Chicago and Northwestern Railway Transfer in Green Bay yards at
Green Bay, Wisconsin and moved to the House Track in the Green Bay &
Western Railroad Yards."

EMPLOYEES' STATEMENT OF FACTS: On the afternoon of Septem-
ber 28, 1957, Road Master Phillip Delano acted as a Yard Pilot in throwing
switches and piloting the Sperry Rail Detector Car from the Chicago &
Northwestern transfer to the House Track in the Green Bay & Western Yards.
This movement was made over the Green Bay & Western so called main-
line, "a live track", for a distance of approximately three and one-half (3½)
blocks. There are approximately seven (7) switches between the points the
Sperry Rail Detector Car was taken off from the Chicago & Northwestern
Transfer Track and the Green Bay & Western Railroad Company House
Track. We are unable to state just how many switches were thrown by
the Road Master, however, it would be necessary for him to throw the one
switch leading off the Chicago & Northwestern Transfer Track in order to
go over the so called Green Bay & Western mainline. It would be positively
necessary for the Road Master to throw the House Track switch, also any of
the other switches that were not lined. This so called Green Bay & Western
mainline is now used as a live switching lead and switch engines are working
on this track around the clock or twenty-four (24) hours a day at both ends.

POSITION OF EMPLOYEES: The following rules support the claim:

ARTICLE 1
YARD SERVICE

Basic daily rates of pay for yard service employees shall be
as shown in the current agreed upon rate sheet which becomes sup-
plemental to and a part of this schedule.

Pilots shall receive foremen's pay. Yardmen acting as such
will not be used outside of yard limits except as provided in Ar-
ticle 11.

ARTICLE 2
BASIC DAY

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

ARTICLE 3
OVERTIME
NOTE 1

On railroads where a seniority board is in effect in cases where there is a man or men on such board available for work at the pro rata rate, a senior man who exercises his seniority to work two shifts, the second of which would otherwise, under the provisions of this rule, be paid at the overtime rate, shall be paid at the pro rata rate.

MEMORANDUM OF AGREEMENT (page 23)

It is understood that regularly assigned yardmen, in accordance with their seniority, may request to be placed on temporary vacancies, if they so desire, and advise the proper officer. They will be called in the order of their seniority. It is understood that should such temporary service occur within the 22½ hour period, yardmen working the second shift will be considered as exercising seniority and paid the straight time rate, except when no extra men are available.

This agreement shall become effective July 23, 1952, and shall continue in effect until it is changed in accordance with the provisions of the Railway Labor Act, as amended.

Under date of February 15, 1958, General Chairman R. R. Nagel forwarded Vice President H. W. McGee the following letter:

February 15, 1958.

Mr. H. W. McGee,
Vice President — Operations,
Green Bay & Western Lines,
Green Bay, Wisconsin

Dear Sir:

I received a time slip from R. J. Van Adestine, claiming 100 miles for the movement of SRS 132 thru the Green Bay yards from the Chicago Northwestern transfer without the aid of a pilot.

This claim was handled with Supt. L. J. Knutson, and denied but his decision cannot be accepted.

This move was accomplished with the use of the Roadmaster in Green Bay.

I wish to point out several awards supporting this claim, 6921, 6922, 7241, and 9930, these awards all sustained, support the use of a pilot on maintenance of way machines.

This claim is also supported by Article 1 par. 2 and Article 2 of the current yardmens schedule.

I trust this claim will be passed for payment.

Yours truly.

/s/ Russell R. Nagel
Chm. Gen. Comm.

Under date of April 2, 1958, the following reply received by General Chairman R. R. Nagel from Vice President H. W. McGee:

April 2nd, 1958.

Mr. R. R. Nagel,
Chm. Gen. Committee,
Brotherhood of Railroad Trainmen,
137 S. Irwin Avenue,
Green Bay, Wis.

Dear Sir:

Receipt is acknowledged of your letter of February 15th in which you appeal from the decision of Superintendent Knutson in the claim of R. J. Van Adestine for 8 hours pay at the yard rate for the movement of the Sperry Rail Car on September 28, 1957.

This claim requires additional study and research on our part, therefore I request a 60-day extension to June 15, 1958.

Yours very truly,

/s/ H. Weldon McGee

Your Honorable Board will please note that the management apparently felt this claim had considerable merit because they requested a 60 day extension for additional study and research.

Under date of June 2, 1958, Vice President H. W. McGee forwarded General Chairman R. R. Nagel the following letter declining payment of the claim:

June 2nd, 1958.

Mr. R. R. Nagel,
Chairman General Committee
Brotherhood of Railroad Trainmen,
137 S. Irwin Avenue,
Green Bay, Wisconsin

Dear Sir:

With further reference to the claim of R. J. Van Adestine for 8 hours pay at the yard rate for the movement of the Sperry Rail Car on September 28, 1957:

The Sperry Rail Car is a maintenance of way machine, not a locomotive or a machine used for the purpose of switching cars. It was used exclusively in performing maintenance of way work and as such did not require the service of a yardman. Article 1 of the Yardmen's Agreement does not say when pilots will be required but merely lays down the manner in which a pilot will be paid when employed.

In the past we have employed yard pilots for the movement of detoured trains and such but in no case have yardmen been employed as pilots in the movement of maintenance of way machines. In the absence of a rule which would specifically require the employment of a pilot or herder in connection with the movement of maintenance of way machines, I can see no merit in a claim for such, and this claim is finally declined.

Yours very truly,

/s/ H. Weldon McGee

The employes do not question that the Sperry Rail Detector Car is a maintenance of way machine not a locomotive or a machine used for the purpose of switching cars. We do not agree that it is in the category of a small motor car and that a Yard Pilot is not necessary. We believe your Board is thoroughly familiar with Sperry Rail Detector Cars and that they are practically as large as a streetcar, weighing 30 or 40 tons and cannot be lifted from the rails by either mechanical or hand power. When such machine is used in road territory a Conductor-Pilot is used and they are operated under train orders.

The Management in their letter of June 2, 1958, admits that in the past they have employed Yard Pilots for the movement of detoured trains but state in no cases have Yardmen been employed as pilots in the movement of maintenance of way machines. The Managements argument infers that this machine was probably the size of a small motor car used by section men which as previously stated is not the case.

The Management has also taken the position that the claim has no merit in the absence of a rule which would specifically require the employment of a Pilot or Herder. The employes have quoted Yardmen's Article 1 which provides in part — "**Pilots shall receive Foremans pay**". Article 2 provides "Eight (8) hours or less shall constitute a days work". Article 15 provides Yardmen shall have the choice of work and promotion which their seniority and service entitles them.

We do not anticipate that the Carrier will contend that the claimant did not properly stand for this service had Yard Foreman been used. He was the senior qualified foreman standing for this service. Such argument was not presented in the correspondence or orally while handling the claim.

Although the Articles of the Contract shown in this brief do not show a specific runaround rule such payments have always been made in the past on this property. In order to substantiate our position the employes refer to a letter under date of December 16, 1946, to former General Chairman

M. O. Warren from the present Vice President H. Weldon McGee, reading in part from the 4th paragraph as follows:

“Two time claims for Yardman Van Adestine for run-around on September 23rd and 24th are paid, - - -”.

The above establishes the fact that 100 miles or 1 yard day as proper payment of the instant claim paragraph.

It is not our desire to burden your Honorable Board with numerous First Division N. R. A. Board Awards sustaining this claim as we know you are familiar with the many decisions rendered, however, we do wish to point out some of the language used in the findings of Awards 3079 and 3080 as follows: “The throwing of switches leading to and from yard tracks and in crossover movements, as under the facts of this case, properly belong to Yardmen. Claim sustained.” Although the rule in these 2 particular awards was not identical to the rule contained in this contract the principle has been sustained by the Board in practically all subsequent awards.

The employes contend that the scheduled rule cited in this case provides that Yardmen will perform services, throwing switches, performing Yard-Pilot service and flagging when necessary, when such service is performed within the switching limits or terminal.

All evidence in this case has been presented either orally or in writing.

Oral hearing is waived unless requested by the Carrier.

CARRIER'S STATEMENT OF FACTS: On September 28, 1957, Sperry Rail Detector Car S132, self-propelled, moved from the C&NW transfer in the Green Bay Yard to the House Track in the Green Bay Yard, a distance of approximately 1300 feet. The total time consumed in this movement was approximately ten minutes. This movement was incidental and preparatory to having the Sperry Rail Detector Car test rail on our railroad the next day.

Claimant, Footboard Yardmaster R. G. Van Adestine, completed a tour of duty at 5:50 A. M. and started a new tour of duty at 9:30 P. M., on the date of claim.

The Sperry Rail Car moved over a yard switching lead track during this operation and not a main line track as alleged in Employee's submission. No trains are operated over this yard lead track and consequently no flagging is required. Movements over this switching lead are governed by operating rules which authorizes unrestricted movements as the way is seen or known to be clear.

This was the first time that the Sperry Rail Detector Car has been used on this property, and it was operated as an ordinary maintenance of way machine. This is attested to by the fact that at no time did the Sperry Rail Detector Car display markers or classification signals, and at no time were train orders issued covering the movement of this car, either in yard or road service.

Roadmaster DeLano denies throwing any switch leading off the C&NW transfer track or any switches while movement was made over this switching

lead. The switches that were not lined were thrown by members of the yard crew who were on duty at the time. The yard crew was not instructed to throw any switches but did so voluntarily as an accommodation in the spirit of cooperation. The only switch that Roadmaster DeLano could have possibly thrown is the switch from the switching lead track to the house track but due to the lapse of time, Roadmaster DeLano is not in position to affirm or deny whether or not he threw this particular switch.

POSITION OF CARRIER: Inasmuch as this was the first time that the Sperry Rail Detector Car was used on this property, there is no past practice, as regards this particular machine, to guide us in a situation of this kind. We must therefore look to analogous situations in order to develop a pattern.

Everyone is familiar with the Sperry Rail Detector Car, and carrier therefore would not be so naive as to suggest or infer that as far as size is concerned it is in the same category as a small motor car or similar maintenance of way equipment. However, when we look at the intended use and purpose of this machine, it becomes obvious, that in principle, it is a pure and simple maintenance of way machine. It is never used in yard or train service, nor could it in any way be regarded as a locomotive, and the work performed by this machine is an integral part of the work properly performed by employes of the maintenance of way class. Quoting from Page 4 of Employee's Submission, "The employes do not question that the Sperry Rail Detector Car is a maintenance of way machine and not a locomotive or a machine used for the purpose of switching cars", it becomes apparent that the parties to this dispute are in agreement that this was a maintenance of way machine. Thus, for the purpose of this dispute, the Sperry Rail Detector Car must be classed in the same category as any other maintenance of way machine, and no one can seriously assert that a maintenance of way machine must have a yard pilot, and this is the interpretation that has prevailed on this Carrier for many, many years as regards maintenance of way machines.

Your Division has frequently held that no pilots are needed on heavy locomotive cranes that cannot readily be removed from the rails so long as such cranes are used solely for maintenance of way purposes and not for yard switching.

5099	11699	11924	12117
5100	11700	12116	12118

It would therefore appear that size alone is not the controlling factor but rather the intended use of the particular maintenance of way machine in question. As aforesaid, the parties to this dispute are in agreement that this machine was to be used strictly for maintenance of way purposes.

It has always been the practice on this property for various classes of employes to handle switches incident to the work being performed by such employes without laying a foundation for a claim by yardmen. Section men regularly operate motor cars, discers, mowers, etc. without pilots within switching limits and handle switches in connection with such movements. Hostlers handle switches within switching limits incident to hostling engines, brakemen handle switches incident to accompanying road engines between train yards and roundhouses, B. & B. Department employes, Signal Department employes, and Car Department employes all handle switches incident to

their work within switching limits and therefore it cannot be said that the work of throwing switches within switching limits is exclusively that of a yardman. We are dealing here with a maintenance of way machine movement and schedule rules and past practice refute such a contention. It has been the practice since the inception of our agreement with the Brotherhood of Railroad Trainmen for work of a similar nature to be performed by various classes of employes in connection with the performance of their duties.

Employes have quoted Articles 1, 2 and 3 in support of their position, but have failed to quote any rule which gives yardmen the right to be employed as pilots on maintenance of way machines because there is no such rule in existence on this property. None of the rules cited are pertinent or controlling. Article 1 is strictly a rate rule, establishing the rate that has been negotiated for pilots. Article 2 is the standard Basic Day rule and there is nothing in this rule, or Article 3 for that matter, which could possibly be construed as to give yardmen the right to be employed as pilots on maintenance of way machines. Certainly, they have not acquired any right by past practice in so far as maintenance of way machines are concerned.

In summarizing Carrier's Position, Carrier wishes to emphasize the following salient facts which should aid the Board in an adjudication of this dispute:

1. The Sperry Rail Detector Car was not operated as a train or engine.
2. The parties to this dispute are in agreement that this was to all intents and purposes a maintenance of way machine.
3. No pilot was needed in connection with this movement and schedule rules do not require that a pilot be used.
4. Past practice on this railroad does not require the use of pilots in connection with the movement of self-propelled maintenance of way machines within switching limits.

EMPLOYES' REPLY TO CARRIER'S ANSWER: This committee does not contest the fact that the portion of track used to transfer and yard the Sperry Rail Detector is a switching lead, but it is still known and called the mainline by yardmen and roadmen from the time when passenger trains were operated from the depot at the Downtown Yards. This track is still the main connecting track between our Downtown Yards and the Shop Yards and all transfer tracks are connected to this switching lead, therefore a yard pilot should be required on the Rail Detector to insure the safety of everyone concerned and protect the seniority of the yardmen to the work which rightfully belongs to them.

It's a fact that it was the first time the Sperry Rail Detector was used on our property and by far the largest self-propelled maintenance of way machine used on this property, but it was not actually used as a maintenance of way machine in this movement. This piece of equipment was turned over to the Green Bay & Western Railroad via Chicago & Northwestern transfer the same as a locomotive or box car would be and if they did not want it

handled with our switch engine then we maintain a yard pilot should be used rather than an official of the maintenance of way department.

We agree with the company that Maintenance of Way, B and B, and Signal men operate their own motor cars and throw their own switches in the use of these cars, but this committee feels their is no comparison to this type of work and the movement of the Sperry Rail Detector.

The company maintains no orders were issued in the movement of the S132 in Road Service. Orders were issued the Conductor-Pilot on the S132 in road service so this car could operate against our road trains other than by the regular time-table.

This committee requests your Honorable Board to sustain this claim to protect the seniority rights and work which belong to yardmen.

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

Petitioner's statement of facts avers it was necessary for the Road Master to throw switches while making the movement subject of claim. Respondent offers a general denial, while conceding he "could have possibly thrown" one switch.

On the record before us the claim will be sustained.

AWARD: Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FIRST DIVISION

ATTEST: M. L. Humfreville
Executive Secretary

Dated at Chicago, Illinois, this 12th day of February 1971.