

Referee Harold M. Weston

PARTIES TO DISPUTE: Railroad Yardmasters of America  
TO  
Penn Central Transportation Company

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that: -

System Docket No. 313 - Buffalo Division Case No. BD-35

"BD-35). Claim of Yardmaster A. F. Dachille, November 12, 1968, for one day at time and one half rate because Clerk R. Staniszewski performed Yard Master work at Babcock St. Yard."

OPINION OF BOARD: Claimant is the first trick yardmaster at Carrier's Babcock Street Yard. During the second trick on Tuesday, November 12, 1968, one of Claimant's rest days, while no yardmaster was on duty at Babcock, a yard clerk at that location instructed a yard crew to dispose of their train, consisting of three cars, on a storage track in the yard. The second trick yardmaster position at Babcock Street Yard had been abolished several months before the incident and its duties absorbed to some extent by the Yard Director at Penn Central Station.

This is not a situation where a clerk is routinely relaying instructions that had just been given to him by a yardmaster and we are convinced that contrary to Carrier's view, these instructions to a yard crew as to where its train should be placed is clearly yardmaster's and not merely clerical, work. That the clerk may have issued the orders on his own is not relevant for Carrier takes the risk that such a situation may develop when it does not maintain a yardmaster position in the yard.

We accordingly find that the Yardmasters Agreement has been violated. The monetary portion of the claim must be limited in line with Rule 4-A-3 to two hours at the time and one-half rate since there is no indication that more than a two hour call would have been involved if the Agreement had not been violated. Petitioner's point regarding rest-day compensation was not raised on the property nor supported by the citation of pertinent rules.

We have not considered Carrier's contention regarding the Mediation Agreement of April 27, 1956, since it was not mentioned during discussions of the claim on the property and is untimely.

FINDINGS:

The Fourth 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 were given due notice of hearing thereon.

The parties to said dispute waived right of appearance at hearing, but were granted privilege of appearing before the Division, with the Referee sitting as a member thereof, to present oral argument.

A W A R D

Claim sustained to the extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

*E. A. Killeen*  
E. A. Killeen  
Secretary

Dated at Chicago, Illinois, this 3th day of June, 1971.