

Referee Harold M. Weston

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

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

EASTERN REGIONSYSTEM DOCKET NO. 333 - CHESAPEAKE DIVISION CASE 188 R-3280

"Chesapeake Division R.Y.A. Case 188 (R3280) Please accept this letter as penalty time cards, eight hours each, at yardmasters rates for the yardmasters as listed below, for using special duty conductor E. W. Wilde performing yardmasters duties at Reybold, Delaware.

March 7, 1968	H. R. Cockerham
March 8, 1968	J. D. Phipps
March 9, 1968	J. D. Phipps
March 11, 1968	H. R. Cockerham
March 12, 1968	H. R. Cockerham
March 13, 1968	J. D. Phipps
March 15, 1968	J. D. Phipps
March 14, 1968	J. D. Phipps
March 16, 1968	J. D. Phipps
March 18, 1968	H. R. Cockerham
March 19, 1968	H. R. Cockerham
March 20, 1968	J. D. Phipps
March 21, 1968	J. D. Phipps
March 22, 1968	J. D. Phipps
March 23, 1968	H. R. Cockerham
March 25, 1968	H. R. Cockerham
March 26, 1968	W. J. Wingate
March 27, 1968	W. J. Wingate
March 28, 1968	W. J. Wingate
March 29, 1968	W. J. Wingate
March 30, 1968	W. J. Wingate

The above yardmasters are on the extra list at Edgemoor, available and not used on the above days."

OPINION OF BOARD: It is Petitioner's position that Carrier has been violating the Yardmaster Agreement by having a special duty conductor supervise industrial switching at Reybold, Delaware.

Since Carrier has challenged the claim that such work must be performed by yardmasters, Petitioner has the burden of establishing the essential elements of the claim. The Scope Rule is not helpful in that

regard for it does not define the duties that belong to yardmasters. While yardmaster functions are not always capable of precise definition it is generally accepted that they consist, in the main, of supervising yard employes and supervision of the switching and making up of trains in railroad yards (See Awards 184, 797, 836 and 1151 as well as R.400N-7 of Carrier's "Rules For Conducting Transportation."). The threshold issue therefore is whether the record establishes that the special duty conductor performed such duties in railroad yard.

Reybold is not classified as a yard by Carrier. That fact, standing alone, is not fatal to the claim, however for it is quite possible that in reality, Reybold is nevertheless a yard. We are interested in substance rather than in the label or name given to the location. The Reybold area in question is an industrial park and the tracks in that park are owned and maintained by private industry. A secondary track leads from Porter, Delaware to Reybold and a runaround track is located at the latter point. Train movements on the secondary track are controlled by the Newcastle, Delaware Block Operator.

Train service employes who service Reybold industries are advertised as local freight crews, although they are paid yard crew rates because of factors unrelated to the instant issue. They sign up and are released from duty at Edgemoor Yard which is a distance of seventeen miles from Reybold. Cars for displacement in Reybold are dispatched from Edgemoor Yard and outbound cars from Reybold are moved to Edgemoor Yard for placement in road freight trains for further movement to destinations. The Rate Schedule of Yardmasters and Assistant Yardmasters effective January 1, 1967, after the present long-standing issue had arisen, purports to list all of Carrier's yards and includes Edgemoor Yard but does not mention Reybold.

The facts mentioned above indicate that Reybold is not a yard. While they are not conclusive by any means and may be rebutted by convincing proof, the evidence before us is not sufficient to overcome them. We cannot validly hold that the special duty conductor is trespassing upon yardmaster rights when the work he is performing is not in a yard or require Carrier to add a yardmaster position at a point where there is no yard to supervise.

The claim will be denied.

#### FINDINGS:

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

The carrier and the employe 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 right of appearance at hearing, but were granted privilege of appearing before the Division with Referee sitting as a member thereof, to present oral argument.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTESTS:

*E. A. Killeen*

E. A. Killeen  
Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1972.