

Referee Robert M. O'Brien

PARTIES Railroad Yardmasters of America
TO
DISPUTE: The Texas and Pacific Railway Company

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

All regular assigned, relief and extra yardmasters working at Crest Tower be allowed one day's pay each day beginning May 17, 1971 and all subsequent dates until practice is stopped account yardmasters required to handle switches and retarders at Crest Tower in Centennial Yard, Fort Worth, Texas.

OPINION The claim arose when during the period May 17, 1971 to July 23,
OF BOARD: 1971, Carrier required the yardmasters at the Crest Tower in Centennial Yard, Ft. Worth, to handle switches and operate car retarders. The Organization contends that the performance of such duties is not incidental to the duties of a yardmaster and is, in fact, work outside the Scope of the Yardmaster's Agreement. They further maintain that this work has been performed in the past by car retarders and car retarder work has never been considered yardmasters' duties on this property.

Carrier denied the claim alleging that all the yardmasters did was merely to move the lever or press the button on the console which activates the electrical control which in turn moves the switch points. Such work, it contends, was incidental to the duties of a yardmaster and could properly be performed by them. Furthermore, Carrier says Rule 3 (e) allows yardmasters to perform service other than their regular duties, and, in any event, none of the yardmasters at the Crest Tower suffered any monetary loss during the claim period, and thus no damages are proven.

Prior to the time that Centennial Yard became an automated hump yard, it was necessary to manually operate switches and retarders. This was before the facility was placed on full automatic operation, which was July 22, 1971, according to the Carrier. We agree with the Organization's contention that during this period Carrier has required the claimants to perform duties outside the scope of their collective bargaining agreement. The work performed by yardmasters, prior to the yard being placed on full automatic operation, was car retarder work which has on this property been the work of trainmen or switchmen

and cannot be considered incidental to the duties of a yardmaster. It is immaterial that the work merely consisted of moving a lever or pressing a button on a console, as Carrier contends, as this Board considers the kind and character of the work controlling rather than the method of performing it. And in the present claim, the work performed during the claim period was clearly car retarder work although admittedly it was performed in the tower and not physically in the yard.

Nor do we feel Carrier can rely on Rule 3 (e). A thorough review of the correspondence on the property fails to disclose where this issue was even remotely alluded to by the Carrier. Consequently it cannot be raised before this tribunal for the first time.

Having found a violation of the Yardmasters Agreement during the period in question, we conclude that damages should be awarded even though no claimant suffered any monetary loss during this period.

FINDINGS:

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

The carrier and the 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 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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: Executive Secretary
National Railroad Adjustment Board

By 
Assistant Executive Secretary

Dated at Chicago, Illinois, this 6th day of July, 1973.