

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION
Referee Robert M. O'Brien

Award No. 3009
Docket No. 2880

Form 1

PARTIES TO DISPUTE: Railroad Yardmasters of America
TO
DISPUTE: Union Pacific Railroad Company

STATEMENT OF CLAIM: IDY-152 Claim of H. L. Rowberry for one day's pay each date August 4, 5, 8 and 9, 1971 and for all subsequent dates, including rest days, until condition complained of is corrected account yardmaster positions abolished at Idaho Falls and yardmaster duties turned over to clerks and footboard yardmasters.

IDY-153 Claim of F. J. Jose for one day's pay each date August 4, 5, 6, and 9, 1971 and for all subsequent dates, including rest days, until condition complained of is corrected account yardmaster positions abolished at Idaho Falls and yardmaster duties turned over to clerks and footboard yardmasters.

IDY-154 Claim of B. R. Eaton for one day's pay each date August 4, 5, 6, and 7, 1971 and for all subsequent dates, including rest days, until condition complained of is corrected account yardmaster positions abolished at Idaho Falls and Yardmaster duties turned over to clerks and footboard yardmasters.

OPINION OF BOARD: The claim arose when on August 3, 1971 Carrier abolished the three tricks of yardmaster assignments at Idaho Falls. It subsequently established a Terminal Superintendent's position on September 1, 1971 and it is the Organization's contention that the Superintendent, along with the clerks and footboard yardmasters, have assumed the duties formerly performed by yardmasters in violation of the Yardmasters Agreement. The Organization **argues** that Rule 16 allows Carrier to abolish yardmaster positions provided no work belonging to yardmasters remains to be performed. Substantial Yardmaster duties, such as issuing orders to yard forces relative to the handling and placing of cars, issuance of switch lists and switching instructions, spotting instructions, etc, it says remained to be performed and were, in fact, performed by non-yardmasters.

Carrier maintains that due to the change in operational patterns, blocking arrangements, unit trains, and a decrease in traffic at Idaho Falls, retention of a yardmaster on each shift was not warranted so they were discontinued consistent with Rule 16.

Carrier denies that any duties reserved to yardmasters have been transferred to the Superintendent, clerks, or engine foremen at Idaho Falls.

The issue before this Board for determination is certainly not one of first impression. A review of the many awards cited to us relative to this issue reveals that in claims such as this the Board must determine whether duties accruing to the yardmasters craft are being performed by non-yardmasters to the detriment of the latter. It is well established that the principal duties belonging to the Yardmasters craft consists of supervision of employees, within yard limits, when such employees are engaged in the making up, breaking up and handling of trains, and performing switching duties. See Award 2189. In each instance the claim rises or falls on the specific factual evidence as it is applied to the aforementioned principles.

Referee Weston, in Award 2606 involving these same parties, declared that the fact Carrier abolished yardmaster positions and it simultaneously created a terminal trainmaster position at that location and put yard conductors on footboard yardmaster pay may provide an inference in Petitioner's favor, but to prevail Petitioner must also establish by persuasive evidence that Carrier actually used non-yardmasters to discharge responsibilities that belong to yardmasters. The claim there was denied due to the absence of such proof.

However, in the claim before us we conclude that the Organization has come forward with such evidence to convince us that duties existed at Idaho Falls which belonged to the yardmasters craft and said work was being performed by employees outside the Yardmasters' Agreement. Such evidence consisted of: the Terminal Superintendent directing what cars are to be loaded, where to place stock cars, where to store cars, instructing yard crews where to set up and spot cars for unloading, when to move cars out, when to move stock cars while the clerks instructed crews where to pull out and spot up loads, and on which tracks cars are to be placed. It is our opinion that such work involved these non-yardmasters in supervising yard crews in the making up and breaking up of trains and in their handling of trains in the yard. Since such work involves a substantial part of the duties of the yardmasters we are compelled to the conclusion that non-yardmasters are performing such work in violation of the Yardmasters Agreement.

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 were given due notice of hearing thereon.

The parties to said dispute waived right of appearance at hearing thereon.

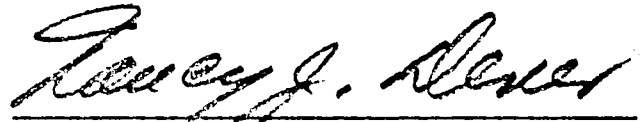
A W A R D

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 December 1973

Interpretation No. 1
To Award No. 3009
Docket No. 2880

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

NAME OF ORGANIZATION:

Railroad Yardmasters of America

NAME OF CARRIER:

Union Pacific Railroad Company

Award No: 3009 (Docket No: 2880) was adopted by the Fourth Division of the National Railroad Adjustment Board on December 6, 1973. Subsequent thereto, on March 5, 1974, Carrier filed with the Board a request for Interpretation of Award No. 3009. The request is properly before us pursuant to Section 3, First (m) of the Railway Labor Act. It should be stated at the outset that Section 3, First (m) limits this Division with jurisdiction merely to interpretation of the Award. It is now well established that we are without authority to expand or modify the Award since Section 3, First (m) also mandates that . . . "the Awards shall be final and binding upon both parties to the dispute." Bearing this in mind we shall attempt to clarify what Carrier feels are ambiguities in Award No. 3009.

In their request for Interpretation Carrier poses six questions wherein they seek clarification of the Award. Relative to Question No. 1, suffice it to say that the Board found in Award 3009 that on the six claim dates the preponderant duties of the abolished yardmaster positions were being performed by non-yardmasters in violation of the Yardmasters collective bargaining agreement. The Award clearly established the criteria that when non-yardmasters performed a substantial part of the duties of the yardmaster then they were doing so in violation of the Agreement. I feel the Award concluded that it was not enough for the Organization to establish that yardmaster positions were abolished. Rather, it was this coupled with removal of the yardmaster work from their craft and performance of such work by non-yardmasters that gave rise to the violation. While Award 3009 plainly had reference to the facts before me it was the intent of this Referee that when the criteria set forth in Award 3009 was met by factual evidence then the Organization has shown that the Agreement was violated. If factual evidence was not shown then we cannot assume that a violation exists.

Question No. 2, we believe, has been properly answered by the Award. The Award held: "Such evidence consisted of: The Terminal Superintendent directing what cars are to be loaded, where to place stock cars,

where to store cars, instructing yard crews where to set up and spot cars for unloading, where to move cars out, and when to move stock cars while the clerks instructed crews where to pull out and spot up loads, and on which track cars are to be placed." We feel the aforementioned is clear and unambiguous and needs no further elaboration.

The answer to Question No. 3 of course is obvious. Award 3009 never ordered the abolished yardmaster positions restored nor was it the intent of the Award to do so.

Relative to question No. 4, it is apparent from the Award that it did not preclude other crafts from performing work contractually accruing to them. The only Agreement before the Board was the Yardmasters' and said Agreement was the only one considered by the Board. Additionally, Carrier is misconstruing the Award when they conclude that a violation exists only when the Terminal Superintendent is directing simultaneously while the clerks are instructing crews. It was not the intent of the Award that the two must coincide before there is contractual violation. Use of the word "while" might not have been grammatically correct but it was not the intent of this Referee to limit the Award as Carrier now argues. It is irrelevant whether the Superintendent and clerks performed work at the same time. A violation can be found if either one, independent of the other, performed a substantial part of the duties of the yardmasters.

Carrier's argument posed by Question No. 5 is merely reargument of its position before this Board when Docket No. 2880 was originally considered. That argument was adequately disposed of by Award No. 3009 and we shall not entertain its resubmission under the guise of interpretation.

Finally, by Question No. 6, Carrier wishes to reduce the compensation allowed in Award 3009 by the amount of claimants' actual earnings in service other than as a yardmaster on each of the claim dates. A through review of the record, however, fails to disclose where Carrier has argued this issue on the property or in their Submissions to the Board in Docket No. 2880. Since Carrier has failed to raise this issue prior to its Request for Interpretation, we conclude this issue is not properly before us now and is thereby barred from consideration.

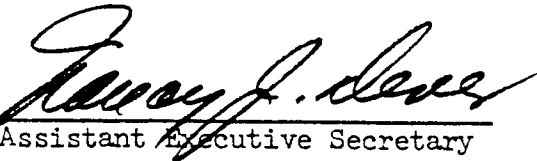
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Interpretation No. 1
To Award No. 3009
Docket No. 2880

Referee Robert M. O'Brien, who sat with the Division as a member thereof when Award 3009 was adopted, also participated with the Division in making this decision.

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 30th day of December, 1974.

Interpretation No. 2

To: Award No. 3009

Docket No. 2880

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

NAME OF ORGANIZATION:

Railroad Yardmasters of America

NAME OF CARRIER:

Union Pacific Railroad Company

Upon application of the representatives of the employes involved in the above Award that this Division interpret the same in the light of the dispute between the parties as to its meaning and application as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

It is readily apparent from a reading of the Organization's request for this interpretation to Award No. 3009 that the ambiguity which allegedly exists in Award No. 3009 relates to the "continuing" aspect of the claim. We must agree with the Organization's contention that an ambiguity does, in fact, exist in Award No. 3009 relative to this portion of the claim.

This Board was fully aware when rendering Award No. 3009 that the Employees' Ex Parte Submission requested one day's pay not only for six specified dates, but also for all subsequent dates on which their Agreement was violated. The Award was consequently not intended to apply only to August 4, 5, 6, 7, 8 and 9, 1971. Rather, it was also applicable to all subsequent dates on which the Yardmasters' Agreement was violated.

It was the intent of the Board when rendering Award No. 3009 that if on each subsequent date to the six enumerated claim dates, the preponderant duties of the abolished yardmaster positions were being performed by non-yardmasters then the Yardmaster's Agreement was violated and the claim must be sustained for each of those dates. It is our opinion that Award No. 3009 and Interpretation No. 1 thereto clearly established the criteria that when non yardmasters performed a substantial part of the duties of the yardmaster then they were doing so in violation of the Agreement. Of course this must be established by factual evidence. However, if the non-yardmasters were performing the exact yardmaster duties on each day subsequent to August 9, 1971 which they had performed on August 4, 5, 6, 7, 8 and 9, 1971 which the Board found to be a violation of the Yardmasters' Agreement then it is obvious that the claim should be sustained for those days. If such was not the case, however, then the criteria

Interpretation No. 2
To: Award No. 3009
Docket No. 2880

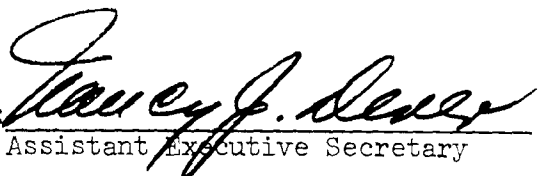
established in Award No. 3009 as clarified by Interpretation No. 1 thereto must be applied to those days to determine whether the preponderant duties of the abolished yardmaster positions were being performed by non-yardmasters in violation of the Yardmasters' Agreement. I would trust the parties are quite competent to make this determination.

In so rendering this Interpretation, this Board must conclude that Carrier's contentions that the Organization is merely requesting an interpretation of an interpretation rather than an interpretation of an Award is not well founded. Nor can we find that their request for interpretation presented new issues not dealt with in Award No. 3009. The request is properly before us pursuant to Section 3, First (m) of the Railway Labor Act.

Referee Robert M. O'Brien, who sat with the Division as a member thereof when Award No. 3009 was adopted, also participated with the Division in making this decision.

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 7th day of April 1976.