

Referee Irwin M. Lieberman

PARTIES TO DISPUTE: Railroad Yardmasters of America
Robert W. Blanchette, Richard C. Bond and John M. McArthur,
Trustees of the Property of Penn Central Transportation
Company, Debtor

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

SYSTEM DOCKET 461
WESTERN REGION - LAKE DIVISION CASE NO. 6-72

Claim on behalf of C. R. Martin for payment of 8 hours at punitive rate for March 12, 1972, account Trainmaster Crissman gave written orders to Extra Yard Crew Working at Ford Yard.

OPINION OF BOARD: This dispute is based on the allegation that Carrier used a Trainmaster to discharge Yardmaster responsibilities at its Ford Yard on March 12, 1972. Claimant held the position of Yardmaster, 2nd Trick, at Rockport Yard, with Sunday and Monday as rest days. On Sunday, March 12, 1972, Trainmaster Crissman, Rockport Yard, gave written orders to the Yard Crew performing service at Ford Yard at a time no Yardmaster was on duty at that Yard. These facts are not in dispute.

The Organization contends that this Board has supported the proposition over the years that orders to yard crews must originate and/or emanate with a Yardmaster. It is argued that it is a categorical and serious invasion of Yardmasters' rights when a Trainmaster plans the entire day's work, issues all instructions and then supervises the crew for the entire eight hour period. Petitioner asserts that if such activity is condoned by this Board it would permit the abolition of all Yardmaster positions on related grounds.

Carrier's position is based principally on the grounds that the work in dispute does not belong exclusively to Yardmasters and further even if such was the case, no substantial portion of Yardmaster work was assigned to the Trainmaster.

The Scope Rule of the Agreement is general in character and does not specify the responsibilities of Yardmasters; no other provision of the Agreement is cited to support the position that the work in question is

exclusively vested in Yardmasters. Petitioner, in discussing Carrier's Rule for Conductors (Rule 400N-1) states that while that Rule provides that Conductors will obey instructions from the Trainmaster, it also states that "... they must obey instructions from Yardmasters, and since this is the practice on days when a Yardmaster is on duty it is a contractual right of the class of service to issue these orders, and written instruction when they are required." It is noted, however, that no evidence to support the fact of a practice - or of any exclusive right - appears in the record of the case. See Awards 2470, 1663 and 2473.

Carrier asserts that communication with a yard crew is not restricted only to Yardmasters and this position is supported by a number of Awards of this Board (2473, 2522 and 3010 among others). It is evident that Trainmasters, as part of their supervisory responsibilities have the right to communicate directly with crews; in Award 2226 involving the same parties and a related dispute, we found that the Scope Rule in the applicable Agreement does not preclude the Trainmasters from performing intermittent and minimal yardmaster duties as part of their overall supervisory functions.

The Board is well aware that employes have a fundamental right to work covered by the applicable agreement and that such work may not be transferred with impunity to employes of another craft or class (Award 2263). However it is also well established that in order to prevail in cases such as the instant dispute, the Organization must show that a substantial amount of the Yardmasters' responsibilities and duties were performed by employes outside the scope of the Yardmasters' Agreement. In the dispute before us the record indicates that the Trainmaster issued written instructions to the extra yard crew; there is no evidence of any other direct supervisory contact with the crew in the performance of their duties, by the Trainmaster. He of course was generally responsible for the activities under his over-all supervision, which would have been true whether or not a Yardmaster was present. The record also indicates that Claimant's position on the day in question was filled by a relief Yardmaster and hence no position was blanked.

We are persuaded from the evidence of record that the Organization has failed to sustain the burden imposed upon it. The work performed by the Trainmaster, issuing written instructions to the crew, does not per se constitute substantial supervisory work of the type performed by and reserved to Yardmasters by their Agreement. Furthermore, we find no support for the thesis that such instruction is reserved exclusively to Yardmasters by the Scope Rule of the Agreement. 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 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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: Executive Secretary
National Railroad Adjustment Board

By: *Rauey J. Dever*
Assistant Executive Secretary

Dated at Chicago, Illinois, this 5th Day of February 1975.