Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 3204
FOURTH DIVISION Docket No. 3152

Referee Dana Eischen

PARTIES TO DISPUTE: Railroad Yardmasters of America

Boston and Maine Corporation, Debtor

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

Spare Yardmasters C. H. Whitney and J. W. Morressey be allowed 8 hours pay at yardmaster rate beginning June 10, 1973 and each subsequent date they would be entitled to work as yardmaster until condition complained of has been corrected, due to second trick yardmaster assignment and relief yardmaster assignment being abolished.

OPINION OF BOARD: It is necessary at the outset to clarify what manner of claim we have herein. Examination of the record shows that the claim was based upon the allegation that employes not covered by the Yardmaster Agreement are performing work belonging to the Yardmaster class. This record does not present a cognizable issue regarding the act of abolishing a Yardmaster position. In this connection, we reiterate the principle enunciated in Award 2032, among many others: "We have consistently held that in the absence of contractual restrictions Carrier may abolish a position for whatever reason. But we have also held that Carrier may not assign all or a substantial part of the work previously performed by employes of the abolished position to other employes not covered by the applicable Agreement." In the instant case, the requisite notice and conference pursuant to the Agreement in Mediation Case No. A-9288 were given, and there is no showing herein of invalidity in the actual abolishment of the position. Rather the instant claim presents the allegation that following the abolishment of the second trick yardmaster assignment and relief yardmaster assignment on June 10, 1973, the work previously performed by these positions was parceled out to other employes not covered by the Agreement. As we understand the claim therefore, it alleges a continuing violation of the Scope Rule, contra to Carrier's assertion that a mere isolated time claim is involved. See Award 2032.

We are not breaking new ground in this case. The general principles governing such claims as that presented here are well established in Award 797 and following Awards, to wit:

> "This claim is premised on the theory that work belonging to Yardmasters has been assigned to employes outside of the scope of their Agreement. The Scope Rule does not purport to define the work of Yardmasters. By custom and usage it is well understood, however, that the principal duties of yardmasters are to supervise the employes engaged in making up, breaking up and handling trains and switching in railroad yards. By reason of the Agreement with the Yardmasters, such work belong exclusively to that craft or class and, subject to definite exclusions mentioned in the Agreement, may not arbitrarily be removed from Yardmasters and performed by persons of a different class or craft not covered by the Agreement. However, under Rule 16(e), the Carrier may abolish a Yardmaster position. It is for the Carrier to determine what, if any supervision it cares to have of the yard work during any particular period of time. But, having abolished a Yardmaster position, if any work remains, the Carrier may not then require others, outside of the Agreement and not excluded therefrom, to perform such work."

All that remains is a determination as to whether the instant record supports a conclusion that employes other than Yardmasters are supervising employes engaged in the making up, breaking up and handling of trains and switching in Carrier's Fitchburg Yard.

The claim was filed on July 24, 1973 on the grounds that on and after June 14, 1973 a Yard Clerk at Fitchburg, one L. Merrill, performed Yardmaster work between the hours of 3:45 p.m. and 9:45 p.m., a six-hour period during which there is no assigned Yardmaster under the revised schedule issued after the second turn and relief Yardmasters' positions were abolished on June 10, 1973. Carrier denies that the clerk performed any Yardmaster functions, primarily basing its denial on Merrill's own denial of same to Carrier. Mention was made by Carrier of a written denial by Merrill but this was never handled with Petitioner on the property and Carrier belatedly offered it before this Board in its Rebuttal. Not only does this material come too late but, as allusions to it on the property suggested, the alleged "denial" is so ambiguously worded as to defy placement in an understandable context.

Carrier asserts that supervision of switching crews is accomplished during the six-hour period when no Yardmaster is assigned 3:45 p.m. to 6:45 p.m. Monday through Friday, primarily by issuance of instructions by the first trick Yardmaster (6:45 a.m. to 9:45 p.m.) issued to the 3:00 p.m. to 11:00 p.m. switcher yard foreman before he goes off duty. Also, Carrier asserts that the first trick Yardmaster, immediately prior to going off duty at 3:45 p.m. furnishes the train director in the tower the available clear track to be used for yarding in-bound freight for the next six-hour period.

Under the new schedule effective June 10, 1973 there is a period from 3:45 p.m. on Friday to 9:45 p.m. on Sundays when there is no Yardmaster supervisor (but the record shows that neither switchers nor Yardmaster worked 3:00 p.m. to 11:00 p.m. on Sunday either before or after the schedule change). Carrier states that during this period when there is no yardmaster supervision, the work is performed as follows:

> "... and switching to be performed is outlined on the switch list by the yard clerk who also furnishes information to the train director at BX Tower from his yard location reports as to tracks which have been made clear when requested to do so.. . "

The record herein is replete with counter allegations and cross denials of the relevancy and timeliness of various positions advanced by the respective parties. One such involves the letter-memorandum of Petitioner's General Chairman dated June 21, 1973 summarizing to the best of his knowledge the discussion between the parties at the June 7, 1973 conference pursuant to the Agreement in Mediation Case No. A-9288. Carrier objects that this matter was raised before the Board untimely, but we note that copy of said letter-memorandum was provided to Carrier during handling on the property and this objection must fail. We also are cognizant of the well-established rule that mere unsupported and bare allegations are not sufficient to support a claim of violation. However, even when viewing such a self-serving document with a necessarily critical eye we are struck by the similarity between Carrier's statement of fact cited supra regarding yard crew supervision since the abolishment and the purported answer of Carrier's Trainmaster to certain questions propounded at the June 7, 1973 meeting to wit:

"5. Who will give instructions to the yard crews and road crews at this location after the yardmasters positions are abolished?

" Mr. Furey replied- Clerk can mark up the switching list for the foreman, tower operator can tell road crews where to yard there trains. 1st trick yardmaster can leave instructions for the middle trick crew.

"6. Are any of these people going to perform any of the duties of the yardmaster?

" Mr. Mason replied- Yardmasters does not have the exclusive rights to making up trains.

"7. Will there be crews employed at this locations engaged in breaking up and making up and handling trains.

" Answer was-Yes."

Carrier has presented a series of denial and dismissal Awards in support of its position all of which we have studied. Some are relevant but most deal with dismissals for insufficiency of evidence, a situation which we do not find herein. One prior dismissal involved a wrong claimant. Carrier raised that point herein but not until its ex parte submission to the Board and accordingly it comes too late. Finally, the balance of the Awards go to the recognized principle that mere presence of a switcher, without more, does not establish the need for a Yardmaster. We do not derogate from these prior Awards to hold that this principle is not dispositive of the instant case, because we find that there is herein more than mere presence of a switcher. Nor do we minimize those sound awards which hold that, absent contractual restrictions, a prior trick Yardmaster may transmit instructions through other employes at a time when no Yardmaster is on duty. Of these latter Awards, however, we note that denial Award 2502 expressly states the following caveat, relevant to the instant case:

"It is not our holding that this procedure is adequate in all situations.../But/ the record before us contains no evidence... that any other yardmaster's responsibilities were discharged by operators or other employees during that time."

We have carefully considered the relevant record evidence confining our review, as we must, to probative evidence timely placed in the record. We are constrained to conclude that on balance Petitioner has carried its burden of proof by demonstrating that in the facts and circumstances of this case employes other than Yardmasters have supervised employes engaged in the making up, breaking up and handling of trains and switching in Carrier's Fitchburg Yard. Specifically, we find on the record that the Yard Clerk not only makes up the switching lists (concededly clerk's duty) but also instructs the yard foreman to show him which cars to switch out or make up into trains. (Yardmasters' duty). See Award 2627. Also the record supports the allegation that the tower operator and the clerk are, between them, performing other yardmaster functions regarding deciding, assigning and ordering which clear tracks are to be used and where a pick up or set off is to be made. In the face of this record we must sustain the claim.

Carrier asserted on the property and before our Board that the claim was vague and indefinite in regard to the ad damnum portion. We have examined the arguments and the authorities submitted and shall not award the eight hours pro rata pay at Yardmasters rate sought by Claimants. Nor is there any showing that the violation of the Scope Rule occurred prior to June 14, 1973. Accordingly, Claimants shall be compensated on the basis of the difference between what they would have earned as Yardmasters at Fitchburg Massachusetts Yard on the abolished second tour and relief Yardmasters positions, less their actual earnings as employes of this Carrier, from June 14, 1973 until the violative conduct ceases. See Award 2032, citing Awards 1897 and 1898.

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 to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: Executive Secretary
National Railroad Adjustment Board

By: Nancy J. Dever
Assistant Executive Secretary

Dated at Chicago, Illinois, this 7th day of July, 1975.

Interpretation No. 1
To Award No. 3204
Docket No.3152

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

NAME OF ORGANIZATION:

Railroad Yardmasters of America

NAME OF CARRIER:

Boston and Maine Corporation, Debtor

Award No. 3204 (Docket No: 3152) was adopted by the Fourth Division of the National Railroad Adjustment Board on July 7, 1975. Subsequent thereto, on August 4, 1975, Carrier filed with the Board a request for Interpretation of Award No. 3204. The request is 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. 3204.

At the outset, our review of Carrier's request for "interpretation" convices us that it is little more than an attempt to reargue positions already advanced in Docket 3152. In this connection we reiterate principles enunciated in earlier similar circumstances and, we had assumed, clearly understood by all experienced in railroad labor relations:

> "The objective of an interpretation is not to provide a forum for reargument of the case or raising new contentions. Rather it is solely designed to clarify provisions of the Award that may be ambiguous. This Board will not permit reargument under the guise of an Interpretation." (Interpretation No. 1 to Award 1839.)

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"The purpose of an interpretation is not to relitigate issues already decided upon the record as submitted to the Division nor to pass upon new issues not theretofore so presented to it for decision, as the parties would now have us do. Rather the purpose of an interpretation is to make clear that part of an award which is ambiguous or uncertain."(Interpretation No. 1 to Award 697.)

* * * * * * * * *

Turning to what may be termed the merits of Carrier's request we shall reiterate what appears to us to be obvious points covered by the Award: 1) Our Award sustains the claim for continuting violations on and after June 14, 1973 and not an isolated act of violation on the date of June 14, 1973. 2) The Award finds such violations during the period from 3:45 P.M. on Friday to 9:45 P.M. on Sunday during which time there is no Yardmaster on duty. 3) Assuming, arguendo, that there are actual damages herein (ie the difference between what Claimants would have earned as Yardmasters at Fitchburg, Massachusetts between Friday 3:45 P.M. and Sunday, 9:45 P.M. from June 14, 1973 until the violative conduct ceases, and what they actually earned as employees of this Carrier during those times and on those dates,)then such damages shall be paid to Claimants on a proportionate basis computed according to their seniority and availability as shown on Carrier records, failing which aliquant computation they shall share equally in the damages.

Referee Dana E. Eischen, who sat with the Division as a member thereof when Award 3204 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: Nancy J. Dever
Assistant Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1976

Interpretation No. 2
To Award No. 3204
Docket No. 3152

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

NAME OF ORGANIZATION:

Railroad Yardmasters of America

NAME OF CARRIER:

Boston and Maine Corporation, Debtor

Award No. 3204 (Docket No. 3152) was adopted by the Fourth Division of the National Railroad Adjustment Board on July 7, 1975. Subsequent thereto, Interpretation No. 1 of Award No. 3204 was issued on March 11, 1976 following request by the Carrier for interpretation. Since then we have received another request from Carrier for "clarification of the Findings of the Board in Award 3204." This request is set forth in a letter to our Board dated July 28, 1976, reading in pertinent part as follows:

> " We are finding it difficult to arrange for payment of the claims sustained by the above Award. Interpretation No. 1 reads in part as follows:
>
> " 2) The Award finds such violations during the period from 3:45 P.M., on Friday to 9:45 P.M. on Sunday during which time there is no Yardmaster on duty.
>
> "The claim that was submitted by the Organization and adjudicated by Award 3204 stated in part as follows:
>
> " Due to second trick yardmaster assignment and relief yardmaster assignment being abolished."

The position of the Organization on this latest request for interpretation is set forth in the final paragraph of its letter to the Board dated September 2, 1976, to wit:

"Since the Interpretation No. 1 clearly sustained the claim for continuing violations on and after June 14, 1973, it appears that this Carrier is attempting to delay and improvise the findings of the Board by their second request for an Interpretation."

We have reviewed the language of Award No. 3204 and Interpretation No 1 thereto. It may be that some latent ambiguity persists inasmuch as Interpretation No. 1 speaks to "violations during the period from 3:45 p.m. on Friday to 9:45 p.m. on Sundays when there is no Yardmaster on duty (54 hours covering three tricks under the old schedule); but the Statement of Claim seeks damages due to "second trick yardmaster assignment and relief yardmaster assignment being abolished" (32 hours covering two tricks under the old schedule). Thus, the Claim as presented does not reach to the Friday and Saturday third trick assignments under the old schedule.

It is well established that our jurisdiction does not exceed the perimeters of the claim presented to us for adjudication. Thus, we herein emphasize that Award No. 3204 and Interpretation No. 1 contemplates payment only on the basis of the tours of duty covered by the Claim to wit, the 32 hours comprehended by the second trick yardmaster assignment and relief yardmaster assignment. We trust that this will dispel any lingering doubts and that our Award will be implemented forthwith.

Referee Dana E. Eischen, who sat with the Division as a member thereof when Award 3204 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: Nancy J. Dever
Assistant Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1976