

Referee Dana E. Eischen

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Burlington Northern Inc.

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

Yardmaster E. L. Carter be allowed one (1) day's pay at yardmaster rate for each date October 16, 17, 18, 19, 20, 23, 24, 25, 30, 31, 1973 because non-yardmasters performing yardmaster work at Jamestown, No. Dak. in violation of the working Agreement.

OPINION OF BOARD: The instant claim alleges that Carrier violated the Yardmaster's Agreement in particular the Scope Rule by abolishing second and third trick Yardmaster positions at Jamestown, North Dakota and transferring the remaining duties to employees outside the scope of that Agreement, ie Clerks and Telegraphers. Petitioner contends essentially that Carrier parceled out to non-yardmasters work exclusively reserved to Yardmasters under the subterfuge of abolishing Yardmaster positions for economy reasons.

Carrier defends against the claim contending that neither express contract language nor system wide custom practice or tradition reserves exclusive to Yardmasters the preparation and transmission of switch lists. In this connection Carrier points out inter alia that standardization and computerization of the Jamestown Yard operation via systems management (PICL, SPINS & COMPASS) had reduced the functions to ministerial duties not requiring round-the-clock Yardmaster coverage. Most of the remaining duties are now performed by a seven day General Yardmaster position but switch lists are prepared by Clerks and distributed by Telegraphers, duties which Carrier maintains have not been proven to be exclusively reserved to Yardmasters.

A voluminous record has been compiled in this case and each of the parties has cited numerous authorities, all of which have been considered. Upon such review we are faced with three recent denial Awards involving essential identical issues between the same parties and under the same Agreement before us in the instant case. See Award 3041, 3042 and 3043. In the lead Award on this subject we said as follows:

"Petitioner has conceded that the Scope Rule in question does not define the work of a yardmaster, but claims that by custom and usage it is well understood that the principal duties of yardmasters are to supervise employees engaged in making up, breaking up, and handling of trains and switching in railroad yards. In support of its contention that such work is now being performed by clerks, Petitioner has submitted evidence of instructions allegedly issued by Clerk Grill on various dates; switch lists furnished by clerks to yard crews; affidavits of yardmen to the effect that clerks are now performing duties formerly performed by yardmasters; and the functions and responsibility of yardmasters under the PICL, SPINS and COMPASS systems.

"A thorough review of this evidence, however, leads us to conclude that nowhere therein has it been shown that such work accrues to the yardmasters class to the exclusion of other employees. Much of the evidence includes the preparation and furnishing of switch lists as hereinafter discussed. After inauguration of the PICL, SPINS, and COMPASS systems, switch lists could be prepared from printouts in a matter of minutes. When such lists were then given to the yard foreman the clerks were not then required to supervise the crew in the execution of switching work. Nor has the evidence proffered by Petitioner established what direct supervisory duties are now being performed by non-yardmasters over the switching crews. Such duties now performed by clerks fail to constitute the supervision of employees engaged in making up, breaking up, and handling of trains and switching in yards, which has been recognized as work belonging to the yardmasters class. In the absence of evidence that such work reserved to yardmasters is now being performed by employees outside the Yardmasters Agreement we are forced to conclude that abolishment of the yardmaster assignment in question was not violative of said Agreement."

In the fact of this clear precedent, Petitioner states simply "the adverse decisions rendered in those Awards were in error." We are not further enlightened as to Petitioner's grounds for this contention nor are we shown how or why the earlier Awards should be distinguished on facts, Agreement language, issues or positions from the instant dispute.

As part of the record in this case we were provided with the file on Docket 2991 which resulted in Award 3041. We have studied all relevant material in the record and we are unable to conclude that Awards 3041, 3042 and 3043 are palpably erroneous. In these circumstances we are guided by principles of res judicata as succinctly summarized by our brethren of the Third Division in Award 8458 to wit:

" . . . The issued involved in those cases is the same one we are asked to readjudicate now. The Board, as a matter of law and sound public policy, ought to adhere to the rule of res judicata. The law declares 'The awards of the several divisions of the Adjustment Board. . . shall be final and binding upon both parties to the dispute. . .' (Section 3, First (m)). This Board itself in Award 6935, (Referee Coffey), enunciated this sound policy when it said:

" If, as we maintain, our awards are final and binding, there must be an end some time to one and the same dispute or we settle nothing, and invite endless controversy instead. The pending claims, having been once adjudicated, are now barred from further Board consideration, and must be denied on jurisdiction grounds."

Under these principals and upon consideration of the decisions previously rendered in Awards 3041, 3042 and 3043 we shall similarly deny this claim.

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: *Lawrence J. Deaver*
Assistant Executive Secretary

Dated at Chicago, Illinois, this 5th day of February 1976