

Referee David Dolnick

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Boston and Maine Corporation, Debtor

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

The following yardmasters be allowed one day's pay at pro-rata yardmaster rate account not called to cover yardmaster assignment, and duties were performed by other classes of employees.

W. A. Shea March 8 and 15, 1975
W. J. Sproul March 22, April 19, and April 26, 1975.
M. R. Cunic April 5, 1975.

OPINION OF BOARD: Each of the claim dates is a Saturday when no yardmasters are employed in the Boston yard on the second and third tricks. The yard is shut down between 2:59 P.M. on Saturday until 2:59 P.M. on Sunday. Yardmaster positions for the second and third tricks on Saturday were abolished effective February 14, 1975.

On each of the claim dates, the Tower Director of Tower X directed the crew of Train TC-100, arriving at the Boston yard, how and where to yard the train. Petitioner contends that this work belongs exclusively to yardmasters.

What exclusive yardmaster work did the Tower Director perform? In each claim on each of the dates, Claimants state that the Tower Director instructs the train crew on what track or tracks to yard the train. In some cases, the train was split and yarded on more than one track. Employees contend that at this yard, instructions to yard trains is work that belongs exclusively to yardmasters. It is, necessarily, the Carrier's position that such instructions to yard trains, as performed by the Director of Tower X is not work belonging exclusively to Yardmasters. In a letter dated October 16, 1975, Carrier's Director-Labor Relations wrote the General Chairman as follows:

As stated to you at conference, the issue in this dispute involves the yarding of one train, TC-100, and nothing else. There were no switching crews employed during the period involved in these claims (each claim was a Saturday when the Hump Yard is shut down) and

it is the Carrier's position that there were no yardmaster's duties performed by or distributed to other classes of employees which either closely resembled or constituted yardmaster's duties. Furthermore, assuming without conceding, but in fact, denying that the instructions which were issued in connection with the yarding of Train TC-100 may in some way, shape or manner have resembled yardmaster's duties, they certainly did not "consist of a substantial volume of supervisory work of the type performed by and reserved to yardmasters by their agreement". (Fourth Division Award No. 2870)

Nowhere in the record does the Carrier categorically deny the work performed by the Director of Tower X is exactly as contained in each of the claims. Nor is there a denial that yardmasters at this yard instructed train crews how and where to yard their trains. The only real question before this board is whether or not on this property this work belongs exclusively to yardmasters.

Carrier relies heavily on Award 3232 on this property. We do not believe that this award is a precedent sufficiently relevant to invoke the principle of stare decisis. There is no serious disagreement in the instant claims before this board that the Carrier had the right to rearrange the yardmaster positions at Boston. Carrier alone has the right to determine when and how many yardmasters are required, provided, however, that employes of no other craft perform work which belongs exclusively to yardmasters. Award 3232 states that: "The record is totally barren of evidence that yard clerks or other employees performed any work belonging exclusively to yardmasters".

In the claims before this board now there is evidence that yardmasters had for many years prior to February 14, 1975 exclusively directed train crews when, where and how to yard their trains at this yard. Carrier has offered no probative evidence that employes of other crafts have also directed train crews on yarding of trains. A statement that no yardmaster's duties were performed by other classes of employes is a mere assertion and not evidence. Carrier concedes the statements in each of the claims and it has offered no evidence to rebut the fact that by history, custom and practice on this property instructions to yard trains came exclusively from yardmasters. As such it has become work that belongs exclusively to them.

For the first time, in its submission to this board, Carrier states that: "The information as to the tracks to be used, in the yarding of Train TC-100 was given to the Train Director at Tower X by the first trick yardmaster on Hump 8 before he completed his tour of duty" (Underlining retained). This was never contended by the Carrier when the claim was handled on the property. The board has no authority to accept or consider this allegation which, if proven and if discussed on the property, would have been a valid defense to the claims. Programming of work is not per se a violation of the Scope Rule - Award 3206.

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.

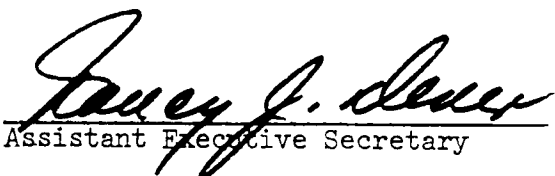
The parties to said dispute waived right of appearance at hearing thereon.

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 October 1976.