

Referee Joseph A. Sickles

PARTIES TO DISPUTE: Railroad Yardmasters of America
Union Pacific Railroad Company (Eastern District)

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America that:
Continuous claim of Yardmaster C. W. Poindexter for 8 hours pay each work date beginning on June 18, 1975 account the 11:00 PM to 7:00 AM yardmaster position at Laramie being abolished in violation of Rule 2-C of the current Agreement.

OPINION OF BOARD: On June 9, 1975, the night shift Switch Engine Shift at Laramie, Wyoming was abolished, and on June 17, 1975, Carrier abolished the Third Trick Yardmaster position. On June 21, 1975, Carrier advised:
"The 3PM to 11PM Yard Master will advise the Laramie operator the following information by 11PM daily:
1) Trackage available for set outs giving track number and length (ie 5 cars, 10 cars, etc)
2) Any traffic for pick up giving track number, cars and destination.
The 12mid to 8AM Operator will advise the Yardmaster the following information by 7AM daily:
(1) Any set out made giving track location, count and symbol of train.
(2) Any pick ups made giving track number, car, and symbol of train that picked up."

Claimants assert that duties and responsibilities remained to be performed, which were transferred to the Operator. This, it is asserted, violated Rule 2-C because it delegated "...the supervision of employee engaged in breaking up, making up and handling trains, and general yard switching."

Carrier asserts that the 11:00 p.m. to 7:00 a.m. shift was properly abolished under the terms of its Agreement with the Organization, and that the Claimants erroneously assume that Yardmaster work was performed by other employees.

We have noted Award 2300, which dealt with a similar claim. The Referee noted that abolishment of yard service on the third trick and abolishment of the Third Trick Yardmaster position resulted in "...no yard service, as such, to direct and supervise." He concluded:

"A straight set-off or pick up by a road crew within yard limits is not treated as yard work belonging exclusively to yard crews..."

But, we are also mindful of Awards cited by Claimants which prohibit a transfer of work outside of the Agreement in conjunction with a position abolishment. See, for example, Award 2627 and 3204.

The Submissions and oral presentations dealt with a number of items not handled on the property and thus, not properly before the Board. In an effort to determine a factual basis for this claim, it is incumbent upon us to limit our review to those matters properly handled below.

In the initial claim, the Employees concluded that the sole purpose of the June 21, 1975 document (cited above) was to inform certain people of information so that "...other crafts may instruct road crews where to make set outs, and where to make pick ups." In its denial, Carrier conceded that road crews make set-outs and pick-ups at Laramie, but stated that no instructions are issued in this regard. It concludes that "other crafts" may be passing information, but not exercising supervision.

In response, the Employees stated that the Operator "...marks and reads from the train consist and instructs road crews over the radio, how many cars to reduce, and what track to set these cars in, and what track, and how many cars to pick up..." Carrier again denied a violation, but failed to comment upon the above-cited allegation that Operators are involved in making operational decisions.

If the Board concurred with the conclusion expressed by Carrier at Page 2 of its Brief that, "The only function the operator performed in the instant case was to relay information given him by the second trick yardmaster to the train dispatcher.", then, of course, various Awards cited by Carrier would suggest a different result herein (see, for example, Awards 3280 and 3335). But, the allegation made on the property - which was not factually rebutted dealt with other individuals performing discretionary duties and making determinations reserved by this Agreement to Yardmaster. In that regard, we feel that the determination in Award 3009 - between these same parties, is particularly significant (rather than Award 3010, authored by the same Referee and adopted on the same day as Award 3009).

In sustaining this claim, we do so on the same basis as described in Interpretation No. 2 to Award 3009.

FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employes 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.

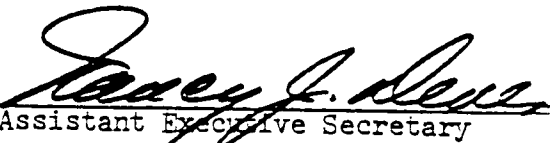
The parties to said dispute waived right of appearance at hearing, but were granted privilege of appearing before the Division with Referee sitting as a member thereof, to present oral argument.

A W A R D

Claim sustained as noted in Opinion of Board, above.

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 2nd day of February 1977