Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award Number 3639
Referee Josepha A. Sickles Docket Number 3609

PARTIES TO DISPUTE: Railroad Yardmasters of America

Missouri Pacific Railroad Company

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

Claim for 8 hours at time and one half rate, position #166 yardmaster, 7:00 a.m. to 3:00 p.m., September 5, 1977, for R. J. Miller, rested and available; account of no yardmaster on duty per orders of Trainmaster H. D. Campbell. Yardmaster duties performed by Clerk-Operator per instructions of Trainmaster H. D. Campbell. This is violation of Article 3, Section 4 of Yardmaster Agreement dated November 29, 1967.

OPINION OF BOARD: On Labor Day of 1977, the Carrier blanked a Yardmaster assignment and (according to the Organization) during those hours certain duties were performed by a Clerk-operator and a Trainmaster; which the Claimant asserts were Yardmaster duties.

The Organization does not dispute the right of the Carrier to blank the 7:00 a.m. to 3:00 p.m. position - as provided by the 1967 National Agreement - but it asserts that a violation then occurred when Yardmaster duties were performed (after the position was blanked) in the manner described in the record.

Specifically, the Organization asserts that the Agent-operator instructed a crew to enter the property and make a delivery of interchange cars and place them on a certain track. Further, a train was instructed to change crews at a specified crossing and the crew was instructed concerning a "drop-off" of cars.

The initial claim was denied because the Superintendent could "...find no basis for it.." The appeal to that denial was denied because "It is not the exclusive duty of a Yardmaster to tell a foreign railroad what tracks to make delivery on in the yard."

The appeal to the Director of Labor Relations specified that the work in question has always been done by, and under the supervison of, the Yardmaster on duty, and not by the Clerk-Operator or the Trainmaster. The final denial (which is the only responsive statement issued by Carrier on the property) stressed the fact that the act of an on-duty Clerk-operator securing and furnishing track information to a train crew is not a violation of the agreement, because of the long and well-established practice under which Yardmasters "...does not have the exclusive right to furnish information and instructions to crews." Further, it was stated to be a systemwide practice for Agents, Operators, Clerks, Dispatchers, Trainmasters and other officers to issue operating instructions to crews.

In response, the Organization stated that other designated employees do not issue operating instructions in yard limits where Yardmasters are employed, and reiterated its contention that the work performed by the Clerk-operator on duty on the date in question violated the Yardmasters' Agreement and, of course, the Agreement between the parties specifies that if the work of a blanked position is to be performed by other than the incumbent, it is to be performed in accordance with the existing schedule rules.

In its Submission to this Board, the Carrier asserts that the work at issue is not reserved for performance by a Yardmaster - by agreement or practice - and it refers to the fact that certain functions may not have been performed "within yard limits." Moreover, the Carrier's Submission suggests that the work performed by the Clerk-operator and Trainmaster was limited to merely a relaying of information and/or work which is not exclusively performed by Yardmasters. The Brief submitted to this Board categorizes the orders in question as "minor" and it urged that there was no exclusive right to furnish the information. Further, it refers to an asserted agreement concerning Agent-Yardmasters or Footboard Yardmasters performing certain duty during the hours that no Yardmaster is employed or on duty.

While the Board has considered all of the documents of record at length, nonetheless, we are required, in the final analysis, to base our determination upon matters which were properly raised on the property and developed prior to submission here. In that regard, we note that the factual basis for the Carrier's denial has been significantly expanded in the various documents submitted to this Board.

The denial stated that it was a long and well-established practice that Yardmasters do not have the exclusive right "to furnish information" and instructions to crews and that it is a systemwide practice for others to issue said instructions. But, as we view the allegations of the claim, the Organization was not basing its claim upon the mere administerial act of issuing instructions. Rather, it was contesting asserted acts by others in making substantive determinations - not merely performing administerial relaying of information. This contention is obvious by the Claimant's reference to "authority."

Accordingly, we are of the view that our Award No. 3429 is particularly pertinent to this dispute. In reaching this conclusion, we stress that the Carrier's Submission and Rebuttal raise extensive factual matters and we do not speculate as to what our determination might have been had the Carrier fully developed those contentions while the matter was under consideration on the property; nor do we comment upon the dispute as to whether or not a certain

agreement does, in fact, exist on this property or if it is a part of an agreement between the T&P Railroad and the Brotherhood of Railroad Trainmen. Suffice it to say that the case argued to this Board is significantly different than the one handled on the property.

We have noted that the Carrier questioned, on the property, that the Organization designated the wrong Claimant because he was not the regular incumbent.

As we read the pertinent agreement, the work need not necessarily be performed by the incumbent, but rather, it states that if the incumbent is not utilized, then the work will be performed in accordance with the existing schedule rules. The Carrier did not suggest, on the property, that this Claimant could not have performed the work within the confines of the schedule, but rather, that it would have "called the regular incumbent, not the Claimant."

If there were a dispute as between the incumbent and the Claimant, then we would be called upon to determine who had the paramount right to perform the work. However, in the instant case, as we understand the record, this Claimant could have performed the work within the confines of the schedule rule, and the fact that he was not the incumbent does not operate to defeat his 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.

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Claim sustained.

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 6th day of March 1979