

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award Number 3719
Docket Number 3674

Referee Robert A. Franden

PARTIES Railroad Yardmasters of America
TO
DISPUTE: New Orleans Public Belt Railroad

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

The working Agreement was violated (Article 1) when this Carrier permitted movement of a foreign railroad to operate on their main line under the authority of employes not employed by this Carrier.

Commencing on June 1, 1978 the first time claim was submitted to allow 8 hours at yardmaster rate of pay for the extra yardmaster not called to protect these duties. Other time claims were presented for each Monday thru Friday until June 13, 1978, then a continuing claim for those days was submitted, until condition complained of is corrected.

OPINION OF BOARD: On May 19, 1978, the carrier abolished the Cotton Warehouse Yardmaster position on Carrier railroad, effective June 1, 1978. Subsequent to that date the manner of handling the movement of the Missouri Pacific Texas Pacific Railroad trains over a section of the carrier railroad during the first trick became the subject of the instant dispute.

The specific action complained of is that subsequent to the abolition of the aforementioned position, movements of MPTP Trains on the New Orleans Public Belt mainlines were, at the direction of the General Superintendent, being handled with MPTP yardmasters, which work was previously performed during the first trick by yardmasters subject to the agreement.

The scope rule under consideration is general in nature and reads as follows:

"This Agreement shall govern the hours of service, rates of pay and working conditions of yardmasters. The term 'yardmaster' as used herein shall be understood to mean yardmasters of all grades except general yardmasters."

The carrier takes the position that to prevail, the claimant must show that members of the organization have exclusive claim to the work which claim must be supported by past practice.

We believe the record supports the organization's position that the work complained of was work performed by yardmasters and in particular, by the occupants of the abolished position prior to June 1, 1978. The record is also clear that the work in question was, during the times complained of, performed by employees of a foreign carrier, to-wit: Missouri Pacific Texas Pacific Railroad employees. The past practice, bulletins, and instructions of the carrier support the organization's position that the work was performed by the first trick yardmaster prior to the abolition of the position. For the carrier to assign what is undoubtedly yardmaster's work which is performed on the carrier railroad to employees of a foreign carrier violates the agreement.

The carrier's defense that a named claimant does not appear in the statement of the claim is both ill-timed and without merit. The awards supporting the organization on this point are legion.

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.

Form 1

-3-

Award Number 3719
Docket Number 3674

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

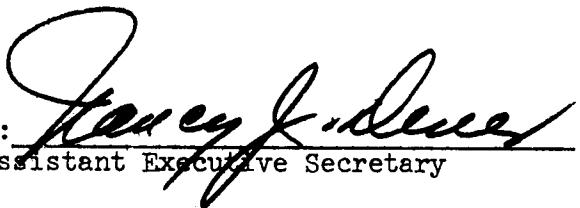
A W A R D

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 March 1980