

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Referee Edward L. Suntrup

Award Number 4135
Docket Number 4123

PARTIES Railroad Yardmasters of America
TO

DISPUTE: Boston & Maine Corporation

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

Yardmaster R. M. Willey who is regular assigned Yardmaster be allowed on yardmaster rate day at the time and one-half rate for October 26, 1981 account not called and used in the make up of the Ringling Brothers Circus Train in Yard No. 7 at Mystic Yard. Carrier used Trainmaster L. Fay to supervise a yard crew in the make up of this train using yard foreman R. Hanwell and an extra yard crew.

OPINION OF BOARD: This is a pay claim initiated by the Claimant, R. M. Willey, on October 26, 1981 for punitive rates for that day, 2300 to 0700 hours, since he was not called as senior Yardmaster available to cover spare Yardmaster assignment.

As a preliminary point it is well established that the National Railroad Adjustment Board will not consider material that has not been submitted during the handling of a claim on property. This firmly entrenched doctrine, which is codified in Circular No. 1, has been articulated in many Awards: Third Division Awards 20841, 21463, 22054. Evidence, therefore, presented to this Board by either party in their ex parte submissions or rebuttals which was not presented on property is untimely and inadmissible.

The instant claim centers on request by Ringling Brothers Circus that a Trainmaster be present to assure the protection of this company's property as its circus train was being made up and when it departed on October 26, 1981 from the Carrier's Somerville, Massachusetts property. The record shows that Regular Yardmaster M. R. Cunio was assigned not only to Yard No. 7 on that property, where the alleged work took place, but also to Yards No. 8, 12, 19, 21 and 22, Mystic Wharf, Monsanto Chemical and Coke Works as territory on that date. Thus it appears, which is not denied by the Carrier, that it would have been practically impossible for the Regular Yardmaster to have supervised the switching of cars, the proper ordering of the cars of the circus train, and the other duties required for the preparation and departure of the train in question. There is no denial by the Carrier that such work had been done, nor denial that such could not have practically been done by the Regular Yardmaster given his other responsibilities on the day in question beyond the mere assertion that Yard 7 was under that Regular Yardmaster's jurisdiction. A review of the record also shows, which has been made a part thereof on property, that an identical claim the preceding year between the same parties was paid by the Carrier at pro rata rate. Nothing in the record before the Board with respect to the October 26, 1981 incident warrants conclusion that its assessment of this case should be different than that of the Carrier with respect to the earlier claim. That the supervision over crews directly engaged in the make up of trains and in general yard switching is the work of Yardmasters has been ruled on to be such numerous times by this Division of the National Railroad Adjustment Board. The Board here rules, therefore, that the Claimant be paid the amount which he would have earned had he been called to service on October 26, 1981, 2300 to 0700 hours.

FINDINGS:

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

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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.

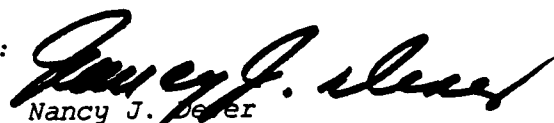
The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained as indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:


Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May, 1984