

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Referee Marty E. Zusman

Award Number 4308
Docket Number 4297

PARTIES Railroad Yardmasters of America

TO

DISPUTE: Richmond, Fredericksburg and Potomac Railroad Company

STATEMENT OF CLAIM: Yardmaster R. W. Harrison be paid one day's pay each at Yardmaster's rate on twenty four (24) claim dates listed below:

(1) 1-13-83	(9) 1-31-83	(17) 1-24-83
(2) 12-28-82	(10) 2-5-83	(18) 1-30-83
(3) 2-26-83	(11) 2-12-83	(19) 2-4-83
(4) 2-18-83	(12) 12-29-82	(20) 2-6-83
(5) 1-20-83	(13) 12-29-82	(21) 1-11-83
(6) 1-20-83	(14) 1-21-83	(22) 1-11-83
(7) 1-20-83	(15) 1-23-83	(23) 1-14-83
(8) 1-10-83	(16) 1-23-83	(24) 1-25-83

The R. F. & P. in Acca Yard is in violation of Article 1 and Article 12 of the current agreement as a result of permitting operators to change and/or add to programmed instructions.

OPINION OF BOARD: Claimant R. W. Harrison is a Yardmaster working the regularly assigned shift of 4:00 p.m. to midnight. The Claim of the Organization alleges that Yardmasters have been assigned by the Carrier the supervision of yarding trains within the Acca Yard. As part of that supervision the Claimant was required on his shift to program instructions to be followed on the midnight to 8:00 a.m. shift where Carrier no longer employs a Yardmaster. The Organization maintains violations occurred on twenty-four (24) dates when the instructions developed by Yardmaster Harrison for the midnight to 8:00 a.m. shift were changed or supplemented by non-yardmasters in violation of the Scope (Article 1) and Abolishing of Positions (Article 12) clauses of the Agreement.

The Carrier maintains that no violation occurred in that Yardmasters do not have by custom, practice, tradition or Agreement the right to perform the work in dispute. The Carrier points to the fact that these instances involved road trains and crews and also that Fourth Division Award 3454 has already ruled that a Yardmaster's programed instruction of "clear tracks" allows non-yardmasters to yard unexpected trains without Agreement violation. The Carrier maintains that the pre-programed instructions included a yard condition report which indicated clear tracks and was followed by non-yardmasters for the yarding of trains on the midnight to 8:00 a.m. shift.

As a preliminary point, this Board has carefully reviewed the probative evidence as developed on property. In the case at bar this Board must emphasize that its decision rests upon those arguments, lines of reasoning, substantiated evidence and material fact as presented by the parties during their handling on property. By firmly established position of the National Railroad Adjustment Board, ex parte submissions, rebuttals and arguments not firmly developed on property are considered by this Board as untimely and inadmissible.

Turning to the merits of the case, we have reviewed each of the twenty-four (24) claims received by the Carrier on February 26, 1983. These twenty-four (24) claims fit into two categories. In the first set of eighteen (18) claims the Yardmaster pre-programed specific instructions on the yarding of a train. These trains were not yarded according to those instructions. In the second set of six (6) claims, the Claimant made attempts to determine if trains were to arrive and in some cases was informed that there would be no train. Trains later arrived and were supplementally yarded by non-yardmasters. The Organization alleges and the Carrier denies that when the Yardmaster's instructions were specifically or supplementally altered there was a violation of the Agreement.

In the first set of eighteen (18) claims the Claimant left specific pre-programed instructions as required by the Carrier and for which Yardmasters had previously "remained on duty at overtime pay until such time as a proper lineup could be provided." A review of the evidence before us, specifically the letters of July 1, 1982 and March 4, 1983 and the actual changing of instructions support the claim. There is no denial on property that programed instructions were changed or that agreements between the parties settled prior claims in 1976 when lineups were changed. A careful review of the record as developed on property supports the conclusion that Yardmasters at Acca have been historically assigned the duty of programing on the 4:00 p.m. to midnight shift the yarding of trains from midnight to 8:00 a.m. and that such duties allowed some control over road crews and trains within Acca Yard. We are forced to conclude that in the changing of instructions non-yardmasters have supervised employes in duties assigned by the Carrier to Yardmasters. Specifically, the record is complete with documentation that train operators are making their own decisions and altering the Yardmaster's pre-programed instructions on the handling of trains. We have studied at length the Carrier's denials, arguments and Awards in support of its position, but find that on the whole of this case at bar we must sustain the claim in those eighteen (18) cases. This is consistent with past Awards of this Fourth Division (Awards 3204, 3009).

As to the remaining six (6) cases, the Carrier maintains without convincing contradiction that the Yardmaster's pre-programed information included a yard condition report as to which tracks were clear. In Fourth Division Award 3454 (Eischen) this Board held that no violation occurred as long as "the non-yardmasters did no more than pass on with virtually no independent judgment or decision-making the specific instructions and general information prepared in advance by the prior trick Yardmaster." We find that such is the case at bar in these six (6) claims where unanticipated trains arrived and were yarded on clear tracks. As such, while we will sustain the eighteen (18) days when instructions were changed, we are constrained to deny the claim in regard to those six (6) days when unanticipated trains were yarded on clear tracks.

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.

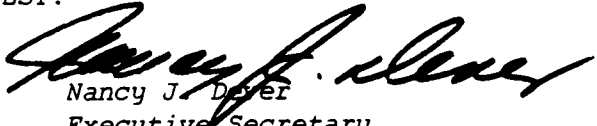
The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:


Nancy J. Dwyer
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1985.