In the Matter of Arbitration

United Transportation Union (Y)	)	
	)	Extra Yardmaster:
vs	)	M. R. Spears
	)	
Union Pacific Railroad Company	)	Time-Claim 870292
		Second Shift (Browder)

STATEMENT OF CLAIM

Claim on behalf of Extra Yardmaster M. R. Spears for one day's pay each day October 8, 9, 13, 16, 17, 20, 22, 23, 24, 26, 29; November 1, 23; and December 3, 1986 alleging the Carrier violated the Agreement when the second shift Yardmaster position at Browder Yard was abolished and the duties were transferred to Carrier officers and members of other crafts.

Background

Pay claims were filed by the General Chairman of the Organization for the Claimant, alleging violation of the Scope Rule of the Agreement. These various claims, for relief for the dates cited above in the Statement of Claim, were filed on the following dates: November 5, 1986; December 10,1986; December 26, 1986; and January 9, 1986. The claims all alleged that the Carrier was in violation of the Agreement when it permitted others than Yardmasters to do Yardmaster work on the second shift at Browder Yard. The second shift Yardmaster position had been previously abolished. Attached to each claim was documentation relative to the work allegedly done.

The claims were declined in a timely manner on property by Carrier officers and after appeal up to and including the highest

officer designated to hear such they were combined in this one case and docketed before this arbitration committee for final resolution.

This is a companion case to file 870291 (C. L. Miller) which contained information on a comparable dispute which was heard and ruled on by this arbitration committee already. That case dealt with alleged violation by the Carrier of scope rights of the craft because work which allegedly was Yardmasters' work, on third shift at Browder Yard, was done by non-covered employees.

The parties have advised the arbitrator of the relationship between these two cases, and their relationship, in turn, to other claims outstanding. It is the parties' view that these two cases be "pilot cases". The arbitrator serves at the parties' pleasure and accepts this view on this matter if that is the parties' wish. The arbitrator has extensively studied the files on both of these cases in order to frame conclusions on file 870291. It was the argument presented by both parties that the line of reasoning found in submissions for both cases were equally applicable to both cases. As the Carrier's submission put it: "the instant case(870292) under consideration is almost identical to case 870291." The Organization does not substantially disagree with this. Since, therefore, all issues and arguments dealing with case 870291 are equally applicable to case 870292 except that the former dealt with the third shift at Browder Yard, and the instant case deals with the second shift, all discussion which this arbitrator could develop relative to arbitral precedent with respect to questions about contract scope,

de minimus principles, or type of relief would be the same in this case as in case 870291 and the discussion in the Award to that case is incorporated here by reference.

Discussion and Findings

Under normal circumstances the arbitral conclusion to this case would simply follow that of case 870291 under application of the principle of res judicata. 1/ The body of arbitral precedent dealing with this principle states that if the same issue, the same fact pattern, the same parties and the same contract provisions are at stake, and if there is a lead arbitration Decision dealing with the same, then ulterior arbitral forums are bound by the lead Decision to forstall endless re-arbitration of the same matter. All of this is true in the present instance except for one detail of no small importance. And this has to do with the de minimus issue as part of the "same fact pattern". While the arbitrator need not repeat here the discussion of the de minimus principles and the arbitral precedent associated therewith, it is encumbent upon him in framing his conclusions in this case to determine the validity of the company's arguments with respect to the minimal amount of work allegedly done

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1/ See, for discussion of this principle, United Mine Workers of America, Local 1825 vs Consol. Coal Co, Burning Star No. 5 Mine 84-12-87-608 (Suntrup, Dec. 18, 1987); and more recently, BRCUS&C/TCU vs Denver & Rio Grande West. R.R. Co., C-1 Conditions (AMTRAK 33-11), (Suntrup, Sept. 29, 1988).

on the specific days enumerated in the Statement of Claim for second shift. It is particularly encumbent upon the arbitrator to arrive at conclusions based on evidence with respect to this question since the relief requested in not of a continuing nature, in either one of these cases before this arbitration committee, nor in any of the other claims filed at Browder Yard on this question of alleged scope violations.

How much work was actually done by non-covered employees on second shift on the dates in question in this case? If it was of such minimal nature, even if the Yardmasters arguendo did have right to the work, there is considerable arbitral precedent to suggest that a claim of this nature could be denied on those grounds alone. The arbitration committee resolved this "empirical and evidentiary question", as the Award to case 870291 puts it (@ pp. 15-6) by concluding that the amount of work done on third shift on the days in question in that case was substantial. Is the same true for this case, for the days in question, for the second shift? With each individual claim filed by the General Chairman under dates cited earlier there is included an evidentiary sheet prepared by "Switchmen ...at Browder... as evidence of...claim". The arbitrator has studied these sheets, as well as other documents of evidence submitted by the General Chairman as he progressed the claim to higher levels of management in accordance with ordinary practice. If the Carrier did not believe that the documentation presented supported the relief requested it had an evidentiary obligation of affirmative defense. The study of all details of the file to this case, as to case 870291 leads

the arbitrator to the conclusion that local management did not provide (or could not provide) the Carrier's highest officer sufficient materials to develop this defense. 2/

The arbitrator must repeat here what was concluded in the Award to case 870291:

> It is unclear...if the work complained of represented eight (8) hours' work for each day listed in the Statement of Claim. It is clear that the work was, according to arbitral standards, substantial. Absent additional information on this matter, the arbitrator must conclude that the relief requested by the Organization is not unreasonable.

Award

Extra Yardmaster M. R. Spears shall be paid one day's pay for each day for the dates of October 8, 9, 11, 16, 17, 20, 22, 23, 24, 26, 29; November 1, 23; and December 3, 1986 because of violation of the Agreement by the Carrier. All compensation due the Claimant shall be paid to him within thirty (30) days of the date of this Award.

For the Arbitration Committee:

Edward L. Suntrup, Arbitrator

D. D. Matter, Employer Member

J. D. Martin, Employee Member

Date: 11.9.98

2/ Declination of the claims by the Dallas Superintendent simply states, for example, that the reason for the declinations are because the claims have no "basis", or no "merit". There is no additional information.