

PUBLIC LAW BOARD 2719

United Transportation Union- :
Yardmasters Department (R YA) :
and : Award No. 34
: Case No. 34
Norfolk and Western Railway Co. :

STATEMENT OF CLAIM

Claim of Yardmaster P. L. Roethlisberger for various dates in July, August and September, 1984, account required to service locomotives with supplies and to place/remove rear end markers on trains. This work not within Scope Rule of Yardmaster's Agreement.

OPINION OF THE BOARD

The Organization has submitted a claim based upon the allegation that on certain dates and times in the the Gambrinus Yard, the Claimant was required to perform duties which were not " . . .in the remotest sense, incidental to his Yardmaster's duties." It is asserted that said duties are outside of the scope of duties assigned to the Yardmaster craft.

More specifically, the Employee asserts that he was required to service locomotives with drinking water, ice, conductor's packets, clipboards, brooms and chairs.

The scope clause of the Yardmaster Agreement generally defines duties to be performed in terms of supervision over employees directly engaged in certain activities and duties directly incidental thereto. There is a proviso that permits assignment to "such other duties as assigned by the Carrier."

The Carrier denied the claim on the property and has continued that denial in its Submission to this Board. We have noted, however, that the Carrier's Submission contains bases for the denial which were not raised while the matter was actively under review on the property.

It has been determined in numerous Awards - without significant contradiction - that a party may not raise items to a Public Law Board which have not been asserted and considered while the matter is under active review on the property. Stated differently, a

party may not remain silent concerning certain issues while the matter is being considered before Submission here, and then raise, in the first instance, those defenses to this Board. The reason for that ruling is of course jurisdictional to the Board, and as a practical matter it places the adverse party in the untenable position of not being prepared to combat those issues.

As this Board has reviewed the handling on the property, we have noted that the initial denial advised that there was no violation of the scope rule or contractual restriction which would prohibit Yardmasters from handling rear end monitoring devices. The denial upon appeal raised certain damage considerations and suggested that the claim was de minimis. Further, that document denied contractual prohibitions.

The March 8, 1985 denial dealt with general scope rule considerations, as well as certain "Section 6 Notice" concerns, as well as damages. Further correspondence was consistent therewith.

Accordingly, the Board will issue its Award based upon the matters properly considered while the matter was under review on the property.

We are of the view that the Organization has set forth the basis for its claim.

There are conflicting Awards concerning Carriers' rights to assign duties to individuals in the Carriers' employ. However, this Board is persuaded by the line of Awards which have held that an assignment of duties must be reasonably related to the craft of the claiming Employee.

We see no basis for the assignment of the type of work involved here to the Yardmaster craft. To be sure, the Agreement grants the Carrier the right to assign "other duties"; however, logic dictates to us that those duties must have some reasonable relationship to the traditionally accepted and understood work of the particular craft in question. See, for example, Fourth Division Award 2104 which prohibited a Carrier from ignoring craft lines when making assignments.

Finally, we have noted that the Carrier raises the question of damages and notes that the Employee in question was performing work and being paid for the same time that he seeks damages in the claim. While there is not unanimity of opinion, this Board prefers the line of authority which has held that it is appropriate to grant damages when there has been a demonstrated violation of the Agreement. We, of course, do not sustain the claim in the areas where there is a duplication. For instance, we have noted that the Claimant seeks compounded damages in certain instances for the same date. We do not approve duplicitous damages and restrict our Award to only one instance per claim date.

Findings

The Board, upon consideration of the entire record and all of the evidence finds:

The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

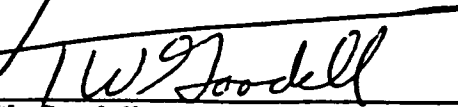
1. Claim sustained to the extent stated in the Opinion of the Board above.
- 2 Carrier shall comply with this Award within 30 days of the effective date.



Joseph A. Sickles
Chairman and Neutral Member

DISSENTS

J. D. Gereaux
Carrier Member



T. W. Goodell
Organization Member

6/3/87

Date