

PUBLIC LAW BOARD NO. 2786

PARTIES TO DISPUTE: Railroad Yardmasters of America
and
Consolidated Rail Corporation

STATEMENT OF CLAIM: Yardmaster W. K. Chmiola be allowed two days pay at current yardmaster rate of pay on February 24, 25, 1979, account yard clerk Greco performing yardmaster service at Northumberland Yard on both claim dates.

FINDINGS: On Saturday, February 24, and Sunday, February 25, trains arrived at the Northumberland Yard during the second trick during which no Yardmaster were employed at that point. On both occasions the second trick block operator at Kase Tower called the second trick Clerk at Northumberland Yard to ascertain where the trains were to make setoffs or pick ups. On each occasion the Yard Clerk checked the track schedule prepared by the first trick Yardmaster and advised the block operator where to make the setoffs and pick ups. This information was in turn relayed to the train crew.

It is the position of the organization that the above described actions were in violation of the Scope Rule in that the work in question was described by the Scope Rule and belongs exclusively to the Yardmasters. The Scope Rule reads as follows:

"SCOPE

The provisions set forth in this Agreement shall constitute an Agreement between Consolidated Rail Corporation and its yard masters, represented by the Railroad Yardmasters of America and shall govern the hours of service, working conditions and rates of pay of the respective positions and employees classified herein.

Where yard masters are employed they will report to and receive their instructions and directions, if any, from the superintendent, trainmaster or other designated official, and shall have jurisdiction over all employees in their assigned territory involved in yard operations and will direct yard operations, make up and movement of trains, engines and cars therein, including all industrial switching. Within the territory assigned, a yard master must determine:

Crews report for duty with prescribed number of employees at the appointed times;

Employees properly discharge their duties;

Trains are made up correctly and promptly moved at the times prescribed;

Waybills have been received and furnished together with any instructions concerning restricted cars or shipments;

Cars and engines are handled carefully;

and in conjunction with the foregoing, yard masters will plan, coordinate and effect economical operation, seeing there is full compliance with operating and safety rules."

The Carrier takes the position that in that Yardmasters are not assigned to the second trick the Scope Rule is not applicable because the second paragraph of the Rule is introduced by the phrase "Where Yardmasters are employed". The Carrier's position is that the Scope Rule has no application to tricks or territories where Yardmasters are not assigned. The carrier takes the further position that the Scope Rule is general in nature and that it is incumbent upon the organization to prove exclusivity. A further argument is made by the Carrier that in that the amount of time taken to perform the work in question was but a few minutes, even if there was a violation it would be de minimis and not warrant a sustaining award.

The Scope Rule is obviously operative only at such locations where Yardmasters are employed. Yardmasters are employed at Northumberland Yard and the fact that they are not employed on the second trick does not cause the Scope Rule to be inoperative at that point. The question to be decided by this Board is whether or not the work complained of was Yardmasters' work as described in the Scope Rule such as to the cause the performance of it by others to be in violation of the Rule. The various types of Scope Rules in the Railroad industry run along a continuum from very broad and general to increasingly more specific to the most specific where the specific functions of the various positions are listed and described. The Scope Rule under consideration is obviously not that specific nor is it so general as to be merely dismissed as a general Scope Rule requiring proof of exclusivity by custom, use and tradition. This rule states that at points where Yardmasters are employed they shall "have jurisdiction over all employees in their assigned territory involved in yard operations, and will direct yard operations, make up and movement of all trains, engines and cars therein" What was done in the instant case quite obviously involved the directing of the movement of trains, engines and cars in the yard.

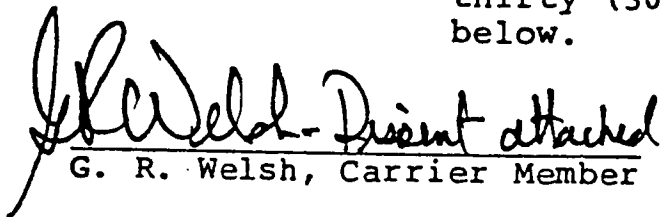
There is no question but that if the work complained of were performed during a trick when a Yardmaster was on duty that the Yardmaster would have done the work. The work in question was Yardmasters' work and should have been performed by a Yardmaster.

The Carrier has cited various awards in support of its position including award No. 1 of Public Law Board 2660 in a dispute between the Railroad Yardmasters of America and the Indiana Harbor Belt Railroad Company. We find the awards in question and in particular Award No. 1 of PLB 2660 to be distinguishable based on the wording of the various Scope Rules.

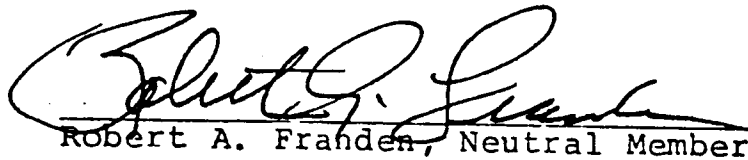
We find that the Agreement has been violated.

AWARD: Claim sustained.

Carrier is directed to make this Award within thirty (30) days of date of issuance shown below.


G. R. Welsh, Carrier Member


J. C. Thomas, Employee Member


Robert A. Frauden, Neutral Member

Issued at Philadelphia, Pennsylvania, August 20, 1982.

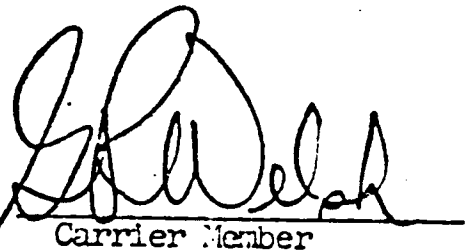
CARRIER MEMBER'S DISSENT TO AWARD NO. 13

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The majority correctly states "The Scope Rule is obviously operative only at such locations where Yardmasters are employed" but thereafter does a complete turnabout by disregarding the fact that there are no Yardmasters employed on the second trick at Northumberland Yard on Saturday and Sunday; by ignoring the past practice at this location which has existed since mid-1975; and by giving no weight to the awards cited by the Carrier to the effect that Yardmasters are only responsible for yard operations and since the picking up and/or setting off of cars by road crews within yard limits is not yard work, Yardmaster supervision is not required.

The majority further compounds the error by granting a day's pay under a classic diminimus situation in the face of a long line of awards which have declined to award damages in such situations, and beyond that, in the face of a "call" rule (4-A-3) found in the applicable Agreement.

For all of these reasons, I must dissent.



Carrier Member