

NATIONAL MEDIATION BOARD, Administrator

OYM-90

PUBLIC LAW BOARD NO. 2826

THE OGDEN UNION RAILWAY AND DEPOT COMPANY

and

RAILWAY YARDMASTERS OF AMERICA

Award No. 1

Case No. 1
(Carrier's File No. Gen. 59-A)

R.E. Adams, Claimant

Date of Hearing: March 9, 1981

Date of Award: April 3, 1981

MEMBERS OF BOARD

David D. Smith, General Chairman
Organization Member

Alden Lott, Assistant to Vice President
Carrier Member

Herbert L. Marx, Jr.
Neutral Member

S T A T E M E N T O F C L A I M

Claim and request of Railroad Yardmasters of America that the Carrier violated Rule 10 and Rule 19 of the current Agreement, therefore Yardmaster R. E. Adams be allowed eight hours at rate for July 2 and 4, 1980 account said violation of Rule 10 of our Agreement.

F I N D I N G S

The Carrier, Ogden Union Railway and Depot Company, and the Organization, the Railroad Yardmasters of America, are parties to a Schedule of Rules Agreement effective November 16, 1978, superceding previous agreements between the same parties. Covered by the Agreement are certain Yardmaster employes in the employ of the Carrier. No evidence or argument was presented to the Board to indicate that the Agreement is other than a wholly independent agreement between the parties separate from any other similar agreement encompassing a large group of employes or any other carrier.

Rule 10 of the Agreement covers "Allowances Account Sickness", providing certain pay benefits to covered employes in the event of sickness. The specific provisions of Rule 10 are clear and are not at issue between the parties.

Rule 19, DATE EFFECTIVE AND CHANGES, is a standard rule found in such agreements and reads in full as follows:

RULE 19. DATE EFFECTIVE AND CHANGES. This Agreement shall be effective as of November 15, 1978, and shall continue in effect until it is changed as provided herein, or under the provisions of the Railway Labor Act.

Should either of the parties to this Agreement desire to revise or modify these rules, thirty (30) days' written advance notice containing the proposed changes shall be given and conference shall be held immediately on the expiration of said notice, unless a different date is mutually agreed upon.

It is understood and agreed that this Agreement is superceded by and subordinate to any municipal, state, or Federal legislation, and any other modification and/or interpretation to be effective, must be concurred in by the parties signature hereto.

Implicit in this Rule is that the provisions of the Agreement (including Rule 10) are binding upon the parties until and unless changed in the normal fashion under the provisions of Section 6 of the Railway Labor Act.

In May 1978 the President of the Railroad Yardmasters of America national organization invited local General Chairman (including the General Chairman of the local unit of employees of the Carrier here involved) to send a Section 6 notice to their respective Carriers concerning a major proposed change in the Sick Leave Rule involving a Supplemental Sickness Program. A later communication to Local General Chairman stated, in part:

If you served that /Section 6/ notice the Executive Board will consider your property as included in the negotiations.

Subject to indicated footnotes, this authorization is coextensive with notices filed and with provisions of current schedule agreements applicable to employees represented by the Railroad Yardmasters of America.

. . . .

Ogden Union Railway and Depot Company

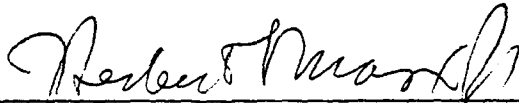
. . . .

The Board was uninformed as to how the name of the Carrier appears on the list. The Board does not know if it was included inadvertently or deliberately. What the Board does know is that no Section 6 notice was filed -- though one was clearly invited -- on behalf of the Yardmasters employed by the Ogden Union Railway and Depot Company. Without such notice, the Board can only determine that the employees of this Carrier simply are not party to the new Supplemental Agreement. It follows therefore that Rule 10 remains in full force and that the Claimant is covered thereunder.

The Carrier and the Organization indicated to the Board that there is no dispute as to the Claimant's entitlement for sick pay on the days in question, if it were found that Rule 10 remains in effect unimpaired by the Supplemental Agreement. A sustaining claim is therefore in order.

A W A R D

Claim sustained. The Carrier is directed to put this Award into effect no later than 30 days after the date of the Award.



HERBERT L. MARX, JR.
Neutral Member



DAVID D. SMITH
Organization Member



ALDEN LOTT
Carrier Member