

PUBLIC LAW BOARD NO. 2938

Parties: Railroad Yardmasters of America
and
Union Pacific Railroad Company

Statement of Claim: "Claim of Yardmaster G. E. Hrabovsky for February 15, February 16 (two incidents), February 23 and March 16, 1981, for eight hours each date account Bridge Dispatcher gave instructions to various road crews."

Background: Rule 2 captioned "Classifications" states in Part:

"(b) Tower Yardmasters: The classification of tower yardmaster shall apply to the incumbent of a position in a tower whose preponderant duties are to supervise the work of employees engaged in making up, breaking up and handling trains and general yard switching within a yard, and who in addition is required by the company as a regular (but a minor) work function to supervise and instruct employes classified as yardmasters.

(c) Yardmasters: This classification includes regularly assigned positions in which the preponderant duties of incumbents are to supervise the work of employes engaged in breaking up, making up, and handling trains and general yard switching within a yard, having jurisdiction over a designated territory, and who report directly to a general yardmaster or assistant general yardmaster or supervisor in charge of the yard where no general or assistant general yardmaster is employed or on duty."

The gravamen of these claims is that the Carrier is utilizing dispatchers to perform yardmaster work in the Omaha-Council Bluffs Terminal. The claims filed by the Claimants state that on February 15, 1981, the Train Dispatcher instructed the employees on Train X9000 West to make up their train on Ramp 1 with ten cars on that track. The claim further states that the employees were instructed to ask the Ramp Foreman to make sure the cars were ready before this move. The claim also states the Dispatcher told the employees to get the track together and that the Carman would make the air test.

The claim filed for February 16, 1981 stated the Train Dispatcher instructed the crew of Train X2531 West to make up their train on the North Running Track and that there were no North Platte cars in their pick up.

The claim for February 23, 1981 states the Dispatcher instructed the employees of Train X3644 East to break up their train on Extension 6 and take two cabooses in their train to Council Bluffs.

The claim for March 16, 1981 stated the Train Dispatcher instructed the employees on Train X8067 West to make up their train on Ramp 1 and to get the list from him.

Organization's Position

The Organization asserts that the Train Dispatcher, on the claim dates, was performing work that traditionally is performed in this Terminal. The work was performed within the yard tracks and not out on the road. The Organization further asserts that the work which the Train Dispatcher instructed the crews to perform was work, which traditionally belonged to Yardmasters, i.e., the work of breaking up, making up and handling trains within the Yard. The work of designating cars to be picked up from designated tracks, is the work of making up a train. It is work that has always been performed exclusively by yardmaster and not by Train Dispatchers.

The Organization stated the Carrier in February 1981 abolished the third trick yardmaster job in Tower B which greatly expanded the duties of the Tower Yardmaster at the 8th Street Yard, which led to the instant claims. The Organization further stated that the Carrier in 1976 consolidated its Train Dispatchers in North Platte, but since there were three Dispatchers with less than five years to retirement, the Carrier decided to let them remain in Omaha until their retirement. The Organization states that one has retired, leaving two, but the Carrier has since hired three more dispatchers in Omaha.

The Organization noted the Train Dispatchers at North Platte handle all Train Orders and Clearances for trains that run west from the Omaha-Council Bluffs Terminals, but the Carrier is now seeking to have the Dispatchers at Omaha perform duties that comes within the purview of the Yardmaster's Schedule Agreement, namely, Rule 2(b) and (c).

The Organization states that Operating Rules #803 and 803A clearly provide that when a yardmaster is on duty, the general direction and supervision of the yard is his responsibility.

The Organization denies the work in question was performed on the line of road, but rather within the Terminal's yard limits. Any train crew, be it yard or road, once it enters the Yard limits comes within the jurisdiction of the Yardmaster. The Train Dispatcher has no jurisdiction over the train until it leaves the Yard and enters road territory.

The Organization notes that Train Dispatchers are non-Agreement employees and the Carrier is violating existing craft lines, but with Management personnel rather than another craft. The Organization adds that if the Carrier is successful in having this work removed from the Scope of the Yardmaster's Agreement, and given to Dispatchers, it only will be a matter of time before the Carrier will have eliminated the Yardmaster craft on this property.

Carrier's Position

The Carrier asserts the claims lack merit for a number of reasons. It contends first that the Organization has not met its burden of proof as the moving party progressing the claims. It cites several awards on this issue which it contends support its position.

The Carrier further contends that the Yardmaster's Agreement does not vest in Yardmasters the exclusive right to supervise road crews. It states Rule 2(b) and (c) is a general rather than a specific statement of yardmaster duties. The Carrier states that for the herein involved scope rule to have effect, the Organization would have to show the existence of system-wide exclusive performance by yardmasters. It states the Organization does not have the exclusive right to supervise road crews. The Carrier states that trainmasters and dispatchers have had the right to supervise road crews for a long time.

The Carrier states that the Organization is seeking by an award of this Board to get a specific scope rule, rather than securing it through negotiations.

The Carrier states that by past practice on this property, it is established that Dispatchers supervise road crews in the Omaha-Council Bluffs Terminal. It alludes to Time Table No. 4 which makes numerous references to Dispatchers supervising road crews in this Terminal. The Carrier also alludes to a statement attached to its Submission from a recently retired Assistant Chief Dispatcher who stated that Train Dispatchers have always supervised road train crews within the Omaha-Council Bluffs Terminal.

The Carrier states it does not deny that Train Dispatchers secure information from Yardmasters in order to supervise road crews, such as to know which tracks are clear. However, the use of information obtained from Yardmasters does not mean that the Train Dispatcher is performing work which belongs exclusively to the Yardmasters craft.

The Carrier urges the Board, on the basis of contract and past practice, to deny the claims.

Findings: The Board, upon the whole record and all the evidence, finds that the employees and Carrier are Employees and Carrier within the Railway Labor Act; that the Board has jurisdiction over the dispute and that the parties to the dispute were given due notice of the hearing thereon.

The Board finds that the weight of the evidence supports the Organization's position rather than the Carrier's.

The Board finds that the specific instances of Train Dispatchers issuing instructions to train crews set forth in the Statement of Claim, constitute making up and breaking up of trains. The Carrier has not refuted or rebutted the specific allegations contained in the several claims, and the Board must accept them as fact.

The Board finds that the Carrier is misapplying the term "supervision of road crews." It is beyond cavil that Train Dispatchers supervise road crews but within the area of dispatcher duties rather than yardmaster duties. The very Time Table No. 4 cited by the Carrier illustrates that the Dispatcher controls the flow of traffic. The Dispatcher, for example, grants permission to go against the flow of traffic, when not protected by the interlocking; when to occupy the main line, when the train must keep to the right on a double track, etc. There is no probative evidence that Train Dispatchers may properly assign road crews to pick up, or set off cars or to make up or break up trains, or direct general yard switching.

The Board finds that Rule 2 of the Yardmaster's Schedule Agreement clearly assigns the work of instructing and supervising crews engaged in performing yard duties and general yard switching to yardmasters, and not to Train Dispatchers.

The Board finds that in this Industry the duties of these two crafts are clearly delineated and one is not subsumed within the scope of the duties of the other. The Board finds that the Carrier has not adduced probative evidence to show that on this property generally, or in the Omaha-Council Bluffs Terminals specifically, the customary and usual duties of Train Dispatchers, including Bridge Dispatcher, encompasses the duties of supervising either road or yard crews engaged in making or breaking up trains or engaged in performing general yard switching.

In light of these Findings, the Board has no recourse but to sustain the claims.

Award: Claims sustained.

Order: The Carrier is directed to comply with the Award, on or before February 28, 1982.

Jacob Seidenberg, Chairman and Neutral Member

R. L. Ryba, Employee Member

J. E. Trummer, Carrier Member

January 26, 1982