

PUBLIC LAW BOARD NO. 3073

Case No. 3 -- Award No. 3

<u>Parties</u>	The Pittsburgh	The Railroad
<u>to</u>	& Lake Erie	Yardmasters of
<u>Dispute:</u>	Railroad Company	America

<u>Dates and Place</u>	P&LE Terminal Building
<u>of</u>	Pittsburgh, PA
<u>Hearing:</u>	April 27 & 28, 1982

Statement of Claim: This case involves the claim of Yardmaster A. A. Corsaro that the Carrier did violate the Yardmasters' Agreement, Holiday Rule, and National Mediation Agreement A - 10183 on May 26, 1980. This claim is for one (1) day's pay at the punitive rate of pay.

BACKGROUND

The primary events leading to the claim before this Board took place on May 26, 1980, at the Riverton Yard. This date was observed as Memorial Day Holiday and all of the yard employees' assignments, including Yardmasters, were annulled by notice. However, it was later decided that the first and second trick employees were needed for work assignment. The notices were then cancelled and the regularly assigned employees for those two tricks worked. The jobs on the third trick were blanked.

On the claim date, the second trick (3:00 p.m. to 11:00 p.m.) Yard Crew, under Yardmaster Nolan, in connection with a pick-up that was to be made by Train GN-2, prepared a clear track for that train to make its set-off at Riverton Yard.

Nolan, at the end of his trick, called the Chief Train Dispatcher and informed him which track was clear for Train GN-2's set-off, as well as on which track the pick-up (fill-out) was located.

Yardmaster Corsaro, the regularly assigned Yardmaster at Riverton, whose position had been blanked, then filed a time claim for May 26, "claiming one day account of blanking my job on holiday. Chief Dispatcher instructing

road crew to set-off and fill-out". This claim was denied at the initial review level and was progressed on the property through the normal and proper channels resulting in its submission to this Board.

#### CONTENTIONS

The Organization contends that work normally performed by Corsaro, during his assigned trick, was performed by others. Therefore, a contractual violation occurred. To support its contentions, the Organization relies upon its construction of Section 4, Article III - Holidays of the National Agreement dated November 29, 1967 and the amended Scope Rule of September 21, 1978:

"Section 4. In instances when a recognized holiday, or the day such holiday is observed by the State or Nation, falls on an assigned work day of a regular yardmaster assignment, the carrier shall have the right to blank such position on that day and the yardmaster then holding such assignment shall be paid for that day on the basis of his regular straight time rate of pay, provided he does not render other compensated service for the railroad during the hours of such yardmaster assignment. If any work of such position is performed by other than the incumbent on the shift on which it is blanked, it shall be performed in accordance with existing schedule rules."

#### Article 1 - Scope and Employees Affected

"Existing scope rules shall be amended by the addition of the following:

The duties and responsibilities of a yardmaster include: (a) Supervision over employees directly engaged in the switching, blocking, classifying and handling of cars and trains and duties directly incidental thereto that are required of the yardmaster in a territory as designated by the carrier.

(b) Such duties as assigned by the carrier."

The Organization holds that the Yardmaster was forced to program his work to a Dispatcher. The Dispatcher, in turn, it is contended, issued instructions for a Road Crew to set-off and fill-out the train at Riverton. Therefore, it is asserted, the Dispatcher assumed work that should have been accomplished by Corsaro, the third shift Yardmaster. Furthermore, the Organization maintains had it not been a holiday there is no question that Corsaro would have worked. Consequently, "if it belongs to the yardmaster on all other days of the year, it most assuredly belongs to him on the holidays".

Essentially, the Organization argues that the supervision or the instruction given by the Dispatcher for the set-off and pick-up work associated with Train GN-2 on the third track in the Riverton Yard constituted Yardmaster's duties. Therefore, by virtue of his seniority, the work belonged to the Claimant.

As in the other cases before this Board, a number of awards are cited and provided as well as P&LE Operating Rule 400 N-7 Yardmasters, which the Organization claims supports its position.

The Carrier builds its argument on the assertion that no Yardmaster work was performed on the third track and

under the provisions of the Holiday Rule (previously quoted), the Carrier has the right to blank such assignments on the holiday. It asserts that the second trick, under the supervision of Nolan, performed all the switching necessary for Train GN-2 to make its set-off and pick-up. Consequently, the contact made by the second trick Yardmaster with the Dispatcher was to provide turnover information so it could be relayed to the Road Crew. It is further asserted that on the property it is not uncommon for Dispatchers to instruct Road Crews as to the location of cars to be picked up and tracks available for setting off cars from their trains, based on yard standing received from the last Yardmaster on duty. (See Case 2, this Board, for greater detail as to Carrier's practices.)

Therefore, Carrier maintains that during the third trick, there was no supervision required of employees directly engaged in the switching, blocking, classifying of cars and train. As a consequence, Corsaro's position was properly blanked.

To support its basic arguments and assertions, the Carrier relies upon its construction of Rule 1-Scope of the October 1, 1964 Agreement, the amended Scope Rule of September 21, 1978, and the letter agreement of September 21, 1978. (See case 2, this Board, for Carrier's construction of these rules.)

In summary, the Carrier maintains that the work complained of, and in this dispute, is not and never has been reserved exclusively to the Yardmaster craft.

The Carrier also provided awards which it holds supports its position as to the merits and the penalty pay issue.

#### FINDINGS

The basic issue before the Board is whether the Train Dispatcher's orders to the Road Freight Crew, as to where to set-off and fill-out within yard limits, constituted work belonging to the Yardmaster.

The Carrier blanked the Claimant's position under the provisions of Section 4 of the Holiday Rule, and by so doing, its rights became limited, as in the instant case, by the last sentence of the Rule which requires that:

"If any work of such position is performed by other than the incumbent on the shift on which it is blanked, it shall be performed in accordance with existing schedule rules".

The existing Rule in this case is the amended Scope Rule of September 21, 1978 previously referred to under Contentions.

The Board, at the outset, would recognize the broad language of the Yardmaster Scope Rule. It does not purport to define the work of Yardmasters. However, by custom and usage, and it seems so on this property, there is general

agreement that the principal duties belonging to the Yardmasters' craft consist of supervision of employees, within the confines of the yard limits, when these employees are engaged in the making-up, breaking-up, and handling of trains as well as performing switching duties. The resolution of the present case depends upon the application of the aforementioned principles to the specific facts of the instant case. Therefore, the question is whether the evidence of record supports the claim that employees, other than the Yardmaster, supervised employees engaged in the making-up, breaking-up and handling of trains and the switching pertaining thereto in Carrier's Riverton Yard? Or, more simply, when the Train Dispatcher conveyed the yardmaster's instructions to the Road Crew, was this a part of the content of Yardmaster's work?

From the record, it is an uncontested fact that the second trick Yardmaster performed the switching and preparation of the clear track for Train GN-2 and passed the required information to the Train Dispatcher, who in turn passed on the work instructions given to him by the Yardmaster. As to what the Train Dispatcher actually did beyond "passing on the yardmaster's instructions", it must be noted that the record is wholly silent on this point.

The Board could and would (but, only under certain conditions) recognize that some work tasks -- by any reasonable measure and in view of their very nature -- must be performed under supervision. We cannot, with reasonable certainty, however, arrive at such a conclusion in the case before us. Therefore, absent a specific showing that the Train Dispatcher acted in a supervisory capacity with respect to the Road Crew and did more than relaying information as to set-off and fill-out given him by the Yardmaster on the previous trick , and with due recognition of past awards between the parties on similar matters, we deny the claim.

AWARD

The claim is denied.

*Eckehard Muessig*  
Eckehard Muessig  
Neutral Member

Dated: 2/1/83

*R. D. Jones*  
R. D. Jones  
Carrier Member

*T. E. Churchill - Dissent*  
T. E. Churchill  
Employee Member