

PUBLIC LAW BOARD NO. 3224

Award No. 7

Case No. 7  
Carrier File YM-176

Parties Railroad Yardmasters of America

to and

Dispute Southern Railway Company

Statement

of Claim: Claim of Spencer Yardmaster F. A. Brandt, that his record be cleared of the charges following investigation held April 26, 1982, wherein Mr. Brandt was assessed a thirty (30) day suspension allegedly for violation of Carrier Operating Rule 1201 and his responsibility in the damages to Southern 780117 and LN-300085 and derailment to NW-38773 which occurred on April 19, 1982, at the north end of receiving Track No. 8. Claim is also appealed on behalf of Mr. Brandt that he be paid for all time lost in addition to four (4) hours pay at the yardmaster pro rata rate consistent with Rule 14(B) of the current working agreement, seniority unimpaired, vacation rights and any and all rights restored that he would otherwise be precluded from as a result of this unfair discipline.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated May 27, 1982, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, on April 19, 1982, was the Yardmaster on the first trick at Carrier's Spencer Yard at Linwood, North Carolina. The Terminal Trainmaster, about 7:00 AM, instructed Claimant Yardmaster as to the specific moves to be made by the crews of yard jobs EA-90 and EA-01. Claimant relayed such instructions to the foremen of both yard assignments.

During the performance of said work instructions extra Job EA-90 about 8:00 AM, while shoving 87 cars in a northward direction in order to

couple on to 43 cars standing on the north end of receiving track No. 8 made a hard coupling which caused a northerly car thereon to enter and foul No. 8 track crossover. Said car thereby came to be involved in a sideswipe thereof by cars of Job EA-01's consist which were moving southerly out of class track No. 32 through No. 8 crossover resulting in a derailment and damages of \$15,000 to 3 cars but no personal injuries.

An investigation was held thereon. Claimant was charged:

"The purpose of ...to develop the facts and place your particular responsibility, if any, in connection with the damages to SOU 780117 and LN 300085, and derailment of NW-38773 which occurred at 8:01 a.m., Monday, April 19, 1982 in the north end of Receiving Track #8, while you were serving as yardmaster.

You are charged in the investigation for allowing EA-90 Job to make a coupling in RT-08 while the north end of this track was fouled by cut of cars being handled by EA-01 Job at 8:00 a.m., April 19, 1982..."  
(underscoring supplied)

As a result of the investigation held Carrier determined that Claimant had responsibility and had violated Operating Rule 1201. He was suspended from service for 30 days as discipline therefor. The Yard Foreman and Helper on Yard Job EA-90 were also given 30 days suspensions.

Operating Rule 1201 reads:

"Yardmasters have charge of their respective yards, or the making up and distribution of trains and the handling of cars therein, of yard employees, and of train and engine crews while within yard limits. Yardmasters are responsible for efficient handling of yard work and prompt movement of cars, properly inspected and sealed and accompanied by prescribed billing and for having crews called and trains started at the appointed times. Yardmasters must observe regulations governing Hours of Service, handling placarded cars containing or last containing hazardous materials, and loading and clearance limits. Yardmasters must require yard employees to be provided with standard watches, current timetables or prescribed signals."

The Board finds that Claimant was accorded the due process to which entitled under Rule 17 - Discipline. Claimant expressly, and his representative implicitly, by their silence agreed that Claimant was precisely charged, that the hearing was properly conducted and that Claimant had been handled in accordance with Agreement Rule 17. Neither had any objections to register at the beginning of the investigation, during same nor at the end thereof. Consequently, any basis for a procedural objection is deemed to have been waived thereby.

The Board finds that there was insufficient evidence adduced to support Carrier's conclusion as to Claimant's guilt of the charges placed against him by the notice of investigation. Carrier seeks to make Claimant the insurer against any incidents occurring. Such conclusion would among other things, represent an abuse of discretion. The Terminal Trainmaster, Claimant's superior, and the party who designed the moves complained of, as did the person who carried out the instructions relayed by Claimant, at page 45 of the transcript, agreed that Claimant did fulfill a Yardmaster's duty and responsibility. Further, we find no basis within Operating Rule 1201 to permit it to be used to impute to Claimant a responsibility for something that is not expressed or otherwise, therein concerning conflicting moves. The absence of common sense herein causes the observation that said Operating Rule is solely within Carrier's charge. Let Carrier state what it desires the rule to say and to use same as a means for assuring safe operations. Such responsibility, incidentally, was unfairly and improperly assessed to be equal to that of the yardmen whose admitted failures actually resulted in the sideswipe occurring.

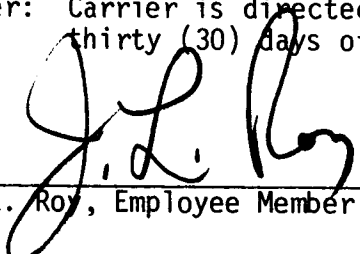
This claim will be sustained for pay for "all time lost." However, that portion seeking four (4) hours pay under Rule 14 (b) - Attending Court does not appear to be payable. The record provided no affirmative basis for support of such claim when one is principled. It disclosed that a rule was sought by the RYA to provide payment when cited to an investigation on their "off days" and subsequently were cleared of the charges.


Nevertheless the record also reflects that said paragraph (b) represented an adaptation from the Trainmen's Rule (UTU). Consequently, the application accorded said UTU rule should likewise be here applied.

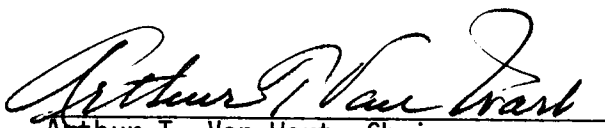
The claim would be honored if, under the UTU Rule, trainmen are paid for attending the investigation on the basis of actual time with a minimum of 4 hours when, as here, they are exonerated. Then the Yardmaster's rule should likewise be similarly applied. Otherwise, that aspect of the claim would be denied.

Award: Claim sustained as per findings.

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

  
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J. L. Roy, Employee Member

  
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C. B. Thomas, Carrier Member

  
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Arthur T. Van Wart, Chairman  
and Neutral Member

September 22, 1983.