

Award No. 1

Case No. 1

PARTIES
TO
DISPUTE

Burlington Northern Railroad Company
and
Railroad Yardmasters of America

STATEMENT
OF CLAIM

"Claim and request is herewith made by the Railroad Yardmasters of America that the carrier violated and continues to violate the Yardmasters' Agreement by abolishing on March 5, 1982, the position of yardmaster at Auburn Yard, Auburn, Washington, and removing the work, duties and authority of the yardmaster class from the scope and operations of the agreement, by assigning such work, duties and authority to employees outside the purview of the yardmasters' agreement, thereby illegally and improperly keeping the work, duties and authority of the yardmaster outside the scope and operations of such yardmasters' agreement.

"That the Yardmaster work, duties and authority shall be restored to the yardmaster class and the carrier required to restore and bulletin the yardmaster positions at Auburn Yard, Auburn, Washington, in accordance with the provisions of the Yardmasters' Agreement, specifically rule 1 Scope, and the agreement concerning the use of computer in YMS system for persons doing the computer functions carrier assigned to the yardmaster class where the YMS is in use, specifically Auburn Yard.

"Further claim is made for 8 hours daily and on continuous basis for senior available yardmaster at prevailing rate and all time lost including rest day and vacation allowances, account being deprived of the yardmaster work at Auburn Yard, Auburn, Washington March 5, 1982 and until the condition complained of is corrected."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Effective May 5, 1982, Carrier abolished the Yardmaster position at Auburn Yard. The Organization contends that thereafter, immediately following the abolishment, the work remained and the duties and responsibilities of the Yardmaster were then assigned to and performed by a Chief Clerk. In support of that position, among

other things, Petitioner notes that the bulletin setting forth the new position of Chief Clerk specified that the Chief Clerk's major duties would include: "Must have complete knowledge of YMS and COMPASS procedures. Supervise clerks, weigh cars, mark switch lists, verify frames, set trains, transport crews...." Furthermore, the Chief Clerk submitted evidence to the effect that he was instructed to take over the duties of the Yardmaster at the Auburn Yard following the abolishment of the Yardmaster position. He stated that his duties included the makeup of switching lists, instructions to train crews as to what order and where to switch on various tracks, and instructions to conductors of locals passing through the terminal as to where to set out or pick up cars. Further, the Switching Foreman indicated he received his switch lists from the Chief Clerk at Auburn since the Yardmaster position had been abolished. In addition, two engineers indicated that they had received instructions from the Chief Clerk at Auburn since the Yardmaster position had been abolished. Petitioner's position is that Carrier has unilaterally decided to assign work covered by the Agreement and reserved to Yardmasters to employees not subject to its terms, namely a Chief Clerk.

Carrier asserts that with the change in business and economic conditions, the Auburn Yard has changed as well. Specifically, improvements in the yard operations at Auburn have eliminated the need for Yardmaster supervision at that location, according to Carrier. This has also been true at a number of other terminals. Carrier maintains that the situation at Auburn is identical to that of other terminals, such as Centralia, where clerks and other employees prepare switch lists from printouts and furnish them to the switch crews but exercise no direct supervision over any of such crews or other operating employees. Carrier's position is that there was no violation of the Agreement and specifically of the Scope Rule in its actions at the Auburn Yard. Furthermore, according to Carrier, the identical issues arising in this case had already been decided on this property in Fourth Division Awards 3041, 3042, 3043 and 3309. Carrier notes that the work in dispute herein is the same work as was in issue in those cases. Carrier notes further that although the earlier cases were decided under a Scope Rule which was somewhat different than that currently, the new Scope Rule agreed to in the 1978 Agreement does not change the material areas of difference in this dispute. Furthermore, the Side-bar letter accompanying the 1978 Agreement specifies that no existing rights of the respective parties would be eliminated by that Agreement, according to Carrier. In addition, Carrier notes that the new Scope Rule very, very carefully defines the role of Yardmaster as supervision over yard crews and duties directly incidental thereto.

In this dispute, according to Carrier, there was no requisite direct supervision of the yard crew involved and, hence, there could have been no violation of the new Scope Rule.

Carrier also notes in its defense that it has the right to determine when and if supervision might be required in any of its yards. This right has long been accepted and known to both parties (see Fourth Division Award 105). As an additional argument, Carrier also refers to the fact that in 1981 the Organization filed a Section 6 notice asking for a change in the Scope Rule. That change would have materially affected the language in the Scope Rule and in effect secured for the Organization that which it is seeking to accomplish in the claim at bar. Subsequently, that notice was withdrawn. Hence, Carrier concludes that the very filing of that notice is an indication of the Organization's inability to sustain a position based on the old Rule.

The Board is aware of the voluminous previous litigation conducted throughout the country on virtually identical grounds. Both parties have supplied substantial records indicating the prior disputes and the decisions emanating from those disputes. We are particularly impressed with the reasoning contained in Fourth Division Award 3309 which sets forth the basis for putting an end to litigation on this same issue. The Board views with considerable favor the finding in Fourth Division Award 6935 as follows:

"If, as we maintain, our awards are final and binding, there must be an end sometime to one and the same dispute or we settle nothing, and invite endless controversy instead. The pending claims, having been once adjudicated, are now barred from further Board consideration, and must be denied on jurisdiction grounds."

The above principle could well be applied to this case but for one compelling circumstance: the change in the Scope Rule in 1978. The circumstances surrounding this dispute seem to be identical to those considered by the Fourth Division in Awards 3041, 3042 and 3043, but for the change in the Scope Rule. In 1978 the parties agreed that the new rule be as follows:

"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 other duties as assigned by the Carrier."

As an adjunct of that new Scope Rule, a Letter Agreement was entered into at the same time which stated in part as follows:

"In the application of this Agreement, it is not intended to eliminate any existing rights of the respective parties under the applicable Collective Agreement."

A careful review of the record and evidence submitted in this dispute leads us to conclude that nowhere does the evidence indicate that the Chief Clerk was required to supervise any of the crew in the execution of switching work as defined in the new Scope Rule. There is no evidence to indicate that the Chief Clerk has any direct supervisory duties whatsoever over the switching crews. As in the Centralia dispute, when switching lists are prepared and given to the Yard Foreman or crew members, the clerk is not required to supervise the crew in the execution of the subsequent work. Therefore, the duties now being performed by the Chief Clerk do not constitute the supervision of employees engaged in the making up, breaking up and handling of trains and switching in yards, as defined in the new Scope Rule.

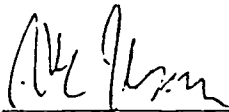
Additional weight must be accorded to Carrier's position by the evidence with respect to the Section 6 notice filed by Petitioner in 1981. In that proposal, contrary to the contention of Petitioner, the Organization attempted to make sure in Paragraph B that all employees "engaged in duties incidental to and related to the switching, blocking, classifying, handling and moving of cars and trains shall be supervised by Yardmaster employees covered by this Agreement." Thus, Petitioner, in that proposal, did indeed attempt to make sure that Yardmasters must be used to supervise all switching, blocking and similar types of work, and also supervise employees engaged in any duties incidental to such activity. It must be presumed therefore that the Organization did not feel that its Scope Rule covered such activities, since it was impelled to file such a request.

In this dispute, it must be concluded that there is no evidence to support the contention of Petitioner that Yardmaster work reserved by the Scope Rule was being per-

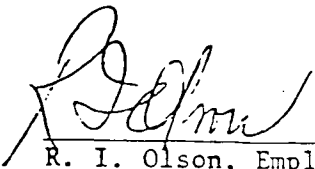
formed by the Chief Clerk; no supervisory functions have been ascribed to the Chief Clerk. Further, it is indeed a fact that Carrier may determine when and if it may require supervision of its employees. In this Board's view, similar to the conclusions reached in the four prior cases preceding the current Scope Rule involving the same parties on this property, there is no evidence to indicate violation of the Agreement by Carrier's actions. Had the Chief Clerk been required to perform supervisory functions as specified in the Scope Rule, a different conclusion would have been reached. However, this was not the fact in this dispute. In the absence of further changes in the Scope Rule, it is hoped that this decision will finally put this matter to rest on this property.

AWARD

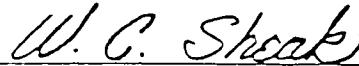
Claim denied.



I. M. Lieberman, Neutral-Chairman



R. I. Olson, Employee Member



W. C. Sheak, Employer Member

St. Paul, Minnesota

October , 1983