

PUBLIC LAW BOARD No. 3337

AWARD No. 12

CASE No. 12

PARTIES TO DISPUTE:

Consolidated Rail Corporation

and

Railroad Yardmasters of America

STATEMENT OF CLAIM

1. Claim of Yardmaster W. F. Moore that Carrier violated the "Scope Rule" of the Schedule Agreement with the Yardmaster Organization effective July 1, 1978. Claim is for one (1) day's pay at yardmaster's rate for January 7, 20, 21, 27, 28 and February 3, 4, 10 and 11, 1981 alleging the operator at BD Tower improperly performed yardmaster work at Binghamton, New York, between 11 PM and 7 AM on the dates noted.
2. Claim of Yardmaster W. L. Dundon that Carrier violated the "Scope Rule" of the Schedule Agreement effective July 1, 1978. Claim is for one (1) day's pay at the yardmaster's rate for February 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, March 1, 2, 5, 6, 7, 8 and 9, 1981, alleging the operator at BD Tower performed yardmaster duties at Binghamton, New York between 11 PM and 7 AM on the dates noted.
3. Claim of Yardmaster W. L. Dundon that Carrier violated the "Scope Rule" of the Schedule Agreement with the Yardmaster Organization, effective July 1, 1978. Claim is for one (1) day's pay at the yardmaster's rate for January 4, 9, 11, 12, 15, 16, 17, 22, 23, 24, 25, 26, 29, 30, February 1, 2, 5, 6, 7, 8, 9, 12, 13 and 14, 1981 alleging the operator at the BD Tower performed yardmaster duties at Binghamton, New York, between 11 PM and 7 AM, on the dates noted.
4. Claim of Yardmaster W. F. Moore that Carrier violated the "Scope Rule" of the Schedule Agreement with the Yardmaster Organization effective July 1, 1978. Claim is for one (1) day's pay at yardmaster's rate for February 17, 18, 24, 25, March 3, 4, 10 and 11, 1981, alleging the operator at BD Tower improperly performed yardmaster work at Binghamton, New York.
5. Claim of W. L. Dundon of one (1) day's pay at the yardmaster's rate for May 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30 and 31, 1981 claiming violation of the "Scope Rule" of the Yardmaster's Agreement of July 1, 1978 account operator at BD Tower performing yardmaster duties at Binghamton, New York, on the dates noted.

OPINION OF THE BOARD

On certain dates the Operator at BD Tower performed work which the Organization asserts was Yardmaster's work during the third shift. Yardmasters are located at Binghamton. The Employees assert that the Operator instructed the road crew with respect to yarding, departing, picking up, and/or setting up cars. This work, according to the Employees " . . . accrues exclusive to the Yardmaster craft and violation occurs when it is performed by other than a Yardmaster at a location, such as Binghamton, where Yardmasters are employed."

The Yardmasters contend that the Scope Rule of its Agreement has been violated since that rule provides that in areas where Yardmasters are employed, they shall have jurisdiction over all Employees in their assigned territory involved in yard operations and will direct yard operations, make up and movement of trains.

The Carrier asserts that the work involved may have been done within the geographical limitations of a yard but it dealt with road trains and contemplated the relaying of Yardmasters' instructions to road crews.

The Board has considered this record and we find that it is controlled by prior Public Law Board Awards. The Carrier has contended that the work in question was "programmed" and in essence the Operator was merely relaying information previously directed by a Yardmaster. Our review of the record indicates that said defense was not raised in sufficient terms while the matter was under review on the property and was only relied upon as an essential ingredient to the Carrier's defense after this case was certified to this Board.

The Carrier has cited Awards and argued that the work involved a road crew and therefore the Scope Rule in question is not applicable.

While certainly there may be appeal to that argument, it has long been held that resolutions of disputes between the same parties concerning the same basic issues should not be disturbed by a subsequent referee or arbitrator. In this regard, see Fourth

Division Award 3830 in which this author stated that the doctrine of res judicata applies even if the second Referee might have decided the case differently had he heard the dispute in the first instance.

On August 20, 1982 an Award was issued in Case No. 13 of Public Law Board 2786 which resolved a dispute between these parties. There, the Referee considered the import of the Scope Rule and found that work similar to the work in question should have been performed by a Yardmaster and he sustained the claim. It is obvious from a review of the Award and the dissent that the majority of the Board in Award No. 13 in Public Law Board 2786 rejected the Carrier's argument that picking up and/or setting off of cars by road crews within the yard limits does not require a Yardmaster's supervision and further that Board rejected the "de minimus" theory.

The just cited Award was also contemplated in Award No. 9 of this Board and the basis for a Denial Award in that case was predicated upon factors not properly before us in this case.

We will sustain the claim, pursuant to pertinent provision of the Agreements, such as Rule 4K1K, etc.

FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

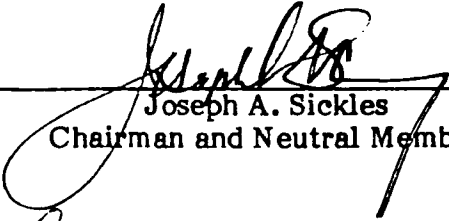
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.


The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

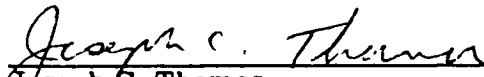
1. Claim sustained.
2. Carrier shall comply with this Award within thirty (30) days of the effective date.



Joseph A. Sickles
Chairman and Neutral Member



Robert O'Neill
Carrier Member



Joseph C. Thomas
Organization Member

9/6/84

Date