

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 3726

RAILROAD YARDMASTERS OF AMERICA

and

CONSOLIDATED RAIL CORPORATION

AWARD No. 8

CASE No. 8

(Docket No. CR-596)

STATEMENT OF CLAIM

This is in reference to Seniority Roster No. 7.

I am protesting the name of J. F. Cardone with a seniority date of November 29, 1980.

J. F. Cardone is employed by Conrail in a promoted capacity but has failed to meet the membership requirement of this organization, a violation of Rule 2-D-1.

His name should be removed from the Seniority Roster #7 pursuant to said rule.

FINDINGS

This dispute concerns the propriety of continued placement of J. F. Cardone on the Yardmaster seniority roster,

with a seniority date of November 29, 1980. Cardone was displaced from an Extra Yardmaster position on June 14, 1982 and thereafter was furloughed. While in furlough status, he was appointed by the Carrier to a non-agreement position of Program Analyst on October 5, 1983. By letter dated November 23, 1983, Cardone requested the Carrier to discontinue deduction of Yardmaster union dues from his pay, although he stated that he "would like to stay on the yardmaster's roster if possible".

He made the request under Section 3(a) of the National Union Shop Agreement of August 29, 1952 which provides that employees under specific conditions "will not be required to maintain [union] membership".

The portions of the Union Shop applicable here read as follows:

Section 1.

In accordance with and subject to the terms and conditions hereinafter set forth, all employees of the carriers now or hereafter subject to the rules and working conditions agreements between the parties hereto, except as hereinafter provided, shall, as a condition of their continued employment subject to such agreements, become members of the organization party to this agreement representing their craft or class within sixty calendar days of the date they first perform compensated service as such employees after the effective date of this agreement, and thereafter shall maintain membership in such organization; except that such membership shall not

be required of any individual until he has performed compensated service on thirty days within a period of twelve consecutive calendar months. Nothing in this agreement shall alter, enlarge or otherwise change the coverage of the present or future rules and working conditions agreements

Section 3.

(a) Employees who retain seniority under the Rules and Working Conditions Agreements governing their class or craft and who are regularly assigned or transferred to full time employment not covered by such agreements, or who, for a period of thirty days or more, are (1) furloughed on account of force reduction, or (2) on leave of absence, or (3) absent on account of sickness or disability, will not be required to maintain membership as provided in Section 1 of this agreement so long as they remain in such other employment, or furloughed or absent as herein provided, but they may do so at their option. . . .

The Carrier complied with Cardone's request to terminate dues deductions. At about the same time, a dispute arose involving the Carrier, the Union and Cardone as to Cardone's failure to maintain membership status. This was resolved under the terms of the appeal procedure of the Union Shop Agreement, resulting in Cardone's continuance of election not to maintain membership through payment of dues.

In this state of the facts, the Union now argues that Cardone's name should be removed from the seniority roster. As the basis for this, the Union cites Rule 2-D-1 of the

Agreement between the Carrier and the Union, which reads as follows:

2-D-1. Official or excepted positions -- retention of seniority. A yard master promoted to an official position or placed on a special assignment by the Company prior to April 1, 1976, shall retain and accumulate seniority in the seniority district from which promoted or assigned. A yard master promoted on or after April 1, 1976 shall be subject to the maintenance of membership requirements of the Union Shop Agreement in order to retain and accumulate yard master seniority, except when required to belong to another union representing such official position.

Because of the nature of this dispute, the Board gave proper notice to Cardone and invited him to participate in the Board's hearing. Cardone did not appear for the hearing.

At the outset, it is clear to the Board that Cardone's status as a furloughed Extra Yardmaster falls within the definition of "yard master" as employed in Rule 2-D-1. Further, his non-agreement position with the Carrier as Program Analyst does not fall within the exception clause in such rule. According to the Union's undisputed contention, while the exception covers certain other titles, it does not encompass that of Program Analyst.

The right of Cardone, as a furloughed Yardmaster, to elect not to maintain his membership in the Union is provided in Section 3(a) of the Union Shop Agreement, and this right has been confirmed in another forum. Based on this,

the Carrier argues that Rule 2-D-1 "has no application to Cardone's status" and his place on the seniority roster should remain undisturbed.

The Board cannot agree with the Carrier's position. Although Cardone moved to a non-agreement position from furlough status rather than directly from active service as a Yardmaster, his status is (or could be, if he so wished) that of a promoted Yardmaster. Rule 2-D-1 provides a specific requirement for a promoted Yardmaster to "retain and accumulate" Yardmaster seniority. This requirement is that he shall be "subject to the maintenance of membership requirements of the Union Shop Agreement".

This language places a condition on the promoted Yardmaster's right to retain and accumulate seniority: he must meet "maintenance of membership requirements".

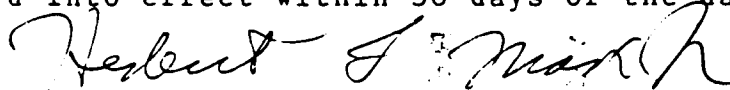
The Carrier, in effect, reads this to find that Cardone was given the right, under Section 3(a) of the Union Shop Agreement, not to maintain membership. This, however, is too narrow a reading of the "maintenance of membership requirements" of the Union Shop Agreement. Surely the parties to the schedule agreement did not write Rule 2-D-1 simply to say that seniority would be continued whether or not the employee elected to discontinue membership in the Organization. If such were the meaning, the rule could simply be left in

its status for employees promoted prior to April 1, 1976, who "retain and accumulate seniority" without stated restriction. The change for those promoted after April 1, 1976 can be read only to require something of the promoted employee to continue his seniority. That "something" can be nothing else than maintaining membership. It follows that if the promoted employee elects not to maintain membership (as did Cardone), he has not met the condition to insure continuation of his standing on the seniority roster.

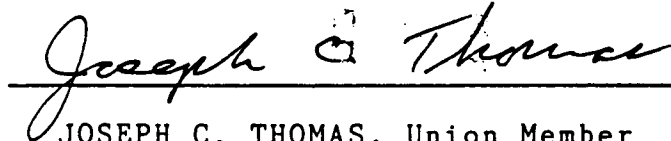
Cardone acted on his own initiative to discontinue dues payments and thus failed to maintain membership. In so doing, he voluntarily passed up the opportunity to "retain and accumulate" Yardmaster seniority. His name is thus improperly on the Yardmaster seniority roster.

A W A R D


Claim sustained, and Cardone's name shall be removed from Seniority Roster #7. The Carrier is directed to put this Award into effect within 30 days of the date of this Award.



HERBERT L. MARX, Jr., Chairman and Neutral Member



JOSEPH C. THOMAS, Union Member

 - I dissent - It is not "clear" to this Board member that a full-time yard master falls within the definition of "yd master" as the term is employed in Rule 2-D-1. If the full-time yard master worked at the A & P instead of an official

ROBERT O'NEILL, Carrier Member

New York, N. Y.

Dated: