

Public Law Board No. 3833

Parties to Dispute

Railroad Yardmasters of America)	
vs)	Case No. 1
Seaboard System Railroad)	Award No. 1

STATEMENT OF CLAIM

Continuous claim for first out and rest day Yardmaster to be paid one day's pay each, commencing with third shift January 21, 1979 and for each subsequent day thereafter, first, second and third shifts each day that the Operator performed Yardmaster duties in violation of Rule 1(e) Scope.

FINDINGS

A time claim was filed by the Organization on March 5, 1979. The claim states that the Carrier was in violation of Rule 1(e) of the current Agreement when it allegedly permitted the Operator at Dent, Kentucky to perform Yardmasters' duties. The claim alleges that the Carrier started this practice on January 21, 1979. Rule 1(e) reads in pertinent part:

The duties and responsibilities of a Yardmaster include:

- (1) Supervision over employees 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.
- (2) Such other duties as assigned by the Carrier.

(National Mediation Board Case No. A-10183, September 21, 1978).

The substance of the claim is stated as follows:

The Hazard (Ky.) Yardmasters have been required to and have been giv(ing) instructions to the train crews at Dent, Ky. since the yard was closed some 25 years ago, following this closing operations were moved from Dent to Hazard.

Hazard Yardmasters have been required to and have kept a turnover of the sidings and outlying yards close to Hazard, both north and south. They give the train and mine run crews

2/

instructions concerning what tracks are to be used when setting/off and picking/up cars at these locations. Both records required by the Carrier and years of past practice shows these different areas (Dent, Typo, Hoyt, and the north and south yards at Crawford) to be designated territory under the supervision of the Yardmaster craft.

The new turnover sheets recently furnished, February 4, 1979 designate the above points to be carried on the turnover in addition to Hazard Yards.

Effective January 21, 1979 the Carrier arbitrarily turned the Yardmasters' duties at Dent, Ky. over to the Operator stationed at that location, an employee who does not fall under the scope of the agreement. This Operator instructs directly the inbound train crews where to yard their train, outbound crews where and how to make up their train, and extra crews with respect to switching to be done at Dent. When regularly assigned Carmen stationed at Dent should bad order a car, the Operator gives the instructions of where and how they are to be set out of the train.

The claim was denied on property by the Trainmaster on the grounds that: the outstanding instructions are for Yardmasters at Hazard to keep the turnover as to cars at Kent, Ky. as well as Hazard, Typo (and) Crawford, Ky.

The Trainmaster further stated, in his denial of the claim, that: the Yardmaster at Hazard does have supervision over the employees directly engaged in the switching, blocking, classifying and handling of cars (and) trains at Dent, Ky. thru the Operators at Dent, Ky.....

in accordance with the provisions of current Agreement Rule 1(e).

The Trainmaster appears to imply in this correspondence that the Operators at Dent, Ky. perform no supervisory duties at all. This impression is corrected by the Carrier's Director of Labor Relations in his later denial of the claim on property. There it is affirmed that the Operators at Dent do perform some "supervision" which is "minor and incidental to their other duties and responsibilities and is under the jurisdiction of the Yardmaster at Hazard".

3/

The only issue to be resolved in the instant case is whether the Carrier's "de minimus" argument can be sufficiently verified to warrant the reasonable conclusion that it was not in violation of the Agreement when it assigned Yardmasters' work to the Operator at Dent.

Evidence of record presented by the Organization shows that on various dates from June 11, 1979 to February 18, 1980 what appears to be direct orders were given to crews at Dent by Operators. This averages out, using these dates as sample, to infringement on Yardmaster's work several times per day. There is also other data of record to show that Operators at Dent did Yardmasters' work at that location. For example, there is a Carrier wire dated February 21, 1979 to the second shift Operator at Dent which suggests that this Operator is to perform Yardmasters' duties at this satellite location of Hazard. It is not clear from the record, however, nor is this ever clarified by the Organization, how much actual work time is involved when the Operators perform this work of the Yardmasters at Dent. Given the total number of duties which an Operator must carry out at Dent it can be reasonably surmised that the work in question appears to fall under the "de minimus" doctrine (See Fourth Division 367, 396, 406). It is the position of the Carrier that the Operators at Dent perform work which is "predominately clerical in nature" and that what Yardmaster work they might perform is "incidental" to their other work. This appears to be supported by the Organization's own Exhibit B which lists the "...only outstanding instructions in written form posted... at Dent... (which are) those to Operators". These instructions include a variety of duties which Operators at Dent must perform, only two of which (Instruction 4 and 5) include responsibilities related to "yard check" and to "making up and yarding of all trains" at Dent. This instruction taken by itself does not necessarily imply that such work by Operators at Dent, as a matter of policy, should be done without the supervision of Hazard Yardmasters, as the Organization argues and the de facto evidentiary value of these Instructions are weak as

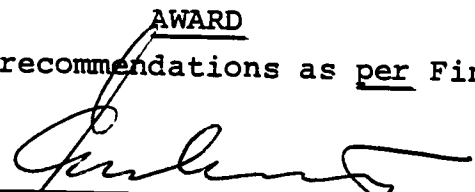
4/

proof to support the claim. Data on file in this case simply shows that Operators at Dent do perform some supervisory duties vis-a-vis crews at that location albeit such work may be construed as minimal.

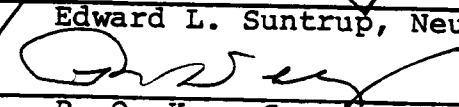
What is disconcerting in the instant case, however, is that the Carrier is not consistent in its position as developed on property. While the Carrier states in its denial of the claim that "the Yardmaster at Hazard plans yard operations at Dent, and the Operator at Dent merely relays instructions of the Yardmaster to crews operating at Dent" it is clear from the record that this is not the full story, also by admission by the Carrier on property, of what Operators do at Dent. Nevertheless the Carrier clearly implies at a number of points in this case that "relaying instructions" is what the Operators at Dent should be doing. For example, the Carrier's wire dated April 25, 1979 to the Yardmaster at Hazard and the Operator at Dent clearly confirms policy that all supervision at Dent is under the Yardmaster at Hazard. Despite denial of this claim on "de minimus" grounds this Board strongly and emphatically recommends that the Carrier carry out the policy which it claims is in effect in its operations at both Hazard and Dent, Ky. with respect to Yardmasters. And this is a policy whereby, in the words of Fourth Division Award 191 which the Carrier references in one of its denial letters, "the important thing is that the laying out of the work be done by the Yardmaster and that the orders emanate from him". Since this is not always happening at Dent, whereas the Carrier implies that this should be the case, it is recommended that the Carrier take corrective action.

AWARD


Claim denied but with recommendations as per Findings.



Edward L. Suntrup, Neutral Member



R. O. Key, Carrier Member



D. R. Carver, Employee Member

Date: 8-22-85