

Public Law Board No. 3833

Parties to Dispute

Railroad Yardmasters of America)	
)	Case No. 2
vs)	
)	Award No. 2
Seaboard System Railroad)	

STATEMENT OF CLAIM

Yardmaster G. W. Cunningham be paid one day's pay each for September 27, 28, 29, October 5, 6, 11, 12, 13, 18, 25, 26, 27, November 1, 29, 30 and December 1 and 6, 1979; Extra Yardmaster R. W. Phillips be paid one day's pay each for September 30, October 1, 7, 8, 15, 22, November 25, 26 and December 2, 1979; Extra Yardmaster E. W. Smith be paid one day's pay each for October 16 and 17, 1979, for violations of Rule 1(e) Scope whereby Operator performing Yardmaster duties.

FINDINGS

Various claims were filed by the Organization on September 28, 1979 and thereafter for Yardmaster C. W. Cunningham and Extra Yardmasters R. W. Phillips and E. W. Smith. The claims all alleged that Operators directly supervised yard and road crews at the Carrier's Oakworth Yard, Decatur, Alabama in violation of applicable Agreement Rule 1(e) - Scope. This Rule reads, in pertinent part:

(Article I - Scope and Employees Affected, National Mediation Board Case No. A-10183, September 21, 1978).

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.

All claims relative to this case were denied by the Carrier on the first level on the grounds that the Operator in question was:

merely carrying out instructions left for him by the Agent-General Yardmaster in his turnover....

2/

In response to this the Organization states on property:

...(the) territory at Oakworth Yards, on third shift, is designated by the Carrier under the supervision of a Yardmaster by means of programming....

...the Agent-General Yardmaster goes off duty at 3:00 P.M. and the third shift Operator comes on duty at 11:00 P.M. The Yardmaster working on the second shift programs the work prior to his departure (and) not the General Yardmaster....

All claims are for third shift. The Carrier never denies on property that the Yards in question are under the supervision of Yardmasters by means of programming. The Board has searched the record and has also not found substantial evidence to dispute the contention of the Organization that it is the second shift Yardmaster, and not the General Yardmaster, who should program the work for the third shift Operator if that Operator is "merely carrying out instructions left for him" as is the position of the Carrier. A search of the record fails to produce evidence that the second shift Yardmaster (or any Yardmaster, for that matter) left written instructions for the third shift Operator.

The Carrier also denies the claim on a higher level on property by stating that:

(the) Carrier is not required to create a Yardmaster position during the third shift hours when there is not sufficient work to justify such position.

This is a "de minimus" argument.

The Board is not persuaded that the "de minimus" doctrine applies to the instant case. It notes, for example, that the contention of the Organization is not denied when it argues that the Carrier does use Yardmasters at Oakworth Yards on third shift from time to time and that at other times it has used non-agreement supervision to perform Yardmaster duties on that shift. The Organization states that Assistant Trainmasters supervised third shift operations, for example, on March 7,8,9,10,14 and 15, 1980. Such is not denied in the exchange on property.

The Carrier states in its submission to the Board that:

...no violation of the Yardmasters' Agreement occurs when programmed instructions are relayed through another employee or when another employee exercises some minor or incidental supervision in connection with the discharge of their other duties....

3/

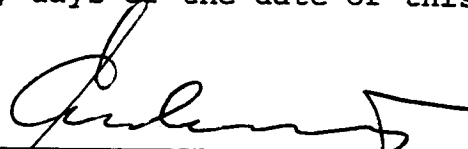
There is no evidence of record that any programmed instructions were relayed nor is the evidence sufficient to support the contention that the supervision was minor or incidental. Indeed, in one eight day period in March of 1980 non-agreement supervision had to be called in on third shift at Oakworth to do Yardmasters' work on six days according to the evidence of record.

The burden of proof in cases before this Board lie with the petitioner (Second Division 5526, 6054; Third Division 18863, 19670). In the instant case that burden has been reasonably met and there is insufficient justification to warrant denial of the claims on precedent found in prior Fourth Division Awards 358, 406 et alia. The Board here cites with favor Fourth Division Award 3774 wherein it is stated that:

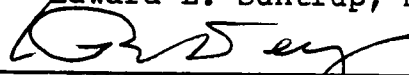
each case must stand or fall on the evidence handled on the property and later submitted (to a) Board. In (the) present dispute, the Board finds that the evidence warrants a sustaining Award.

AWARD

Claim(s) sustained. All compensation due the Claimants shall be paid by the Carrier within thirty (30) days of the date of this Award.



Edward L. Suntrup, Neutral Member



R. O. Key, Carrier Member



D. R. Carver, Employee Member

Date: 8-22-85