PUBLIC LAW BOARD NO. 4093

Parties to Dispute:

United Transportation Union Yardmasters Department	)	Case No. 6
vs	)	Award No. 6
Chesapeake and Ohio Railway Company	)	

STATEMENT OF CLAIM:

Yardmaster R. A. Peters is claiming one day's pay account the Handley-St. Albans Turn picked up 145 east out of yard tracks, Engine 8286 arrived 2:20 AM dept. 4:50 AM. There was not a yardmaster on duty and the last yardmaster on duty did not line this move up so therefore advanced programming does not apply. The Coal River Dispatcher issued the instructions.

OPINION OF THE BOARD

Claimant Robert Peters, Yardmaster, filed a claim on July 24, 1983 for one days pay on account of non-yardmaster doing yardmaster's work. Specifically, the claim stated that there had been no "advanced programming." Claim was denied on July 28, 1983 with no comment on the specifics of the claim itself, only the statement that the claim was "not supported by agreement rule."

The Organization pursued this claim by letter of August 4, 1983 noting that the Coal River dispatcher did Yardmaster's work and also that the work performed was in "a designated yard and, as such, train movements are under the control of the Yardmaster by agreement and practice." The claim was again rejected on September 30, 1983. There are two key points that appear in that rejection. This Board notes that the Division Manager's declination states that "prior to being relieved at 1:00 AM, gave a yard line-up to

Chief Train Dispatcher in Huntington, West Virginia." He also states that the pick up was out of "Yard Tracks."

The final appeal by the General Chairman on November 14, 1983 was declined by the highest Carrier officer on January 13, 1984. In that declination two new defences are raised that were not discussed elsewhere on property. For the first time, the Carrier states that the "No. 1 main track is not designated as a yard track" and also that the yardmaster on duty advised the Dispatcher that cars were "ready to be picked up" before "being released from duty." A conference of November 9, 1984 failed to resolve this dispute.

In the instant case the Carrier has used as support numerous Awards of the Fourth Division, and pointed in it's letter of January 21, 1985 to Fourth Division Award No. 4157. That Award clearly concerns the right of the Carrier to program work. Numerous Awards have under varying circumstances ruled that when a Yardmaster leaves preprogramed instructions or messages that lays out work to be performed that no violation has occured. (Fourth Division Awards 2367, 3424, 3206, 3808). While this Board may agree with those Awards it finds that the circumstances at bar are different.

In the instant case, the Organization in its initial claim and in all correspondence thereafter, noted that the claim was not involving advanced programing. Nowhere in the first two declinations is that denied. Neither the Trainmaster, nor the Division Manager deny that there was no advanced programing. The Division Manager states a "yard line-up" was given, but on such a known key fact of terminology, advanced programing was not denied. In addition, the Division Manager's declination does not give sufficient probative evidence to clearly indicate that a line-up could mean the same as advanced preprogramed instructions. And importantly, we note that he refers to the "Yard Tracks".

As such the final declination by Senior Manager Labor Relations which takes issue with both points is insufficient to

make the point by strength of evidence or rebuttal. First, it comes too late and contradicts its own officers. The Division Manager stated it was a yard track and the Senior Manager says it is not. We find that when the lowest level declinations state otherwise, we can give little weight to that point. Further, that these yard lineups were "programming" is not supported by the evidence of record. There is nothing in the record to show that such was anything other than a listing of tracks and contents. We find no clear probative evidence of record to show preprogramed instructions were left for the yarding or movement of trains. If the Carrier wishes to raise these issues as an affirmative defence, it must support them with evidence and it has failed to do so. Since it has not refuted the assertions of the Organization, the claim must be sustained on the record before us.

As such, this Board finds for the Organization. It notes that in the ex parte of the Carrier an issue was raised as for the time involved being less than two minutes. Such an issue was never raised on property and is therefore beyond the consideration of this Board. Given all of the facts of this claim, it is sustained as presented.

FINDINGS

Public Law Board No. 4093 upon the whole record and all the evidence finds that:

The Carrier and the Employee involved in this dispute are respectfully Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

That the Agreement has been violated.

AWARD

Claim sustained.

Marty E. Zusman

Marty E. Zusman, Chairman
Neutral Member

R. L. McAtee

Mr. R. L. McAtee
Employee Member

E. R. Norton

Mr. E. R. Norton
Carrier Member

Dissenting

Date: 2/19/87.