

PUBLIC LAW BOARD NO. 4093

Parties to Dispute:

United Transportation Union )  
Yardmasters Department )  
 ) Case No. 15  
 vs. )  
 ) Award No. 15  
CSX Transportation, Inc. )

EMPLOYEES STATEMENT OF CLAIM:

Claims for eight (8) hours pay at the yardmaster pro rata rate for the following yardmasters and dates, or for whatever extra yardmaster that would have been available to work the positions listed had the below named regular yardmasters been unavailable for work on the dates and positions claimed account persons outside the scope of the yardmaster craft performing duties of a yardmaster in violation of Rule 1 of the effective Working Agreement dated July 1, 1983 and the Memorandum of Agreement dated December 18, 1986.

J. M. Plumly	June 12, 1987	11:00 PM to 7:00 AM
B. J. Edwards	June 13, 1987	7:00 AM to 3:00 PM
J. E. Bowling	June 13, 1987	3:00 PM to 11:00 PM
J. M. Plumly	June 13, 1987	11:00 PM to 7:00 AM
B. J. Edwards	June 14, 1987	7:00 AM to 3:00 PM
J. M. Plumly	June 14, 1987	11:00 PM to 7:00 AM
C. E. Cales	June 15, 1987	7:00 AM to 3:00 PM
J. E. Bowling	June 15, 1987	3:00 PM to 11:00 PM
J. M. Plumly	June 15, 1987	11:00 PM to 7:00 AM
C. E. Cales	June 16, 1987	7:00 AM to 3:00 PM
J. E. Bowling	June 16, 1987	3:00 PM to 11:00 PM
J. M. Plumly	June 16, 1987	11:00 PM to 7:00 AM
C. E. Cales	June 17, 1987	7:00 AM to 3:00 PM

In addition to the claim for 8 hours pay for the above listed yardmasters, it is also claimed that if the claims were not settled within 60 days of original claim that interest would accrue thereon at the rate of 14 percent (14%) per annum until said claim is paid and said yardmaster positions restored.

duties to instruct crew callers when to call crews at Hinton, W. Va.,.."

The Carrier denies any Agreement violation. It agrees with the Organization that yardmasters had supervised the movement of trains at Hinton for the last hundred years. It points out that Hinton declined in business and has no traffic beginning there. The Carrier argues that "Yardmasters are responsible for switching and classification of cars within their terminal by a yard crew.." The Carrier further contends that by various stated District Notices the responsibility for train movements was shifted to Train Dispatchers. Carrier notes that it abolished the last yard assignment at Hinton. The Carrier further points to the fact that calling taxis for crews has been done by other crafts elsewhere on the system. In Carrier's final exchange on the property the Director of Labor Relations stated that any "Yardmaster work to be done is programmed by the Quinnimont Yardmasters."

The Organization disputed the Director of Labor Relations with statements from three (3) Quinnimont Yardmasters attesting that they "have never performed any yardmaster's work at Hinton, West Virginia." They also presented evidence from two Hinton Clerk Operators who stated that they instructed crews coming into and out of Hinton as to any switching that needed to be done as well as what to do with their trains and also that such instructions did not come from the Yardmasters at Quinnimont.

In the instant case, the burden of proof lies with the Organization, who, as the moving party must demonstrate that the work performed accrues to it's employees under the Scope of the Agreement. This proof could be established either with reference to specific Agreement language or through a persuasive demonstration that Yardmasters have traditionally, historically and exclusively performed the work.

A review of the Scope Rule indicates that the Organization must provide clear references to:

"(a) Supervision over employees directly engaged in the switching, blocking, classifying and handling of cars and trains and duties directly incidental thereto.."

We have carefully reviewed the Exhibits which pertain to Yardmaster responsibilities. In comparison to language and incidents which form the instant grievance, we cannot find specific incidences of switching, blocking and classifying. The July 3, 1986 statement of the Operator of Hinton Yard instructs of "any switching that needs to be done..", but no evidence of any actual supervising of switching being done at Hinton is in the record. Nowhere in the record is there evidence of supervision over road or yard crews. Nowhere in the record do we find evidence of the making up or breaking up of trains.

As to other duties which may be assigned, the Organization emphasizes that its forces have exclusively called taxi service for crews at Hinton. It does not rebut Carrier's assertion that other crafts perform this function elsewhere on the system. System-wide exclusivity must be shown to prevail and such a showing has not been made in this record (Third Division Awards 21132, 20179, 16787; Fourth Division Awards 3763, 3482).

A careful review of the Awards presented by the Organization in support of it's claim fails to find them on point. Each of those Awards found firm probative evidence of a violation of the Scope Rule of the Agreement. In the Arbitration Award of November 9, 1988 (Suntrup), there is clear evidence of the issuing of supervision and instructions of set outs, pick ups, yard switch engines, and instructions to switch crews. In other Awards there is clear evidence of non yardmasters instructing yard crews in making up, yarding and switching trains and in issuing switching instructions (First Division Award 14723; Fourth Division Awards 3204, 3009, 2189).

Unlike the above Awards, the Organization has not come forth with persuasive probative evidence that the duties of Yardmasters are being performed by clerks and dispatchers. We do not find that there is direct supervision over other employees by clerk operators and train dispatchers within the yard limits, wherein those other employees are specifically performing the work of making up, breaking up, handling of trains, switching, blocking and incidental Scope related activities. The evidence presented herein indicates no road crews, yard crews, supervision as discussed (supra), instructions, prior claims on property either directly on point or relating to Carrier Bulletins issued subsequent to June 12, 1987 changes, or evidence of system-wide exclusivity.

From this record we cannot find that the actions of clerk operators and train dispatchers was the supervision of employees engaged in activities within the Scope of this Agreement. The probative evidence does not support and the concrete examples do not prove that such work was traditionally and exclusively performed by yardmasters. The Organization carried the burden to establish such, and failing to do so, we have no alternative but to deny the claim. A violation of the Scope Rule was not demonstrated herein.

#### FINDINGS

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

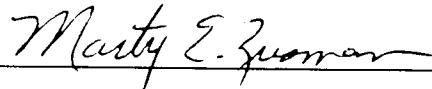
The Carrier and the Employee involved in this dispute are respectfully Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

That the Agreement has not been violated.

AWARD

Claim denied.



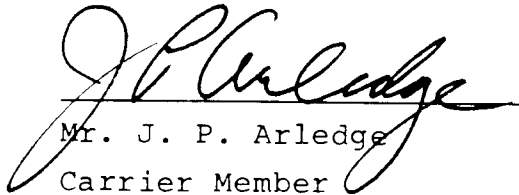
Marty E. Zusman, Chairman  
Neutral Member



Mr. R. C. Arthur  
Employee Member

*Dissenting*

Date: 8/28/89.



Mr. J. P. Arledge  
Carrier Member