PUBLIC LAW BOARD NO. 4093

Parties to Dispute:

United Transportation Union)
Yardmasters Department)
) Case No. 17
vs.)
) Award No. 17
CSX Transportation, Inc.)

STATEMENT OF CLAIM:

Continuous claim, including payment at regular yardmaster rate of pay for the legal holidays thereof, or holiday rate of double time and one-half where work performed on legal holidays, beginning with the first shift, December 28, 1987, submitted in behalf of Etowah, Tennessee Yardmasters W. D. Stiles, ID# 181617; D. W. Harass, ID# 1181688; P. R. Seltzers, ID# 181732; J. A. Armstrong, Jr., ID# 181666 and Extra Yardmaster D. C. Akins, ID# 196955, for one day's pay each at regular yardmaster rate of pay for the respective individual shifts including the relief days and tag days thereof, as were established on December 27, 1987, prior to the abolishment of all of the yardmaster positions effective with the close of the third shift December 27, 1987, continuing until the violations complained of are ceased and the yardmaster positions are reestablished.

OPINION OF THE BOARD

The Organization filed the instant claim by letter dated January 6, 1988. In that letter the Organization alleged that the Carrier abolished all Yardmaster positions at Etowah Terminal and assigned Yardmaster responsibilities to other crafts not covered by the Scope of the Agreement. By specific examples in that and other correspondence and with evidentiary support including Operating Rules, the Organization alleged that trains were being blocked, switched and movements supervised by Clerks, Operators,

Dispatchers, Agents and Trainmasters in violation of the Scope Rule of the Agreement. That Rule reads in pertinent part that Yardmasters are responsible for:

> "(1) Supervision over employees engaged in the switching, blocking, classifying and handling of cars and trains required of the yardmaster in a territory as designated by the carrier.
>
> (2) Such other duties as assigned by the carrier."

The Carrier's response was issued by the Division Manager in a letter dated February 1, 1988. That response stated only that "the above listed claims are respectfully declined account not supported by work agreement."

The Organization has pursued this Claim on the further grounds that the denial (supra) violates Rule 15 (a) in that the disallowance of claim must present "the reason for such disallowance." The Organization argues that the response failed to do so and was thereby an inadequate denial.

The Carrier further denied this claim in that it found little or no yard activity during a visit to Etowah. The Carrier agrees that "the cars that are handled in the former yard are done so by the instructions you alluded to in your claim." Carrier argues that Etowah is not a working yard and most importantly that no other crafts are doing work "exclusively assigned to the Yardmasters." It argues that there are few employees at the terminal and the Trainmaster visits Etowah only on isolated instances. In Carrier's final denial, the Director of Labor Relations states that it does "not agree that excessive amounts of switching are being done at Etowah."

From the record before us that developed on property we conclude that the Carrier has violated the Agreement. Most important to our conclusion which we make on the merits is that Carrier throughout the handling on this property failed to rebut or deny the Organization's assertions and evidence. Among the

many points raised by the Organization were the following. The Organization argued a procedural violation of Rule 15(a) without rebuttal from the Carrier. The Organization argued with message instructions that substantial switching was being done at Etowah and the Carrier response indicated that it was not "excessive". The instructions to trains provided as probative evidence by the Organization indicates that crews were being asked to block and switch trains which is within the Scope of the Yardmaster's Agreement and not specifically denied by the Carrier. The Organization provided signed statements by Yardmasters that after abolishment their work was being performed by the Trainmaster, Agent, Dispatchers at Corbin and Atlanta and others. The Organization further provided a statement by the Agent stating that "each and every day I am required to do the work formally done by the Yardmaster." In addition to statements for Crew Callers, the Organization provided statements signed by over sixty (60) Conductors, Engineers and others stating that:

> "After the Yardmaster jobs at Etowah were abolished... we... have been taking yard and switching instructions, such as what engines to use, what track to use, what to switch, and how to build or work our train, from Trainmaster D. R. Mearkle, Agent M. O. Fullbright, North Dispatcher, South Dispatcher, or by the Clerk on duty. These instructions referred to were formally issued by a Yardmaster."

Again, the Carrier did not rebut these assertions on the property. If Carrier had a defence for the assertions and evidence presented by the Organization the only proper place to raise it was on the property. This the Carrier did not do and unrebutted assertions must be accepted as fact (Third Division Awards 20041, 12840, 20109, 14385; Fourth Division Awards 2863, 3480).

The Organization made a prima facie case for an alleged violation of the Scope Rule and Rule 15 (a) of the Agreement. The Carrier denied that Etowah was a working yard in need of supervision by Yardmasters or that any work performed after

abolishment was exclusively assigned to Yardmasters. The Organization responded with further evidence indicating that as per the Scope Rule, "switching, blocking, classifying and handling of cars" was being done at Etowah. The Organization's response of April 12, 1988 included a point by point rebuttal of the Carrier's contention of "little or no activity' at Etowah Terminal. That rebuttal included sufficient evidence that more than a little activity occurred at Etowah. It is not possible from this record to conclude with precision just how much work does exist and nor did the Carrier in its on property correspondence develop any Agreement support for the importance of such evidence, but there can be little doubt that it was substantial. The Organization provided a long list of dates and times showing the hours of actual yard switching that was performed along with listing four trains used in switching on a near daily basis. Again, in the face of a preponderance of signed statements, lists of other employees doing switching, classifying, breaking up and building trains, the Carrier provided no affirmative defence and raised almost no objection to the facts presented.

Clearly the Carrier is vested with the right to change its operating rules, as these are not collectively bargained agreements. However, it may neither unilaterally change nor violate the Scope Rule of the Agreement. Etowah is a territory governed by the Agreement. In view of the record of probative evidence demonstrating the exclusive right of Yardmasters to supervise within the Scope of the Agreement, we must sustain the claim. This right has been upheld by numerous Awards (Fourth Division Awards 3204, 3009, 2641, 2189, 1494).

The issue at bar is whether Yardmasters responsibilities delineated by the Scope of the Agreement are being performed at Etowah by employees of other crafts. The record as developed on property forces us to sustain the Organization's claim. The record indicates that Yardmaster's work is being performed by employees foreign to the Agreement. We must sustain the claim as presented on its merits. However, we are without authority to order the Carrier to reinstate positions.

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 to the extent indicated in the Opinion.

Marty E. Zusman

Marty E. Zusman, Chairman
Neutral Member

R C Arthur

Mr. R. C. Arthur
Employee Member

J P Arledge

Mr. J. P. Arledge
Carrier Member

Dissenting

Date: 8/28/89.