

BEFORE PUBLIC LAW BOARD NO. 5189

UNITED TRANSPORTATION UNION - YARDMASTER'S DEPARTMENT
and
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

Case No. 1

CLAIM OF EMPLOYEES:

Yardmaster R.A. MacDougall (hereinafter Claimant) is claiming one (1) hour and thirty (30) minutes at the punitive rate of pay for Carrier's violation of the Scope Rule including the changing of work programmed by the Claimant. Trainmaster R.A. Lattimer changed the work programmed by the Claimant for the 1 p.m. Ore Train on September 6, 1990.

FINDINGS:

In June 1989, the Carrier and the Organization agreed to change the weekly schedule for yardmasters at the Carrier's Two Harbors, Minnesota, facility from five 8-hour shifts to four 10-hour shifts. As a result, for a period of about four hours each day between shifts, no yardmaster was on duty. To compensate for this absence, the Carrier required yardmasters to leave instructions for the switch crews.

In connection with the instant claim, on September 6, 1990, Claimant MacDougall left written instructions for the incoming ore train, and these same instructions were changed by a non-yardmaster employee. The Organization contends that this action was a violation of the Scope Rule.

The Carrier has denied the Organization's appeals, alleging that the Organization has not proven that the required instructions, which are to be left for the switch crews, are reserved exclusively for yardmaster employees. The parties being unable to resolve the

issue, this matter came before this Board.

This Board has reviewed the entire record in this case, including the arguments compiled during an executive session, and we find that the controlling language appears in Rules 803 and 803(A) of the Carrier's Consolidated Code of Operating Rules. Those Rules state the following:

803. Where a yardmaster is employed, the general direction and government of the yard is in his charge. At such locations, employees in yard, train and engine service must comply with his instructions. Where no yardmaster is employed, such employees will be governed by instructions of agents in doing work at stations.

803 (A). The yardmaster is responsible for and shall have direct supervision over the work of yard crews, clerks and all other employees working in the yard. He must see that they carry out their work in a safe, efficient and economical manner, in accordance with the rules, regulations and instructions of the Company. He is charged with the prompt and regular movement of cars, also giving special attention to the proper make-up of trains and to their prompt movement into and out of the yard.

The record reveals that the Carrier implemented the ten-hour shift schedule on June 12, 1989. In implementing this new schedule, the Carrier's Assistant Superintendent issued instructions that specified that yardmasters were to leave work orders for those periods of time when no yardmaster was on duty. These instructions make clear that, just as they do when actually present and on duty, the yardmasters are responsible for programming the movement of trains and crews in the yard during the four hours each day that no yardmaster is on duty.

On the date that the instant claim arose, and in accordance with the Assistant Superintendent's instructions, the Claimant left written orders with the Carrier's Control

Center relating to the incoming ore train. There is no dispute that the Claimant's written orders subsequently were changed by the trainmaster, who is a non-yardmaster employee.

Rules 803 and 803(A) make it very clear that the yardmaster is responsible for and exercises supervision over the yard crews, clerks, and other employees working in the yard. It is the yardmaster who is charged with the prompt and regular movement of cars. The Fourth Division, in numerous awards, has upheld those yardmaster rights. That work cannot be reassigned to a non-yardmaster employee.

In Fourth Division Award #4308, the Board stated:

We are forced to conclude that in the changing of instructions, non-yardmasters have supervised employees in duties assigned by the Carrier to yardmasters. Specifically, the record is complete with documentation that train operators are making their own decisions and altering the yardmasters pre-programmed instructions on the handling of trains. We have studied at length the Carrier's denials, arguments and awards in support of position, but find that on the whole of this case at bar we must sustain the claim in those 18 cases. This is consistent with past awards of this Fourth Division (Awards 3204, 3009).

The Carrier has asserted that because the Organization is claiming that the Carrier violated the Scope Rule, the Organization bears the burden of proving that the type of work at issue has been exclusively performed by yardmasters on a system-wide basis. This standard is applicable in situations involving only claimed violations of the Scope Rule. The instant matter, however, is not so limited.

This Board has reviewed the Carrier's argument that this case involves a claimed Scope Rule violation and that the Organization has not shown their rights to be exclusive and system-wide in the past. This Board finds, however, that this dispute does not

involve a violation of the Scope Rule, but rather a violation of Carrier Operating Rules 803 and 803(A), which specifically assign the work at issue to the yardmasters. These two rules charge the yardmaster with the responsibility for directing and programming all train and crew movements within the yard; it gives the yardmaster supervisory responsibility over all employees in yard, train, and engine service in connection with such movements. The record does not contain any evidence of rules or operating procedures by which yardmasters are expressly authorized to delegate these responsibilities, or by which other employees are expressly authorized to assume such duties. In fact, the Carrier's issuance of instructions that yardmasters are to leave orders governing train movements for those time periods when no yardmaster actually is on duty represents the Carrier's acknowledgement that this work properly is done only by the yardmaster.

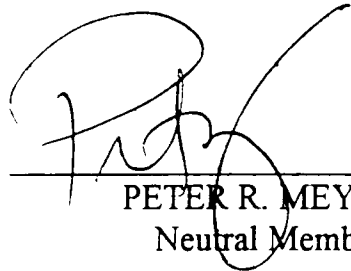
In further support of this finding is the fact that the Carrier's June 1989 instructions relating to the implementation of the shift emphasizes that not only must the yardmaster leave orders to cover the entire period during which no yardmaster is on duty, but that the yardmaster is to make sure that the dock foreman understands that the orders are not to be changed; that the orders, in any event, are not to be altered unless absolutely necessary; and that the personnel on duty during such periods can reach Carrier personnel, presumably both on- and off-duty personnel. These provisions suggest that the Carrier anticipated that any necessary changes in the yardmaster's orders would come only with the off-duty yardmaster's approval after consultation between the on-duty

personnel and the off-duty yardmaster.

With respect to the remedy, this Board finds that the Claimant in this case was the regularly assigned yardmaster on the dates that the program instructions were changed. The Claimant was off duty and available to be called to perform the yardmaster work that was performed improperly by the trainmasters. If the Claimant had been called to perform the yardmaster work, he would have been paid at the rate of time and one-half. This Board must find that the Organization's request that the Claimant be paid at the time and one-half rate be sustained.

AWARD


Claim sustained.



PETER R. MEYERS
Neutral Member



Carrier Member



Organization Member

Dated: 6/1/94