

BEFORE PUBLIC LAW BOARD NO. 5189

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

Case No. 2

CLAIM OF EMPLOYEES:

Yardmaster R.A. MacDougall (hereinafter Claimant) is claiming fifteen (15) days pay at ten (10) hours per day at the yardmaster punitive rate for dates of September 10, 11, 20, 18, 24, 25, 26, October 1, 2, 3, 8, 9, 10, 15, 16, 1990 for Carrier's violation of the scope rule including the changing of work programmed by yardmasters. On the claim dates, Trainmasters R.A. Lattimer, B.A. Lind, or F.L. Udenberg, or a combination thereof changed the work programmed by the yardmasters. Claimant was the senior qualified yardmaster rested and available and should have been called to perform the yardmaster work performed by the Carrier's Trainmasters.

FINDINGS:

In June 1989, the Carrier and the Organization agreed to change the yardmasters' weekly schedule 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 between shifts, no yardmaster was on duty. To compensate for this absence, the Carrier required yardmasters to leave instructions for the switch crews, which included road crews. In September 1990, the Carrier abolished the day-shift yardmaster position and further required the yardmasters on the night shift to leave additional instructions to compensate for the abolished day shift.

In connection with the instant claim, on the dates in question, Claimant MacDougall left written instructions for the yard crews working on the 7:45 a.m., 3:45

p.m., and 11:45 p.m. switch positions; these instructions were changed by non-yardmaster employees. The Organization contends that this 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 extensive record in this case, including the arguments compiled during an executive session, and we find that the Carrier violated the Agreement by permitting non-yardmaster employees, trainmasters, and others to change the program instructions that had been left by the yardmaster.

There is no question that the yardmasters are required to program and supervise the movement of trains and crews in the yard. In addition to the Scope Rule, which states that supervision over employees directly engaged in the movement of cars is required of the yardmaster, the Carrier's Consolidated Code of Operating Rules 803 and 803 (A) are relevant to this dispute. Those Rules state:

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.

Also applicable to this dispute is the fact that, 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 hours each day that no yardmaster is on duty.

In this case, there is no question that the trainmasters changed the instructions that had been left by the yardmasters. Since the June 12, 1989, Agreement, that work has been yardmaster's work. The record definitely establishes that programming the movements of trains and crews in the yard is the responsibility of yardmasters, and developing and leaving work orders for the period when no yardmaster is on duty is a critical part of this very responsibility. If the Carrier wants to change this aspect of the June 12, 1989, Agreement, it must do so through negotiations, not through the unilateral reassignment of the work.

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 non-yardmaster employees.

In Fourth Division Award #4308, the Board held:

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).

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.

The Carrier also has asserted that the record does not show that all of the changes at issue were initiated by or involved a trainmaster. This Board finds, however, that the record conclusively establishes that on the dates in question, changes were made in the programmed work orders left by the yardmaster. Moreover, these changes definitely were initiated by non-yardmaster employees; this is necessarily so in light of the fact that no yardmaster was on duty when the changes were made. These facts establish that the claimed violations did occur.


With respect to the remedy in this case, the Claimant was the regularly assigned yardmaster on the dates that the program instructions were changed in violation of the Agreement. The Claimant was off duty, rested, and available to be called into work as a


yardmaster. Had he been called into work, he would have been paid time and one-half.

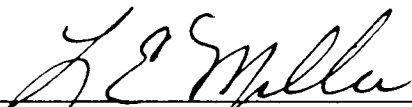
Given the record before us, this Board has no choice but to sustain the claim.

AWARD:

Claim sustained.

  
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PETER R. MEYERS  
Neutral Member

  
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Carrier Member

  
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Organization Member

Dated: 6/1/94