



Joe to work at home rather than in Atchison, Kansas. The Agreement neither established Yardmaster positions, nor placed the prior nonagreement work under the Scope of the Agreement.

In its Submission the Carrier has further argued that this Board lacks jurisdiction. The Carrier argues that as St. Joe Yardmasters are not represented by the Organization, the instant Claim is a representational dispute belonging solely under Section 2, Ninth of the Railway Labor Act to be determined by the National Mediation Board. We have carefully reviewed this issue as well as the Organization's numerous objections thereto. The Board has long noted that jurisdictional issues may be raised at any time. The Carrier stated in its letter dated July 10, 1992, in which it discussed the merger of the St. Joseph Terminal Company with the Missouri Pacific that:

even after the merger... the yard work at [St. Joseph].. remained outside the MP Western District territory, as well as outside the scope of the MP-UTU(Y) Agreement, as evidenced by the fact that UTU-represented employees, who had historically shared in the performance of yard work at this facility along with non-agreement employees, continued to perform this work after merger and continue, to this day, to maintain a separate bargaining unit and collective bargaining agreement apart from the UTU MP Western District Committee (emphasis added).

Our review of the evidence submitted by the Carrier on this jurisdictional issue provides ample support that the Organization does not represent Yardmasters at St. Joseph. The Affidavit and attachments of 15 NMB (No. 30) provide proof that the UTU(Y) has no representation of Yardmasters at the St. Joseph Terminal of the merged Union Terminal Railway. Finding no evidence refuting that fact or indicating new NMB Certifications challenging that conclusion, the Board must find its right to arbitrate legitimately questioned. If this Board were to find a violation of Scope, that would result in a conclusion that Yardmaster's work at St. Joe would come under the Agreement. That conclusion would be counter

to the fact that there exists no Certification for the UTU(Y) to represent employees doing Yardmaster work at the St. Joseph Terminal. We are therefore constrained to find for the Carrier that we lack jurisdiction and dismiss this case. Any other finding would result in a conclusion that the UTU(Y) was the Organization certified to represent employees doing Yardmaster work at St. Joseph terminal.

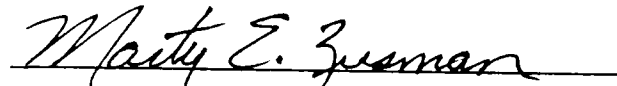
Even if, arguendo, we had jurisdiction, and we most assuredly do not, our review of the evidence does not support the Organization's Claim. In researching the above conclusion, we carefully read the language of the September Agreement, the Scope Rule of the December 1, 1975 Agreement and the on-property record. The September Agreement is not signed by the officer of the Carrier authorized to make Rule changes. The September Agreement states that the agreement holds "when the Carrier determines it is necessary to assign Atchison Yardmasters to Yardmaster positions at St. Joseph." While they may determine a necessity for Claimant to work Saturdays and Sundays, if the Carrier does not determine it necessary, it follows, it is not necessary. Nowhere does this September Agreement include any language attaching it to the December 1, 1975 Agreement or modifying the Scope Rule in the manner the Organization argues. Nor does the language relied upon by the Organization in the Scope Rule show it to be applicable to a merged property not expressly listed in the Scope Rule. There is a lack of evidence submitted by the Organization to reach the conclusion that either Rule 1(a) or 1(c) would be applicable to this instant case incorporating it into the Agreement. That is particularly true when the record is replete with evidence that the Carrier has always both prior and subsequent to the September Agreement permitted nonagreement personnel at St. Joseph to do Yardmaster work.


Accordingly, based upon all the facts of record, this Board must dismiss this Claim for lack of jurisdiction. There is no record supporting a finding that the work of the Yardmasters craft and class performed at St. Joseph Terminal falls under the Scope of


the Agreement. As the work in dispute does not fall under the Agreement and a sustaining resolution would result in jurisdiction which the Board is not empowered to determine the Claim must be dismissed.

AWARD:

The Board, after consideration of the dispute identified above, hereby orders that an award favorable to Claimant not be made. The Claim is dismissed as set forth in the foregoing Findings.

  
Marty E. Zusman, Chairman  
Neutral Member

  
Mr. D. R. Carver  
Employee Member

  
Mr. D. D. Matter  
Carrier Member

Date: 2/1/93.