Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13344
Docket No. 13169-T
98-2-96-2-74

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(International Association of Machinists and
(Aerospace Workers (District 19)
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"(1.) The Consolidated Rail Corporation violated the Rules of the Controlling Agreement of May 1, 1979, and particularly Rules 2-A-1, 3-C-6, 3-D-1, and 3-E-3, and past practice and customs, and subsequent rules of the National Agreement referred to as Seniority Retention Agreement of December 18, 1987.

(2.) That the Consolidation (sic) Rail Corporation be ordered to remove Mr. D. H. Eckles' (Man No. 696623) name from the Conrail Machinists' seniority roster(s)."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

As Third Party in Interest, the United Transportation Union - Yardmasters Department was advised of the pendency of this dispute and chose to file a Submission with the Board.

Pursuant to Section 3, First (j) of the Railway Labor Act, as amended, notice was given to the Yardmasters of this claim as a possible third party of interest. The Yardmasters decided to intervene in this matter and their submission is now a part of the official record before this Board.

This dispute arose because the Carrier permitted the Claimant to retain his Machinist seniority while he was employed as a Yardmaster.

The Claimant obtained seniority in the Machinist Craft with the Carrier on May 20, 1977. He worked as a Machinist until May 1981 at which time he was furloughed. Subsequently, he was employed as a Yardmaster and established seniority in that craft on May 7, 1985. By certified letter, dated December 11, 1992, the Carrier notified the Claimant that he was recalled to a Machinist position at Buckeye Yard, Columbus, Ohio. Because the Claimant did not report as instructed, he was notified by letters dated March 1, and April 13, 1993 that his seniority was forfeited pursuant to the self-executing provisions of Rule 3-C-6 of the Machinist Collective Bargaining Agreement. That Rule, in pertinent part, reads:

> "Employees failing to report for duty for positions expected to be more than sixty (60) days duration, within ten (10) calendar days after a Certified U.S. Mail notice is mailed to the last recorded address, will forfeit all seniority."

By letter, dated July 4, 1993, the Claimant filed a claim with the Carrier, which, among other matters, requested that his name be restored to the Machinist Seniority Roster.

Following a number of discussions between the Claimant, the Carrier and others, the Carrier restored the Claimant to the Machinist Seniority Roster by letter dated June 29, 1994. The propriety of this action is now before the Board for final resolution.

This dispute rests upon the construction of the term "supervisory" as used in Rule 3-D-1(a) when it states:

"3-D-1. (a) Employees covered by this Agreement who have been or are hereafter appointed to a supervisory or non-agreement position, shall retain previously acquired seniority in the seniority district from which appointed and shall continue to accumulate such seniority while occupying such position."

The record shows that the Machinists and the Carrier in the past agreed that the position of Yardmaster does not meet the definition of a supervisory position as the term is used in Rule 3-D-1(a). Indeed, a Carrier Senior Director, in a letter dated May 7, 1993, to the Organization's General Chairman, restated this position. That letter in relevant part stated:

"Rule 3-D-1(a) provides that employees who are appointed to a supervisory or non-agreement position shall retain previously acquired seniority in the seniority district from which appointed and shall continue to accumulate such seniority while occupying such positions. As discussed, the position of yardmaster which is covered by the Conrail/UTM-YM Collective Bargaining Agreement does not meet the definition of a supervisory position as that term is used in Rule 3-D-1(a). Accordingly, a machinist who obtains a position as a yardmaster does not have his machinist seniority protected under Rule 3-D-1."

However, subsequently it came to the attention of the Carrier that Public Law Board No. 4698, Award 44, dated June 28, 1993 had held a Yardmaster position to be supervisory. Specifically, that Award held that a Yardmaster was a supervisory position as "contemplated by the appropriate rules" of the Parties' Agreement. The Carrier, upon receipt of Award 44, determined that its previous position should be reversed. Accordingly, it advised the Claimant, in pertinent part, as follows:

"In a letter dated May 7, 1993, former Senior Director-Labor Relations L. J. Lipps advised General Chairman R. J. McMullen that a machinist who obtains a position as a yardmaster does not have his seniority protected under Rule 3-D-1. We have reviewed this position on the basis of Public Law Board 4698, Award No. 44 dated June 28, 1993 which held that the responsibilities of yardmasters are properly considered to be supervisory in nature. In light of this award, your seniority as a machinist will be

restored. You should be aware, however, that the IAM General Chairman may protest your restoration to the roster."

The Board has carefully reviewed the voluminous file accumulated in this matter and has concluded that the Carrier has erred in reversing its position that Yardmasters were not Supervisors. The proceedings of Public Law Board No. 4698 involved different parties, (CSX and BRC), different rules and different key evidence. While the seniority Rules of the Carmen/CSX Agreement have similar language, they are also significantly different. For example, in that Agreement there is a provision which provides that Carmen seniority is protected after promotion to a supervisory position, if the employee remains in continuous service.

Second, the Carmen Organization, before Public Law Board No. 4698 and in its Submission to that Board, acknowledged that at the CSX work site in Ohio, Yardmasters actually performed supervisory duties. This acknowledgment, when coupled with specific examples where the Yardmaster gave instructions and performed tasks that were supervisory in nature, were key elements in the Board holding at that property that the Yardmaster functioned as a Supervisor.

The above facts leading to Award 44, Public Law Board No. 4698 contrast significantly from this case. The parties are not the same. The Agreement is different. And, last and most significant, the parties on this property have never recognized the Yardmaster as a Supervisor when the provisions of Rule 3-D-1 were applied.

In summary, the Board finds that the Carrier has improperly apply Award 44 of Public Law Board No. 4698. Moreover, even arguendo, if the facts and circumstances leading to Award 44 were substantively similar, which they are not, this Board would not impose a different construction of a Rule to which the Parties have been in accord as to its application for a number of years. The best ends of labor-management relations were not served in this instance, by the unilateral decision of the Carrier.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 24th day of November 1998.