

ARBITRATION BOARD
(ARBITRATION PURSUANT TO SECTION 11
OF THE NEW YORK DOCK CONDITIONS)

UNITED TRANSPORTATION UNION)	
(YARDMASTERS DEPARTMENT))	
)	FINDINGS & AWARD
vs.)	
)	
THE BALTIMORE AND OHIO RAILROAD COMPANY)	

QUESTION AT ISSUE:

AS PRESENTED BY UNITED TRANSPORTATION UNION (YARDMASTERS DEPARTMENT) (Organization):

"Did the agreement dated January 31, 1984 which covered coordination of B&O and SBD YM functions being performed at that time in the greater Cincinnati, Ohio Terminal area remove the supervision of train crews working at the Trailer Ramp from other than yardmasters and place this work under the provisions of the B&O Yardmasters Agreement and Mediation Case A-10183 since that work had been performed by B&O yardmasters prior to the building of the L&N TOFC Ramp?"

AS PRESENTED BY BALTIMORE AND OHIO RAILROAD COMPANY (Carrier):

"Did the agreement dated January 31, 1984 which covered coordination of B&O and SBD Yardmaster functions being performed at that time in the greater Cincinnati, Ohio Terminal area remove the supervision of train crews working at the Trailer Ramp from other than yardmasters and place this work under the provisions of the B&O Yardmasters Agreement?"

BACKGROUND:

On September 25, 1980 the Interstate Commerce Commission (ICC or Commission) in Finance Docket No. 28905 (Sub. No. 1) and related proceedings approved the application of the CSX Corporation to control, through merger, the railroad subsidiaries of Chessie System, Inc. (The Baltimore and Ohio Railroad Company (B&O) and The Chesapeake and Ohio Railway Company (C&O) and The Seaboard Coast Line Industries, Inc. (The Seaboard System Railroad Company (SBD) and The Louisville and Nashville Railroad Company (L&N).

In granting such authority, the ICC imposed the employee protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979), commonly known as the New York Dock conditions.

On November 9, 1983, pursuant to Article I, Section 4, of the New York Dock conditions, the Carrier served notice to the Organization of its intent to coordinate the job functions of yardmasters employed on the SBD, or more specifically those employees on the L&N, with the job functions of yardmasters on the B&O in the Greater Cincinnati, Ohio, terminal area.

An Implementing Agreement covering the above subject matter was entered into between the Carrier and the Organization on January 31, 1984.

Pursuant to Section 12 of the January 31, 1984 Implementing Agreement, the Carrier served notice to the Organization by letter dated May 21, 1984, that the coordination of the separate yardmaster job functions would take place on June 18, 1984.

Following the coordination, and by undated letter which was received in the Carrier offices on October 5, 1984, the Organization's Regional Chairman wrote the Carrier as follows:

"This is a claim for one days pay at the Yardmaster pro rata rate of pay for unassigned Yardmaster J. C. Baker for date of August 7, 1984 account of personnel other than yardmasters supervising employees directly engaged in the switching, blocking, classifying and handling of cars and train and duties directly incidental thereto at the Trailer Ramp located in the B&O Cincinnati Yard.

This is a violation of the Yardmasters' Scope Rule and Mediation case A-10183 which reads in part as follows:

'The duties and responsibilities of a yardmaster include: (a) Supervision over employees directly engaged in the switching, blocking classifying and handling of cars and trains and duties directly incidental thereto that are required of the yardmasters in a territory as designated by the Carrier.'

Cincinnati Terminal is a territory designated by the Carrier where the yardmaster have the contractual right to all yardmaster work in Cincinnati Terminal and is listed as a designated territory in Article 6 of the Yardmasters' Agreement.

Under the present operations at the Trailer Ramp, clerks and Ramp Supervisors are supervising yard crews while switching the cars at the Ramp and supervising train movements in and out of the Ramp yard. In violation of Mediation case A-10183."

On October 15, 1984, the Carrier's Manager Operations responded to the above letter, stating in part as is here pertinent, the following:

"The procedures for handling work within the Cincinnati Terminal TOFC Facility is the same as it was prior to the implementation of coordination on June 18, 1984, between SBD and B&O within the Cincinnati Terminal. Under the Coordination Agreement, it was never the intent to coordinate any functions or work that was not being performed by Yardmasters on either SBD or B&O.

In view of the foregoing, your claim is not supported by the agreement rules and is declined in its entirety."

The parties having been unable to subsequently resolve the dispute during conferences on the property, it was decided to place it before this Arbitration Board for resolution.

Since the Carrier argued that the work in dispute is currently assigned to clerical employees represented by the Brotherhood of Railway, Airline and Steamship Clerks (the Clerks), that organization was provided third-party notice of the dispute pursuant to Section 153, First (j) of the Railway Labor Act, as amended. In this regard, the Clerks filed an ex parte submission and participated in oral arguments to the Arbitration Board.

POSITION OF THE ORGANIZATION:

The Organization submits that prior to 1980, the B&O maintained trailer ramps in its Brighton and Millcreek Yards at Cincinnati, Ohio. Further, that supervision of crews performing service therein was supplied by B&O yardmasters employed in the respective yards.

The Organization says that from 1980 to the date of the instant coordination, the B&O discontinued its trailer ramps at Brighton and Millcreek Yards to have said ramp work performed by the L&N at its Cincinnati Trailer Ramp, located in Cincinnati, Ohio adjacent to the B&O Queensgate Yard, and under L&N supervision, in what the Organization refers to as a contract arrangement.

In this latter regard, the Organization says it does not dispute the fact that while the SBD (L&N) performed the service for the B&O by contract that the B&O yardmasters did not have claim to the work. However, the Organization states, when effective June 18, 1984 the supervision of the Cincinnati Trailer Ramp was shifted from the SBD (L&N) to the B&O the Cincinnati Trailer Ramp

became a territory designated to the supervision of a yardmaster by agreement and operating rules. Here, the Organization directs attention to the Cincinnati Terminal being a territory designated to the supervision of the Yardmaster craft by Article I, "Scope and Definitions," and listed in Article 6, "Rates of Pay," of the Schedule of Agreement between the parties.

The Organization also maintains that the National Mediation Agreement in Mediation Case No. A-10183 supplements the above referenced Agreement provisions by stating:

"Existing scope rules shall be amended by the addition of the following:

'The duties and responsibilities of a yardmaster include:

(a) Supervision over employees directly engaged in the switching, blocking, classifying and handling of cars and trains and duties directly incidental thereto that are required of the yardmaster in a territory as designated by the carrier.

(b) Such other duties as assigned by the carrier.'"

The Organization also directs attention to Section 5(b) of the Implementing Agreement of January 31, 1984 as placing former SBD (L&N) yardmasters under the B&O Yardmasters' Agreement. Section 5(b) reads:

"SBD yardmasters whose names are removed from the SBD (former L&N) Cincinnati Terminal - DeCoursey Yard Yardmaster's seniority roster pursuant to paragraph (a) of this Section 5 will be subject to the rates of pay, rules and working conditions of the Agreement between The Baltimore and Ohio Railroad Company and the Railroad Yardmasters of America."

The Organization also maintains that the coordination agreement did not negate the provisions of the B&O Yardmasters' Agreement, and that Section 2 of Article I of the New York Dock conditions guarantees the preservation of existing agreement rules. This section reads as follows:

"2. The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collective bargaining agreements

or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes."

In response to the Clerks' contentions that the Carrier is contractually obliged to continue assigning supervision of the Trailer Ramp in question to clerical employees, the Organization here asserts that the Clerks' Agreement "makes absolutely no mention nor reservation of the right to directly supervise yard operation, i.e., switching, blocking, classifying cars, [and] yarding trains."

The Organization further contends that the Clerks' organization "is attempting to use the terms 'positions' and 'work' as an offensive weapon to place 'work' of other crafts under the scope of the BRAC agreement."

In this last connection, the Organization directs attention to several awards of Public Law Boards whereby claims of the Clerks' organization to certain supervisory duties were rejected. The Organization particularly cites Award No. 1 of Public Law Board No. 2555 (Referee Seidenberg) as having rejected a Clerks' organization attempt to demand yardmaster work on the Atchison, Topeka and Santa Fe Railroad. In this respect, it cites the following excerpt from this Award as being especially significant:

"Another course of action that would have to be followed if the contentions of the Clerks' Organization were to be accepted, would be to transfer from the Yardmasters' Craft to the Clerks' Craft, the duties and responsibilities of switching Corwith Yard with the concomitant duties of maintaining a car-track inventory following the switching. If the Clerks were to be vested with the exclusive right of operating CRT equipment, a Yardmaster could not function, and there would be no justifiable need for the Carrier to employ Yardmasters."

POSITION OF THE CLERKS' ORGANIZATION:

It is the position of the Clerks' organization that the Carrier is contractually obligated to continue assigning all supervision of the Trailer Ramp to clerical employees, and that to assign such work to employees other than clerical employees would be violative of the Clerks' Scope Rule in General Agreement No. 10.

The Clerks' organization also directs attention to Section 14 of a Memorandum of Agreement which it had entered into with the C&O and the SBD (L&N) to consolidate and coordinate all C&O and SBD (L&N) clerical functions into the Greater Cincinnati, Ohio Terminal

area. In this connection, it says that the SBD (L&N) Trailer Ramp that is at issue here was one of the railroad facilities which was involved in that coordination.

Section 14 of the Memorandum of Agreement dated February 28, 1984 reads in its entirety as follows:

"14. It is further understood and agreed that all work now under the C&O General Clerical Agreement and all work coming from the SBD and which is being placed under the C&O General Clerical Agreement as a result of the coordination provided for herein, shall continue to be in and under the C&O General Clerical Agreement unless and until otherwise agreed in writing between the duly authorized representatives of the C&O Management and the General Chairman of the C&O System Board of Adjustment."

Additionally, the Clerks' organization directs attention to Section 15 of the same Memorandum of Agreement, which reads:

"15. It is further understood and agreed that all work of the craft or class of Clerical, Office, Station and Stores employees in the offices, departments and operations covered by this Agreement shall be performed by employees holding seniority rights in and assigned to positions in the offices and departments at the locations and on the Seniority Districts as shown in this Agreement unless otherwise agreed in writing between the Management and the General Chairman on the road involved (C&O or SBD)."

The Clerks' organization also submits that when this facility was constructed in 1979 that all supervisory functions associated with its operation were assigned to SBD (L&N) employees represented by its organization, with the exception of certain overall supervision assigned Carrier officers. Further, that when the facility was coordinated in June, 1984 all work which was then being performed by SBD (L&N) clerical employees was placed under the C&O Clerks' General Agreement No. 10.

In this latter regard, the Clerks' organization submits that the January 31, 1984 Implementing Agreement relative to the coordination of B&O and SBD (L&N) yardmaster functions indicates only that those yardmaster functions which were then being performed by SBD (L&N) employees would be placed under the B&O Yardmasters' Agreement. Thus, the Clerks' organization states that since the record shows that SBD (L&N) Yardmasters have never performed any supervisory functions in connection with the operation of the SBD (L&N) Trailer Ramp that such work function was not subject to the