The decision is palpably erroneous lacking any arbitral value and because of such we respectfully dissent.

Respectfully submitted,

Russell C. Oathout
General Chairman
February 24, 2005

Respectfully submitted,

William R. Miller
Sr. Executive Director Industry Relations
February 24, 2005

hearing clearly stated that his work assignments and movement of cars within the New Haven Yard have always been under the control of Assistant Stationmasters and continue to be.

The Award ignored the facts, testimony and arbitral precedent on the property that has consistently held that once work is assigned to employees working under a Positions and Work Scope Rule, the work is "captured" by the Scope Rule and remains covered work.

The Neutral ignored Award 451 of Special Board of Adjustment 951, between TCU and Metro-North, wherein Arbitrator Suntrup had this to say about the Scope Rule contained in the TCU Agreement.

> "Rule 1 of the Agreement is a 'work or position' scope rule. There is an abundant arbitral precedent clarifying our understanding of the intent of such rules.
>
> > 'The sum and substance of (such)...precedent is that positions and work scope rules...have an adhesive quality by which work once assigned to employees clearly covered thereby becomes vested in those employees and may not, thereafter, be removed unilaterally from them and given to other employees...'
>
> "Under a rule such as Rule 1 of the parties' labor Agreement, a...Carrier is not permitted to unilaterally transfer work of a position held by a member of the Clerks' craft to another craft. This is what Carrier's supervision did in the instant case. A ruling by this Board that such would be permissible would have the effect of destroying the meaning and intent of Rule 1 of the Agreement. Repercussions of such ruling would be to permit supervision under whatever convenient context, to take work currently under jurisdiction of this craft and transfer it to another craft; to supervision; or even to some outside contractor. The intent of Rule 1 of the Agreement is to guard against such maneuvers."

Unfortunately, the Neutral in this instance chose to disregard the "sum and substance" of arbitral precedent regarding a "position and work" Scope Rule versus a general scope rule nor does he seem to comprehend that the purpose of Rule 1 was to guard against maneuvers such as the contrived effort in this instance of the Carrier and ACRE. The Neutral has inadvertently become a pawn in ACRE's and the Carrier's blatant attempt to steal TCU covered work.

Furthermore, we would point out that Rule 58 (c) of the TCU Agreement recognizes that positions are not static and will change and employees will be trained to use new technology to handle their positions more efficiently. Of course, that rule was not properly before the Arbitrator – it will be when this dispute is presented to a proper forum.

We next turn to that portion of the Award's reasoning titled **Scope Rules** wherein the Neutral correctly states:

> "There is no question that the Scope Rule in the TCU Agreement supports TCU's contention that Stationmasters at New Haven should continue to control the movement of cars, trains and engines. The Scope Rule is a *"position and work"* rule, which states that positions or work shall not be removed from the scope of the Agreement except by agreement between the parties. Assistant Stationmaster is one of the positions delineated in the TCU Scope Rule." (Underlining our emphasis)

After acknowledging that the Assistant Stationmaster work could only be removed by Agreement between the parties the Neutral makes an intellectually bizarre reversal stating that the Yardmaster's General Scope Rule equally supports its contention that Yardmasters should manage the New Haven Terminal. That conclusion ignores the fact that ACRE's General Scope Rule required it to prove system-wide exclusivity to the disputed work. Obviously, ACRE could not meet that test because it never did the disputed work at New Haven. The Neutral's opinion is contrary to 71 years of arbitral precedent with no arbitral support.

Unlike ACRE's General Scope Rule, TCU's "position and work" Scope Rule does not require proof of system-wide exclusivity. TCU only has to demonstrate that it did the disputed work at individual locations as stated in the several Awards furnished the Neutral. That fact was not disputed by the Carrier or ACRE. Furthermore, it is extremely interesting that no one furnished the Neutral any Award that vaguely suggested that a General Scope Rule could be considered to be on an equal plateau with a "position & work" Scope Rule. The bizarre logic continues in the final paragraphs on page nine when the Neutral states:

> "...the Yardmasters' Scope Rule dovetails operation..." because "The work involved at this yard includes the make up and movement of trains, engines and cars in the yard, including switching."

That conclusion makes no logical sense because that is exactly what the Assistant Stationmasters have controlled for 50 plus years. One of ACRE's Conductors who testified at the

Their duties remain to control the movement of trains throughout the yard, including the nine new tracks. The switching panel merely permits the Assistant Stationmasters, with the push of a button, to open switches rather than the trainmen walking the tracks and pushing the button on the switch.

Assistant Stationmasters at New Haven are performing the same work they have always performed - the movement of traffic throughout the New Haven facility. The installation of a switching machine or panel has not changed the nature or purpose of the work performed. The Carrier's own documents - job bulletins - confirm that the nature and purpose of the work continues to be the same as when first assigned to the Assistant Stationmasters in the 1950's.

At the top of page nine the Neutral concludes the past practice reasoning by stating:

> "The nature and character of the yard operation at the New Haven Passenger Yard are comparable to yard operations at all other yards on Metro-North. All those yards are under the control of Yardmasters."

In making this statement he is simply acknowledging the undisputed fact that since the inception of the Carrier, Assistant Stationmasters at New Haven have always had the same authority and control that Yardmasters had at other locations. However, that similarity of duties does not lead to a logical conclusion that the work can be removed from TCU coverage. Perhaps more revealing is the fact that the Neutral is attempting to base his rationale on the usage of new equipment, added tracks, etc. as being the reason why the work should be removed from the Assistant Stationmasters. The nature and character of the work is not defined by the mechanical tools used to accomplish the duties, but is instead defined by the purpose of the work. The purpose of the position was defined by the Carrier in its job bulletin and they are as follows:

> "... Within assigned territory, in charge of movement of trains and engines and handling of cars, yard employees and train and engine crews within yard. Responsible for prompt movement and careful handling of cars; proper make-up and prompt dispatchment of trains; prompt placement of bad-order cars for repair and for expeditious handling of such cars after repairs have been completed. "
> (TCU Exhibit 16, page 1)

The purpose of the jobs were not changed because nine tracks and a switching machine were added, just as they didn't change when any of the previous changes were made to the yard.

had no right to do TCU covered work and the Neutral had no jurisdiction to denigrate the working conditions of TCU employees.

Continuing on page six the Neutral further confirms his misunderstanding of the dispute when he states the following: "The job description for Yardmasters at New Haven provides that:" As we stated in our submission and repeatedly told the Neutral at the hearing Yardmasters have never worked at New Haven, therefore, his job description of the New Haven Yardmaster has no factual basis as it is the description of a non-existent job. Simply put the Neutral compared fully covered TCU positions of New Haven Assistant Stationmasters to make believe positions. It becomes clear as you read this Award the Neutral ignored the facts and has fictionalized them. When you write fiction you can make absurd conclusions.

Beginning on page seven of the Award under the sub-section titled **Past Practice** and running through page nine the Neutral expresses some of the most convoluted reasoning and disregard of the facts ever seen by these writers in an Award.

In the first two paragraphs on page eight the Neutral concludes that even though Assistant Stationmasters at New Haven have controlled and governed all traffic, as well as train crew movement, without any objection from the Carrier or ACRE since 1983 (Carrier's inception) the work was properly removed from TCU's "position and work" Scope Rule. He justified this skewed logic based upon the reconfiguration of tracks, a new switch machine console located in the new building; and running repairs and speed restrictions added. He reached this conclusion despite the fact that Assistant Stationmasters continued to perform the disputed work even after the changes were implemented at New Haven.

That lack of logic is contrary to better reasoned Awards on this property and throughout the industry. The New Haven Terminal, like any other yard, is made up of different sections which are given names for identification purpose. Within the New Haven Terminal are sections referred to as the "storage yard," "temporary new yard," "MU repair facility," and "heavy rebuild shop." The New Haven Terminal or Yard is no different than any other railroad yard - it is made up of different sections or parts that make up the entire facility.

The fact that Carrier added nine tracks and a switching panel does not change the character or purpose of the duties of the Assistant Stationmasters.

authority.

During the Hearing itself the Neutral raised the question whether or not he had any legitimate authority to hear the dispute. When he suggested that he might close the Hearing and go home without addressing the merits, TCU's representatives stated that would be the correct thing to do. Rather than closing the Hearing and issuing a decision confirming no authority the Neutral chose to try and persuade TCU to give him authority to review the merits so he could legitimatize any subsequent decision. Despite repeated attempts by the Neutral to gain authority TCU never acquiesced. TCU did not give the Neutral the authority he requested to review the merits of the dispute and the very fact that the Neutral attempted to secure that authority from TCU is an acknowledgment on his part that he lacked authority. We will reiterate that because the Neutral chose to ignore TCU's procedural and jurisdictional arguments about the validity of the Board's existence and offered no reasoning as why he thought he had attained the right to review the alleged dispute on its merits the Board's decision is fatally flawed. The Board had no authority under the RLA to rule on TCU's Agreement. We advised the Neutral at the hearing that we did not believe TCU would be bound by any decision to remove work from our craft and our position remains unchanged.

Absent the fact that the Board had no authority to address the merits of the Carrier's and ACRE's concocted Question at Issue we will address its additional failings beginning on page six under its **FINDINGS AND OPINION** wherein the Board further defines its misunderstanding of TCU's position when it states the following:

> "The TCU contends that the controversy before this Board does not involve a "jurisdictional dispute", but the Neutral Member respectfully disagrees."

Contrary to the aforementioned statement, in the very first five minutes of TCU's opening presentation its presenter stated:

> "Turning to the instant dispute we discover that the normal third party jurisdictional dispute has been turned on its head."

Furthermore, on page 11 of TCU's submission we wrote almost the exact same thing when we stated:

> "Turning to the instant dispute, it is evident that the normal third party jurisdictional dispute has been turned on its head."

TCU never stated there was no jurisdictional issue with ACRE. We specifically stated ACRE

Haven – agreed to a SBA with the Carrier to lay claim to TCU covered work. The fact that the Carrier even agreed to this deal suggests that it wanted to remove the work from TCU and give it to ACRE and was attempting to expedite that process with a "quickie" arbitration board that did not arise through the collectively bargained grievance procedures. This scenario was confirmed by the Carrier's oral presentations at the Board.

Notwithstanding the fact that there was no merit for removing the disputed work from TCU coverage and giving it to ACRE the SBA established a rule which limited its authority. The last sentence of Paragraph (B) of the SBA Agreement (TCU Exhibit No. 8) states:

> "The Board shall **not** have jurisdiction of disputes growing out of requests for changes in rates of pay, **working conditions** nor have authority to change existing agreements or establish new rules." (Underlining and bold for emphasis)

It logically follows that if the SBA had no authority to change the working conditions of ACRE covered employees then it clearly had no jurisdiction or authority to change the "working conditions" of TCU employees. Accordingly, it also follows that if work is removed from TCU covered employees their "working conditions" would be changed. The only way this SBA would have had such authority is if TCU had been a primary and participating party to the establishment of this SBA Agreement and had agreed to such a condition. TCU was not afforded that opportunity and this SBA had no jurisdictional authority to change the "working conditions" of TCU covered employees.

For the Board to suggest it had such authority is to invite disruption to the foundation of the Section 3 process. It is an invitation to outlaw groups or company unions to attempt to steal work covered by negotiated agreements by simply conspiring with a carrier to pose a bogus question at issue.

It is abundantly clear that the Board failed in its obligation to address whether or not it had legitimate authority to review the merits of the dispute. Rather than stepping up to the plate and addressing the issue, it took a "walk" on the issue and offers zero explanation as to how it believes it acquired authority in the instant dispute.

The absence of any explanation confirms the Neutral's inability to justify his alleged

the Neutral that the Board lacked jurisdiction and/or authority to rule on TCU's Collective Bargaining Agreement. Failure to address such a fundamentally important argument confirms the lack of discernment.

Because that section of the Award titled **Board's Jurisdiction** does not address TCU's jurisdictional argument we find it necessary to lay out our entire argument so that any Neutral in the future who might address a similar or identical issue involving these same parties will have the benefit of knowing what transpired in this instance.

We will first discuss the peculiarities of this Special Board of Adjustment and TCU's participation.

Usually third party disputes involve alleged Scope Rule violations, wherein two or more Unions lay claim to the same work. Normally what transpires is one Union's members exclusively perform a certain duty and subsequently the Carrier assigns those duties to a second Union after which the first Union files a grievance for a Scope Rule violation. The Carrier then denies the claim on the basis that the work was allegedly shared or did not belong exclusively to the Petitioner. The claim then works its way through the appeal process and eventually ends up before a Section 3 tribunal. The primary parties to the Board then file their submissions. If there is an interested Third Party, the arbitrator and/or Board then directs those parties to send their submissions to the interested Third Party, who is given an opportunity to review the submissions and file a submission with the right to appear at the hearing.

Turning to the instant dispute, it is evident that this was not the normal third party jurisdictional dispute. The record indicates that ACRE agreed to a Special Board of Adjustment with the Carrier wherein the parties adopted and agreed to a vague question at issue to determine whether or not ACRE has the right to acquire TCU Scope covered work via the arbitration process.

As previously stated, in a normal arbitration case the primary parties to the dispute oppose each other. When an interested third party is invited to participate and that third party chooses to be involved you can count on the third party to normally be in agreement with the Carrier. Yet in this case, as TCU pointed out to the arbitrator in its letter of September 1, 2004 (TCU Exhibit 10), TCU was the primary party rather than the third party. Nonetheless, what should have been the actual third party ACRE - who all three parties agreed had never performed the disputed work at New

THIRD PARTY

TCU'S DISSENT TO

AWARD NO. 1, PUBLIC LAW BOARD NO. 6805

(REFEREE ROBERT M. O'BRIEN)

The finding in this case cries out for a dissent because the Award is an erroneous anomaly devoid of discernment and logic.

Beginning on page four the Neutral Member of the Board discusses his jurisdiction and the invitation to the Transportation Communications International Union (TCU) as an interested Third Party. Anyone not directly involved with the instant dispute reading the Award would have no idea that this was not a normal third party jurisdictional dispute. The customary grievance resolution process was turned on its head.

Under the customary rules of arbitration, TCU should have been the primary party to the dispute, inasmuch as it was TCU's members who have always performed the disputed work at the location, and the dispute centered over whether that work should now be removed from those employees and given to another craft. Yet under the unprecedented, collusive and singularly unfair process concocted by Metro-North and the Association of Commuter Railroad Employees (ACRE), the interloping union, ACRE, was treated as the primary grievant, even though they were by industry standards and precedent the third party.

The purpose of this ruse was obvious and pointed out by TCU at the hearing. It permitted Metro-North and ACRE to establish the rules of the arbitration and select the arbitrator. It permitted Metro-North and ACRE to submit a spurious question at issue that did not arise from any collectively bargained grievance process under the Railway Labor Act and that did not even pose any liability to the carrier. And, finally and most telling, it permitted Metro-North and ACRE to argue identical positions before the arbitrator – that the work should be removed from TCU and given to ACRE. There was in fact no dispute at all between Metro-North and ACRE, and therefore no legal basis for the arbitration board to be established under the Railway Labor Act. The Award therefore has no legal validity.

The Award does not even acknowledge, much less address, the fact that TCU argued before

Based on all the following, the Neutral Member of this Board finds that Yardmasters shall have control over the West End Passenger Yard at New Haven, Connecticut.

AWARD

Yardmasters represented by the Association of Commuter Rail Employees have control over the West End Passenger Yard at New Haven, Connecticut.

_____

Robert M. O'Brien, Neutral Member

Dated:

directing the movement of cars, trains and engines at this station is no longer apposite. The nature and character of the yard operation at the New Haven Passenger Yard are comparable to yard operations at all other yards on Metro-North. All those yards are under the control of Yardmasters.

(2) Scope Rules

There is no question that the Scope Rule in the TCU Agreement supports TCU's contention that Stationmasters at New Haven should continue to control the movement of cars, trains and engines. The Scope Rule is a "*position and work*" rule, which states that positions or work shall not be removed from the scope of the Agreement except by agreement between the parties. Assistant Stationmaster is one of the positions delineated in the TCU Scope Rule.

However, the Yardmasters' Scope Rule equally supports ACRE's contention that Yardmasters should manage yard operations at the new passenger yard at New Haven just as they do at all other Metro-North yards. That Scope Rule provides that Yardmasters "[*w*]*ill direct yard operations, make up and movement of trains, engines and cars . . . including all industrial switching. . . .*"

The Neutral Member of this Board finds that the Yardmasters' Scope Rule dovetails operation of the West End Passenger Yard at New Haven. The work involved at this yard includes the make up and movement of trains, engines and cars in the yard, including switching. Therefore, under the ACRE Scope Rule, Yardmasters have the right to direct yard operations at this yard.

Assuming, for the sake of argument, that the custom, usage and practice at the New Haven station should prevail over the custom, usage and practice at all Metro-North yards, the weight of the evidence has persuaded the Neutral Member of this Board that working conditions at New Haven changed so dramatically with the opening of a new passenger yard that the longstanding practice of Assistant Stationmasters being responsible for the movement of cars, trains and engines at the New Haven station is no longer operative. It is axiomatic that when the underlying basis for a practice, custom or usage changes, the practice, custom or usage ceases to exist.

In the Neutral Member's opinion, a fundamental change occurred at New Haven with the reconfiguration of the tracks. A new yard with nine storage tracks was established. A switch machine console located in a new building now remotely controls these tracks. Running repairs will now be made to equipment in the new passenger yard. Running repairs were not made at the New Haven station before the new yard opened. Also, the new yard has speed restrictions similar to all other Metro-North yards.

The new passenger yard at New Haven cannot be distinguished from other yards on the property. At all these other yards, Yardmasters direct yard operations and the make up and movement of trains, engines and cars. They also operate switch machines. It is undisputed that Stationmasters have never operated switch machines on Metro-North. Additionally, Stationmasters at New Haven are now subject to the Carrier's Operating Rules as well as DOT random drug and alcohol testing like other operating employees.

In the Neutral Member's opinion, there was such a major change at New Haven with the opening of the West End Passenger Yard that the practice of Stationmasters

Passenger Yard. Accordingly, in the Neutral Member's opinion, their respective claims to this work involve a jurisdictional dispute, as that term is commonly understood in labor relations.

MERITS

In determining who has authority to control yard operations, the make up of trains, the movement of cars, trains and engines and switching at the New Haven Passenger Yard, the Neutral Member of this Board has carefully examined both the TCU and ACRE Agreements, particularly the Scope Rules in these Agreements. He has also carefully reviewed the job description for the Assistant Stationmaster position and the job description for the Yardmaster position on Metro-North. The Neutral Member has further considered the usage, practice and custom of the parties involved in this proceeding. The evidence and arguments advanced by the TCU in support of its contention that Assistant Stationmasters at New Haven are entitled to manage yard operations there has been given the same consideration that has been accorded ACRE's evidence and arguments that Yardmasters are entitled to this work. As noted above, this was a requirement of the agreement that established this Board. The Neutral Member has complied with that condition.

(1) Past Practice

The custom, practice and usage on Metro-North regarding responsibility for yard operations is an admixture. For instance, at every Metro-North yard, Yardmasters have been in charge of yard operations. However, at the New Haven station, Assistant Stationmasters have always been in charge of the movement of trains, engines and cars.

That this Board has jurisdiction over the dispute involved herein.

The TCU contends that the controversy before this Board does not involve a "jurisdictional dispute," but the Neutral Member respectfully disagrees. Based on a review of the job description for the position of Assistant Stationmaster and the job description for the position of Yardmaster on Metro-North, the question before this Board involves a quintessential jurisdictional dispute, in the Neutral Member's opinion.

The job description for the Assistant Stationmaster position states that:

> "Within assigned territory, in charge of movement of trains and engines and handling of cars, yard employees and training and engine crews within yard. Responsible for prompt movement and careful handling of cars; proper make up and prompt dispatchment of trains; prompt placement of bad order cars for repair and for expeditious handling of such cars after repairs have been completed" (underscoring added).

The job description for Yardmasters at New Haven provides that:

> "Within their assigned territory, they are in charge of the movement of trains and engines, the handling of cars, of yard employees and of train and engine crews within the yard. They are responsible for the proper make up and prompt dispatchment of trains. They are responsible for the prompt movement and careful handling of cars. . . .
>
> They are responsible for the prompt placement of bad order cars for repair and for the expeditious handling of such cars after repairs are completed . . ." (underscoring added).

It is obvious from the foregoing job descriptions that Assistant Stationmasters and Yardmasters on Metro-North may be assigned duties common to both job classifications. Based on their respective job descriptions, both classes of employees have a rational claim to control the movement and handling of trains, cars and engines at the New Haven

Among other provisions, the August 12, 2004 agreement establishing this Board states that if the Neutral Member determines that a third or additional party may have an interest in the dispute, he shall give such party, or parties, notice and an opportunity to be heard. The agreement allows interested third parties a reasonable period of time to present their position to the Board and they are to be accorded the same full and fair hearing procedures that are afforded to ACRE and Metro-North.

The Board scheduled a hearing for September 27, 2004. On September 1, 2004, the TCU advised the Neutral Member that it intended to appear before the Board to make an oral presentation and provide a written submission. It requested additional time to prepare its submission and oral presentation. That request was granted and the September 27, 2004, hearing was postponed to give the TCU adequate time to prepare its submission and oral argument.

ACRE, TCU, Metro-North and the Neutral Member of the Board agreed to convene a hearing in New Haven on October 26, 2004. ACRE, TCU and Metro-North appeared at that hearing and submitted extensive written and oral arguments and evidence in support of their respective positions. Pursuant to the August 12, 2004 agreement establishing this Board, in the light of the intervention by a third party, only the Neutral Member is authorized to make the Award.

FINDINGS AND OPINION

This Board upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

July 24, 2004, it intended to place into operation the newly configured yard at New Haven under the following conditions:

1. The incumbent TCU Assistant Stationmasters will be trained and qualified in the new yard and on the operation of the switching machine. These TCU Assistant Stationmasters will be assigned these responsibilities when the yard is put into operation. This assignment of work to the TCU Assistant Stationmasters is based solely on Metro-North's operational need to integrate this yard into our operations without delay or disruption. It is not intended to represent Metro-North's position on the jurisdictional issues.

2. Metro-North will agree with ACRE to expedite their jurisdictional claim to this work to arbitration. The TCU is invited as a third party in interest to participate in this arbitration proceeding. Metro-North will be bound by the arbitrator's decision.

3. Metro-North will qualify certain ACRE Yardmasters on the operation of New Haven Yard. These ACRE Yardmasters will be used in New Haven in case of operational emergencies or when no qualified TCU Assistant Stationmasters are available.

Metro-North takes these steps in order to meet our operational requirements and our actions should not be interpreted as favoring one Union over the other.

On July 24, 2004, the New Haven West End Passenger Yard was placed into operation under these conditions.

BOARD'S JURISDICTION

On August 12, 2004, ACRE and Metro-North signed an agreement to establish a Special Board of Adjustment (hereinafter referred to as the Board) pursuant to Section 3 of the Railway Labor Act. The undersigned was selected to serve as the Neutral Member of this Board.

new storage tracks (#61 - 69) and a transportation building (building #13) were constructed as part of this reconfiguration project. A switch machine console located in building #13 remotely controls the storage tracks. With this change, Assistant Stationmasters at New Haven were relocated from their trailer to the new transportation building. They are now subject to Federal Hours of Service laws, DOT random drug and alcohol testing and must qualify on the Carrier's Operating Rules.

Before the West End Passenger Yard became operational, a dispute arose between the TCU and ACRE regarding who would be responsible for the make up and movement of cars, engines and trains at this new yard. The TCU was adamant that Assistant Stationmasters should manage the yard since they had always been in charge of the movement of trains, engines and cars at New Haven. ACRE was just as adamant that Yardmasters should have this responsibility inasmuch as they operate remote control switches and direct yard operations at all other yards on the property.

The Carrier was anxious to resolve this dispute before the New Haven West End Passenger Yard opened. It recognized that both the TCU and ACRE had a justifiable claim to the work at this new yard. On March 9, 2004, the Carrier proposed a procedure to resolve what it considered to be a jurisdictional dispute between the TCU and ACRE. It was hopeful that this dispute could be resolved prior to April 1, 2004.

ACRE was amenable to the Carrier's proposal but the TCU was not. Nevertheless, the two labor organizations met several times and attempted to resolve the dispute. Unfortunately, they were not successful.

By July 2004, the opening of the new passenger yard at New Haven was imminent. On July 22, 2004, Metro-North advised ACRE and the TCU that on or about

Since 1983 when Metro-North began providing commuter service, Yardmasters have not been assigned at the New Haven station. Rather, Assistant Stationmasters have been responsible for the movement of trains and engines at New Haven. Train crews threw their own switches at New Haven. Assistant Stationmasters did not control switches. Assistant Stationmasters are represented by the Transportation Communications International Union (hereinafter referred to as TCU). Prior to the summer of 2004, Assistant Stationmasters worked in a trailer at New Haven. There are currently five Assistant Stationmasters assigned to New Haven.

Until August 2004, Assistant Stationmasters were not subject to the Federal Hours of Service Law or the United States Department of Transportation (DOT) random drug and alcohol testing. Nor were they required to qualify on the Carrier's Operating Rules. Also, Assistant Stationmasters did not provide "blue light" protection on equipment.

Yardmasters on Metro-North were formerly represented by the Railway Yardmasters of America (RYA) then by the United Transportation Union (UTU). They are currently represented by Division #1 of the Association of Commuter Rail Employees (hereinafter referred to as ACRE). Yardmasters on Metro-North have jurisdiction over employees involved in yard operations. They direct yard operations and the make up and movement of trains, engines and cars, including industrial switching. They provide blue light protection on equipment in yards. Yardmasters also authorize train movements within yards and work directly with Rail Traffic Controllers.

The Carrier and the Connecticut Department of Transportation expended considerable resources to improve and reconfigure the passenger station, shops and tracks at New Haven. A new West End Passenger Yard was constructed at New Haven. Nine

PUBLIC LAW BOARD NO. 6805

Case No. 1
Award No. 1

PARTIES TO DISPUTE: ASSOCIATION OF COMMUTER RAIL EMPLOYEES

-and-

METRO-NORTH COMMUTER RAILROAD

QUESTION AT ISSUE

Who shall have control over the West End Passenger Yard at New Haven, Connecticut - - Assistant Stationmasters represented by the Transportation Communications International Union or Yardmasters represented by the Association of Commuter Rail Employees?

BACKGROUND

In 1983, the Metro-North Commuter Railroad (hereinafter referred to as the Carrier or Metro-North) was established to provide passenger service to parts of New York and Connecticut. Conrail had previously provided this passenger service.

Metro-North services passengers on several lines one of which is the New Haven Line. New Haven is the northernmost station on this Line. Metro-North and AMTRAK both utilize tracks at New Haven.

Until the summer of 2004, the Carrier did not have a yard at New Haven where cars were stored and trains were made up. Rather, cars and engines were stored on the mainline until they were needed for service. The Carrier has a passenger station (Union Station), a repair facility, a storehouse, a loop track and several shop tracks at New Haven.