

NATIONAL MEDIATION
BOARD

DEC 23 9 16 AM '74

NATIONAL RAILROAD
ADJUSTMENT BOARD

Award No. 13
Case No. 13

PUBLIC LAW BOARD NO. 1204
SPECIAL BOARD OF ADJUSTMENT

United Transportation Union (T)

and

Richmond, Fredericksburg and Potomac Railroad Company

STATEMENT OF CLAIM:

Claim of various Yardmen for a day's pay on August 21, 1972 and subsequent dates account Carrier assigned M of W employees to "flag and control yard engines at south end of south yard."

FINDINGS:

This claim arises as a result of the utilization of Maintenance of Way foremen by Carrier to assist the independent contractor working on the Federal I-95 bridge that spanned Acca Yard.

The Organization contends that the use of Maintenance of Way personnel resulted in the "giving of signals for the starting, stopping and controlling yard engines," and as such, Carrier was in violation of the Schedule agreement between the parties that provides that "the giving of signals to yard engine crews for the purpose of governing their movements in switching operations" shall be handled by yardmen and shall be considered yard work.

Carrier asserts that the utilization of Maintenance of Way personnel at construction sites for flag protection as a means of coordinating the work between the construction crew and the yard switching crews was permissible, that his responsibility was to see that construction work did not impede yard engine movements and not to flag yard engine movements, and, that under such circumstances, Claimants did not have the exclusive right to perform this work.

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During the course of the hearing it was determined that the Maintenance of Way Organization should, under the terms of the agreement establishing this Board, be afforded an opportunity to be heard as a third party. Pursuant to due notice, the representatives of that Organization appeared and presented argument as to why this was properly the work of the employees of the Maintenance of Way Organization. Essentially, its position may be summarized as follows:

- 1) It is the traditional duty of Maintenance of Way employees to flag where an independent contractor is involved and a potential hazard is created.
- 2) main line tracks as well as yard switching tracks were involved,
- 3) even in a yard location, the Maintenance of Way personnel are protecting the track, and not concerned with yard movements, and
- 4) Under the circumstances, the independent contractor, without the coordinating efforts of Maintenance of Way employees, would not be able to avail itself of any protection from yard crews and their switching operations.

The basic thrust of the Claimants' contention is that irrespective of the circumstances and situation, any flagging performed by anyone other than U.T.U. employees (Trainmen) within switching limits is a violation of Rule 10(e).

The Board does not agree.

While it is clear that yardmen have a right to give signals to yard engine crews "for the purpose of governing their movements in switching operations," it is clear that the Maintenance of Way personnel were not involved in work that was in

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any way intended by Carrier to deprive the Claimants of their right to control the movement in switching operations. It is equally clear that the function of the Maintenance of Way personnel is to preserve the track under the circumstances in order that the work of the Railroad and the work of the independent contractor can continue with the least possible disruption. In this sense, the flagging was incident to the duty of aiding the independent contractor in furtherance of protecting the interests of Carrier.

The rule cited by the Claimants is grounded on safe track, no potential danger of obstruction, and normal and routine switching movements. It did not, as far as this Board is able to determine from the record, contemplate the type of activity involved in this dispute.

The Board further finds that First Division Award No. 5607, cited by Claimants, misses the mark.

AWARD:

Claim denied.

T.B. Choate

T. B. Choate, Carrier Member

Lester Kimball, Organization Member

Nicholas H. Zumas
Nicholas H. Zumas, Chairman

December 11, 1974

2:13 p. m.