

PARTIES) RAILROAD YARDMASTERS OF AMERICA  
 )  
 TO ) And  
 )  
 DISPUTE) HOUSTON BELT AND TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM

Claim (1) penalty day at the appropriate applicable rate for the senior available yardmaster, L. T. Nash, account officer of the Carrier B. Cates did act in the capacity of a yardmaster and no emergency existed. Eng. Foreman Cato was instructed by the Officer to move CNW 161495 off Rip 4 to the inspection track at 3:50 p.m., March 29, 1985."

FINDINGS

This Board upon the whole record and all the evidence, finds that the employees and the carrier involved in this dispute are respectively employees and carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

This claim on behalf of L. T. Nash, the senior available yardmaster, is based upon the contention that on March 29, 1985, Car Foreman B. J. Cates instructed Engine Foreman Cato to pull a car from the Rip Track and respot it on another track. Engine Foreman Cato gave a signed statement, which, in pertinent part, said:

"General Car Foreman gave me instruction to move CNW 161495 from R-4 to the Inspection Trk. 3:50 p.m."

The Carrier denies Foreman Cates gave instructions to Cato and relies upon the following statement from Cates:

"I did not instruct Mr. Cato to move any place CNW 161495 anywhere.


"I told him this car was a partial load and was suppose to go to track 739 to finish being unloaded and car had been called to PICL clerk."


The Carrier argues Yardmaster Sides controlled the movement of all South Yard engines, and Foreman Cates did not arbitrarily move the engine to Track 739. This contention overlooks the fact that the violation was reported by Yardmaster Sides.

Contrary to the Carrier's belief, the Board looks to the party advancing an explanation relating to an occurrence to offer substantial evidence in support. Once put on notice by the Organization that Yardmaster Sides reported the violation, it is inadequate proof for the Carrier to attempt to discredit Sides' claim by arguing in the submission that Sides controlled the movement of the yards. Accordingly, we find the preponderance of evidence before the Board supports the Organization's claim that Car Foreman Cates performed work reserved to the Yardmasters craft by the Agreement.

AWARD

Claim sustained.

  
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Robert W. McAllister, Chairman and  
Neutral Member

  
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Terry M. Stone, Carrier Member

  
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D. R. Carver, Employee Member

April 28, 1986

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Date