

BEFORE PUBLIC LAW BOARD 5902

**UNITED TRANSPORTATION UNION
YARDMASTERS DEPARTMENT**

and

NORFOLK SOUTHERN RAILWAY COMPANY

Case No. 24

STATEMENT OF CLAIM:

Please allow Yardmaster R.J. Siesel fifteen dollars (\$15.00) additional pay for each of the fifteen (15) days he was required to train another employee who was learning the duties and responsibilities of a yardmaster at the Bellevue Hump, Bellevue, Ohio. The fifteen days are October 6, 7, 8, 9, 10, 13, 14, 15, 16, 2001, and November 5, 24, 25, 26, 26 and 28, 2001.

FINDINGS:

On the above-referenced dates, the Claimant was assigned to and worked the position of yardmaster at Bellevue Hump, and Trainmaster J.J. David instructed the Claimant to train Derk Duffield and Mark Hricovec on the duties and responsibilities of this position. The Organization thereafter filed a claim on the Claimant's behalf, contending that the Carrier had misapplied Rule 2 of the collective bargaining agreement by not allowing Claimant the \$15.00 payment provided therein. The Carrier denied the claim.

The Organization argues that the Carrier failed to support its denial of this payment with any applicable contract language. The Organization points out that the agreement does not restrict the payment to the training of a yardmaster who has not established seniority, but instead provides for payment to a yardmaster in the training

program. The Organization argues that yardmasters are the training program until they are qualified at all positions in all locations in an area covered by the Guarantee Extra Board (GEB).

The Organization points out that prior to the June 26, 2000, revision to the agreement, a yardmaster was required to be qualified on all yardmaster positions at all locations within a terminal area before being permitted to apply for or displace to a GEB position. The Organization explains that it negotiated in good faith to relax the qualification requirements for a yardmaster to claim a position on the GEB. The Organization points to the General Chairman's statement that the agreement clearly provides payment for all yardmasters in the training program, and that the Carrier never discussed its assertion that yardmasters training an unqualified yardmaster with seniority in a terminal would not be paid a trainer allowance of \$15.00. The Organization maintains that the Carrier has not challenged this position at any level, and it must be accepted as fact.

As for the Carrier's denial of material facts regarding whether or not the Claimants were instructed to train unqualified yardmasters on the claim dates, the Organization points to the Claimants' signed statements proving that they were so instructed by Carrier officers. The Organization also contradicts the Carrier's reliance on the handling of training program agreements with other crafts. The Organization argues that these other agreements give no support to the Carrier's position because the training demands of each craft greatly differ, and the statements of train and engine representatives are of no value in this proceeding.

The Organization emphasizes that amendments to the current agreement were made on a quid pro quo basis. The Organization argues that the rule does not contain any language that terminates when a seniority date is established; seniority is established by working thirty shifts in a yardmaster position, and this has no bearing on being qualified on all positions within the terminal of service. The Organization contends that the Carrier is in violation of the agreement, and the claim should be sustained.

The Carrier contends that Rule 2, Section 3, specifically states that the trainer pay allowance applies only when a yardmaster is training other employees in the Carrier's yardmaster training program. There are no references to paying yardmasters who are assisting other yardmasters who are qualifying on positions. The Carrier asserts that neither this nor any other agreement restricts the Carrier's right to determine who is, or is not, in the Carrier's training program. The Carrier argues that it consistently has held that employees who are in training to become yardmasters, but have not yet received promotion, are "in the Carrier's yardmaster training program." The Carrier maintains that these are the only instances in which it has paid trainer pay.

The Carrier points out that once an employee is promoted to yardmaster, the employee performs yardmaster duties without a trainer present, earns the yardmaster rate of pay, and establishes a seniority date. The Carrier contends that assisting promoted yardmasters who are qualifying on a position, such as Claimant was doing with Yardmasters Duffield and Hricovec, does not fall under the auspices of the Carrier's yardmaster training program, and does not qualify for trainer pay. As referenced in the

trainer pay rule, a promoted yardmaster no longer is in the Carrier's yardmaster training program.

The Carrier goes on to argue that under the new GEB Rule, which contemplates allowing a yardmaster qualified at only one location in the yard to hold a position on the GEB, the Carrier may promote a yardmaster trainee to yardmaster, and award this employee a position on the GEB. The Carrier contends that it then may use this yardmaster to fill vacancies at those locations where qualified, and on the days not so used, complete qualifications in the rest of the yard. The Carrier maintains that under this rule, the new yardmaster benefits by earning the yardmaster rate of pay for working on the GEB while completing qualifications. The Carrier asserts that it has not allowed the trainer allowance for assisting a GEB yardmaster in qualifying for another location in the yard, and it has not received any claims from the Organization in connection with this. The Carrier argues that the Organization's belated contention that the trainer allowance is due to yardmasters assisting other yardmasters in qualifying, after they have made seniority moves to new locations, is disingenuous and completely unsupported by the trainer pay agreement language, the language of the GEB rule, and the parties' bargaining history.

The Carrier then contends that the language of Rule 2, Section 3, parallels other trainer pay agreements applicable to the operating crafts. The Carrier maintains that it has properly interpreted this language in the same manner as it has applied these other agreements. A side agreement regarding pay increases provides further evidence of the link between the yardmaster's trainer allowance and the allowances received under the

train and engine service agreements. As established by statements from the general chairmen of other crafts, the trainer allowance is payable only to craft employees who are training someone in the initial training period who has not yet established seniority in the craft. The Carrier emphasizes that trainer pay was intended to apply only to craft employees instructed to train other employees in their craft who are in the initial phase of training.

The Carrier then points out that the Organization's position has far-reaching and prohibitively expensive implications. The Carrier contends that it never agreed to the concept of paying a yardmaster to qualify a promoted yardmaster at a location where, or on a position that, the yardmaster has not worked before. In the instant case, the Claimant was required to assist other yardmasters in qualifying on his position. These other yardmasters had successfully completed the Carrier's yardmaster training program, were promoted, and held seniority. The Carrier maintains that the Organization has failed to distinguish between assisting an experienced yardmaster and training a person who is completely new to the craft. Moreover, the Organization chooses to ignore the language "in the Carrier's yardmaster training program."

The Carrier asserts that the Organization is seeking to obtain through the grievance and arbitration process what it was unable to obtain through negotiations. The Carrier argues that if trainer pay applied to yardmasters assisting other, already-promoted yardmasters in qualifying on an unfamiliar position, then the Carrier would be obligated to pay the trainer pay allowance to the incumbent of a position any time a yardmaster voluntarily exercised seniority to an unfamiliar position. Given the fact that yardmasters

on this property have an optional displacement every six months, the cost of such a system would be prohibitively expensive, and the Carrier argues that it never would have agreed to this.

The Carrier ultimately contends that the instant claim should be denied in its entirety.


The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the agreement when it failed to pay Claimant Siesel \$15.00 additional pay for each of the fifteen days he was required to train another yardmaster who was learning the duties and responsibilities of the yardmaster position. The Organization has failed to show that the trainer allowance language includes the training of previously trained yardmasters. Rule 2, Section 3 (A), states that the trainer pay allowance only applies when a yardmaster is training "other employees in the Carrier's yardmaster training program." The language goes on to refer to employees and trainees as people who are being trained. There is no reference in the rule to paying yardmasters who are merely assisting other yardmasters for qualifying on positions. The Claimant in this case is attempting to be paid the yardmaster training pay for training two yardmasters who have already been promoted and have been qualified in the yardmaster craft. It is clear that a promoted yardmaster is no longer in the Carrier's yardmaster training program and, therefore, the additional pay for the Claimant would not be appropriate.

Since the Organization bears the burden of proof in this case and it has failed to show that the \$15.00 yardmaster training allowance is applicable to the Claimant when he is training employees who were not in the yardmaster training program, this Board has no choice other than to deny the claim. Therefore, the claim will be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 12/19/2003



CARRIER MEMBER

DATED: 12/19/2003

Dissent