

Public Law Board No. 1922

PARTIES
TO
DISPUTE:

United Transportation Union (Switchmen)

and

Southern Pacific Transportation Company

STATEMENT
OF
CLAIM:

Org. File 073-53

Co. File YDM 148-16638

Claim is made for a day's pay at the yard rate of payment applicable for the three senior switchmen standing for service at 11:50 p.m. July 5, 11:15 a.m. July 9 and 11 a.m. July 10, 1973, Oakland Yard. Five other cases identified as (1) 073-39 and YDM 148-16515, (2) 073-54 and 148-16644, (3) 073-60 and 148-16691, (4) 073-66 and 148-16739 and (5) 074-7 and 148-16943 concern the same issues and should be governed by the decision in this case.

FINDINGS:

At each of the times and dates indicated in the above Statement of Claim, employes of Asbury Graphite Company, an industry concern, used a tow truck

to switch a railroad car from a spot on the industry track onto a Southern Pacific lead track. There is no evidence that these moves were made with the knowledge or consent of Carrier.

It is entirely clear that the work performed by Asbury employes belongs to claimants under the terms of Petitioner's Agreement with Carrier. While Carrier is not an insurer against unauthorized acts of strangers (e.g., see Public Law Board 333 Award No. 1), it cannot validly permit outsiders to continue to switch cars on its property when it has expressly agreed that such work is reserved exclusively for its own employes.

This is not the first time that Asbury employes have trespassed on the work rights of Carrier's switchmen. According to Carrier, it has repeatedly asked Asbury to cease and desist from using Asbury employes to move cars from the industry track to the lead track.

We recognize that Asbury is one of Carrier's customers. However, as a modern day business organization, Asbury is bound to appreciate that Carrier must safeguard the seniority and work rights of its own employes by appropriate arrangements.

As was succinctly pointed out in First Division Award 18.859, "It is neither fair nor just for this Division to be too easily persuaded that customer relations justify an invasion of the seniority rights of carrier employes, because the

employees cannot effectively project their rights against outsiders in this regard and have nowhere to look for protection but to their own employers."

Here, the moves complained of were not of a minor nature or made only on Asbury's property or because of any fault on claimants' part. There is no indication that Carrier took any action to protect the work for its switchmen other than to make the requests to Asbury to refrain from using Asbury employees to switch the cars. Such measures could not be realistically relied upon in this case since experience had showed that they were an ineffective means of protection for switchmen's work rights. A carrier cannot sit by while work that by its express commitments belongs to its employees is eroded by outsiders on its own property.

Upon weighing the respective interests of the parties, we are satisfied that the claims for July 9 and 10 should be sustained; the July 5th claim will be denied since that was the first time in several years that claimants' rights had been invaded by Asbury employees.

AWARD: Claim sustained for July 9 and 10, 1975; and denied June 8, 1973 (Org. File 0 73-39, Co. File YDM 148-16515).

Adopted at San Francisco, California, February 21, 1979.

ORDER:

Carrier is hereby to put the above Award into effect on or before *March 10*, 1979.



Harold M. Weston, Chairman



Carrier Member



Employee Member