

PUBLIC LAW BOARD NO. 1977

CASE NO. 93

AWARD NO. 93

UTU FILE NO. T-PY-54

CARRIER FILE NO. T-PY-54

PARTIES TO DISPUTE:

Richmond, Fredericksburg and
Potomac Railroad Company

and

United Transportation Union

STATEMENT OF CLAIM

"Claim of Conductor R. H. Young and Yardman H. J. Winter for one (1) day's pay each January 28, 1980 account Company official performing duties of trainman."

OPINION OF THE BOARD

On the claim date a Yardman failed to report for his assignment which was scheduled from 8:00 a.m. until 4:00 p.m. At 9:14 a.m. the Assistant Trainmaster was instructed to perform the absent Yardman's work, which he did until another Yardman reported for work at 9:48.

The Organization notes that two employees were assigned to the Crew on the day in question, and that one of them was unavoidably delayed due to traffic in the area. As a result, the Carrier called a Brakeman who was "next out on the Extra Board", and the Carrier

violated the Agreement by using the Trainmaster for the interim amount of time until the Extra Board Employee arrived.

The Organization cites Appendix 27, Paragraphs 3 and 17 of the Crew Consist Agreement, which states:

"3. The minimum crew size shall consist of not less than one conductor (foreman) and one brakeman (yard helper) and no service shall be required of any crew manned by less than one conductor (foreman) and one brakeman (yard helper) except by agreement between the General Chairman and Carrier's Director of Personnel."

"17. A carrier officer or employee other than a conductor and brakeman will not be used to supplement, supplant or substitute in the work of a yard or road employee covered by UTU agreements."

Not only is the present situation specifically covered by the cited language, according to the Organization, the situation was a "foreseeable and inevitable consequence of reducing a Crew from three men to two men."

The Carrier does not deny the basic factual assertions set forth by the Employees, but it does stress that it has an obligation to provide service to shippers and to the public. On the claim date, according to the Carrier, there were no "blankable" men who could be moved to the Brakeman vacancy, and the Carrier only used the Supervisor for a very short period of time until the Extra man could report.

The Carrier has relied upon Award No. 74 of this Public Law Board. But, there, we dismissed the claim because the "...Employee before us is not the proper Claimant."

Thus, we question the propriety of the claim as it relates to Yardman Winter in the incident case because of the determination in Award No. 74. However, that Award does not control the claim of Conductor Young.

As we view the Carrier's position in this case, it requests that we provide an equitable resolution. This Board does not enjoy equity powers, but, rather, we are

required to apply the Agreements as they are written.

While it may very well be that the Conductor cannot be required to perform certain work under the Crew Consist Agreement, nonetheless, in a situation such as the incident case, we feel that the Conductor is entitled to one day's pay when the Carrier uses a Supervisory Employee to perform bargaining unit work.

FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due and proper notice of hearing thereon.

AWARD


Claim sustained insofar as it seeks one (1) day's pay for Conductor R. H. Young.



Joseph A. Sickles
Chairman and Neutral Member



W. E. Griffin
Carrier Member



C. E. Wible
Organization Member

6/1/84
Date