

PARTIES TO DISPUTE:

* MAINE CENTRAL RAILROAD COMPANY
 * PORTLAND TERMINAL COMPANY
 *
 * -and-
 *
 * UNITED TRANSPORTATION UNION C&T
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STATEMENT OF CLAIM:

Claim of Yard Condr. L. M. Miller, Brakemen G. E. Gagnon and C. K. Trask, dated January 24, 1978 for one day's pay account road crew worked in Rumford Yard with Plow 76 and spreader.

FINDINGS:

This Board, upon the whole record and all the evidence finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

On January 23, 1978, the Carrier called a road crew to perform snow plow service on January 24, 1978 commencing at 7:00 a.m. in Rumford Yard Rumford, Maine. That road crew was instructed to spread Rumford Yard as directed by the Engineering Personnel; and subsequently to run from Rumford to Waterville. The road crew reported for duty as instructed at 7:00 a.m. on January 24, 1978. At 10:30 a.m., while spreading Rumford Yard, Spreader 805 and Engine 565 derailed. Thereafter, the crew continued to plow Rumford Yard using another engine and Plow No. 76. The derailed equipment was not re-railed in sufficient time to enable the crew to operate to Waterville as instructed. Thus, the crew worked exclusively in Rumford Yard until they tied up under the Hours of Service Law at the expiration of twelve (12) hours. The Claimant yard crew submitted the instant claim for one day's pay at yard rates asserting the Carrier violated the controlling Agreement by utilizing a road crew exclusively within yard limits for an entire day.

It is the Organization's contention that Carrier's use of a road crew to perform snow plow service entirely within Rumford Yard violated the collective bargaining Agreement, specifically Articles 10 and 13. Article 10 of the Yardmen's Agreement states, in part, as follows:

YARDMEN'S AGREEMENT, ARTICLE 10, "YARD SWITCHING" -

"Except as otherwise provided in this Agreement as it applies to Road Trainmen or Yardmen, the following shall be considered yard work at points where continuous switching service is maintained or where switchers are employed and on duty, shall be handled by Yardmen and shall be compensated for at not less than yard rates:

. . .

"(c). The handling of all construction and maintenance of way work trains and snow plows operating exclusively within yard limits.

. . .

Article 13 of the Yardmen's Agreement states, in pertinent part, as follows:

YARDMEN'S AGREEMENT, ARTICLE 13:

"Except on lines where road and yard rights are interchangeable, Roadmen shall have the right to man work trains that are operated partly within switching or yard limits, and partly on the road adjacent to such yard or switching limits, . . . Except on lines where yard and road rights are interchangeable, Yardmen shall have the right to man all work train service operating exclusively within the recognized confines of yard or switching limits."

The Organization maintains that the Claimant Yardmen, all of whom were rested and available for service, had the contractual right to perform the work in question, i.e. handling all snow plows operating exclusively within the yard limits of Rumford Yard. The Organization contends that Carrier's intention to utilize the road crew both within yard limits, and on the road adjacent to the yard does not excuse its violation of Articles 10 and 13. The Agreement explicitly provided that Yardmen, not Roadmen, shall handle all snow plows operating exclusively within the yard limits. The Organization stresses that Carrier violated this Agreement, notwithstanding its intent to assign the crew to both yard and road service, and it requests this Board to render a sustaining award as a result.

The Carrier maintains that the road crew in question was instructed to perform work with a spreader and plow in Rumford Yard, and then to run from Rumford to Waterville and plow the tracks enroute. Such instructions were proper under Article 13 of the Agreement, the Carrier submits.

However, due to the derailment of Spreader No. 805 and Engine 565, unforeseen delays occurred and the crew was required to tie up under the Hours of Service Law without leaving Rumford Yard. It is the Carrier's position that circumstances beyond its control caused the road crew to remain in Rumford Yard; and that it should not be penalized because of these unforeseen circumstances.

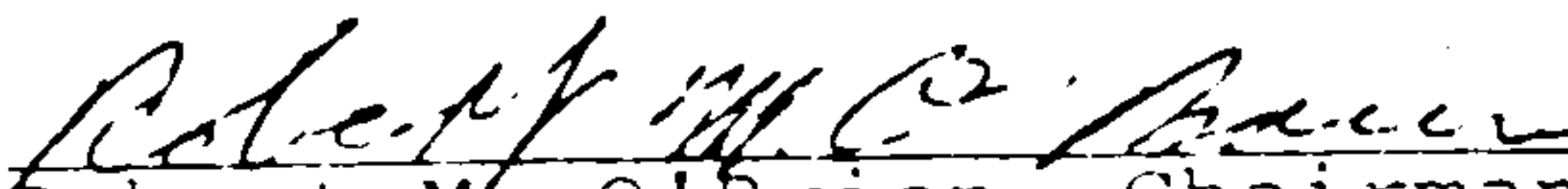
It is the opinion of this Board, based upon a careful review of the evidence at hand, that the instant claim is meritorious. Article 10(c) of the Yardmen's Agreement, in clear and unambiguous terms, provides that the handling of all snow plows operating exclusively within yard limits shall be considered Yardmen's work. This is precisely what occurred in the instant case. Although the Carrier clearly intended to use the road crew both within the yard limits and on the road adjacent thereto, the road crew was never so used. Had the road crew been used both within the yard and on the road, this would have been permissible under Article 13 of the Agreement. However, the road crew was used exclusively within the yard limits of Rumford Yard. Under Article 10(c) this work belonged to Yardmen. It is unfortunate that the Carrier was unable to use the road crew in both yard and road service, as the Carrier originally intended. Yet, when it performed snow plow service exclusively within Rumford Yard, Article 10(c) was thereby violated; and this Board has no choice but to sustain the claim as a result.

In accordance with the foregoing findings, it is the opinion of this Board that the instant claim must be sustained.

AWARD:

Claim sustained.

Carrier is ordered to comply with the Award on or before thirty (30) days from the date hereof.


Robert M. O'Brien, Chairman and Neutral Member


E.F. Lyden, Union Member


A.N. Tupper, Company Member

DATED: ~~Robert M. O'Brien~~ October 18, 1982