

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION**

Award No. 25078

Docket No. 44639

99-1-97-1-S-6749

The First Division consisted of the regular members and in addition Referee Robert E. Peterson when award was rendered.

PARTIES TO DISPUTE: (United Transportation Union
(Soo Line Railroad Company

STATEMENT OF CLAIM:

“Claims for basic day in behalf of Iowa East utility switchmen for December 1, 12, 13, 14, 15, 22, 27 and 29, 1995 account performing as utility men at West Davenport, a different seniority district.”

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The issue before us concerns a determination as to whether it was a violation of applicable rules for the Claimants to be required to perform utility service at both Nahant, Iowa and West Davenport, Iowa.

It is the position of the Organization that Nahant and West Davenport are located in separate and distinct *seniority districts* and that a utility position must be filled from the district in which the work is to be performed.

The Carrier does not dispute the existence of separate seniority districts for Nahant and West Davenport. It says that such a circumstance is not relevant to the dispute at issue. Rather, it says what does have a bearing on the case is that West Davenport Yard is within the confines of the *switching limits* for Nahant Yard, which it also refers to as Nahant Terminal. In this respect, the Carrier submits that it has the right to have utility positions work in more than one yard pursuant to Article IX, Utility Employees, of Appendix A of the 1994 UTU Agreement.

Aforementioned Article IX of Appendix A of the 1994 UTU Agreement, in part here pertinent, reads:

"The Company may establish utility positions in yard service to assist crews subject to the following:

(a) These positions will be compensated at the yard foreman's rate of pay. Overtime will apply after eight (8) hours on duty. Utility positions may work with more than one yard or road crew within switching limits at the direction of proper authority and in compliance with FRA rules regulating utility positions." (Emphasis added.)

The Carrier therefore maintains that a utility employee who reports for or begins work at Nahant can also be used anywhere within the Nahant switching limits, including West Davenport Yard.

According to the record as presented and developed, there is no question that West Davenport is located at Mile Post 194 and Nahant at MP 195.7. There is some dispute, however, as to whether both locations are within the same switching limits. In correspondence during the handling of the claim on the property the Carrier stated that the Nahant switching limits extend from MP 187 to MP 197.7, and thereby encompasses the entire West Davenport Yard (MP 194). This Carrier assertion as to the extent of the Nahant switching limits was not rebutted by the Organization during the handling of the claim on the property.

In an attempt to show that West Davenport is exclusive of the Nahant switching limits, the Organization offers a schematic drawing that it asserts shows that the Nahant switching limits do not include West Davenport Yard. This referenced exhibit is not shown to have been presented to the Carrier during the handling of the claim on the

property. Moreover, it is of unspecified origin and authorship. The exhibit also appears to have initially been prepared to show the automatic block system between Nahant and a portion of West Davenport, albeit a handwritten notation has been placed just above the words, Automatic Block System, that reads: "Yard Limits Eastward Trk." Accordingly, even if, *arguendo*, some recognition was to be given to the exhibit, which it is not for the above stated reasons, it would have to be recognized that there is a significant difference as concerns the more restrictive term, *yard limits*, and the greater meaning of the term, *switching limits*, in making reference to an area that may encompass more than one yard in a defined territory. See for example, First Division Award 20673, wherein it was stated:

"When used in connection with railroad work, the term "yard" generally connotes a system or unit of parallel tracks, crossovers, and switches where cars are switched and made up into trains or where trains are broken up or where cars and other rolling stock are kept, awaiting further disposition or repairs. See: The American College Dictionary, Text Ed., New York, Harper & Brothers Publishers, 1948, p. 1413. The term is not synonymous with the term "switching district." The latter normally refers to a larger area consisting of several yards."

The Organization also seeks support for its claim in submitting that under a March 4, 1980 Agreement, known as the "Miami Accord," that the former operator of the property, the Chicago, Milwaukee, St. Paul and Pacific Railroad (Milwaukee Road), had made an "Option 2" selection for West Davenport to operate as a separate seniority district. This, as opposed to an Option 1 election that would have permitted a commingling and expansion of then existing seniority districts.

The above mentioned happenstance involving the former Milwaukee Road notwithstanding, the Organization offers no argument to overcome correspondence of record involving claims subsequent to the Miami Accord that have included references to West Davenport being within the switching limits of the Nahant Terminal. Nor has the Organization shown reason as to why we should find other than as in First Division Award 24593, where, in a claim that Ottumwa District trainmen were improperly required to operate through Nahant to West Davenport, it was held that the claim be denied because the claimants did not intrude on another road district's territory in that "West Davenport is within the switching limits of Nahant."

As concerns a further aspect of the claim, namely, that the positions were put on outside the starting time bracket rules, it is evident in study of the record that the utility employee positions here at issue all went on duty within the starting time brackets called for in Article 120 of the 1973 General Labor Agreement and in compliance with Agreed Upon Question and Answer No. 23 of the 1994 Crew Consist Agreement.

The Organization having failed to meet a necessary burden of proof in support of the claim, it will be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 2nd day of December 1999.