

PUBLIC LAW BOARD NO. 7425

PARTIES ) SMART - TRANSPORTATION DIVISION  
TO )  
DISPUTE) BNSF RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim of Minnesota Seniority District (Dilworth) Extra Yardman R. L. Owens for payment of a basic day account the Carrier mandated he protect calls for road service outside the start times contained in Rule 10(b) of the Great Northern (GN) Yard Schedule while working the Yardman's Extra Board on September 2, 2012.

(Organization File No. 14-01175-1137; Carrier File No. 54-14-0003)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that 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; and, the parties were given due notice of hearing thereon.

In substance the wage claim in this dispute is based on Organization contentions that Rule 10(b) of the applicable collective bargaining agreement clearly proscribes that employees on the Yard Service Guaranteed Extra Board may not be called or placed into Road Service outside the start times contained in Rule 10(b) of the Yard Schedule of Rules. In this respect, the Organization maintains that "start times" are one of three "calling windows" of 0430-0800; 1230-1600 and 2030-2359 hours. The Organization thus claims that when an employee on the Yard Service Guaranteed Extra Board is placed into road service outside a start time those employees are entitled to a penalty payment of a basic day for the breach of a contract provision.

The Carrier basically contends that the instant claim is without merit; there are no collective bargaining agreement provisions providing for "call windows;" and, Guaranteed Extra Board employees are subject to call for service at all times of the day provided they are legally rested and pursuant to Yard Schedule Rule 44, "are called nearly as possible one and one-half (1-1/2) and two (2) hours prior to the designated time for reporting for duty."

Both parties have cited numerous past and current collective bargaining rules, interpretations of agreements, and alleged past practices in support of their respective positions. The Board has given thorough study to the varied contentions of the parties. The Organization's position that past practice has led to an


incorporation of "call windows" into the applicable agreement has not been met, in that it failed to demonstrate the element of acceptability of the practice by both parties. However, there is support for the elements of longevity and consistency of practice in the record despite the Carrier's contention that none existed. The remaining factor to consider is the clarity of the practice, which the record is full of inferences, oblique references and historical modifications based on location. As such, the record supports neither contention.


It is for such reason, and being mindful that the parties to any dispute are in the best position to resolve it, that the Board will remand this case back to the parties with a strong recommendation that they endeavor to resolve it themselves in order to avoid the possible imposition of conditions that neither may find to their liking.


The Board will retain jurisdiction and will issue a final decision if the parties are unable to come to a mutually acceptable resolution of the dispute within a reasonable period of time.

Award:

Claim remanded as set forth in the above Findings.

  
Robert E. Peterson  
Chair & Neutral Member

  
Melissa A. Beasley-Coke  
Carrier Member

  
J. Michael LaPresta  
Organization Member

Fort Worth, TX  
Dated: 4/18/17