FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD
39 S. LaSalle St., Chicago 3, Illinois
The First Division consisted of the regular members and in addition Referee Ernest M. Tipton when award was rendered.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN
NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: This submission involves a claim for 100 miles at local freight rates, each, in favor of Winston Salem Division Conductor S. R. Davis and Brakemen G. C. Womack, B. C. Kirk and W. E. Ingram; Conductor C. P. Manuel and Brakemen E. S. Minter, W. H. Hudson and J. R. McNeil, November 20th, and a similar claim, in favor of Conductor S. R. Davis and Brakemen W. E. Ingram, G. G. Womack and E. C. Hale; Conductor C. P. Manuel and Brakemen E. S. Minter, W. H. Hudson and J. R. McNeil, December 25, 1941, assigned to two local freight shifting crews operating daily except Sunday in each direction, out of Payne, account of these assignments being laid off Thanksgiving and Christmas Days 1941 respectively. This submission to include all subsequent dates similar violations exist. These claims are made because Article 4, paragraph (e) appearing in the Conductors' and Trainmen's Current Agreement provides:

"Regularly assigned local (conductors) crews working less than the calendar working days of the month will be guaranteed not less than one hundred (100) miles per day for each calendar working day, except for days when the line is broken through the act of God. (Calendar working days shall be construed to include legal holidays.)"

EMPLOYEES' STATEMENT OF FACTS: The Winston District, a part of the Shenandoah Division of the Norfolk and Western Railway extends in a southerly direction from Roanoke, Virginia (home terminal) to Winston Salem, North Carolina (away-from-home terminal). Payne, Virginia is an intermediate point on the Winston District located 56.60 miles south of Roanoke and 65.28 miles north of Winston Salem. Station switching points and assignment of the two local crews involved in this claim, with their approximate distances from Payne, are as follows:

<table>
<thead>
<tr>
<th>One Crew Assigned South of Payne:</th>
<th>One Crew Assigned North of Payne:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fieldale</td>
<td>Bassett</td>
</tr>
<tr>
<td>2 miles</td>
<td>5 miles</td>
</tr>
<tr>
<td>Martinsville</td>
<td>Henry</td>
</tr>
<tr>
<td>5 miles</td>
<td>13 miles</td>
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<tr>
<td>Ridgeway</td>
<td>Ferrum</td>
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<tr>
<td>15 miles</td>
<td>20 miles</td>
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<tr>
<td>Price</td>
<td></td>
</tr>
<tr>
<td>20 miles</td>
<td></td>
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</tbody>
</table>

November 20th, and December 25th, 1941, each of the crews in question regularly assigned to local freight shifting service operating daily, except Sunday, in each direction out of Payne, Virginia the intermediate point, described in the foregoing were laid off. Sometime prior to April 16, 1938,
the Carrier annulled the application of Article 4, paragraph (e) appearing in
the respective Current Agreements hereinbefore mentioned (the local guar-
antee rule) and discontinued payment for week days when these crews were
laid off and not worked. Claims were instituted involving the violation and
under date of April 16, 1940, the dispute was submitted ex parte, jointly by
the Order of Railway Conductors and Brotherhood of Railroad Trainmen, to
the First Division of the National Railroad Adjustment Board for a decision,
Docket No. 9872. Under date of January 13, 1941, Award No. 5393 was
issued sustaining the claims. Referee Edward F. Carter in the closing para-
graph of Award No. 5393 had the following to say:

"The carrier contends that the shifter was not in local freight
service because package freight was not handled. While this is or-
dinarily a fair test as to whether a train is in local freight service, it
is not always a controlling factor. We think the terms of the bulletin
creating the run, the fact that the carrier treated it as in local freight
service by paying the wages and guaranties provided in the schedules
for that service over a long period of time, and the failure of the
carrier to give notice of its change of position in respect to the classi-
fication of the service when the run was bulletined, estops the carrier
from denying that claimants were engaged in local freight service."

Subsequent to issuance of Award No. 5393 the Carrier issued Bulletin
Notice No. 546, Exhibit "A," which was cancelled by a message posted on
bulletin board under date of March 22, 1942, Exhibit "B." March 24, 1941,
Bulletin Notice No. 547, Exhibit "C" was issued, which again had for its
purpose further arbitrary annulement of the local guarantee rule as it applies
to the crews in question.

Protest was filed under date of March 26, 1941, by the duly accredited
representatives of the organizations involved requesting the Carrier to cancel
the bulletin instructions, as indicated by the following quoted letter:

"Roanoke, Virginia,
March 26, 1941.

Mr. J. W. Kirk,
Superintendent, Shenandoah Division,
Norfolk and Western Railway Company,
Roanoke, Virginia.
Dear Sir:

Bulletin Notice No. 546, dated March 17, 1941, issued over signa-
ture of Trainmaster R. H. May, abolishing the two Payne lay-over
shifter crews for conductor and brakemen.

Under date of March 22, 1941, Bulletin Notice No. 546 was can-
celled. However, under date of March 24, 1941, Bulletin Notice No.
547 was issued over signature of Trainmaster May abolishing the two
Payne lay-over shifter crews and re-advertising these runs as not
coming within the provisions of Article 4 (e), Conductors' and Train-
men's Current Schedules.

This is to advise that we are registering this as our protest in the
abolishment and reassignment of the two runs in question, giving as
our reason therefor that the working conditions heretofore applicable
to these runs remain unchanged.

Therefore, we request that Bulletin Notice No. 547 be canceled.
Kindly reply.

Yours truly,

(s) E. H. Johnson,
General Chairman, O. R. C.

(s) K. H. Jones,
General Chairman, B. R. T."
Superintendent Kirk's reply of March 29th, 1941, is attached hereto as Exhibit "D."

Time claims were presented by the individuals involved under date of November 20th and December 25th, payment of which were declined under date of November 24th and December 31, 1941, respectively.

**CARRIER'S STATEMENT OF FACTS:** On September 1, 1912, the local guarantee rule (currently carried as Article 4, paragraph (e), applicable to Conductors and Brakemen, was adopted in a conference between representatives of the Employes and the officials of the Norfolk and Western Railway Company, the Chesapeake and Ohio Railway Company and the Virginia Railway. The rule (then carried as a note to Article D in the schedules) read as follows:

"Regularity assigned local crews working less than the calendar working days of the month, will be guaranteed not less than 100 miles per day for each calendar working day, except for days when the line is broken through the act of God. (Calendar working days will be construed to include legal holidays.)"

In the application of this rule from September 1, 1912, until March, 1920, crews operating shifters did not enjoy the benefits of the guarantee, since shifter crews, who did not load or unload package freight, were not deemed to be "local crews" within the meaning of the rule.

In the spring of 1920 the conductors' and trainmen's joint schedule came up for revision. Recognizing that shifter service was not covered by the local guarantee rule, the organizations proposed the following amendment to the rule:

"Regularly assigned local and shifter crews working less than the calendar working days of the month will be guaranteed not less than 100 miles per day for each calendar working day.* * *" (Underlining for emphasis.)

On March 17 and again on May 27, 1920, Management informed the Committees that the proposed amendment was not acceptable. On June 7, 1920, the words "and shifter" were withdrawn and the original 1912 rule was retained in the schedule (and so appears in the schedules today).

In the course of a payroll check on the Shenandoah Division in 1934 it was discovered that shifter crews had been paid the local guarantee by local officials under the misapprehension that Article 4 (e) was applicable to shifter crews. On December 15, 1934, instructions were issued by the General Manager that these unauthorized payments be discontinued. After December 15, 1934, guarantee payments to shifter crews were not made when the crews performed no service.

On October 5, 1937, Trainmaster May issued Bulletin No. 300, which read as follows:

"NORFOLK AND WESTERN RAILWAY COMPANY
SHENANDOAH DIVISION
Office of Trainmaster
Bulletin No. 300
Roanoke, Virginia,
October 5, 1937

All Concerned,
Winston District:

At the close of the day's work Saturday, October 9, shifters working Payne north and Payne south will be abolished. Conductor McDaniel and Engineer Turner will be run to Roanoke at end of the day's work.
Effective Monday, October 11, a shifter will be put on to do the necessary shifting in the Basset-Martinsville territory, together with work that may be necessary between Henry and Ridgeway as occasion requires, with layover at Payne, reporting 6:40 and 6:50 A.M.

The section of No. 87 handling Martinsville merchandise cars will, beginning Saturday P.M., October 9, place them on south end of house track and in addition will place other Martinsville proper loads on Tracks 2 and 4. Pick up extra will report Winston-Salem 1:00 P.M. and 1:25 P.M.

Vacancies exist for conductor and three brakemen on Payne layover shifter. These vacancies will be assigned to the senior conductor and three senior brakemen making application for same within a period of five (5) days, including date of this notice.

R. H. May,
Trainmaster

Expires Midnight October 9th.

Working under this Bulletin the Crew* of the Basset-Martinsville shifter was laid off on Saturday, April 16, 1938, because the furniture factories in the territory served were then operating on a four and five day week and there was no need for shifting service on Saturday. Claim was made for the crew, based upon the provisions of Article 4, paragraph (e). The Carrier denied the claim. The dispute was then referred to this Division who, on January 13th, 1941, rendered the Findings (Award 5393) quoted below:

"The sole question in this case is whether the Basset-Martinsville Shifter as bulletinized on October 5, 1937, was in local freight service and its crews entitled to the guaranty provided by the schedule for crews working in local freight service.

The carrier contends that the shifter was not in local freight service because package freight was not handled. While this is ordinarily a fair test as to whether a train is in local freight service, it is not always a controlling factor. We think the terms of the bulletin creating the run, the fact that the carrier treated it as in local freight service by paying the wages and guaranties provided in the schedules for that service over a long period of time, and the failure of the carrier to give notice of its change of position in respect to the classification of the service when the run was bulletinized, estops the carrier from denying that claimants were engaged in local freight service."

On March 24, 1941, Trainmaster May issued the following Bulletin No. 547:

"NORFOLK AND WESTERN RAILWAY COMPANY
Office of Trainmaster
Shenandoah Division

All Concerned

Winston District:

Effective after completion of the day's work Saturday, March 29th, the two present Payne layover shifters will be abolished.

Effective Monday, March 31st, a shifter with Payne layover will be established to work northward doing the necessary shifting in the Basset territory and such other work that may be necessary on special instructions from time to time between Basset and Ferrum.

* Conductor S. R. Davis and Brakemen C. P. Manuel, S. F. Alldred and E. S. Minter.
Effective Monday, March 31st, a shifter with Payne layover will be established to work southward to do the necessary shifting at Fieldale in the Martinsville territory and such work as may be necessary from time to time on special instructions between Martinsville and Price.

These crews will not be required to load or unload package freight and accordingly applicants for positions on the train crews will understand that the positions do not carry the guarantee applicable to regularly assigned local crews under the provisions of Articles 4 (e) of the Conductors’ and Trainmen’s Schedules.

Vacancies exist for one conductor and three brakemen on Payne shifter north.

Vacancies exist for one conductor and three brakemen on Payne shifter south.

These vacancies will be assigned to the two senior conductors and six senior brakemen making applications for same within a period of five (5) days. Preference should be stated in making application.

Expires 9:00 A. M. R. H. May,
March 29th. Trainmaster

On March 29, 1941, S. R. Davis was assigned to the job of Conductor on the Martinsville shifter; B. C. Kirk, J. R. McNeil and W. E. Ingram as Brakemen. On that day E. S. Minter was assigned as Conductor on the Bassett shifter and W. H. Hudson, J. M. McDaniel and E. D. McRoy were assigned as Brakemen. Their applications for the work are attached hereto as Exhibit “A.”

On November 20, 1941 (Thanksgiving) and on December 25, 1941 (Christmas) these shifters were not worked and claims were made for the crews laid off, relying on Article 4 (e) of the Conductors’ and Trainmen’s Agreements.

POSITION OF EMPLOYEES: The Committee contends that the Carrier by issuance of Bulletin Notice No. 547, arbitrarily annulled the application of Article 4 (e), appearing in the Current Agreements of the Order of Railway Conductors and the Brotherhood of Railroad Trainmen, as it applied to the assignments in question depriving the Conductors and Brakemen assigned to these runs the right to earn six (6) days per week as provided by the Local Guarantee Rule.

The Local Guarantee Rule (Article 4, Paragraph (e) ) first appeared in the Schedule of the Conductors, Brakemen, et al., effective September 1, 1912, as a Note to Article D. It read as follows:

“Regularly assigned local crews working less than the calendar working days of the month, will be guaranteed not less than 100 miles per day for each calendar working day, except for days when the line is broken through the act of God. (Calendar working days will be construed to include legal holidays.)”

The rule originated in the conference between the officials of the Norfolk and Western, Chesapeake and Ohio and Virginian Railways and the representatives of the Conductors and Trainmen held at Norfolk, Virginia, in September 1912. The minutes of that conference show that the employees proposed the rule (p. 147) and it was adopted without discussion so far as the minutes show.

Consequently, the Committee further contends that the rule should continue to apply to these runs. (It is understood, however, that it does not apply to exclusive mine run service on the Pocahontas Division.)
Part III—Title I, Section 2, (7)—Railway Labor Act as Amended in 1934.

The organizations contend that the “guarantee” paid to shifters on the Shenandoah Division was abrogated without negotiations with representatives of the employees as required by Title 1, Section 2, (7) of the Amended Railway Labor Act which reads as follows:

“No carrier, its officers, or agents shall change * * * rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of this Act.”

The Committee further contends that the “Guarantee” paid to the local shifting crews was arbitrarily abrogated without negotiations by and between the Carrier and employ representatives, as required by Title 1, Section 2 (7) of the Amended Railway Labor Act.

A check of the carrier’s records indicated that shifter crews had been paid the guarantee as far back as 1932.

The Committee further contends that, Awards Nos. 203, 5323 and 7058 support this case. Award No. 5323, involves the very same and identical assignments set out in this case.

The Committee respectfully requests that the claim be sustained.

POSITION OF CARRIER: Article 4 (e) of the collective agreements contemplates a guarantee to regularly assigned local crews for each calendar working day. For years Men and Management have understood that “local crews” did not include shifter crews who do not load or unload package freight. For their part, the Employees gave recognition of this distinction in 1920 when they sought to amend Article 4 (e) to include shifters after their contention that “local crews” included shifter crews had in effect been denied by Board of Adjustment No. 1 in Case No. 1111. So far as the collective agreements are concerned, the Conductors and Trainmen on regularly assigned shifter crews are not entitled to the guarantee provided by Article 4 (e).

The object of the collective agreements is to provide a method of uniform application of the understandings between the representatives of the Men and the Management. Obviously assignments to particular runs are intended to conform with collective agreements; but experience shows that in an enterprise extending over many states, departures from the collective agreements arise in local applications of the agreements. Such departure occurred here. For a period of time on the Shenandoah Division crews on shifter assignments were mistakenly paid the guarantee. When this departure was corrected protest came from the men. The issue arose over claims for men laid off on April 16th, 1938, who were working under the terms of the bulletin of October 5, 1937.

This Division in Award 5393 found the sole question to be whether the claimants were in local freight service under the bulletin of October 5, 1937. The Division found that the Carrier was estopped to deny that the claimants were engaged in local freight service because (1) of the terms of the bulletin creating the run, (2) the Carrier had treated the run as being in local freight service “over a long period of time” and (3) the Carrier’s failure to give notice of its change of position in the bulletin of October 5, 1937. The rights of the claimants in Award 5393 arose from estoppel incident to the bulletin and not from an interpretation or the application of Article 4 (e) of the agreements.

In the bulletin of October, 1937, the offer was “to do necessary shifting * * * together with work that may be necessary * * *.” The Division treated the bulletin as broad enough to include the loading and unloading of
package freight. Having paid predecessor Bassett-Martinsville shifter assignments the local guarantee, the Award indicates there was reasonable basis for the men to assume that under this bulletin the crew could be called upon to load or unload package freight; it did not matter that the men were not actually called upon to do that work,—work which would have given them the status of a local crew.

On March 24, 1941, the Carrier issued a bulletin which made it clear that the crews would not be called upon to load or unload package freight and the Carrier gave notice of its position regarding the classification of service to be rendered and the inapplicability of the guarantee. The estoppel incident to the bulletin of October 5, 1937, and subsequent bulletins (patterned after it and subject to the same infirmity) ceased to exist. The present claimants knew what the Carrier offered them and they accepted that offer in accordance with the current agreements as their applications show.

The sole question in this dispute is whether the Carrier had the right to remove the elements which this Division held lead to estoppel: whether the Carrier had the right to give uniform application to the collective agreement. The bulletin assignments are necessarily of indefinite duration. On this property bulletin assignments have always been created and abolished as a matter of managerial right. This practice which is as old as the operation simply cannot be challenged. Nor is there anything in the collective agreements or in the Railway Labor Act as amended which limits that right on the part of management. The right of a Carrier to establish, reduce or discontinue bulletin assignments was recognized by this Division in Award 5821. These bulletin assignments by their inherent nature imply the power of revocation. They are designed to meet present conditions in a railroad world where conditions are always changing. If these bulletins could not be terminated except by mutual agreement of Men and Management, the managerial function in large measure would be turned over to the Employees.

In this case the bulletin assignment under which estoppel arose, was of indefinite duration and was similarly terminable. If this is not the case, then local misapplication of a governing collective agreement can ultimately destroy the rule itself. The Carrier submits that it has the right to terminate assignments established by bulletin and establish new assignments which carry out the purposes of the governing collective agreements. It not only has the right, but under the Railway Labor Act, as amended (45 U.S.C.A. 152 First) it has “the duty *** to *** maintain” the collective agreements. And in this situation the only way to “maintain” those agreements was to bring the assignment into line with the collective agreements.

The Employees contend that the bulletin of March 24th, 1941, “had for its purpose further annulling the local guarantee rule.” On the contrary the sole purpose of the bulletin was to give effect to the local guarantee rule in the agreements. They contend that the action taken by the Carrier was arbitrary,—“affecting a change in working conditions without consideration having been given by the two parties concerned as provided by the amended Railway Labor Act.”

Section 2, paragraph 7 of the Act provides as follows:

“No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.”

Section 6 of the Act provides as follows:

“Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the
parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 155 of this chapter, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

Clearly the Act forbids the change of the collective agreements except in the manner prescribed by the Act or in the agreements themselves. The Act only relates to changes in rates of pay, rules, or working conditions of a "class" of employees. It is not applicable to a bulletin assignment of particular individuals (as distinguished from a class of employees). Award 1788 (Third Division). Thus the contention that change of bulletin assignment required conference and agreement lacks foundation.

The Carrier requests that the claim be declined.

EMPLOYEES' REBUTTAL: The decision issued in Case No. 1111, Board of Adjustment No. 1, Norfolk and Western Railroad versus Conductors and Trainmen, relied upon by the Carrier as supporting their position in this case, involved the Naugatuck shifter. This run was assigned to operate between Williamson, West Virginia and Blockton, West Virginia (distance one way 16 miles), making the round trip daily with only one relief terminal, which is Williamson, West Virginia, and served a coal mining territory.

In the joint statement of facts submitted in connection with this case the following language appears:

"Leaving Williamson on the initial movement, this shifter has in its train only such carload business as is consigned to the coal mines or for others in the territory referred to, such, for instance as machinery, food, etc., the cars being set off on side tracks for unloading by the consignees **.*.

"**. Empty coal cars are brought into the territory assigned to this crew by through crews from the West and set off on storage tracks, where they are picked up by this crew and placed at the several coal operations for unloading. This crew then pulls loaded cars of coal from coal operation tracks and assembles them on storage tracks along the main line, to be picked up by the through crews **.*.""

"DECISION"

The Board decides that in view of the fact no definite understanding has been reached between the parties as to the meaning of the words 'Regular assigned local crews' appearing in the schedule, this case is remanded to the parties for the purpose of reaching an understanding on this question, and this and pending claims to be adjusted on the basis of such understanding."

Therefore, the decision rendered in the case immediately referred to above neither denied nor sustained the claim involved.

It has never been the contention of the Committee that Article 4 (e) involved in this dispute applied to mine run shifters in general.

Award 5821, First Division of the National Railroad Adjustment Board upon which the Carrier further relies, involves the general acquiescence over a long period of time, by the employees involving what was done in connection with the complaint of improper yard assignments.
The Carrier applied the local Guarantee Rule, Article 4 (e) to the Basset-Martinsville-Payne shifters involved in this submission for a number of years and arbitrarily stopped payment provided by the Guarantee Rule by issuance of Bulletin Notice No. 547, (Exhibit "C").

Award 5821 substantiates the Committee's contention that the working conditions and payments applicable to the runs involved should not be changed.

All data submitted in support of these two positions has been exchanged by the parties to this dispute and are properly a part of this record.

The Employes and the Carrier desire to inform the First Division that they waive their rights to an oral hearing of their arguments in this dispute and do hereby rest their positions on the written arguments herein contained.

(Exhibits not reproduced.)

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

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employe 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.

The parties to said dispute waived hearing thereon.

The question in this claim is whether the shifter trains described in the record come within Articles 4 (e) of the Conductors' and Trainmen's Schedule. This Division in Award No. 5393 held that they did. The reason assigned in that Award is that the carrier had for a long period of time given these rules that interpretation. In fact, the record shows in that claim (Award 5393) that both parties had for a long period of time interpreted the above rule as applying to shifter trains. Where the language of an agreement is ambiguous and is therefore open to two constructions, it will be given the construction adopted by the parties to the agreement, and such construction cannot be changed except by mutual consent of both parties.

The question of the carrier's right to change bulletins is not involved in this claim, except to the extent that the agreement between the carrier and its employes cannot be changed by bulletin.

AWARD

Claim sustained.

BY ORDER OF FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

ATTEST: (Sgd.) T. S. McFarland
Secretary

Dated at Chicago, Illinois, this 17th day of November, 1943.