

**Award 20258**

**Docket 32752**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**FIRST DIVISION**

**39 South La Salle Street, Chicago 3, Illinois**

**With Referee Byron R. Abernethy**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD TRAINMEN**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC  
RAILROAD COMPANY (Lines East)**

**STATEMENT OF CLAIM:** "Claim of Chicago, Milwaukee, St. Paul & Pacific (Lines East) Austin, Minnesota Yard Foreman J. J. McGuire, Helpers J. L. Nessand J. C. McMullen, September 17, 1953; Yard Foreman C. M. Hogan, Helpers A. C. Erickson and J. P. Kloberdanz, September 15, 1953 — each claiming eight (8) hours at yard straight time rates when a yardmaster performed work properly belonging to yardmen."

**EMPLOYES' STATEMENT OF FACTS:** On September 17, 1953, Yardmaster Camborn doubled Train No. 761 from track No. 2 to track No. 3. This Yardmaster made the cut between the cars and threw No. 3 track switch.

On September 15, 1953, Yardmaster W. J. Camborn doubled Train No. 761 from track No. 2 to track No. 5, making a cut between the cars and throwing the switch from No. 5 track.

This train doubles over at the north end of the yard, and there is a highway crossing that has to be flagged. The man that assists in doubling the train over is required to flag automobiles, and he must also throw one or more switches. This work has been performed by yardmen for many years; however, on both of the above dates, the Yardmaster performed this service while there were two switch crews on duty at the time.

**CARRIER'S STATEMENT OF FACTS:** When Train 761 came into Austin, Minnesota on September 15 and 17, 1953, the track on which it was to be yarded was not long enough to hold the entire train, and a portion of it had to be doubled over on to another track for proper clearance. No more cars were doubled over than was necessary for proper clearance.

The regular yardmaster was on vacation, and an extra yardmaster who was relieving him assisted 761's road crew in making the double, and in doing so threw a switch. Because of this claims are submitted in behalf of full yard crews for minimum days at yard rates.

Investigation developed that prior to these two instances the field man assigned to a yard engine working in the vicinity had assisted 761's road crew in making the double over under similar circumstances. When this fact was discovered in the handling of this claim, instructions were issued to the division officers to have the yardmen stop assisting in doubling over this train because the double, being made for clearance purposes only, is service which can be and is regularly performed by road crews.

There was at least one yard engine working in the vicinity available to perform any yard service that needed to be done on 761 on both of the days involved. No extra engine would have been called out to perform any service in connection with yarding Train 761.

The division officers' records do not agree that the claimants named in this dispute are the employes that would have been called if an extra engine had been needed at the time the double was made on the days involved.

**POSITION OF EMPLOYES:** Yardmen's Schedule Rules 1(a), (c), 5(a), (d), and 12(a) read as follows:

"1(a) The seniority service rights of yardmen and switchtenders in freight and passenger service shall be equal as between the two classes in each particular yard or terminal, and shall commence with the date and time of day they perform service in that particular yard or terminal, but are not transferable."

" (c) The right to preference of work and of promotion shall be governed by seniority in the service, where ability is equal to service requirement."

"5(a)	Per day
Yard Foreman .....	\$17.03
Yard Helper .....	16.18
Switchtender .....	14.63"

" (d) Eight hours or less shall constitute a day's work."

"12(a) Where yardmen are employed, all regular switching transfer of freight and passenger equipment, the handling of all construction and maintenance of way trains, operating exclusively within the terminal or yard limits, will be performed by yardmen at their established rate of pay. The present practice of road crews handling car or cars in connection with their train will not be changed."

The Carrier, in a letter of November 24, 1953 (their File B-5751), stated as follows:

"On the two dates involved there was an extra yardmaster performing service due to the regular yardmaster being on vacation otherwise the work would not have been handled in this manner and when the time slips were presented the extra yardmaster was immediately contacted and instructed to discontinue assisting road crews to make their double over." (Emphasis ours)

As this is a joint submission, the Carrier will not deny the above quoted paragraph which clearly admits the violation.

When the Carrier first declined the claims, it was their position that the claimants were not the switchmen that actually would have been used had yardmen been called for this service. It was later determined that these were the senior yardmen that would have been used and that the Carrier was in error, with the exception that the Carrier contended that on September 15, 1953, Switchman J. L. Ness did stand to be placed on the time slip instead of A. C. Erickson. Yardman Ness was contacted and did not desire to submit the time claim, and under these circumstances, the claim for Switchman Erickson was submitted because Yardman Ness stated he would not have worked if called on this date.

The Carrier then contended that Switchman F. D. Bacon was marked up on the 7:30 A. M. engine and was on his way to work at 6:45 A. M., and Switchman K. Kelly was marked up on the 7:00 A. M. engine September 17 and was also on his way to work at 6:45 A. M., and they were the yardmen that would have been called had the Carrier utilized an additional yardman to make the double-over of the road train at 6:45 A. M.

In all other instances on this property, the Carrier has taken just the opposite position, i.e., that these yardmen were marked up and on their way to work and could not possibly have claimed lost earnings under such circumstances. It is the Employes' position that the Carrier only submitted such an argument in order to confuse the issue. Later on, the Carrier apparently conceded that the proper yardmen had submitted time claims, and they then attempted to further confuse the issue by taking the position that it was legitimate for road crews to make such a double in accordance with awards from your Board. We do not deny that road crews are permitted to make a double when the track will not hold the entire train; however, this work is performed on this property only by roadmen and not by yardmasters or other supervising officers of the Railroad Company.

The only issue involved is that a yardmaster made a cut between cars, gave signals, and threw switches in doubling over the head end of this road train. The Carrier, in its letter of November 24, 1953 (in the paragraph quoted in this submission, and underscored for your ready reference), admitted this was a violation when they stated in part as follows:

“\* \* \* when the time slips were presented the extra yardmaster was immediately contacted and instructed to discontinue assisting road crews to make their double over.”

The Employes contend that this admission on the part of the Carrier sustains the Employes' position and shows this was a violation of rules, and respectfully request your Board to render a sustaining decision.

All facts and evidence offered herewith have been presented to the Carrier's Representative through correspondence or in conference.

**POSITION OF CARRIER:** As separate and independent defenses to this claim, the Carrier will show:

- (1) no work belonging exclusively to yardmen was performed by the extra yardmaster in this instance, and
- (2) claimants have no standing to claim lost earnings.

**NO WORK BELONGING EXCLUSIVELY TO YARDMEN WAS PERFORMED BY THE EXTRA YARDMASTER IN THIS INSTANCE —**

The undisputed facts show that the double over was made only because the track which 761 was yarded on was not long enough to hold the entire train, and that no more cars were doubled over than was absolutely necessary to obtain proper clearance.

This is work that through the years has always been held to be proper work for road crews to perform, not only on the property of this Carrier but on all railroads generally. See Awards 6728, 11207, 11208, 11471, 11914, 13114, 13158, 14022, 14780, 15378 and 15974.

Thus, throwing the switch and all other work in connection with the double over was work that could properly be performed by 761's road crew, and was not work which Austin yard crews could claim any right to perform.

The employes will argue that the field man on the Austin yard engine has assisted in making the double in the past, and will try to show in this manner that the yardmen have obtained a right to do the work, but in the Carrier's opinion such an argument is of no effect. The mere fact that a local practice may have evolved at Austin permitting yardmen to assist in making the double does not give the Austin switchmen any vested right in the work. Since it is clear beyond question under the awards cited above that this is work that road crews may perform, it is equally clear that the Austin switchmen are deprived of nothing when other than switchmen perform the service.

In fact, the local practice of having the field man assist in the double was unknown to anyone but the men themselves and their immediate supervisors at Austin until this claim was submitted. No one knows how the practice arose. The field man may possibly have started to do the work as an accommodation to the road brakemen on 761's train earlier. At any rate, when the practice was discovered during the investigation of this claim, arrangements were promptly made to see that it was stopped. None of the employes involved or their representatives have complained in any manner about this work being taken away from the Austin switchmen which clearly shows to the Carrier that the employes recognize that this work does not belong to the Austin switchmen exclusively.

It is impossible to argue that the Austin switchmen were hurt in any manner when the extra yardmaster performed the service involved. He was merely assisting the road crew do its work which should not be a matter of any concern whatsoever to the Austin yardmen.

In view of these facts, we submit that the yardmen at Austin can assert no claim whatever to the work of assisting in doubling over 761's train for proper clearance purposes, and that the employes have no possible cause for complaint whether this road work is performed by 761's road crew, by the yardmaster, or by anyone else even though he may not hold seniority as a yardman.

**CLAIMANTS HAVE NO STANDING TO CLAIM LOST EARNINGS —**

The undisputed facts show that there was at the time at least one yard engine on duty in the near vicinity available to perform whatever work in

connection with 761's train that might properly be performed by yardmen. Thus, no extra yard crew would have been called even if yard service had been required which, as we have shown above, was not the case.

The First Division has held in innumerable decisions under such circumstances that no claim on behalf of employes allegedly available to perform service as an extra crew will be honored. See such First Division Awards as 5888, 9990, 10086, 12169, 12260, 12297, 12669, and 15527. The BRT Committee itself admits that this work had previously been performed by the field man of one of the yard engines on duty in the vicinity. There is no dispute as to the fact that there was at least one engine on duty in the vicinity and unquestionably this work could have been done by the field man on these dates just as it had been done before. Thus, under the awards cited above it is clear that this claim for lost earnings on behalf of employes who say that they should have been called out as an extra crew is entirely without merit.

Furthermore, had there been a need for an extra yard crew to serve in the Austin yard at the time involved, and this the carrier denies, the men who would have been called are not, according to the division records, the same men who are listed as claimants in this dispute as the following tabulation will show:

**SENIOR AVAILABLE YARDMEN  
ACCORDING TO DIVISION RECORDS**

**CLAIMANTS**

**September 15, 1953**

C. M. Hogan  
A. C. Erickson  
J. P. Kloberdanz

C. M. Hogan  
J. L. Ness  
J. P. Kloberdanz

**September 17, 1953**

J. J. McGuire  
J. L. Ness  
J. C. McMullen

F. D. Bacon  
J. L. Ness  
K. Kelly

As to Switchman A. C. Erickson's claim of September 15, 1953, the Committee stated in a letter to the Carrier dated February 10, 1954 (a copy of which is attached hereto as Carrier's Exhibit "A") as follows:

"We have again investigated this matter and find that on September 15, 1953, Switchman J. L. Ness did stand to be placed on the time claim instead of A. C. Erickson; however, Switchman Ness was contacted and did not desire to submit this time claim, but he did submit a time claim for September 17, 1953.

Under these circumstances, the claim of Switchman A. C. Erickson is proper, as he is just junior on the seniority roster to Switchman Ness."

The Carrier cannot agree with the Committee's line of reasoning. Certainly the fact that the senior man does not wish to submit a claim is not sufficient reason to permit a junior man to step into his shoes and make the claim instead. If the man who is entitled to make the claim does not wish to do so, then there should be no claim at all.

In the letter marked Carrier's Exhibit "A", General Chairman Houser also indicates clearly that Yardmen F. D. Bacon and K. Kelly are senior to Yardmen McGuire and McMullen for a 6:45 A. M. engine on September 17, 1953. The Committee argues that at 6:45 A. M. of that day, Bacon and Kelly were on their way to work which, in the Carrier's opinion, is entirely immaterial. Had there been a genuine need for an extra engine at 6:45 A. M. on September 17, 1953, the Carrier would have known about it ahead of time, and would have called the crew at least one hour and thirty minutes beforehand at which time Bacon and Kelly would not have been on their way to work. Thus, of the six claimants listed in this dispute, only three have any standing whatsoever even to make a claim as the employes who would have been called for an extra engine, and, of course, no extra engine would have been called because there were yardmen on duty in the vicinity available to perform any yard service that needed to be done.

As has been explained above, the fact that the Carrier did not use the yardmen on duty to perform service in connection with doubling over No. 761 is justified because this was road work which the yardmen have no right to perform.

Inasmuch as it has been shown:

- (1) that the yardmen at Austin have no cause to complain about the yardmaster assisting 761's road crew in doubling over their train because this is work that can be and is regularly done by road crews and yardmen have no right to claim the work,
- (2) that no claim for lost earnings can be sustained because there was a yard crew available in the vicinity to perform any yard work that needed to be done at the time, and
- (3) that the claimants in this dispute did not even stand to be called as extra yard crews,

we submit that this claim is entirely without merit, and we respectfully request that it be denied.

All data submitted in support of Carrier's position has been presented to the Organization and conference has been held on the property.

(Exhibits not reproduced.)

**FINDINGS:** The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

We find that Yardmaster Camborn did assist the road crew double Train No. 761 on September 15 and 17, 1953; that in so doing he performed work which for years prior thereto had been performed by a yardman assigned to a yard engine working in the vicinity.

This Division has heretofore held, and so holds in this case, that yardmasters performing service such as that complained of here do so in violation

of the yard agreement. In this instance the work complained of was regularly performed prior to claim dates by an individual yardman and did not require the use of an entire yard crew. Therefore the claim for a minimum day's pay for only a single individual yardman on each date is supported by the record. Accordingly, only the claims of C. M. Hogan for September 15 and of F. D. Bacon for September 17 are valid claims. They must be sustained. The record does not support the claims of the other claimants.

**AWARD:** Claims sustained in part as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of FIRST DIVISION

ATTEST: E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of April 1963.