

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

INDIANA HARBOR BELT RAILROAD COMPANY

STATEMENT OF CLAIM: Wm. Julian, September 9th, 1945; George Kunde, September 16-23 & 30th, 1945; George Kunde, October 7-14, 21-28th, 1945; George Kunde, November 4, 11 & 18th, 1945; C. P. Barker, November 25th, 1945; R. E. Church, December 2nd, 1945.

Account of having Yardmaster Whaley to work two regular 7 day assigned Yardmaster jobs in violation of Agreement with respect to filling extra yardmaster position.

EMPLOYES' STATEMENT OF FACTS: July 20th, 1937, General Manager, W. J. O'Brien signed letter with the General Committee as to the meaning of Article 10 Paragraph C of the Chicago Memorandum Agreement.

ARTICLE X.

SENIORITY PRIVILEGES

(a) Seniority rights of yardmen will date from the time they enter the service continuous in yards or terminal where employed.

YARDMEN

(b) The right to preference of work and of promotion will be governed by seniority in service. The yardmen oldest in service will be given the preference, if competent.

(c) In the appointment of Yardmasters and Assistant Yardmasters the senior yardmen will, in all cases, be given full and unprejudiced consideration.

After the Agreement above referred to was agreed on the Committee could not get the Management to comply with same and during assistance of a Grand Lodge Officer in 1943 Mr. C. F. Wiegele, acting General Manager agreed that effective March 22, 1943, the agreement of July 20th, 1937 would be effective as of March 1943:

Chicago, March 22, 1943

Mr. C. C. Kitts, General Chairman
Brotherhood of Railroad Trainmen
511-165th Street
Hammond, Indiana

Dear Sir:

Supplementing Mr. O'Brien's letter of July 20, 1937, concerning the filling of regular yardmasters' position, we will hereafter, when a regular

yardmaster's position is available, assign the yardman in that seniority district who has been performing yardmaster's work for the longest period of time, regardless of whether his extra yardmaster's work has been in the particular yard where the vacancy exists or in some other yard in that seniority district.

Please signify your concurrence by signing and returning the attached carbon copy of this letter.

Yours very truly,

(Signed) C. F. Wiegele
Assistant General Manager

ACCEPTED FOR THE YARDMEN:

(Signed) C. C. Kitts
General Chairman, B. of R. T."

This understanding was not fully complied with until Awards 10215 and 10216 of the First Division came out on the property then all yardmen who had made bids for extra Yardmasters work, were sent a letter requesting of them if they wanted to exercise their Seniority for extra Yardmasters work to reply, Yes or No, and the Senior Yardmen making such requests have been used accordingly.

On August 28, 1945, the carrier put out the following Bulletin and referred to as Position No. 35:

Gibson, Indiana, August 28, 1945
File No. 1827

Messrs.:

F. H. Elliott	B. E. James	C. C. Tevis
Alex Miller	L. L. Wood	Walter Bauermeister
J. C. Wolf	Richard Boyd	W. D. Medaris
Earl Hostetter	Henry O'Neal	H. J. Kennedy
J. J. Montgomery	Frank L. Hart	A. L. Crout
A. R. Terrill	J. M. Marr	M. D. Straight
D. J. Dougherty	Jas. Kane	J. C. Fisher
Manson Naugle	J. G. Hesterman	H. J. Johnson
John Pappas	M. F. Boswinkle	A. B. Whaley

Bids will be accepted in this office as of 12:00 Noon Monday, September 3rd, for Relief and Fill-in Yardmaster Position No. 35, Calumet City and Calumet Park Stock Yards respectively, rate \$11.56 per day.

The assignment of this position will be as follows:

Sundays—Off
Mondays—3:45 P. M.—11:45 P. M. Relieve 2nd trick Yardmaster, Calumet City
Tuesdays—11:45 P. M.—7:45 A. M. Calumet Park Stock Yards
Wednesdays—11:45 P. M.—7:45 A. M. Calumet Park Stock Yards
Thursdays—11:45 P. M.—7:45 A. M. Calumet Park Stock Yards
Fridays—11:45 P. M.—7:45 A. M. Calumet Park Stock Yards
Saturdays—11:45 P. M.—7:45 A. M. Relieve 3rd trick Yardmaster, Calumet City

Position No. 34 Calumet Park Stock Yards will start to work at 3:45 P. M. at the award of the above position and on Mondays and Saturdays will supervise the work at Calumet City and Calumet Park Stock Yards.

(Signed) C. A. Deppen"

Mr. A. B. Whaley made claims under the Yardmasters Rule to collect extra day account of working 2 assignments in his tour of work; however Whaley did not belong to the Yardmasters Organization and his complaint was not handled as provided for in the Yardmasters Agreement and Superintendent L. W. Payne, admitted Mr. Whaley had a complaint, however

he had nothing in the form of a complaint from the Committee representing Yardmasters.

POSITION OF EMPLOYES: The entire set-up violated the contractual rights of the claimants who had under the notice order for extra Yardmaster work bid for same, the carrier made this change to defeat the agreement respecting the rights of extra Yardmasters. The 2nd shift at Calumet City in which Mr. Whaley was required to work, in addition to his regular position at Calumet Park, was brought on by Yardmaster Strait, on the first shift having every Sunday off and Yardmaster Fischer on 2nd shift working first shift on Sundays, which had gone on for years and one of the claimants was used on 2nd shift.

After the time claims were presented the practice of one Yardmaster, working Both Calumet Park and Calumet City was discontinued and the claimants have been working the position that caused the origin of claims, ever since, which clearly shows the carrier knew they were in violation of agreements of filling extra Yardmasters duties.

The carrier has been very arbitrary in this matter, they only want to talk about the Yardmasters agreement, which deals solely with regular assigned Yardmasters, and the Rules relied on is in full effect, on the property for extra Yardmasters work and the claims are valid ones.

For further support of the Committee I am quoting two letters from General Manager, Mr. Green, to the undersigned April 16th and May 27th, 1946:

T. L. Green
General Manager
Mr. C. C. Kitts, General Chairman
Brotherhood of Railroad Trainmen
Indiana Harbor Belt Railroad
511-165th Street
Hammond, Indiana

April 16, 1946
File 1-11-1AA

Dear Sir:

This letter will serve to acknowledge receipt of yours, dated April 12th, concerning Item 11, Docket Y-429, in connection with claims for extra Yardmaster's work.

I anticipate making answer to you concerning this matter in the near future.

Very truly yours,

(Signed) T. L. Green
General Manager"

T. L. Green
General Manager
Mr. C. C. Kitts
General Chairman
Brotherhood of Railroad Trainmen
Hammond, Indiana

May 27, 1946
File 1-11-1AA

Dear Sir:

Re; Docket Y-429

At our meeting on May 17th we again discussed the claims of the several yardmen listed in your letter of April 17th, which arose because of the arrangement in effect for handling yardmaster work at Calumet Park and Calumet City.

The arrangement referred to was negotiated with the organization authorized to represent yardmasters on this railroad under the Railway Labor Act and is a proper and legal arrangement.

I do not consider that these claims or similar claims are supported by the rules of the Chicago Memorandum of Agreement or by First Division Awards 10215 and 10216 to which you refer in your letter of April 12th and they are declined.

Yours very truly,
(signed) T. L. Green,
General Manager"

To which I replied, June 7th, 1946, as follows:

Mr. T. L. Green, General Manager
Indiana Harbor Belt Railroad
Gibson, Hammond, Indiana

Hammond, Indiana
June 7, 1946

Dear Sir:

Re: Docket Y-429

Reply to your letter of May 27th, 1946, case of A. B. Whaley, We don't agree with your decision, in this matter. Both, Mr. Whaley and the claimants, in my letter of March 29th have been denied all rights or privileges due them under current agreements and I feel quite sure we will be in a position to find some one to give consideration to both complaints.

Same will be appealed to the President of the Grand Lodge for further handling.

Respectfully,

(Signed) C. C. Kitts, General Chairman
Brotherhood of Railroad Trainmen
Indiana Harbor Belt Railroad"

Committee, believes we have made it clear that the claims deal only with Extra Yardmasters, and if the carrier would have met the issue under rules in effect the claims would have been paid. I desire to quote letter to General Manager, Mr. Green, under date of March 28th, 1946:

Mr. T. L. Green, General Manager
Indiana Harbor Belt Railroad
Gibson, Hammond, Indiana

Hammond, Indiana
March 28, 1946

Dear Sir:

With further reference to Docket Y-429, claims of A. B. Whaley account of being required to cover two separate and distinct Yardmaster positions at one rate of pay:

Such requirement was a direct violation of understanding arrived at by Mr. C. F. Wiegele, Assistant General Manager, and the undersigned, at Chicago March 23, 1943. This complaint was definitely disposed of when Award 10215 and 10216 were made effective on the IHB property.

The dates Mr. Whaley was required to perform duties as yardmaster deprived the following extra yardmen, who had qualified, under the Rules, to perform extra yardmaster work. Following are the dates for which claims were made for each at Yardmaster rate:

William Julian	September 9, 1945
George Kunde	September 16, 23 & 30, 1945
George Kunde	October 7, 14, 21 & 28, 1945
George Kunde	November 4, 11 & 18, 1945
C. P. Barker	November 25, 1945
R. E. Church	December 2, 1945

Respectfully Yours,

(Signed) C. C. Kitts, General Chairman
Brotherhood of Railroad Trainmen
Indiana Harbor Belt Railroad"

All data or information has been furnished the carrier; it has been discussed in conference. The Labor Act has been complied with. Oral hearing is requested when case is heard.

CARRIER'S STATEMENT OF FACTS: Yardmasters employed by the Indiana Harbor Belt Railroad are represented by the Railroad Yardmasters of North America, Inc., and for several years have been covered by agreements with that Organization. The present agreement between the parties became effective in April 1944.

An understanding was entered into by the parties in August 1945 which provides that the territory of the 3:45 P. M. shift yardmaster at Calumet Park Yard would be extended on Sundays to include the adjoining Calumet City yard in order to provide a rest day for a second shift yardmaster at the Calumet City yard.

This understanding reads in part:

"It was mutually agreed that we would continue the arrangement under which the holder of the second shift position at Calumet City covers the first shift position at that point on Sundays thus affording a relief day for the district yardmaster and that effective at once, the holder of the 3:45 P. M. shift at Calumet Park would cover the work at both points on that shift on Sundays."

Yardmaster A. B. Whaley, the holder of this 3:45 P. M. assignment, protested the change and asked that he be permitted to exercise his seniority and displace a junior yardmaster.

The rule in the Yardmasters' Agreement covering displacement rights of Yardmasters reads:

"RULE 8

(d) A Yardmaster will be considered displaced and shall have the right to displace a junior yardmaster:

1. When his position is abolished.
2. When he is removed to make way for a senior man.
3. When the starting time of his position is changed one hour or more for more than five (5) consecutive days, or when his rest day is changed by the management.
4. In particular cases when the Superintendent and the Local Committee agree that circumstances, other than those listed above, justify such action."

In keeping with the provisions of paragraph 4 of this rule, the Superintendent discussed this protest with the Yardmasters' Committee and, as the Committee did not consider the change in the assignment justified granting displacement, the request to displace was denied.

The Brotherhood of Railroad Trainmen protested the arrangement, contending that it created a one-day vacancy in the second shift position at Calumet Park on Sundays and that the carrier was obligated by Article 10, paragraphs (a), (b) and (c), of the Chicago Memorandum of Agreement, which applies to yardmen only, to call out and use a yardman as yardmaster on that shift.

These paragraphs read:

- "(a) Seniority rights of yardmen will date from the time they enter the service continuous in yards or terminal where employed.
- (b) The right to preference of work and of promotion will be governed by seniority in service. The Yardmen oldest in service will be given the preference if competent.

- (c) In the appointment of Yardmasters and Assistant Yardmasters the senior Yardmen will in all cases be given full and unprejudiced consideration."

The Brotherhood then filed the claims which are the subject of this submission.

These claims were considered in several conferences with the Yardmen's Committee but no agreement was reached. Because of changes in service requirement in December 1945, the arrangement of extending the territory of the 3:45 P. M. assignment on Sundays was discontinued after Sunday, December 2, 1945.

POSITION OF CARRIER: In presenting its position in this dispute, the carrier will show that:

1. The arrangement objected to was negotiated with properly authorized representatives of the yardmasters.
2. The rules of the yardmen's agreement are not applicable.

1. THE ARRANGEMENT OBJECTED TO WAS NEGOTIATED WITH PROPERLY AUTHORIZED REPRESENTATIVES OF THE YARDMASTERS.

Rule 4 of the agreement covering yardmasters provides that each regularly assigned yardmaster shall have one day each week designated as his rest day. This is accomplished by either

1. assigning a substitute to the position, or
2. blanking the position, or
3. rearranging assignments or extending territory.

When the rest day can be afforded by either using a substitute or by blanking the position, the exercise of either option 1 or 2 is wholly in the discretion of the carrier. Where it is necessary to rearrange assignments or to extend the territory of a yardmaster on a certain day in order to afford relief to another yardmaster, as was done in the instant case, it is done after conference and agreement with the accredited representatives of the yardmasters.

The arrangement negotiated with the representatives of the yardmasters in this particular case is a proper and legal arrangement and the procedure followed in negotiating it was in full conformity with the rules of the controlling agreement and the provisions of the Railway Labor Act.

2. THE RULES OF THE YARDMEN'S AGREEMENT ARE NOT APPLICABLE.

Articles 10 (a) and (b) of the Chicago Memorandum of Agreement or Yardmen's Agreement, urged by the employes and quoted in carrier's statement, extend only to work recognized as yardmen's work and paid for at yardmen's rates. They do not extend to work in other occupations whether or not such occupations are covered by agreements with other classes of employes and have no relevancy to the instant dispute. Article 10 (c), also previously quoted, simply provides in effect that yardmen will be given consideration for appointment when yardmaster positions have to be filled and no yardmasters holding seniority under the Yardmasters' Agreement want them.

There was no yardmaster position to be filled on the dates involved in this dispute so Article 10 (c) does not apply.

The only other understanding or agreement between this carrier and its yardmen respecting yardmaster positions is one which became effective in July 1937 under which it was agreed that when yardmen are selected for

yardmaster work they will not be used in other than their own seniority district and one made effective in March 1943 under which it was agreed that in appointing yardmen to yardmaster positions the yardman who had been performing extra yardmaster work for the longest period of time would be given precedence.

Understandings are also in effect under which bulletins are posted when additional men are needed to qualify for extra work as yardmasters, and yardmen who respond and ask to be so used are given opportunity to demonstrate their fitness for such work.

None of the rules or understandings above referred to is applicable to this dispute nor lends any support to the claims.

There was no vacancy in the second shift position at Calumet Park on the dates involved herein as is contended by the employes. The work at that point and at the adjoining Calumet City Yard on those dates was taken care of on Sundays by the yardmaster regularly assigned to the 3:45 P.M. shift at Calumet Park under an arrangement negotiated with the Committee authorized to represent yardmasters for the purposes of the Railway Labor Act and was a proper and legal arrangement with which the Yardmen's representatives cannot interfere.

CONCLUSION: The carrier has shown that the arrangement complained of was properly negotiated with the organization that holds the contract and that the rules urged by the complainant organization are not applicable and do not support the claims.

All of the matters referred to herein have been exhaustively discussed with the representatives of claimants during conferences held on the property to consider the subject.

The carrier desires an oral hearing in this dispute.

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

The carrier and the employes 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 were given due notice of hearing thereon.

The claim in this Docket involves the question of the coverage and extent of the Yardmasters' Agreement and the performance of the work of the craft or class covered thereby, viz., Yardmasters.

The Petitioner contends that the performance of "extra" Yardmaster work comes under the terms of the Chicago Memorandum Agreement to which the Petitioner is a party, but to which the duly accredited organization representing the class of Yardmasters is not a party.

The Carrier denies the above contention by the Petitioner and states that all Yardmaster work, including that of extra or unassigned Yardmasters, is included in the coverage of the effective agreement covering Yardmasters.

Also involved is the question of the right of the contracting parties signatory to the agreement, to reach an understanding in respect to the performance of Yardmaster work.

The record discloses that the contracting parties reached an understanding that on a certain day of the week, because of the shutdown of a large portion of the industries served, the work of one Yardmaster absent on his assigned rest day could be absorbed by another Yardmaster then on duty. To such an understanding the Petitioner makes objection.

Agreement between the Indiana Harbor Belt and its Yardmasters represented by the Railroad Yardmasters of North America, Inc., is controlling. Memorandum Agreement, dated August 7, 1945, between the parties to the agreement, permits a relief assignment such as the one complained of.

This Division finds that the contentions of the Petitioner are untenable and the claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: R. B. Parkhurst
Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1948.