

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**FOURTH DIVISION**

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**PARTIES TO DISPUTE:**

**SWITCHMEN'S UNION OF NORTH AMERICA, AFL-CIO**

**WESTERN PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of Extra Yardmaster H. C. Hughes for one day's pay at yardmaster rate account runaround for yardmaster shift on December 13, 1957.

**EMPLOYEES' STATEMENT OF FACTS:** Claimant has status as a qualified extra yardmaster and on the date of claim was the senior and only extra yardmaster available for such service.

On December 12, 1957, Mr. Hughes completed his sixth consecutive shift as an extra yardmaster. The following day, December 13th, a vacancy existed for a yardmaster shift at 7:30 A. M. Claimant had 16 hours rest and was available for the call.

Yardmaster Brown, a regular assigned yardmaster, was used to fill the 7:30 A. M. vacancy and subsequently doubled through on his own assignment at 3:30 P. M. this date.

**POSITION OF EMPLOYEES':** We will introduce portions of the Switchmen's Schedule and also a tri-party agreement in support of our position here. The Tri-Party Agreement referred to was negotiated and signed by representatives of the Western Pacific Railroad Company, Railroad Yardmasters of America and Switchmen's Union of North America under date of May 16, 1946.

Prior claims from this property which have related to the application of this same Tri-Party Agreement have been dismissed by the First Division for lack of Jurisdiction (Awards 14145-14146).

We therefore submit the instant case for the consideration of the Fourth Division.

The Tri-Party Agreement is reproduced in the Switchmen's Schedule as follows:

MEMORANDUM OF AGREEMENT  
THE WESTERN PACIFIC RAILROAD COMPANY  
and  
RAILROAD YARDMASTERS OF AMERICA  
SWITCHMEN'S UNION OF NORTH AMERICA

IT IS AGREED:

1. Regularly assigned yardmasters will not be used to work a second trick in a calendar day or any trick on their rest days when extra yardmasters are available. Extra yardmasters are considered available when they are rested or have eight (8) hours to work. Yardmasters regularly assigned to six day's relief work per week will not be considered as extra yardmasters. (emphasis ours)
2. (a) Extra yardmasters consist of men who have established seniority under the existing yardmaster's agreement, but unable to hold a regular yardmasters' assignment, and/or in the order prescribed in Rule 26 existing Switchmen's Schedule.  
  
(b) Extra yardmasters shall be used first in the order of their established yardmasters' seniority and following will be the switchmen as per Rule 26 existing Switchmen's Schedule.  
  
(c) Extra yardmasters will not be used to fill yardmasters vacancies on more than one trick in a calendar day unless the above mentioned available group of extra yardmasters has been exhausted. When necessary to use in excess of one trick in a calendar day, the senior rested extra yardmaster will be used first, and second will be the senior extra yardmaster with eight (8) hours to work, and in the filling of such vacancies will not be considered a seniority move.
3. ( Not pertinent )
4. This Memorandum of Agreement shall take effect May 16, 1946, and remain in effect subject to the provisions of the Railway Labor Act amended June 21, 1934.

/s/ E. W. Mason (HRF)  
Vice President & General Manager

/s/ R. W. Rich  
General Chairman, RYA

/s/ Eugene Morton  
General Chairman, SUNA

Rule 26 of the Switchmen's Schedule reads in part;

**Promotion** In the appointment of yardmasters, switchmen will be given consideration as follows:

1. The switchman employed in the yard where vacancy occurs will be given consideration according to their seniority, if qualified.
2. ( Not pertinent )

Rule 47 of the Switchmen's Schedule is as follows;

**Runarounds** Rule 47. When switchmen are left unplaced through no fault of their own they will receive pay for a minimum day for each day lost.

In accordance with paragraph No. 1 of the Tri-Party Agreement; Regular Yardmaster Brown was not entitled to work the shift in question while an extra yardmaster was available with rest or with eight hours to work. In this instance, that extra yardmaster was Hughes. Carrier's failure to use Hughes was a denial of his seniority rights under the Switchmen's promotion Rule and paragraphs (a) and (b), Part No. 2 of the Tri-Party Agreement.

Our appeal on the case was declined by Management with the following decision:

"The facts in this case are fully set forth in Superintendent Christy's letter of February 20, 1958 to Local Chairman Fred L. Farlow and for the reasons stated therein, claim is denied."

A copy of Superintendent Christy's letter of February 20, 1958 is attached hereto and marked Organization Exhibit "A". From it, we quote;

"It was agreed on October 1, 1947 between the Carrier and the Railroad Yardmasters of America that extra yardmasters would not be permitted to work more than six (6) consecutive days as yardmaster."

Such agreement, if intended to apply to the extra yardmasters referred to in the Tri-Party Agreement, is in direct contravention to paragraph No. 1 of the Tri-Party Agreement.

We seriously challenge carrier's right to consummate an agreement with one Organization which would serve to abrogate a portion of the provisions of a prior agreement concluded on a Tri-Party basis. If such action were to be upheld there would be little integrity left in a labor contract.

Claimant has suffered a loss of service to which he was entitled as a contractual right. We therefore request that your Board sustain our claim as entered.

All material and argument herein used have been presented to Carrier. Oral hearing is waived insofar as this Organization is concerned.

**CARRIER'S STATEMENT OF FACTS:** Claimant H. C. Hughes, regularly assigned during the period of this claim, as a helper on 7:55 A. M.-3:55 P. M. switch engine at Stockton Yard, worked December 7 through December 12, 1957 filling a vacancy as an extra yardmaster. On December 13, 1957 there was a vacancy on the 7:30 A. M. to 3:30 P. M. yardmaster shift, which was filled by B. G. Brown, the senior regular yardmaster desiring to work, and the proper yardmaster to be used under the governing understanding dated September 25, 1947 reading as follows:

“Effective October 1, 1947, extra yardmasters must not be permitted to work more than six consecutive days as yardmasters. If, because no other yardmaster is available, it is necessary to work an extra yardmaster on the seventh day, he should be paid at time and one-half for such seventh day in the same manner as regular yardmasters and assistant yardmasters are compensated under Rule 7 of the Yardmaster’s Agreement.

“For the purpose of applying these instructions, six consecutive days means six consecutive calendar days. For example, if a yardmaster works two shifts as yardmaster on a calendar day such two shifts should be counted as one day only.”

The Railroad Yardmasters of America has been duly authorized and certified by the National Mediation Board as the bargaining agent for the class or craft of yardmasters on The Western Pacific Railroad Company and is a party to the Schedule of Pay and Regulations for Yardmasters and Assistant Yardmasters on The Western Pacific Railroad Company, effective October 16, 1944. Copies of said Schedule have been filed with your Board and are hereby incorporated herein by reference.

The Switchmen’s Union of North America has been duly authorized and certified to represent the class or craft of yardmen (switchmen) on this property.

**POSITION OF CARRIER:** It is Carrier’s position that the claim here presented should be denied as it is without merit under the controlling rules and understandings governing Yardmasters. The Railroad Yardmasters of America, the designated representative of the class or craft of yardmasters, and Carrier concur that the handling of the yardmasters under the circumstances involved in this claim here presented was proper and no basis exists for the claim under provisions of the current Agreement governing Yardmasters.

In support of its position, Carrier herewith quotes a letter received from Mr. Reinhold Schmidt, General Chairman of the Railroad Yardmasters of America, stating his interpretation of the controlling agreement as it applies to the facts of the instant case:

**“RAILROAD YARDMASTERS OF AMERICA**

Western Pacific Local Lodge No. 62

480 Corbett Avenue  
San Francisco, California  
February 19, 1958

“Mr. W. A. Tussey  
Asst. to Gen. Mgr. — Lbr. Rels.  
The Western Pacific Railroad Company  
526 Mission Street  
San Francisco 5, California

“Dear Mr. Tussey:

“This will refer to our discussion concerning filling of the vacancy on Yardmaster Hamilton’s position at Stockton on December 13, 1957.

"This will confirm my statement to you that it was proper to use Regular Yardmaster Brown to fill this vacancy on the seventh day inasmuch as the only extra yardmaster (Mr. H. C. Hughes) had worked the preceding six calendar days as yardmaster. This handling is in accordance with understanding reached September 25, 1947 (effective October 1, 1947) between former General Chairman Ray W. Rich and former Asst. to General Manager H. R. Fegley and, under this understanding, Extra Yardmaster Hughes was not available for the seventh day's work inasmuch as a senior yardmaster (Mr. B. G. Brown) was available for the service.

"Very truly yours,

/s/ REINHOLD SCHMIDT  
General Chairman

"cc—Mr. M. G. Schoch, President  
Mr. R. W. Rich, Vice President"

The petitioning Organization, Switchmen's Union of North America, is certified to represent only yardmen, and such certification cannot be extended or broadened by the submission of a claim to entitle that Organization to bargain for yardmasters. Not being a party to the agreement, it is without voice in determining the rules, rates of pay and working conditions of yardmasters. The rights of the Switchmen's Union of North America under the Tri-Party Agreement, effective May 16, 1946 are no greater than the provision of Rule 26 — Promotion — governing switchmen; that is, switchmen will be given consideration in appointing yardmasters. A right to consideration for promotion does not entail a right to bargain for and interpret the rules governing the higher class. This limitation is made evident in the dispute here presented by petitioner's attempt to support a claim for one day's pay at **yardmaster's rate of pay** in behalf of a **yardmaster** account runaround for **yardmaster** shift by provisions (Rules 26 — Promotion, and 47 — Runaround) contained in the agreement governing switchmen, a schedule **not** applicable in any manner to rates of pay or rules governing yardmasters.

On page 1 of its submission, petitioner states that prior claims from this property ". . . which have related to the application of this same Tri-party Agreement have been dismissed by the First Division for lack of jurisdiction (Awards 14145-14146)."

Your Board in Awards 14145 and 14146 dealt with the same problem of service as extra yardmaster as follows:

"The tri-partite agreement of May 16, 1946 between the Carrier, RYA and SUNA makes the establishing of seniority under the yardmaster's schedule the basic test for determining which person are entitled to be classified as extra yardmasters. Only by referring to the provisions of that contract can it be ascertained how and when yardmasters' seniority is acquired and accumulated. Only after such preliminary inquiry can it be decided whether or not a particular employe warrants the designation of extra yardmaster.

"By authoritative precedent the interpretation and application of Yardmasters' Schedules is not the proper function of this division."

Your Board clearly held in the above awards, as do Carrier and the Railroad Yardmasters of America, that only by referring to the provisions of the yardmasters' contract can the governing rates of pay, rules and working conditions be ascertained. To make such a determination one does not rely on either Rule 26 or Rule 47 contained in the schedule governing switchmen as cited by petitioner. Such provisions, not within the covers of the yardmasters' schedule, indisputably have no force or effect nor deserve any consideration in interpreting and applying the provisions of the schedule governing yardmasters. The reliance by petitioner upon provisions of the schedule governing switchmen in an attempt to control handling under the yardmasters' schedule, only emphasizes the point that petitioner is inserting itself into an area not included within the coverage of its certification as bargaining agent for yardmen (switchmen). In effect, petitioner is attempting to bargain for yardmasters by adding new rules to the yardmasters' schedule.

In conclusion Carrier reiterates that there is no dispute between the parties to the yardmasters' agreement concerning the manner in which the yardmaster vacancy was filled in the circumstances here involved, that the Switchmen's Union of North America is obliged to follow the interpretation placed upon the yardmasters' agreement by the Carrier and the authorized representative of yardmasters, the Railroad Yardmasters of America, and that, inasmuch as the Railroad Yardmasters of America holds that its agreement was correctly applied in these circumstances, the instant claim must be denied.

All of the above has, in substance, been discussed with the representative of the Organization and made a part of the particular question in dispute. Oral hearing is waived by Carrier.

(Exhibits not reproduced.)

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

The carrier and the employe 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 right of appearance at hearing thereon.

Rules of the Agreement between Western Pacific Railroad Company and the Switchmen's Union of North America relied upon by the Petitioner are not applicable, and therefore without force and effect.

Railroad Yardmasters of America is the duly authorized and accredited representative of the class and craft of yardmasters, employes of the W. P. R. R. Co., and the agreement between the W. P. R. R. Co. and R. Y. A. is controlling; the record shows that the parties thereto are in accord that the claim asserted herein is without merit, and this Division so holds.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **FOURTH DIVISION**

**ATTEST:** Patrick V. Pope  
Secretary

Dated at Chicago, Illinois, this 1st day of June, 1959.