

Award No. 1486

Docket No. 1402

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**FOURTH DIVISION**

The Fourth Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

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**PARTIES TO DISPUTE:**

**TENNESSEE CENTRAL RAILWAY COMPANY**

**BROTHERHOOD OF RAILROAD TRAINMEN**

**STATEMENT OF CLAIM:** Claim of Carrier that "the complaint of yardmasters of General Superintendent's Bulletin No. 53, dated November 27, 1957 and that of General Yardmaster performing the duties of trick yardmasters" is not supported by applicable rules of the current agreement.

**CARRIER'S STATEMENT OF FACTS:** Effective 4:00 p.m. November 30, 1957, the then existing position of first trick yardmaster at Nashville was discontinued and the remaining positions of second and third trick yardmasters rearranged, in accordance with General Superintendent-Chief Engineer Manning's Bulletin No. 53 of November 27, 1957, reading:

"Nashville, Tennessee, November 27, 1957

— : BULLETIN NO. 53 : —

**YARDMASTERS, NASHVILLE:**

Effective 4:00 p.m., November 30, 1957, present assignments of 1st trick Yardmaster and Relief Yardmaster at Nashville are abolished.

Effective December 1, 1957, off days of position of 2nd trick Yardmaster at Nashville are changed to Monday and Tuesday and starting times of positions of 2nd and 3rd trick Yardmaster at Nashville changed to 3:00 p.m. and 11:00 p.m., respectively.

W. E. Manning

General Superintendent-Chief Engineer"

Instructions were concurrently issued that the third trick yardmaster be held on duty on overtime as needed.

The committee complained of the above quoted bulletin and inferred that due to discontinuance of the said position of first trick yardmaster that the General Yardmaster was performing the duties of trick yardmasters.

It was the decision of Carrier that its action under Bulletin No. 53 was justified by existent facts, effectuated in strict conformity with the rules of the governing agreement, and entailed no violation thereof.

Yardmasters at Nashville are assigned for eight consecutive hours with time consumed in making transfer not counted.

The General Yardmaster has no assigned hours.

**POSITION OF CARRIER:** In the fall of 1957, in compliance with the obligation of Carrier to operate in an efficient and economical manner, Mr. W. E. Manning, General Superintendent-Chief Engineer of the Carrier, through consultations with Mr. G. H. Binkley, Jr., General Yardmaster of the Carrier, and by his own independent investigation and consideration, found that there was but little work for the first trick yardmaster at Nashville, Tenn. yard to perform, and that by a rearrangement of hours of service to have the second trick yardmaster report for duty at 3:00 p.m. and the third trick yardmaster at 11:00 p.m. and hold the third trick yardmaster on duty on overtime for any service required after 7:00 a.m., that the small volume of work then being done by the first trick yardmaster could be absorbed or at least almost entirely so by the other two yardmasters, and thereby eliminate the need for a first trick yardmaster position.

The rules of the separate agreement with yardmasters, effective June 1, 1944, as amended, were also carefully considered with respect to the contemplated change, particularly Rule 2(f) reading:

“(f) A yardmaster displaced through cancellation of an assignment will be permitted to exercise his seniority and displace a junior yardmaster.”

and conclusion reached that cancellation of the unneeded position not only could not possibly be construed to be in violation of any of the rules of the agreement but that the action of cancelling a position in the circumstances here existent had been contemplated when the agreement was negotiated and specifically provided for in Rule 2(f) quoted above.

Accordingly Bulletin No. 53, as quoted in Carrier's Statement of Facts, was issued to effectuate the changes referred to, and the General Yardmaster was instructed to hold the third trick yardmaster on duty beyond his regular quitting time at the time and one-half rate for any required service, but principally to line up the work of the one first shift train yard engine for the remainder of its tour of duty. Approximately the same situation still prevails and the third trick yardmaster has made an hour or more overtime most every day since the arrangement was placed in effect.

The careful consideration given this matter is reflected by the review thereof by Mr. G. H. Binkley, Jr., General Yardmaster, in his written statement to General Superintendent-Chief Engineer Manning under date of January 24, 1959, attached hereto as Carrier's Exhibit No. 1, and makes it obvious that the small volume of work being done by the first trick yardmaster could be absorbed or at least almost entirely so by the other two yardmasters and eliminate the need for a first trick yardmaster position.

General Yardmaster Binkley also points out that on the relatively infrequent occasions his attention has been required by the one train yard engine on the first shift after work for the remainder of its tour has been lined up by the third trick yardmaster, that such is no different from what general yardmasters or positions of like nature have done all along regardless of whether or not a yardmaster were present and that any time spent by him in connection with the engine in question can be accurately described only as negligible.

And he makes the very definite and accurate statement in the last paragraph of his letter that none of the rules of the agreement with yardmasters specify the duties of the various yard supervisory positions nor make any distinction as between the duties of general yardmaster and yardmaster, all such work being supervisory and by its very nature necessarily overlapping, and that the general yardmaster has heretofore performed any and all yard supervisory work without limitation.

As a matter of information, the switching limits extend from Mile Post 5 east of Nashville to Mile Post H-13 west thereof, and include Hamilton Street industrial tracks in north Nashville, downtown tracks, and train yard at Shops where office of general yardmaster and yardmasters is located. The train yard at Nashville is a comparatively small narrow yard being confined between shop yard on the south and Cumberland River bottom on the north. It consists of nine connecting yard tracks, the longest with capacity of 53 cars, and three short stub end tracks. Approximately 130 industries are served within the switching limits, including those served by industrial tracks joint with L&N Railroad. Interchange is accomplished with L&N Railroad, the only other road entering Nashville, at Vine Hill, a station within the Nashville switching limits.

Following an informal discussion by the Local Yard Chairman, accompanied by the General Chairman, with the General Superintendent-Chief Engineer and the General Yardmaster with respect to the discontinuance of the first trick yardmaster position, Mr. D. C. Lassiter, General Chairman, wrote the Supervisor of Wages under date of December 17, 1957, as follows

"Nashville, Tennessee  
December 17, 1957

Mr. Caskey Knott, Supervisor of Wages  
Tennessee Central Railway Company  
901 American Trust Building  
Nashville, Tennessee

Dear Sir:

Referring to our telephone conversation on December 10, last, concerning the complaint of yardmasters of General Superintendent's Bulletin No. 53, dated November 27, 1957 and that of General Yardmaster performing the duties of trick yardmasters.

Would appreciate hearing from you as soon as possible naming time and date for the purpose of discussing this matter.

Yours truly,

(s) D. C. Lassiter

General Chairman BofRT"

In conference held on January 3, 1958, the Supervisor of Wages fully explained the position of Carrier in the light of the circumstances existent, the rules of the agreement and practices thereunder, and pointed out that no evidence whatever had been offered of General Yardmaster having performed the duties of trick yardmasters as asserted by them. Toward the latter part of the conference General Chairman Lassiter exhibited three papers, one a

memorandum dated December 2 ,1957 from Mr. George Miller, yard foreman on the first shift train yard engine that date, reading:

"12-2-57

In addition to what Mr. Helms had told me, Mr. G. H. Binkley told me to get a car from the house and bring to roundhouse and turn and return to house.

After that, he told me what cars he wanted lined up for cut to Belt; also several moves to make in yard.

When we left for H5 and H8 he told me to get a load out of location 304 and check several locations for empties. When we got back we were to work location 236.

(s) Geo. Miller"

a pencil memorandm reading:

"Loc 304

has U T L X — 3627 — empty tank O.K. for N.C.

(s) Borger  
12-5-57"

and a switch list form without date listing twelve cars as follows:

"Switch List

Initials	Numbers	Kind	Contents or Empty	Desti- nation
LN	48957	S. Iron	410	4
PLE	2187	Pipe	429	3
LN	30330	Coke		2
SOU	31080	Ld	405	5
LN	62063	Coal	446	1
TC	5188	XG	216	
"	5151	"	"	
"	5200	"	"	
"	6009	XCH	"	
"	5159	XG	"	
"	5103	"	"	
"	5157	"	"	"

Their complaint was rejected for lack of sound basis, letter from the Supervisor of Wages to the General Chairman dated January 22, 1958, reading:

"Nashville, Tenn.,

January 22, 1958.

Mr. D. C. Lassiter, General Chairman,  
Brotherhood of Railroad Trainmen,  
2516 Carter Avenue,  
Nashville, Tennessee.

Dear Mr. Lassiter:

Referring to your letter of December 17, 1957, and our discussion on January 3, 1958, regarding complaint of yardmasters of General Superintendent's Bulletin No. 53 of November 27, 1957 and of General Yardmaster perform the duties of trick yardmasters:

You are aware of the fall off in our business which necessitated a reduction in expenses, and it was pointed out that the action of abolishing the position of first trick yardmaster at Nashville and changing rest days of the second trick position and the starting time of the second and third trick positions as set forth in Bulletin No. 53 is authorized by the rules of the agreement. It developed that the inference of violation of the seniority rule stemmed from the fact that the present General Yardmaster, Mr. G. H. Binkley, Jr., is not the senior man on the yardmasters' seniority roster as was the case when Mr. J. S. Proctor, Jr. was the only man on the first shift, with exception of Mr. G. W. Lytton, employed as Trainmaster. It was also brought to attention that the Monday to Friday belt engine, as well as the road trains (Monday to Friday Lebanon-Old Hickory, tri-weekly No. 62 and daily except Sunday No. 71) normally having departed before the third trick yardmaster was due to go off duty, and no change whatever being made in the practice of the General Yardmaster giving any needed supervision to the 8:00 a.m. Monday to Friday yard engine going on duty and off duty at 12th Avenue in North Nashville, there remained only one first shift engine working in and about the train yard, and even in this situation the third trick yardmaster was being held on duty on overtime as needed and that this was being done just about regularly.

It was also pointed out that the contention of General Yardmaster performing the duties of trick yardmasters is of too general a nature to permit of a decision thereon, and that this is especially so in the light of the fact that no distinguishment has ever been made between their duties. Toward the latter part of our conference you handed me three papers, one a memorandum dated December 2, 1957 from Mr. George Miller, yard foreman on the first shift train yard engine that date, a pencil memorandum dated December 5, 1957 with signature 'Borger', presumably representative of a shipper, and a switch list from without date listing 12 cars. It seems obvious from Mr. Miller's memorandum that Mr. Helms, the regular third trick yardmaster, had lined up the general work of his engine and I find that the subsequent instructions given by General Yardmaster Binkley in no way differed from the further instructions and changes which have been given crews in the past by the General Yardmaster either directly or through others; that information such as that from "Borger" reporting car empty is handled by whichever class of employe answers the telephone and that its manner of copying was customary; and that the switch list referred to was copied by General Yardmaster Binkley from the original which had been prepared by a clerk in the normal course of his duties. It, therefore, appears obvious that such work at a yard office where a General Yardmaster, trick yardmaster, clerks and telegrapher-clerks are employed could not possibly be taken as the exclusive work of trick yardmasters.

Further, the pertinent portion of the scope rule of the agreement with Yardmasters reading "These rules shall apply to Yardmasters and

Assistant Yardmasters employed as such, but will not apply to General Yardmasters or Assistant General Yardmasters' does not define or in any manner set forth the duties of a Yardmaster or General Yardmaster, and in specifically providing that the rules shall apply to Yardmasters and Assistant Yardmasters 'employed as such' it is made unmistakably clear that the agreement does not grant a monopoly of any work to yardmasters as a class. Neither does the said rule preclude General Yardmasters and Assistant General Yardmasters performing any kind or character of work, but simply provides that the agreed upon rules applying to Yardmasters and Assistant Yardmasters employed as such will not apply to General Yardmasters or Assistant General Yardmasters.

It is my considered opinion that no sound basis exists for the complaint made in this instance.

Yours very truly,

(s) Caskey Knott

Supervisor of Wages."

The intimation of the General Chairman in conference of alleged violation of "the seniority rule" presumably stems from the fact that Mr. John S. Proctor had for a number of years previous to the appointment of Mr. Binkley as General Yardmaster performed any and all yard supervisory service without complaint as both General Yardmaster and yardmaster on first trick, but as pointed out by General Yardmaster Binkley, General Yardmasters at Nashville have heretofore performed any and all yard supervisory work without limitation, and this is true both before and after an agreement was first reached with yardmasters in 1944. The mere fact that General Yardmaster Binkley is not the senior man on the yardmasters' seniority roster provides no foundation for an allegation that some undisclosed seniority rule has been violated.

This case was further discussed, along with some others, with committee headed by Mr. J. M. King, Deputy President, Brotherhood of Railroad Trainmen, in conference held commencing afternoon of February 12 and extending to early afternoon of February 14, 1958, following which the Supervisor of Wages again declined their complaint in writing, and nothing further has been heard from the Brotherhood with respect thereto.

Carrier would respectfully direct your attention to Scope Rule No. 1, reading as follows:

"These rules shall apply to Yardmasters and Assistant Yardmasters employed as such, but will not apply to General Yardmasters or Assistant General Yardmasters.

The term 'yardmaster' as used herein shall apply to Yardmasters and Assistant Yardmasters."

and as pointed out by Supervisor of Wages in his letter to General Chairman Lassiter of January 22, 1958, it does not define or in any manner set forth the duties of a yardmaster or General Yardmaster, and in specifically providing that the rules shall apply to Yardmasters and Assistant Yardmasters "employed as such" it is made unmistakably clear that the agreement does not grant

a monopoly of any work to yardmasters as a class. Nor does the said rule preclude General Yardmasters and Assistant General Yardmasters performing any kind or character of work, but simply provides that the agreed upon rules applying to Yardmasters and Assistant Yardmasters employed as such will not apply to General Yardmasters or Assistant General Yardmasters.

The action of the Carrier having been justified by facts, effectuated in accordance with the agreement, and no violation of any of the rules of the agreement having occurred, Carrier respectfully submits that "the complaint of yardmasters of General Superintendent's Bulletin No. 53, dated November 27, 1957 and that of General Yardmaster performing the duties of trick yardmasters" is not founded on a violation of the agreement and could not, therefore, be supported by applicable rules of the current agreement.

All data submitted herein has been presented in substance to the duly authorized representatives of Employes and is made a part of the particular question in dispute.

Oral hearing requested.

**EMPLOYES STATEMENT OF FACTS:** On November 27, 1957 the Carrier issued the following Bulletin:

Bulletin No. 53

"November 27, 1957

Yardmaster Nashville

Effective 4:00 p.m. November 30, 1957 present assignment of first trick yardmaster Nashville and relief yardmaster Nashville are abolished.

Effective December 1, 1957, off days of position of second trick yardmaster at Nashville are changed to Monday and Tuesday and starting time of position of second and third yardmaster at Nashville are changed to 3:00 p.m. and 11:00 p.m. respectfully.

W. E. Manning, General Superintendent"

**POSITION OF EMPLOYES:** The employes assert that this protest has been handled on the property in accordance with the current agreement up to and including the highest officer without reaching a satisfactory understanding. Quoted below is letter over signature of Mr. Caskey Knott, Supervisor of Wages, Tennessee Central Railway under date of February 17, 1958:

"February 17, 1958

File 970-19

Mr. J. M. King, Deputy President,  
Brotherhood of Railroad Trainmen,  
508 Andrew Jackson Hotel,  
Nashville 3, Tennessee

Dear Sir:

Referring to our conference commencing afternoon of February 12 and extending to early afternoon of February 14, 1958, at which we

discussed complaint of yardmasters of General Superintendent's Bulletin No. 53 of November 27, 1957, and that some of the duties being performed since that time by the General Yardmaster belongs to trick yardmasters:

Claim respectfully declined.

Yours very truly,

(s) Caskey Knott

Supervisor of Wages"

cc Mr. G. P. Hicks, General Chairman,  
Order of Railway Conductors & Brakemen,  
2518 Elm Hill Road,  
Nashville 14, Tenn.

Mr. D. C. Lassiter, General Chairman,  
Brotherhood of Railroad Trainmen,  
2516 Carter Avenue,  
Nashville, Tenn."

Rules relied upon to support Employees Position are quoted from current agreement between the Tennessee Central Railway Company and its Yardmasters Represented by the Brotherhood of Railroad Trainmen effective, June 1, 1944:

"Rule 1 — Scope.

These rules shall apply to Yardmasters and Assistant Yardmasters employed as such, but will not apply to General Yardmasters or Assistant General Yardmasters.

The term "yardmaster" as used herein shall apply to Yardmasters and Assistant Yardmasters."

"Rule 2 — Seniority

(a) Seniority of yardmasters shall be confined to the terminal in which employed. The seniority of yardmasters now in the service as such, who have completed an aggregate of sixty (60) days yardmaster's service within the twelve (12) months' period preceding the effective date of this agreement, and yardmaster's heretofore advanced to other official positions while serving as yardmasters, will date from first day compensated yardmaster's service was performed, subject to correctness of seniority dates as provided in section (c) of this rule."

"Rule 4 — Rates of Pay

(c) Change in title or classification of yardmasters or assignments shall not be made for the purpose of reducing the rate applicable to the assignment on which yardmaster service is performed, without mutual agreement."

"Rule 5 — Assignments and Vacancies

(a) All new positions and permanent vacancies will be bulletined to yardmasters for a period of five (5) days, and the senior qualified yardmaster making application in writing will be assigned thereto.



(b) A temporary vacancy will not be bulletined but will be filled by the senior qualified unassigned yardmaster."

The Employes contend that the Carrier violated rule 1 when they issued Bulletin No. 53, abolishing the first trick yardmaster's assignment for the reason that there was yardmasters duties to perform on the first trick which were performed prior to December 1, 1957 by yardmasters and since December 1 have been performed by general yardmasters and trainmasters.

The Committee's position further supported by Article 2(a)—Seniority, and Article 5 (a) and (b) Assignments and Vacancies. The Employes contend that a vacancy exists for yardmaster on the first trick, and should be filled in accordance with Article 5(a) and (b).

The Employes further contend that the Carrier has violated Article 4(c) by transferring the duties of the first trick yardmaster to the general yardmaster.

The Employes rely upon the rules of agreement herein referred to in support of their position.

It is affirmatively stated the claims and dispute involved herein have been considered in conference and handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes.

Employes respectfully submits that its position as outlined is supported by rules and requests that your Honorable Board sustain our position in this case. (Exhibits not reproduced)

**OPINION OF BOARD:** It is the position of the Organization that since the discontinuance on November 30, 1957, of the first trick yardmaster position at Nashville, Tennessee, the General Yardmaster has been performing duties that belong to trick yardmaster.

There is no question but that the General Yardmaster is specifically excluded from the scope of the Agreement covering yardmasters. However, the Carrier denies that he is performing yardmaster functions and maintains that the volume of work for trick yardmasters had fallen off to such an extent by November 30, 1957, that it could be handled by discontinuing the first trick position and reassigning the hours of the second and third tricks.

In general, where the parties have not provided otherwise by contract, it is for the Carrier to determine the amount of supervision needed for yard work at any particular location and time. No contract provision or exceptional set of circumstances has been cited that calls for the application of a different principle to the present situation.

As a matter of fact, it is quite apparent from an examination of the record that the Organization has failed to establish by competent proof, as distinguished from mere contention, that a substantial volume of yardmaster duties is being performed by persons outside the scope of the Agreement. It is equally clear that the burden of proving that point is upon the Organization. See, e.g., Awards 1228, 1208 and 797.

The Organization has failed to prove its case and we have no alternative but to find its complaint meritless and to sustain the Carrier's position.

**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 waived right of appearance at hearing thereon.

The Agreement was not violated.

**AWARD**

The Organization's claim denied.

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

**ATTEST: Patrick V. Pope  
Secretary**

**Dated at Chicago, Illinois, this 26th day of September, 1960.**