Award No. 2104
Docket No. 2077

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.

PARTIES TO DISPUTE:

RAILROAD YARDMASTERS OF AMERICA

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim and request of the Railroad Yardmasters of America that—

Assistant Yardmaster Joseph Rochowiak be allowed a day's pay at Yardmaster pro rata rate for December 23, 1964, account being required to perform fireman's duties in short turn around service on Trains No. 411 and No. 412 between Mile Post 3.8 and Lang Yard in addition to his regular Yardmaster duties.

Assistant Yardmaster Joseph Rochowiak be allowed a day's pay at Yardmaster pro rata rate for December 24, 1964, account being required to perform fireman's duties in short turn around service on Trains No. 411 and No. 412 between Mile Post 3.8 and Lang Yard in addition to his regular Yardmaster duties.

Assistant Yardmaster Joseph Rochowiak be allowed a day's pay at Yardmaster pro rata rate for December 25, 1964, account being required to perform fireman's duties in short turn around service on Train No. 411 between Mile Post 3.8 and Lang Yard in addition to his regular Yardmaster duties.

Assistant Yardmaster Frank LaDuke be allowed a day's pay at Yardmaster pro rata rate for December 23, 1964, account being required to perform fireman's duties in short turn around service on Train No. 403 between Mile Post 3.8 and Lang Yard in addition to his regular Yardmaster duties.

Assistant Yardmaster Frank LaDuke be allowed a day's pay at Yardmaster pro rata rate for December 24, 1964 account being required to perform fireman's duties in short turn around service on Train No. 704 between Mile Post 3.8 and Lang Yard in addition to his regular Yardmaster duties.

Assistant Yardmaster Robert A. Wiley be allowed a day's pay at Yardmaster pro rata rate for December 23, 1964 account being required to perform fireman's duties in short turn around service on Train No. 414 between Mile Post 3.8 and Lang Yard in addition to his regular Yardmaster duties.

EMPLOYES' STATEMENT OF FACTS: On dates as shown hereinabove, claimants were required by Carrier, in addition to regular Yardmaster duties, to perform work exclusively reserved to Operating employes and belonging to Employes possessing seniority within the scope of the Firemen's Agreement.

POSITION OF EMPLOYES: The position of the employes in the handling of this dispute on the property is evidenced by the exchange of correspondence reproduced herein and attached as Exhibit A, 12/23/64; B, 12/23/64; C, 12/23/64; D, 12/24/64; E, 12/24/64; F, 12/25/64; G, 1/4/65; H, 1/13/65; I, 1/27/65; J, 2/2/65; K, 2/12/65; L, 2/16/65; M, 2/20/65; N, 2/23/65; O, 2/27/65.

On February 12, 1965, General Manager McPhail addressed a letter, Exhibit K, to General Chairman Wiley confirming conference held on February 10, 1965, in connection with this dispute. We quote from paragraph 5 of this letter:

> "Each of the claimants while on duty and under pay as assistant yardmasters, was directed to ride in the locomotive cab of a road train either as far as Milepost 3.08 or return, or both, in order to comply with the Ohio Full Crew Law. Milepost 3.08 is within Lang Yard limits."

In the handling of this Claim on the property the Carrier has clearly shown its reliance on Article 1 of Current Agreement and **has offered no other defense.** Article 1 reads as follows:

> "The term 'yardmaster', as used herein, shall include yardmasters and assistant yardmasters, but shall not include General Yardmasters.
>
> The duties of yardmasters shall consist generally in the supervision of, or in assisting in the supervision of, the work of employes engaged in making and breaking up trains, in the movement of cars within the yard to which the yardmaster is assigned, in general yard switching and in the calling of crews; and, in addition, the yardmaster shall perform such other and further work as may be directed."

It is in the last provision of the Article that Carrier seeks refuge and with which it attempts to rationalize its actions. By its broad interpretation of the words "other and further work", it proposes duties unlimited in scope and impossible of inclusion in any sound working agreement. As stated in General Chairman Wiley's letter of February 27, 1965, Exhibit O, it was never the intent of the contracting parties to so construe this portion of the Agreement. By no stretch of the imagination could one conceive of requiring yardmasters to perform work indisputably and exclusively belonging to another craft. It should not require much study or understanding of railroad terminology to realize that a yardmaster is not a crew

member. It then follows that when he is used to bring the crew within compliance of the Ohio Full Crew Law, he is acting as a crew member, and as such, is performing service within the scope of another Agreement. Let us examine the Opinion of the Board in First Division Award 14225:

> "A three man crew was switching a 26 car train. The engine was behind the scale house. The yardmaster assisted in passing signals to the engineer. This was a duty which should have been performed by another yardman. While this in and of itself is not a grave violation of the rules, it must not be permitted, as it would encourage working smaller crews than ordinarily required and allowing them to accept assistance from whoever was available, which might cause accidents. The violation of the rules is admitted, but a request is made for no penalty. However, it has been consistently held in previous awards that the chief means of redress by employes for violations of such rules is to file time claims."

We direct attention of this Board to the holding in this award. The same circumstance prevails, that of requiring an employe to cross craft lines and intrude on work of employes under the scope of another working agreement. The evils resulting from such transgressions are clearly outlined in the Opinion. In Third Division Award 4681 we find an interesting definition of work as contemplated in Agreements: "A day's work under the Contract, then, can only mean a day's work at the position for which the employe is called." Yardmasters herein involved are called as such and are not called to perform duties properly belonging to crews in train service, no matter how desirous the Carrier is of reading this permission into the rule in the interest of operating economy.

Awards too numerous to mention have consistently held that work within the scope of a collective agreement cannot be assigned to other classes of employes with impunity. When carrier ordered the claimants to ride the engines, it was incumbent on them to do so, as a refusal to obey an operating order would have placed them in jeopardy and liable to a charge of insubordination. However, complying with the order did not lessen or remove the contract violation nor did it remove the penalty which should be imposed on the carrier. It has been shown that Carrier deliberately violated the Agreement, and in order to bring about observance of the Agreements, the penalty of compensating the Claimants is a matter of sound discretion.

All data used in support of this claim has been presented to the Management and made a part of this particular question in dispute.

Claim must be sustained.

CARRIER'S STATEMENT OF FACTS: On the dates in question, due to no fireman available account Christmas Holiday, claimant Yardmasters were instructed to ride in the cab of engines from Lang Yard (Toledo, Ohio) to the Ohio state line and return to Lang Yard, a distance of approximately 7.6 miles.

POSITION OF CARRIER: The claimant yardmasters were used only to provide train with a sufficient number of employes in the crew so that the carrier would be in compliance with the full crew law of the State of Ohio, and they were not required to perform any duties, nor were any

duties performed. They only occupied a seat in the cab of a locomotive during the movement from Lang Yard to the Ohio state limits and return to Lang Yard.

Yardmasters are considered supervisory employes who can be, and are, required to perform service the carrier deems necessary to the efficient, lawful, and economic operation of its railroad.

That such requirement is in accord with the controlling contract is supported by Article 1 of agreement effective March 25, 1952, between this carrier and the Railroad Yardmasters of America, reading as follows:

> "The term 'yardmaster', as used herein, shall include yardmasters and assistant yardmasters, but shall not include general yardmasters.
>
> The duties of yardmaster shall consist generally in the supervision of, or in assisting in the supervision of, the work of employes engaged in making and breaking up trains, in the movement of cars within the yard to which the yardmaster is assigned, in general yard switching and in the calling of crews; and, in addition, **the yardmaster shall perform such other and further work as may be directed.**" (Emphasis ours.)

If the organization were in opposition to the wide scope of their duties, they have had ample time, in the over 13-year period such rule has been currently in effect, to eliminate or modify it, but have not done so.

That yardmasters can be required to perform special services is further supported by the provisions of Article 16 of the current agreement, effective March 25, 1952, reading as follows:

> "A yardmaster, required by the Company to perform **special service**, will be paid not less than the earnings he would have received had he not been used in such **special service.**"
> (Emphasis ours.)

During the handling of these claims on this property in correspondence, the employes have cited no rule and/or agreement(s) in support of the claims, for the simple reason that there are no supporting rules and/or agreements in effect to uphold their position.

In view of the foregoing rules and facts, the Carrier submits there is no basis for the Employes' claims, and respectfully requests that they be denied.

All data submitted in support of Carrier's position has been presented to or is known by or available to the duly authorized representative of the employes and made a part of this particular question.

The Carrier hereby waives oral hearing, providing oral hearing is not granted to the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: The present claim tests the propriety of Carrier's use of yardmasters, the claimants herein, to ride in engine cabs from

Lang Yard at Toledo, Ohio, to the Ohio state line and then back to Lang Yard, a total distance of about 7.6 miles, when firemen were unavailable because of the Christmas holiday. Claimants were required to ride in the cabs to enable Carrier to comply with the Ohio Full Crew Law.

Carrier emphasizes Rule 1 of the Agreement, which provides that "The duties of Yardmaster shall consist generally in the supervision of, or in assisting in the supervision of, the work of employes engaged in making and breaking up trains, in the movement of cars within the yard to which the yardmaster is assigned, in general yard switching, and in the calling of crews; and, in addition, the yardmaster shall perform such other and further work as may be directed." The clause, "the yardmaster shall perform such other and further work as may be directed" is not sufficiently broad to authorize Carrier to ignore craft lines and use yardmasters to discharge firemen's responsibilities or perform other services that are completely unrelated to the yardmaster duties specified in other portions of Rule 1. While the claimants did not work while in the engine cabs, they did perform service merely by being there. There is no evidence of past practice or of any other circumstance that supports Carrier's case, and we find no basis for denying this claim. Since no contention was raised on the property or in the submissions to this Board regarding the compensation requested in the claim, we will sustain the claim in its entirety.

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 parties to said dispute waived right of appearance at hearing.

The Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION

ATTEST: Patrick V. Pope
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1966.