

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****LEHIGH VALLEY RAILROAD COMPANY**

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

Oldest unassigned Yardmaster on the Allentown-Bethlehem roster be allowed a day's pay at the appropriate Yardmaster rate for December 12, 1964, and for all subsequent dates until condition complained of is corrected due to the abolishment of the first trick yardmaster position at Allentown and the reassignment of the duties of this position in violation of the controlling Agreement.

EMPLOYEES' STATEMENT OF FACTS: On December 2, 1964, Carrier issued a notice abolishing the position of Yardmaster, First Trick, at Allentown, Pa., after completion of tour of duty on December 11, 1964. Instructions were also issued placing Allentown Yard under the jurisdiction of the Yardmasters at Bethlehem, Pa., during the hours of the abolished position, in violation of Rules 2(c) and 12 of Controlling Agreement.

CARRIER'S STATEMENT OF FACTS: The schedule of rules Agreement between the parties, effective August 16, 1953, copy of which is on file with this Board, are by reference made a part of this submission.

East Penn Junction yard is located within the yard switching limits of Allentown, Pennsylvania, a point on the main line of this Carrier.

Prior to December 12, 1964, yardmasters assignments were maintained around the clock at East Penn Junction-Allentown. For many months prior to December, 1964 there was a continuing decline in business in this area, this decline was particularly evident in the operation during the first trick yardmaster hours.

In the opinion of the Carrier's supervisory officers, its operations during the first trick hours at East Penn-Allentown were such that full time yardmaster supervision of the one yard engine operating at that point in the morning hours was not justified or necessary and such yard engine could properly operate and perform service required without full time yardmaster supervision. Actual operation subsequent to December 12, 1964, has convincingly indicated that this opinion was correct.

Accordingly, effective with the end of tour of duty on December 11, 1964, the first trick position of yardmaster at East Penn Junction-Allentown was

abolished. Also, effective with the start of duty on December 17, 1964, the tour of duty of the second trick yardmaster was changed from 2:00 P.M. to 10:00 P.M. to be from 3:30 P.M. to 11:30 P.M., and the tour of duty of the third trick yardmaster was changed from 10:00 P.M. to 6:00 A.M. to be from 11:30 P.M. to 7:30 A.M. With the time changes in assignments the following notice was also posted.

December 14, 1964

Yardmasters — Bethlehem

East Penn Jct

Effective December 17, 1964 the following will be in effect:

Yardmaster Allentown-East Penn Jct on duty 3:30 PM to 11:30 PM will start the 10:45 PM Allentown on their tour of duty.

Yardmaster Allentown-East Penn Jct on duty 11:30 PM to 7:30 AM will start the 6:45 AM Allentown drill on their tour of duty. Before completion of tour of duty by this Yardmaster arrange to phone to first trick Yardmaster at Bethlehem the situation at Allentown and vicinity and also phone the switching slips to Yardmaster at Bethlehem for this Yardmaster to follow through with the work required at Allentown.

Yardmaster at Bethlehem starting on duty at 3:00 PM will be in charge of East Penn Jct. until Yardmaster at that point goes on duty at 3:00 PM.

/s/ M. G. Simons
Trainmaster

Following the abolishment of the first trick East Penn Junction, Allentown yardmaster position, what little yardmaster supervision necessary at this point, was issued as per the above notice, i.e., the East Penn Junction — Allentown yardmaster on the third trick issued whatever instructions may be necessary to the first trick yard crew going on duty at that point at 7:00 A.M., in addition, the first trick yardmaster at Bethlehem, 2.9 miles away, issued whatever instructions necessary before the second trick yardmaster at East Penn Junction-Allentown went on duty. These instructions prepared by the first trick yardmaster at Bethlehem, were in turn, conveyed to the yard train crew through the East Penn Junction-Allentown yard clerk. The yard clerk exercised no supervision over the yard crew.

Both prior to and after December 12, 1964, a yard clerk was assigned on three tricks around the clock at East Penn Junction-Allentown. There was no change in the duties or responsibilities of these yard clerks. The only change brought about as a result of the abolishment of the first trick yardmaster position at East Penn Junction-Allentown was that the first trick yard clerk reported to and received his instructions from the first trick yardmaster at Bethlehem, Pa. Yard clerks come within the scope of the Agreement between this Carrier and its employes represented by the Brotherhood of Railway and Steamship Clerks. The yard clerks at the point involved perform precisely the same functions required of yard clerks at other locations on this property. One of these functions was the checking of yard tracks for the purpose of having a record of freight cars and the location of freight cars.

The following letter dated December 21, 1964 was received by the trainmaster.

RAILROAD YARDMASTERS OF AMERICA
LEHIGH VALLEY LOCAL LODGE No. 53

R. D. #1
Pittston, Pa.,

Dec. 21, 1964.

Mr. M. G. Simons, Trainmaster,
Lehigh Valley Railroad Co.,
Box 184,
Easton, Pa.

Dear Sir:

This Organization hereby protests the abolishment of the position of First Trick Yardmaster at Allentown effective with the expiration of tour of duty Friday, Dec. 11, 1964. The duties of said Yardmaster position being assumed by the First Trick Yardmaster at Bethlehem effective Dec. 12, 1964.

The above mentioned abolishment violates Sec. 1 and 7 of the Railway Labor Act as amended. Sec. 1 has been violated due to the fact the Carrier has delegated the authority of Yardmaster in the Allentown, East Penn, Bethlehem terminals in a pell-mell manner. This is corroborated by letter of Dec. 14, 1964 with the signature of Trainmaster M. G. Simons. This letter states 'Effective Dec. 17, 1964, Yardmaster at Bethlehem Starting on duty at 3:00 P.M. will be in charge of East Penn Jct. until Yardmaster at that point goes on duty at 3:30 P.M. Furthermore, the starting time of the Yardmaster positions at Allentown, East Penn Jct. were changed effective Dec. 17, 1964 from 2:00 P.M. to 3:30 P.M. and from 10:00 P.M. to 11:30 P.M. Evidently this was done to afford a semblance of continuity of operations which was lacking under the previous starting times.

Sec. 7 has been violated because the Carrier has changed the working conditions of its employees as a class. Three specific incidents which substantiate this violation are as follows: On Dec. 14, 1964 Clerk V. Morgan was ordered to make a physical check of Allentown Coal Yard on the orders of Acting Trainmaster, G. Simons. Also on Dec. 14, 1964 Clerk L. Moyer was ordered to make a physical check of Allentown, East Penn Yard. On Dec. 15, 1964 Clerk L. Moyer was ordered by Acting Trainmaster, G. Simons, to make a physical check of the Allentown freight yard, the Barber branch and the West End branch; also to make switching drill slips effective Dec. 16, 1964. This work was previously performed by the Yardmaster of the abolished position at Allentown-East Penn First Trick.

Sec. 6 of the current agreement between the Lehigh Valley Railroad Co. and the Railroad Yardmasters of America has been violated.

The Carrier has, by abolishing the position of First Trick Yardmaster Allentown, transferred the duties and responsibilities to the First Trick at Bethlehem, but has delegated some of the duties pre-

viously performed by the First Trick Yardmaster Allentown to personnel not covered by the Yardmaster's agreement.

Allentown Yard being approximately six miles from Bethlehem Yard and with the number of major industries served by the Lehigh Valley Railroad in this area, it is physically impossible for the First Trick Yardmaster at Bethlehem to cover this territory and also the industrial West End and Barber Branches.

Therefore, be advised this Organization claims one day at the pro rata rate of pay for the oldest extra employee on the Yardmaster's roster of the affected seniority districts as of Saturday, Dec. 12, 1964 and all subsequent dates until the conditions complained of are corrected by the re-establishment of the abolished position.

Respectfully yours,

/s/ Robert J. Culver
General Chairman

The Trainmaster denied the claim as follows on January 7, 1964.

Easton, Pa.
P. O. Box 184
January 7, 1965

Mr. Robert J. Culver
Genl. Chairman RYofA
RD. 1
Pittston, Pa.

Dear Sir:

Your letter Dec. 21, 1964 protesting abolishment of the position of First Trick Yardmaster at Allentown effective with expiration of tour of duty Friday, Dec. 11, 1964. Claim the above mentioned abolishment violates Sec. 1 and 7 of the Railway Labor Act as amended. Also violates Sec. 6 of the Current Agreement between the Lehigh Valley Railroad and the Railroad Yardmasters of America.

There was no violation of Sec. 1 and 7 of the Railway Labor Act in this abolishment of this position.

There was no violation of Sec. 6 of current agreement between Lehigh Valley Railroad and Railroad Yardmasters of America.

Claim for one day at the pro-rata rate of pay for the oldest extra employee on the Yardmaster's roster of the affected seniority districts as of Saturday, Dec. 12, 1964 and all subsequent dates until condition corrected by the re-establishment of the abolished position.

Claim for one day Dec. 12, 1964 and all subsequent dates is denied.

Respectfully yours,

/s/ M. G. Simons
Trainmaster

The employes in letter dated January 27, 1965 appealed the Trainmaster's decision to the Superintendent-Transportation.

RAILROAD YARDMASTERS OF AMERICA
LEHIGH VALLEY LOCAL LODGE No. —

R.D. #1
Pittston, Pa.
Jan. 27, 1965

Mr. John E. Crowley
Supt. of Transportation
Lehigh Valley Railroad Co.
425 Brighton St.
Bethlehem, Pa. 18015

Dear Sir:

Appealing to you from the denial of Trainmaster M. G. Simons in his letter dated Jan. 7, 1965.

The Lehigh Valley Railroad Co. effective Dec. 12, 1964 abolished the position of first trick Yardmaster at Allentown. The duties of the first trick Yardmaster's position at Allentown were transferred to the first trick Yardmaster at Bethlehem. On Dec. 14, 1964 a letter was issued over the signature of Trainmaster M. G. Simons notifying all concerned meaning the Yardmasters at Bethlehem and Allentown of further changes effecting yardmasters duties at the above mentioned terminals. A second letter was issued on Dec. 14, 1964 again over the signature of Trainmaster M. G. Simons notifying the second and third trick yardmasters at Allentown the starting times of their positions would be changed effective Dec. 17, 1964. The instructions contained in the above mentioned letters indicate the necessity of having a yardmaster on the abolished position.

There have been numerous instances since the first trick Yardmaster position at Allentown has been abolished where other than members of the Yardmaster craft have been doing the work of yardmasters in the Allentown-East Penn Jct. terminals.

By abolishing the position of the first trick Yardmaster at Allentown, it is true the Carrier has transferred the duties to the first trick Yardmaster at Bethlehem. Yet some of the duties have fallen into the hands of clerks, agents, and yard foreman in the affected terminals. It is quite evident this would occur in a terminal such as Allentown-East Penn. where switching and interchange operations are widely scattered.

Rule 6 of the current agreement between the Lehigh Valley Railroad Co. and the Railroad Yardmasters of America has been violated.

Therefore, this organization claims one day at the pro rata rate of pay for the oldest extra employe on the Yardmaster's roster of the affected seniority district as of Saturday, Dec. 12, 1964 and all subsequent dates until the condition complained of is corrected by the re-establishment of the abolished position. Please advise.

Respectfully yours,

/s/ Robert J. Culver
General Chairman

The Superintendent-Transportation denied the claim as follows.

February 2, 1965

Mr. Robert J. Culver, G.C. RYA
R.D. #1
Pittston, Pa.

Dear Sir:

This refers to your letter December 21, 1964, in which protest is made account abolishment of the position of First Trick Yardmaster at Allentown effective with the expiration of tour of duty Friday, December 11, 1964.

The employes Statement that violation of Section 1 of the Railway Labor Act as amended account Carrier having delegated the authority of Yardmaster in the Allentown-E. Penn-Bethlehem Terminals in pell-mell manner is not correct as any exclusive Yardmaster duties involved were assigned to other employes of the Yardmaster craft only. Neither has there been any violation of Section 7 as any work reassigned to Yard Clks. to perform was work not exclusively the entitlement of Yardmaster to perform, such as, physical check of cars in yard, etc.

Also, there has been no violation of Section 6, cited by the employe to substantiate this claim. There is no basis for this claim and it is noted that employe's submission presents a blanket claim for one day at pro rata rate of pay for the oldest extra employe on the Yardmaster Roster but has failed to present definite claim for specific name and specific date.

Yours truly,

/s/ J. E. Crowley
Supt., Transportation

The Organization then appealed the instant case to the Chief of Personnel in letter dated March 13, 1965, as follows:

RAILROAD YARDMASTERS OF AMERICA
LEHIGH VALLEY LOCAL LODGE NO. 53

R.D. #1
Pittston, Pa.
March 13, 1965

Mr. Paul N. Mansfield
Chief of Personnel
Lehigh Valley Railroad Co.
415 Brighton Street
Bethlehem, Pa.

Dear Sir:

Appealing to you from the decision of Supt. of Transportation John E. Crowley dated Feb. 2, 1965 and clarified by his letter of March 1, 1965. This refers to our protest of the abolishment of the first trick

yardmaster position at Allentown and the subsequent claim by this Organization for one day's pay at the pro-rata rate for the oldest extra employee on the Yardmaster's roster of the affected seniority district. Both the protest and claim denied by Supt. Crowley in his letter dated Feb. 2, 1965 and re-affirmed in his letter of March 1, 1965.

This Organization contends the Carrier has violated the Yardmaster's Agreement. Rule 6 of the current agreement between the Lehigh Valley Railroad Co. and the Railroad Yardmasters of America has been violated to the extent that by abolishing the first trick Yardmaster position at Allentown and delegating the responsibilities to the first trick Yardmaster at Bethlehem. Rule 6 states: 'Established positions shall not be discontinued or abolished and new ones created covering relatively the same duties and responsibilities, which will have the effect of reducing rates of pay or working application of these rules.

By combining the first trick at Allentown with the first trick at Bethlehem the Carrier has abolished one position and technically created a new one at the latter location combining the duties of both positions. The Carrier, has by its action exposed our members in the affected Terminals to responsibilities remote from their assigned location. There is no denying the fact the duties of a yardmaster are still in existence at Allentown. The Carrier's action in abolishing the position at Allentown first trick and transferring the responsibilities to the Yardmaster at Bethlehem did not transfer the work to the latter location. The actual work still remains at Allentown.

Therefore this Organization claims one day at the pro-rata rate of pay for the oldest employee on the Yardmaster's roster of the affected seniority district as of Saturday, Dec. 12, 1964 and all subsequent dates until the condition complained of is corrected by the re-establishment of the abolished position. Please advise your decision in this case.

Respectfully yours,

/s/ Robert J. Culver
General Chairman

The Chief of Personnel denied the claim on April 23, 1965 as follows:

April 23, 1965

Mr. R. J. Culver
General Chairman, RYA
R.D. #1
Pittston, Pa.

Dear Sir:

Re: Your letter March 13, 1965, Claim on behalf of oldest extra yardmaster for one day at pro-rata rate due to abolishment of first trick Allentown Yardmaster position, Rule 6 applying.

I do not agree with your contention that Rule 6 of the agreement was violated when management abolished the first trick Allen-

town Yardmaster position. The carrier did not abolish one position and create a new one reducing rates of pay or changing the working applications of the rules. The carrier exercised its right to eliminate unnecessary positions, which was the only action taken by the carrier in this instance.

The Bethlehem Yardmaster and the Allentown Yardmaster are two positions within the same seniority district and the transfer of some of the yardmaster duties from one position to the other did not violate the agreement.

Therefore, as this claim is without merit or support of the rules it is hereby denied.

Yours very truly,

/s/ P. N. Mansfield
Chief of Personnel

On July 1, 1965, the employes again wrote the Chief of Personnel as follows:

RAILROAD YARDMASTERS OF AMERICA
LEHIGH VALLEY LOCAL LODGE NO. 53

July 1, 1965

Mr. Paul N. Mansfield, Chief of Personnel
Lehigh Valley Railroad Company
415 Brighton St.
Bethlehem, Pa. 18015

Dear Sir:

This has reference to your letter of April 23, 1965 in connection with claim account abolishment of first trick yardmaster assignment at Allentown.

We have noted your contention that Rule 6 of the Agreement has not been violated and your statement that the only action taken by the carrier was to exercise its right in eliminating an unnecessary position. You also stated that the Bethlehem and Allentown yardmasters positions are positions within the same seniority district and the transfer of some of the duties from one position to the other did not constitute a violation of the Agreement.

In light of this contention we call your attention to Rule 2 (c) of the Agreement all yardmaster assignments as to location, title, trick, and monthly rate. The positions at Allentown and Bethlehem were negotiated into the Agreement through collective bargaining and thus can not be unilaterally abolished or combined with other positions. This can only be accomplished through negotiation within the provisions of the Railway Labor Act. This interpretation is clearly set forth in Third Division Award 13559 wherein it was held 'positions negotiated into an Agreement may not be unilaterally eliminated by the carrier if a substantial part of the work remains'. An examination of Trainmaster Simon's Bulletin Notice dated December 2nd, 1964

are very illuminating. One notified Yardmaster W. B. Paul that effective with completion of his tour on December 11th his position was abolished. Another notified Yardmaster W. DeHaven that effective with completion of his tour of duty December 11th his position of relief yardmaster was abolished. Finally, notice addressed to Yardmaster Harold DeEsch, Bethlehem, notified him that effective Saturday, December 12th, he would assume the duties of former yardmaster at Biery Yard which position was abolished Friday, December 11th, 1964. In order to further facilitate this change another bulletin notice was issued by Trainmaster Simons on December 14th changing the starting time of yardmaster positions at Allentown-Penn Jct. from 2 PM to 3:30 PM and from 10 PM to 11:30 PM, effective December 17th.

It is our contention that the positions at Allentown-Penn Junction and Bethlehem are separate and distinct entities as negotiated into the Agreement. To attempt to eliminate and combine such by abolishment, change of starting time, and re-assignment of duties by bulletin is violative of Agreement. We urge that you re-examine the facts as presented by the Organization with a view of effecting a mutually satisfactory settlement of this claim on the property.

Yours very truly,

/s/ R. J. Culver
General Chairman

The Chief of Personnel answered the above letter on July 23, 1965 as follows:

July 23, 1965

Mr. R. J. Culver
General Chairman, RYA
R.D. #1
Pittston, Pa.

Dear Sir:

Re: Your letter March 13, 1965, Claim on behalf of oldest extra yardmaster for one day at pro-rata rate due to abolishment of first trick Allentown Yardmaster position, Rule 6 applying.

I have received your letter of July 1, 1965 relative to the above claim. I do not agree with your contention that the yardmaster positions involved in this claim were negotiated into the agreement, therefore, negotiations were not necessary for the discontinuance of same. Award 13559 referred to is not relevant to the rules and facts herein involved.

Therefore, my denial decision given you in letter dated April 23, 1965 is reaffirmed.

Yours very truly,

/s/ P. N. Mansfield
Chief of Personnel

OPINION OF BOARD: The theory of the present claim is that Carrier violated the applicable Agreement by abolishing the first trick yardmaster position at Allentown, Pennsylvania, and reassigning its duties.

It appears that the work content of the position in question had decreased to an appreciable extent during the period leading up to its abolishment. Some duties of that position remained, however, and they were assigned to the third trick yardmaster at Allentown and to the first trick yardmaster at Bethlehem, which is a distance of from four to six miles from the Allentown Yard. There is no competent evidence that any yardmaster responsibilities or duties were assigned to non-yardmasters.

That Carrier possesses the right to abolish a position at a location where the work has fallen off to a considerable extent is beyond dispute. (See Third Division Awards 11511 and 11294). Petitioner maintains, however, that it is a breach of Rules 2 (c) and 12 for work of the abolished position to be performed by a Bethlehem yardmaster. Rule 2 (c) lists separately the Allentown, Bethlehem and other yardmaster positions with their respective locations, tricks and rates of pay. Rule 12 shows that the Agreement supersedes all existing agreements, practices and understandings and has been applicable during all times material to the present dispute.

Neither Rule 2 (c), 12 nor any other provision of the Agreement, expressly or by reasonable interpretation, prohibits Carrier from abolishing a yardmaster position or assigning an employe to work at two different locations. The mere listing of locations, tricks and rates of pay for positions does not provide a sound basis, whether considered independently or in connection with other rules of the Agreement, for the important restriction on managerial authority that is sought here by Petitioner.

Notwithstanding Third Division Awards 1296 and 11368, which in any event concerned stronger rules than are here in question, the great weight of authority and well considered opinions of the Board are to the effect that Carrier has the right to require employes to work in two different locations where, as here, no contract provision or past practice provides to the contrary and the two locations are within the same seniority district and agreement. See, e.g., Third Division Awards 6944, 8428, 12044, 12332, 13201 and 14126.

No violation of any applicable rule or statute has been established and the claim will be denied.

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, but were granted privilege of appearing before the Division, with the Referee sitting as a member thereof, to present oral argument.

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION

ATTEST: Muriel L. Humfreville
Acting Secretary

Dated at Chicago, Illinois, this 12th day of September, 1966.

**DISSENT OF LABOR MEMBERS TO AWARD 2142 (DOCKET 2109) —
RYA vs LV**

The majority decision denying this claim not only is counter to previous awards establishing the precedent upon which the Employes based their claim, but disregarded completely the pertinent parts of the Agreement which distinctly placed a limitation on territories assigned to a position.

It was on the predication of these territorial limits that wage rates were set and a consolidation of two separate positions into one certainly required negotiation. Carrier's action was unilateral and therefore improper. The majority, by its decision, has sanctioned a change in "Working Conditions" without Agreement, as required by the Railway Labor Act.

We dissent vigorously.

LABOR MEMBERS

A. T. Otto, Jr.

W. J. Ryan

J. P. Tahney