Award No. 2197
Docket No. 2177

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

Referee Jacob Seidenberg

PARTIES TO DISPUTE:

RAILROAD YARDMASTERS OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

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

YM-254 Yardmaster T. H. Bainbridge be allowed the difference between what he was paid and (8) hours, punitive Yardmaster rate for service performed on January 9, 1965, at Mingo Junction, Ohio.

Yardmaster Bainbridge was called on his relief day to relieve another Yardmaster who had become ill.

EMPLOYES' STATEMENT OF FACTS: On January 9, 1965 Yardmaster T. H. Bainbridge, regularly assigned at Mingo Junction, Ohio, was called on his rest day to complete the tour of duty of a Yardmaster who had become ill. Yardmaster Bainbridge was improperly compensated by the Carrier for actual time worked instead of the basic day at punitive rate.

CARRIER'S STATEMENT OF FACTS: This dispute arose at Mingo Junction, Ohio, on the Pittsburgh Division of the Carrier's Central Region.

The Claimant held a regular position as Yardmaster at "400" Yard, Mingo Junction, first trick, with rest days Saturday and Sunday. On Saturdays and Sundays, the first trick work of yardmaster at this location was assigned to a relief yardmaster position.

On Saturday, January 9, 1965, the incumbent of the relief yardmaster position at "400" Yard became ill while working his first trick tour of duty and was relieved of further duty on that day after working only three hours of his assignment.

Because of the necessity of filling the remaining portion of this tour of duty, and in accordance with the practice of calling employes to perform yardmaster work at this location, the Claimant was called and he worked the remaining five hours of the position. For this service, the Claimant was compensated at the punitive rate of pay for the five hours of service he performed in accordance with paragraph (a) of Rule 4-A-3, which rule is quoted on page 4 herein.

By letter dated March 2, 1965, the General Chairman, Railroad Yardmasters of America, presented a claim in behalf of Mr. Bainbridge in substantially the same form as that quoted at the beginning of this submission to the Superintendent, Personnel, Central Region. The Superintendent, Personnel denied the claim in a letter dated March 23, 1965.

The General Chairman then listed the claim for discussion with the Superintendent, Personnel, who denied the claim in a letter dated May 17, 1965. (The General Chairman did not attend the scheduled meetings for discussion of this claim and the claim had to be acted upon by the Superintendent, Personnel, in order to comply with the time limits imposed by Rule 4-G-1 of the Schedule Agreement as amended by Article V of the August 12, 1954 Agreement governing the usual manner of handling claims or grievances on the property.)

A Joint Submission, copy of which is attached as Exhibit A, was subsequently formulated by the General Chairman and the Superintendent, Personnel, for the further handling of this matter by the former and the Manager, Labor Relations, the highest officer of the Carrier designated to handle disputes on the property.

The matter was discussed by the General Chairman with the Manager, Labor Relations at a meeting held on November 5, 1965, following which the latter, in a letter dated November 22, 1965, denied the claim. A copy of the Manager's letter is attached as Exhibit B.

There has been no question raised on the property that the Claimant was not the proper employe to be called for the work in question. So far as the Carrier is able to anticipate the basis of this claim, the only question to be decided by your Board is whether, under the provisions of the Yardmasters' Rules Agreement, the Claimant is entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts giving rise to the claim are that the Claimant, a regularly assigned Yard Master, was called on one of his assigned rest days, to relieve another Yard Master who had become ill during his tour of duty. The Claimant worked five hours on this day and was compensated for it at the rate of time and one-half. The Claimant contends that instead he should have been compensated for the time worked at the rate of eight hours at the rate of time and one-half.

The Claimant predicates his claim upon the fact that it is within the purview of Rule 4-C-1(b), the "rest day" Rule which states:

> "A Yard Master who is required to work on the relief day of the position to which he is regularly assigned shall be paid at the rate of time and one-half. An extra Yard Master who is required to work on seven (7) consecutive calendar days as Yard Master shall be paid time and one-half for the service performed on the seventh day."

The Organization states that there is nothing in this Rule which states that the Claimant shall be paid on a minute basis. The Organization points to a number of awards of this Division which have held that a Yard Master who

is called to work by the Carrier on his rest day is entitled to be paid at the rate of time and one-half for the entire day. It particularly cites and relies upon Award No. 567 between the parties, which it contends has already ruled upon this issue, and therefore the claim should be sustained upon the principle of stare decisis.

The Carrier, on the other hand, contends that the Claimant was paid properly because he is only entitled to be compensated on a minute basis, and that the applicable Rule in this case is 4-A-3(a) which states:

> "A regularly assigned Yard Master notified or called to perform work and reporting for such work, between his regular work periods and not continuous therewith, shall be paid on the actual minute basis at the rate of time and one-half with a minimum of two (2) hours at the time and one-half rate computed from the time he reports for work."

The Carrier further contends that this "call" rule is buttressed by the relevant provision of the August 12, 1954 National Agreement which states:

"ARTICLE IV.

> (b) Regularly assigned yardmasters required to perform service on either or both of the rest days assigned to their positions will be paid therefor at the rate of time and one-half; except where rest days are being accumulated."

The Carrier stresses that the parties have no "Basic Day" provision in their Agreement and it is the "call" rules which provide the guarantee that is paid to employes who are called upon to perform service of less than eight hours' duration. It particularly notes that Article IV(b) states that on rest days Yardmasters compelled to work "will be paid therefor at the rate of time and one-half" which is exactly what the Claimant was paid in the instant case. This relationship between Rule 4-A-3(a) of the Schedule and Article IV(b) of the 1954 National Agreement must be analyzed in their entirety in order to glean the exact meaning of the parties. The Carrier also points out that Rule 4-A-3(a) is a special rule governing the amount of time to be paid for while Rule 4-C-1(b) is a general rule pertaining only to the rate of pay. The Carrier further denies that the awards cited by the Organization have any probative value because they were all rendered prior to Article IV(b) being adopted and secondly they deal with the specific issue of what constitutes "work" on a rest day and not with what should be the rate of pay therefor.

The Board finds that the Organization's position is sounder, in light of the existing rules, than the one advanced by the Carrier. In the first place the Board finds that Rule 4-C-1(b) deals specifically with the situation of a Yardmaster being required to work on his assigned rest day while Rule 4-A-3(a) relates to the general situation of a Yardmaster working outside of the confines of his regular tour of duty, which could encompass many other situations than working on a regularly assigned rest day. Secondly, there is nothing in Rule 4-C-1(b) that states or suggests that those covered by its terms shall be paid on a minute basis. It would appear to be unwarranted for this Board to write such a significant restriction into the Rule. Thirdly, a review of the existing cases indicates that the weight of authority in this Division, is that,

when an employe works on his assigned rest day, he is paid for the entire, and not for part of the day, at premium rates. The Board finds nothing in the existence of Article IV(b) that compels it to depart from the accepted holdings on this subject. The fact that many of the awards on the subject also have had to determine whether the tasks or functions performed by the Yardmaster on his rest day constituted "work" does not detract from the findings, that once it has been determined that the "work" was performed on a rest day, held that the affected employe was entitled to be compensated at premium rates for the whole day.

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 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION

ATTEST: Muriel L. Humfreville
Secretary

Dated at Chicago, Illinois, this 16th day of May, 1967.

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