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Award No. 2262  
Docket No. 2306

ARD

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**FOURTH DIVISION**

Referee John Day Larkin

**PARTIES TO DISPUTE:**

**SOUTHERN PACIFIC COMPANY (PACIFIC LINES)**

and

**RAILROAD YARDMASTERS OF NORTH AMERICA, INC.**

vs.

**SWITCHMEN'S UNION OF NORTH AMERICA**

**STATEMENT OF CLAIM:** Petitioners' claim that Yardmaster J. D. Shockley, who was not promoted to yardmaster under Article 12(a) of the September 1, 1956, Switchmen's Agreement, had the right under Article 8(a) of the current agreement covering yardmasters to displace a junior yardmaster at Tucson following the discontinuance of the last yardmaster assignment at Tucumcari.

**PETITIONERS' STATEMENT OF FACTS:**

1. There is in effect an agreement by and between the Southern Pacific Company (Pacific Lines) and the Railroad Yardmasters of North America, Inc., bearing an effective date of August 1, 1941 (reprinted with certain revisions on September 13, 1954, and September 1, 1959), governing wages and working conditions of employes referred to therein as "day general yardmasters, night general yardmasters, assistant general yardmasters, yardmasters and assistant yardmasters." A copy of this agreement, hereinafter referred to as the "yardmasters' current agreement," has been filed with this Board and is, by reference thereto, made a part of this submission.

2. Article 8 of the yardmasters' current agreement is captioned "Seniority" and paragraph (a) thereof, as revised effective March 29, 1965, reads as follows:

"(a) Yardmasters included within the scope of this agreement constitute one seniority class. A yardmaster's seniority will begin from the date that he is assigned to a position by assignment notice, except as otherwise provided in this article, and shall be confined to the yard where promoted as long as yardmaster service is maintained in such yard. In the event all yardmaster service is thereafter discontinued at such yard, any yardmaster who transfers therefrom to another yard where yardmaster service is maintained, within six months of the date the last yardmaster's assignment is discontinued, shall be accorded the same seniority date as yardmaster

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and territory which he is to supervise, he will familiarize himself with the work and territory without additional expense to the Company.

If senior switchman standing for promotion to yardmaster is not available as result of sickness or leave of absence, and it is necessary to promote a junior switchman the senior switchman will be allowed five (5) days after becoming available to elect whether he desires to accept the promotion; if he elects to accept the promotion, the seniority date as yardmaster which would have been acquired by the junior switchman, shall be accorded the senior switchman and the junior switchman will not thereby establish a seniority date as yardmaster.

Should switchman standing for promotion to yardmaster, or to fill vacancy as such, decline to accept, he will do so in writing, and in either case he will forfeit his right to yardmaster work for a period of six months (180 days).

At the expiration of six months, he will again be eligible for promotion and assignment to regular position as yardmaster, and to fill temporary yardmaster vacancies provided he notifies proper authority in writing of his desire to be used.

Switchmen promoted to position of yardmaster will retain their seniority as switchmen. If, after switchman is promoted to regular position as yardmaster, the position is discontinued or he is displaced, he will be privileged to exercise his switchmen's seniority to acquire a position, but will not be privileged to work as switchman, when his seniority entitles him to a regular position as yardmaster. If loses position as yardmaster and if privileged to displace a switchman, such displacement must be made within five (5) days after loss of position as yardmaster, except if on leave of absence, or if off duty account sickness or injury, displacement must be made within five (5) days from date of return.

Should a switchman promoted to position of yardmaster be demoted, he will be privileged within five (5) days of said demotion (or if on leave of absence account sickness or otherwise within five (5) days from date of return), to displace a junior switchman. Superintendent will notify Local Chairman of such demotion within five (5) days after demotion.

Note: The title 'yardmasters' as used in this Section will include General Yardmaster (except at large and important terminals), Assistant General Yardmaster, Yardmaster and Assistant Yardmaster."

Both of the above-referred-to agreements are by and between the Southern Pacific Company (Pacific Lines) and the Switchmen's Union of North America, and while switchmen at Tucumcari and Tucson are covered by separate working agreements, they have consolidated seniority pursuant to Memorandum of Agreement YDM 1-324, copy of which is attached at Petitioners' Exhibit A. The yardmasters' current agreement covers all of carrier's yardmasters, including those at Tucumcari and Tucson.

promoted in that yard prior to June 1, 1963 will have protected seniority in that yard.

Any yardmaster who transfers to another yard under this provision will qualify for yardmaster service in that yard on his own time."

3. On February 24, 1967, the last yardmaster assignment at Tucumcari, New Mexico, was discontinued. Thereafter on March 11, 1967, Yardmaster J. D. Shockley, who was assigned to a yardmaster position at Tucumcari May 20, 1950, and thus acquired yardmaster's seniority as of that date pursuant to provisions of the yardmasters' current agreement, exercised his yardmaster's seniority to displace Yardmaster James L. Hill, seniority date December 18, 1965, at Tucson, Arizona, in accordance with the above-cited provisions of Article 8(a), yardmasters' current agreement. Yardmaster Hill thereafter displaced junior Yardmaster P. A. Vilbrand, the youngest assigned yardmaster at Tucson, and Vilbrand, being unable to hold a regular yardmaster assignment, reverted to service as switchman and displaced a junior assigned switchman.

4. Yardmaster Shockley was promoted from switchman to yardmaster at Tucumcari under the provisions of Article 18 of an agreement covering yard service employes on the former EP&SW, effective November 1, 1924 (reprinted November 1, 1962, with certain revisions), which reads as follows:

"Section (a). In line of promotion yardmen will have a fair opportunity to demonstrate their ability to perform the work and when disqualified the reason therefor will be stated in writing if requested; and the yardmaster, or the supervising official, is to be the judge of their qualifications and efficiency. Any one feeling that he has not had a fair and impartial trial or examination will have the right to appeal to higher authority. However, when any engine foreman has been disqualified, he shall at the expiration of sixty (60) days, upon request to the proper supervising official, be given another opportunity to demonstrate his ability.

Section (b). In the appointment of Yardmasters and Assistant Yardmasters, the senior qualified yardman will be given full and unprejudiced consideration."

Yardmaster Hill, on the other hand, was promoted from switchman to yardmaster at Tucson under the provisions of Article 12, Section (a) of an agreement covering switchmen on the Southern Pacific (Pacific Lines), effective September 1, 1956 (reprinted March 1, 1965, with certain revisions), which reads as follows:

"Section (a). Switchmen will be promoted in their respective yard, helper to foreman, foreman to yardmaster; seniority and ability to govern. As a prerequisite to promotion to yardmaster, it will be necessary for the applicant to have served at least one (1) year (306 days) as engine foreman in yard where promoted; except where new yards are established, senior engine foreman with one (1) year's (306 days') experience on the seniority district, shall be eligible for position as yardmaster in accordance with this Section. Should switchman promoted to yardmaster not be familiar with the work

5. The claim in this docket arises as a result of a position advanced by the Switchmen's Union of North America that Shockley's displacement of Hill on March 11, 1967, was not proper because Shockley had not qualified for promotion to yardmaster in accordance with the provisions of Article 12, Section (a), reproduced hereinabove.

(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 employes involved in this dispute are respectively carrier and employes 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 Petitioners, Railroad Yardmasters of North America, Inc., and Southern Pacific Company, and the Respondent, Switchmen's Union of North America, were given due notice of the hearing; the Petitioners appeared at said hearing; and the Respondent waived right of appearance at said hearing.

The right to negotiate with the carrier rules governing the performance of the work of the yardmaster craft, including the exercise of seniority to obtain positions covered by the yardmasters' agreement, is vested solely in the organization legally authorized to represent the yardmaster craft. See Awards 430, BRT v. IHB; 495, NPTC v. BRT; 1360, SUNA v. WP; and 1531, SUNA v. SP, by this Division. See also Switchmen's Union of North America v. Southern Pac. Co., C. A. Cal. 1958, 253 F. 2d 81, certiorari denied 79 S. Ct. 29, 358 U. S. 818, 3 L. ed. 2d 60, rehearing denied 79 S. Ct. 152, 358 U. S. 896, 3 L. ed. 2d 123, and Order of Railway Conductors and Brakemen v. Switchmen's Union of North America, C. A. Ga. 1959, 269 F. 2d 726, certiorari denied 80 S. Ct. 206, 361 U. S. 899, 4 L. ed. 2d 155. The controlling Agreement involved in this dispute is between the Railroad Yardmasters of North America, Inc., and the Southern Pacific Company and contentions to the contrary are invalid.

This Board, therefore, finds that the contentions of the petitioners must be sustained.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of FOURTH DIVISION

ATTEST: Muriel L. Humfreville  
Secretary

Dated at Chicago, Illinois, this 7th day of February, 1968.

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