

Referee John H. Dorsey

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Lehigh Valley Railroad Company

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

Yardmaster Leo Scruitsky be allowed one day's pay at the appropriate Yardmaster time and one-half rate for June 17, 1967 account not being called for vacancy 3 P.M. to 11 P.M., at Tifft Terminal when the Carrier called a junior extra Yardmaster when the Claimant was available.

OPINION On June 2, 1955, the parties executed a letter agreement
OF BOARD: which, insofar as here material, reads:

"When extra yardmasters (or other classes of employes used to perform extra yardmaster service) are not available to work at straight time rate to fill a yardmaster vacancy, first consideration in filling such a vacancy will be to use regularly assigned yardmasters in the order of their seniority at the point where the vacancy exists, and when so used on their rest days or on days on which they work their regularly assigned position also, they will be paid at time and one-half rate.

* * * *

Extra yardmasters (or other classes of employes used to perform extra yardmaster service) will not be considered 'available' unless they have had not less than eight (8) hours off duty from last period of service in any class or grade or position. (Emphasis supplied.)

* * * *

I suggest this rule be added as Paragraph (g) of Rule 8 of the Yardmasters' current schedule agreement."

On June 17, 1967, a Yardmaster vacancy occurred at Carrier's Tifft Street Terminal, Buffalo, New York, on the 3:00 P.M. to 11:00 P.M. shift. Carrier assigned Extra Yardmaster J. Hass to fill the vacancy. Hass had been assigned to a clerical position with hours from 11:59 P.M., June 16, 1967 to 7:59 A.M., June 17, 1967. Carrier states that Hass was

relieved from the clerical position "at 7 AM on this day (June 17) to be able to cover this yardmaster assignment allowing him to have 8 hours rest and not necessary to call out regular assigned yardmaster (Claimant) on his rest day;" further, inasmuch as Clerk Hass had personal business at the Passenger Station, he volunteered to bring the mail over to the Freight Office" after 7:00 A.M. Carrier did not deny that the delivery of the mail was a messenger duty of Hass' clerical position.

The only issue in this dispute is whether Hass was "available" as an Extra Yardmaster for assignment to the Yardmaster vacancy on the shift beginning 3:00 P.M. June 17, since 8 hours had not lapsed from the termination of the assigned hours of his clerical position.

We resolved a like issue on another property in our Award No. 1711 wherein we held:

"The critical question is whether or not Gibbs was available for the second trick yardmaster vacancy. In our view, this issue must be resolved in the negative. The clerical position he filled the day in question had regularly assigned hours from 8:00 A.M., to 5:00 P.M., and there is no showing that when he first reported for work he was informed that those hours would be curtailed. We do not consider an employe 'available', within the meaning of Rule 5-A-2, for extra Yardmaster work when the assigned hours of such work conflict with those of a position he already occupies. An employe in that situation does not become 'available' by the device of abandoning the position he has begun to fill before its assigned hours have run their course (see Third Division Award 3875) or by Carrier's act of relieving him from that work before the expiration of its regular hours. We are of the opinion that this is a sound and fair interpretation of Rule 5-A-2. In arriving at our conclusions, we have only considered the narrow question of an employe's availability for extra Yardmaster work under the applicable Agreement and are not passing upon Carrier's power to blank a portion of a position's work day.

Claimant was entitled to be used for the disputed extra work on one of his rest days and no valid justification is perceived for limiting his monetary claim.

The claim will be sustained."

For reasons stated in Award No. 1711 we will sustain the instant claim.

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 thereon.

The Carrier violated the Agreement.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: *Muriel L. Humphreille*
Muriel L. Humphreille
Secretary

Dated at Chicago, Illinois, this 28th day of January, 1969.