

Referee Lloyd H. Bailer

PARTIES TO DISPUTE: Railroad Yardmasters of America
The Atchison, Topeka and Santa Fe Railway Company
-Coast Lines-

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

Yardmaster J. L. Collins be allowed one day's pay at the appropriate Yardmaster time and one-half rate for January 9, 1968 account junior Yardmaster called to double when Claimant was available.

OPINION OF BOARD: On the claim date Extra (Unassigned) Yardmaster K. G. Cutshell performed service as a Yard Helper on Job No. 23, with assigned hours 3:59 PM to 11:59 PM. Shortly before 10:45 PM the same date a Yardmaster laid off from his regularly assigned Position No. 2454, with scheduled hours 11:00 PM to 7:00 AM. The local Trainmaster thereupon arranged to tie up Job No. 23 at 10:45 PM and Cutshell was used to fill the temporary Yardmaster vacancy on Position No. 2454. The subject claim was filed in behalf of Yardmaster Collins, who was observing a rest day on the date involved, the contention being that Extra Yardmaster Cutshell was not available for this temporary Yardmaster vacancy because it was overlapped by his Yard Helper assignment. Carrier responded that it was not prohibited from tying up Extra Yardmaster Cutshell's yard job early, that he therefore became available for the 11:00 PM temporary Yardmaster vacancy and was properly used thereon in accordance with Article IV, Section 2(1) of the Yardmasters' Agreement, and that--in any event--Yardmaster Collins was not the proper claimant because he was not the senior Yardmaster willing to work and available per Article IV, Section 2(3).

Article IV, Section 2 of the Yardmasters' Agreement states in pertinent part:

"Section 2. Temporary vacancies of unknown duration shall be protected on a day to day basis (1) by the senior unassigned yardmaster available, (2) by the senior trainee yardmaster available, and (3) in case time and one-half would accrue to anyone, the senior yardmaster willing to work and available; however, a regular yardmaster will not be used as extra yardmaster if it will interfere with his filling his next regular assignment...."

A variety of awards by the several Divisions on the question of availability have been cited during the presentation of this case. Moreover, during argument before the Referee the Carrier members placed particular stress on Fourth Division Award No. 2180 which held that the senior extra Yardmaster, regularly assigned on a yardman's position starting at 2:30 PM, was contractually entitled to be used on an extra Yardmaster assignment commencing at 3:30 PM on the same date. This Division should of course strive for consistency in its holdings under similar facts and contract language but when diversity of holdings has already developed, departure from the less persuasive precedent becomes unavoidable.

We regard the analysis of the availability issue in Fourth Division Award No. 1711 as the sounder view and we subscribe to the holding in that case under the facts involved. When an employe is assigned a tour of duty with hours which overlap the hours of another assignment we do not think he properly may be considered available for the second assignment by the device of relieving him early from the first assignment so that he may be used on the second assignment to the deprivation of another fully available and qualified employe. But Management is not barred from early relief of an employe from a given assignment in order to use him on another assignment when no other qualified employe is available for the second assignment. Nor are we here passing on the general right of the Carrier to blank a portion of a position's work day. Under the circumstances that prevailed in the present case, however, Extra Yardmaster Cutshell was not available for the subject temporary Yardmaster vacancy.

For the purpose of this dispute it is immaterial whether Claimant Collins was the most senior of the Yardmasters willing to work and available for the vacancy in question. The Carrier will not be required to compensate more than one claimant for the Agreement violation here found to have occurred. Moreover, we find no valid reason for limiting the amount requested in the claim.

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 thereon.

Carrier violated the Agreement.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: *Muriel L. Humfreville*

Muriel L. Humfreville
Secretary

Dated at Chicago, Illinois, this 14th day of July, 1970.