Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 2589
FOURTH DIVISION Docket No. 2560

Referee Harold M. Weston

PARTIES TO DISPUTE: Railroad Yardmasters of America

Chicago and North Western Railway Company

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

Yardmaster G. N. Thielen be allowed one day each day on the following dates at the appropriate Yardmaster time and one-half rate:

December 29, 1968 and January 12, 19, 20, 26 and February 2, 9 and 23, 1969 account of not being called for vacancy on Yardmaster assignment 001 starting at 6:30 A.M.

January 18, 25 and February 8 and 22, 1969 account of not being called for vacancy on Yardmaster assignment 002 starting at 2:30 P.M.

January 17, 24 and 31 and February 7 and 21, 1969 account of not being called for vacancy on Yardmaster assignment 003 starting at 10:30 P.M.

OPINION OF BOARD: Petitioner contends that Carrier breached the Yardmasters Agreement when it used a yardman instead of a yardmaster to fill a one-day vacancy in a yardmaster position on each of several dates during December 1968 and January 1969. Claimant is a regularly assigned yardmaster who had filed a written request that he be called for yardmaster vacancies.

It is Carrier's position that it is free to use yardmen to fill vacancies of one day's duration in view of past practice and the parties' Memorandum of Understanding of July 23, 1956.

In the cases that come before this Division, it is not always easy to define the scope of yardmaster duties. Here, however, the problem does not exist for it is undisputed that the positions in dispute were yardmaster positions. Work covered by any collective bargaining agreement is reserved for employes holding seniority rights under that agreement. If employes outside the scope of the agreement are permitted to occupy positions covered by its terms, the agreement is undermined and rendered meaningless to that extent.

The Yardmasters Organization, the accredited and sole bargaining Agent of the yardmasters involved in the present case, negotiated this Agreement for the benefit of the employes within the bargaining unit and any position within the scope of that Agreement must be filled only by the classifications covered by its terms when they are available to do so. A contrary holding would be inconsistent with elementary principles of labor-management relations and would ignore the purpose and scope of the Agreement as well as the seniority rights of the employes it covers.

There is nothing in the Agreement that calls for a different result. Rule 8 deals with the filling of vacancies, providing in subparagraph (a) for the bulletining of new positions and vacancies of 30 days or more and specifying in subparagraph (b) which yardmaster is to fill temporary vacancies of less than 30 days duration. The Memorandum of Understanding of July 23, 1956, emphasized by Carrier, describes the procedure and priority among yardmasters to be followed when it becomes necessary to fill yardmaster positions at the overtime rate. None of these provisions nor any other rule to which we have been referred lends support to Carrier's theory in this case. Nor is the evidence submitted by Carrier sufficiently persuasive and specific to establish, as a matter of past practice acquiesced in by the Organization, the strange proposition that an employe outside the coverage of the Yardmasters Agreement may be used in preference to an available yardmaster or assistant yardmaster to fill a temporary vacancy in a yardmaster position.

As between Claimant, a yardmaster, and yardmen without any seniority rights under the Agreement, Claimant is entitled to fill yardmaster vacancies when he is available to do so. The record indicates that he was available to fill the Saturday vacancies, those on January 18 and 25 as well as February 8 and 22, 1969, since Saturday is his rest day. The claim will be sustained with respect to those dates, the time and one-half rate being appropriate since that is the pay he would have received if called to fill the vacancy on each of those days. He does not appear to have been available on the other claim dates and the claim will be denied as to those dates.

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.

A W A R D

Claim sustained to the limited extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: Muriel L. Humfreville

Muriel L. Humfreville
Secretary

Dated at Chicago, Illinois, this 9th day of November, 1970.