

Referee Harold M. Weston

PARTIES Railroad Yardmasters of America
TO

DISPUTE: The Baltimore and Ohio Railroad Company

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

Yardmaster L. J. Boyer be allowed one day's pay at the appropriate Yardmaster time and one-half rate for each date, October 23, 1970, October 24, 1970 and November 4, 1970 at Toledo, Ohio when junior Yardmasters were used to fill vacancies.

OPINION OF BOARD: The present claim is based on the following provision of Article 9 (a-2):

" . . . If neither unassigned or substitute Yardmasters are available, then a regularly assigned Yardmaster must be used. When necessary to use a regularly assigned Yardmaster the senior qualified available regularly assigned Yardmaster who has signified in writing of his desire to be called for such service will be used. . . "

On two of the three claim dates, Claimant, who was regularly assigned to the 11 P.M. to 7 A.M. Yardmaster assignment, was not available since the vacancies in question on those days existed on the 4 P.M. to 12 Midnight shift. An employe is committed to protect the hours of his regularly assigned position and is not available to fill a temporary short-term vacancy when doing so would prevent him from completing his own assignment. Claimant's seniority rights do not entitle him to abandon his regularly assigned position in order to fill a casual or intermittent vacancy in the same class. Accordingly, the claim as to October 24 and November 4, 1970 must be denied since Claimant was not available for the disputed work.

The facts relating to the third claim date, October 23, 1970, are quite different. Claimant was available for the vacancy existing on the 3 to 10 P.M. trick that day and we will sustain the claim as to October 23. Carrier's general assertion that Assistant Trainmaster Howland attempted to reach Claimant does not satisfy its burden of proof, particularly since Petitioner insists that Claimant was home that day and neither Howland nor any other representatives of Carrier denied the General Chairman's specific statements that as early as 9:30 A.M. and 1 P.M. on October 23, Yardmasters junior to Claimant were asked to fill the vacancy in controversy.

The record developed on the property does not support the use of a junior Yardmaster instead of Claimant to fill the October 23rd vacancy and the claim as to that date will be sustained in its entirety since Claimant would have received time and one-half if he had been given the additional assignment.

FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The Carrier and the Employee involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing, but were granted privilege of appearing before the Division with Referee sitting as a member thereof, to present oral argument.

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Claim sustained as to October 23, 1970, and denied as to October 24 and November 4, 1970.

NATIONAL RAILROAD ADJUSTMENT BOARD
BY Order of Fourth Division

ATTEST: *E. A. Killeen*

E. A. Killeen
Secretary

Dated at Chicago, Illinois, this 28th day of February 1973.