Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award No. 3211
Docket No. 3236

Referee Irwin M. Lieberman

PARTIES TO DISPUTE: Railroad Yardmasters of America

Grand Trunk Western Railroad Company

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

Carrier violated provisions in Mediation Agreement A-9288 dated February 2, 1973, abolishing yardmaster positions without required 10 day notice. The following Yardmasters claiming 8 hours pay at straight time rate for dates indicated:

J. Burns	December 22, 23, 25, 26, 27, 28, 29, 30, 1973 and January 1, 1974
N. Scutt	December 23, 24, 25, 28, 29, 30, 31, 1973 and January 1, 1974.
D. Wallace	December 24, 25, 26, 27, 30, 31, 1973 and January 1, 1974
W. Shaw	December 24, 25, 26, 27, 30, 31, 1973 and January 1, 1974.

OPINION OF BOARD: On December 17, 1973 Carrier issued a Circular abolishing six yardmaster positions effective December 21, 1973. As a result of the action described in the Circular Claimants were unable (either through displacement or abolishment of their jobs) to hold regular yardmaster assignments subsequent to December 21st. On January 2, 1974 the positions which had been abolished were re-bulletined. The positions, according to Carrier, were initially abolished because of a General Motors Company holiday shutdown which ran from December 24th through January 1st and the fact that the positions were primarily to service the General Motors plant.

The Mediation Agreement A-9288 dated February 2, 1973 provides in pertinent part:

> "In the event that a Carrier decides to abolish a yardmaster position covered by the rules of a collective agreement between Railroad Yardmasters of America and a Carrier party hereto, such Carrier shall notify the general chairman thereof by telephone (confirmed in writing) or telegram not less than ten calendar days prior to the effective date of abolishment. If requested by the general chairman, the representative of the Carrier and the general chairman or his representative shall meet for the purpose of discussing such abolishment.

Nothing in this Agreement shall affect existing rights of either party in connection with abolishing yardmaster positions."

Carrier states that the Carrier officer responsible for the abolished yardmaster positions did not believe that the action he took came under the Mediation Agreement, above, since he interpreted that Agreement as being applicable to permanent abolishments only and this was only a temporary move. While Carrier in its submission recognized that the Mediation Agreement did not distinguish between permanent or temporary abolishments, it felt that the second paragraph of the Mediation Agreement gave it the unhampered right to abolish the positions. It argued further that in view of that provision, the results in this instance would have been the same whether or not the General Chairman had received ten days advance notice. The Carrier felt that in this instance there was nothing to discuss with the General Chairman since the work of the abolished positions was merely suspended during the holiday shutdown.

Petitioner, while pointing out that identical issues were disposed of in Awards 3054 and 3056, argues the importance of this dispute in that it represents an attack on the intent of the parties in the understanding codified in the Mediation Agreement supra. The Organization contends that Carrier's right to abolish positions, protected in the second paragraph of the Mediation Agreement, is in fact conditioned on Carrier notifying and meeting, if requested, with the Organization's representative, and the Organization considers this an important right.

We find Petitioner's arguments convincing. Carrier did not in this case notify the Organization as required by the Mediation Agreement. The fact that the decision might not have been altered and the positions would have been abolished in any event, is not relevant, and is at best merely a hypothesis. It is clear that Carrier violated the Agreement; the Claim will be sustained.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: Executive Secretary
National Railroad Adjustment Board

By: Nancy J. Dever
Assistant Executive Secretary

Dated at Chicago, Illinois, this 13th day of August 1975.