

Referee Dana E. Eischen

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Robert W. Blanchette, Richard C. Bond and John H. McArthur, Trustees
of the Property of Penn Central Transportation Company, Debtor

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

SYSTEM DOCKET 470
NORTHEASTERN REGION - BUFFALO DIVISION CASE NO. 21-73-134

Yardmaster V. E. Stiller be allowed one day at time and one-half Yardmaster rate for August 12, 1973 account Carrier allegedly permitting A. C. Pizzolanti to work as yardmaster at Penn Yard 9 AM to 3PM, which resulted in paying time and one-half to Clerk R. VanSchaick to fill Mr. Pizzolanti's clerical position, violation of Section 4-B of the Extra List Yardmaster Agreement.

OPINION The facts in this case are uncontested insofar as follows: On
OF BOARD: August 12, 1973 the relief Yardmaster at Penn Yard, Buffalo assigned to first tour laid off for personal reasons and Carrier used Mr. A. C. Pizzolanti to fill the position; Pizzolanti at the time held a first tour clerical relief position and so Carrier called an extra clerk to fill this position; said extra clerk covered the position at straight time rate of pay for 7:00 am but he became ill at 11:00 am and went home; Carrier then called another clerk, Mr. R. Van Schaick to cover the clerical position from 11:30 am to 3:00 pm and Van Schaick was compensated three and one-half hours at the time and one half rate. In the foregoing circumstances, the Organization alleges a violation of the so-called Extra List Agreement signed at Syracuse, New York in December 1968 and effective January 1, 1969 in the Buffalo Zone. Specifically, the Organization contends that Section 4(b) infra was violated:

* * * * *

"4. In the event the extra list is exhausted and a vacancy exists that is filled, such vacancy will be filled as follows:

- (a) By the senior available furloughed or unassigned yardmaster whose use will not result in additional expense to the Company, except that such furloughed yardmasters will not be used on their rest day in another craft.

- (b) From employees of other crafts who have signified, in writing, their desire to become yardmasters and who have satisfied Management as to their qualifications, except that such employees will not be used on their rest days in other crafts or when the Carrier would be required to pay punitive rates to fill their positions. (Emphasis added).

* * * * *

The parties are in disagreement regarding a material fact viz: Pizzolanti's status under the Yardmaster's Agreement. Carrier maintains that Pizzolanti held Yardmaster's seniority date of July 16, 1972; that he forfeited said seniority per Rule 3-B-2 in September 7, 1973 but that on the claim date of August 12, 1973 he was an unassigned Yardmaster per the meaning of Rule 4(a) of the Extra List Agreement. The Organization denies that Pizzolanti was on the Yardmaster seniority list for 1973 and insists that he was a clerk without Yardmaster seniority on August 12, 1973. The Board observes that this point is apparently obviated by the theory advanced by the Organization in handling this claim, to wit, that the alleged violation commenced at 11:30 a.m. when Van Schaick, who relieved the clerk who relieved Pizzolanti, reported at the punitive rate. Thus the dispute is focused on an alleged violation of the last phrase of Section 4(b): "... or when Carrier would be required to pay punitive rates to fill their positions."

We have considered carefully the positions advanced and especially the Agreement language. The interpretation and application sought by the Organization in our judgement puts an unreasonable strain upon Agreement language which clearly was not intended to cover the instant set of circumstances. As the Organization reads the language Carrier, because of an unanticipated, uncontrolled and essentially unforeseeable occurrence midway through the assignment, would have had to remove Pizzolanti from the Yardmaster position he was filling, return him to his clerical position and then call another furloughed or unassigned Yardmaster to cover the remaining hours of the Yardmaster position. While there is arguably some support for this view such a reading strains credibility and reason. We have expressed approval in an earlier Award for the accepted principal of contract construction and arbitral law that holds whenever language is susceptible to alternative constructions, one leading to a reasonable result and the other to a harsh or unreasonable application the former will be preferred. We hold to this rule of reason herein and deny 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: Executive Secretary
National Railroad Adjustment Board

By: *Lawrence J. Dever*
Assistant Executive Secretary

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