

Referee Irwin M. Lieberman

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Grand Trunk Western Railroad Company

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

Extra Yardmaster J. D. Wiers be allowed 8 hours at straight time yardmaster rate for February 25, 26, and March 11, 1974 account not used to work Yardmaster assignments on these dates, and unavailable Extra Yardmaster worked the 7:30 A.M. vacancy.

OPINION OF BOARD: This dispute is concerned with whether or not two employees were properly determined to be eligible to fill extra Yardmaster vacancies on the three dates in question. The two employees held dual seniority as yardmen and as extra yardmasters. They were regularly assigned as yardmen on a job with hours of 3:55 P.M. to 11:55 P.M. On the three dates involved herein they were assigned to work the 7:30 A.M. Yardmaster assignment following their regular job. On all three days they had been allowed early quits (twenty five minutes) on their regular jobs. Carrier maintains that it had permitted the entire crew to quit early on the three days since all the work of their assignment had been completed; such early quits were not unusual at this location.

Petitioner claims that the employes used to fill the vacancies could not have properly performed service the following morning had they worked their scheduled hours of the yard assignments; they would have been in violation of the Hours of Service Law. It is argued, therefore, that the two employees were not available in accordance with Article 5(c). The Organization argues that the two men abandoned their yard positions before their regular completion time in order to fill the extra Yardmaster position. A number of Awards, including Award 1711, are cited.

Carrier insists that the two men were available under the Hours of Service Law, stating that Carrier had taken no affirmative action to relieve them of their assignments as Yardmen. Because of their early quits, the two men were the senior available extra yardmasters on the claim dates. Carrier distinguished the instant factual situation from that in Award 1711 and Third Division Award 3875 in that in those cases the Carrier permitted the abandoning of the work of one assignment in order to work on another assignment. Carrier argues that the two men were available, as provided in Article 5(c) and were properly called to fill the yardmaster vacancies in line with their seniority standings.

In Award 1711 we stated, inter alia, as follows:

"We do not consider an employe 'available', within the meaning of Rule 5-A-2, for extra Yardmaster work when the assigned hours of such work conflict with those of a position he already occupies. An employe in that situation does not become 'available' by the device of abandoning the position he has begun to fill before its assigned hours have run their course (see Third Division Award 3875) or by Carrier's act of relieving him from that work before the expiration of its regular hours."

The fact that Carrier "allows" early quits does not materially change the factual situation in the instant dispute from that at issue in Award 1711. Whether an employe abandons his regular assignment, with Carrier's acquiescence, or quits early with Carrier's approval, is immaterial; both situations clearly fall within the language cited above in that the employe has left his assignment before its assigned hours have run their course. It is also obvious in this dispute that the assigned hours of the extra Yardmaster assignments on the dates herein conflicted with the hours of the regular yardman's assignments; this is precisely analagous to the situation discussed in Award 1711. It is our conclusion that an employe who has abandoned his regular position by quitting early, as in this dispute, is not "available" under the circumstances herein, as provided in Article 5(c). The Claim must 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.

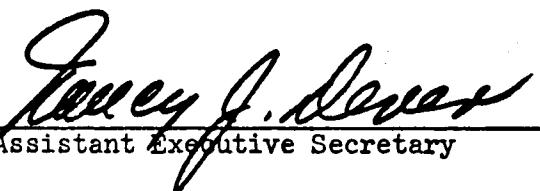
The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: Executive Secretary
National Railroad Adjustment
Board

By: 
Assistant Executive Secretary

Dated at Chicago, Illinois, this 16th day of September, 1975