Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 3280
FOURTH DIVISION Docket No. 3183

Referee Dana E. Eischen

PARTIES TO DISPUTE: Railroad Yardmasters of America

Norfolk and Western Railway Company (Western Region)

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

Yardmaster R. P. White be allowed 8 hours at assistant general Yardmaster's rate of pay for the following dates: September 16, 20, 21, 22, 24, 27, 28, 30, 1973, October 12, 1973 account third shift yardmaster position at Ft. Wayne, Indiana abolished in violation of schedule Rule of the Agreement.

OPINION OF BOARD: This case and three companion cases, in Dockets 3184, 3185 and 3186 involve the same parties, Agreement and grievance. But for the identities of the respective Claimants in each case the facts, arguments and positions of the parties are in words or substances identical and the cases were consolidated for hearing before the Board. Accordingly, we shall treat the cases seriatea and designate the instant docket as the lead case.

The unrefuted record indicates that Carrier operates switching Yards ("Downtown Yard" and "East Wayne Yard") at Fort Wayne, Indiana, a common point on the lines operated by the former NKP and Wabash Railroads which merged with Carrier in 1964. Prior to September 14, 1973 Downtown Yard was a three shift operation employing yardmasters around the clock. Beginning in Spring 1973, the volume of switching operations at Downtown Yard declined. Under agreements with operating Brotherhoods, Yard Crews formerly reporting or going off duty at Downtown Yard (former Wabash) instead began doing so at East Wayne Yard (former NKP). The Downtown Yard crews then traveled to Downtown Yard with or without engine, performed their duties and returned to East Wayne to tie up and report off. While working at Downtown Yard these crews on all three shifts were under the supervision of the respective shift yardmaster at Downtown yard. The instant dispute arose when Carrier abolished the positions of third shift yard crew and third shift Yardmaster at Downtown Yard, save for one night of the week, Wednesday. On Wednedays, since September 14, 1973, the regularly assigned relief yardmaster and relief yard crew work a "tag-end" day at Downtown Yard. Beginning on and after September 15, 1973 Petitioner presented time claims for several named Claimants, including Claimant herein, alleging that the third shift yardmaster position was abolished in violation of the schedule Rules of the Agreement.

Each of the parties in this case has complicated the record by raising extraneous matters both on and off the property. No useful purpose would be served in chronicling each of the evidentiary objections and cross-claims made by the respective parties. Suffice it to say that in keeping with long established principles of this Board we shall confine our considerations to matters raised and handled on the property.

Apparently because of the volume of identical claims Petitioner developed a "boiler plate" form letter setting forth the gravamen and allegations on appeal. In words or substance the Petitioner asserts that clerical, dispatcher and other non yardmaster employees at Downtown Yard and East Wayne Yard are illegally performing the duties of the abolished third trick yardmaster position. In essence, Petitioner avers that the position was abolished but not the duties and that these duties have been parceled out to others. In addition, Petitioner contends that the abolishment worked a de facto unilateral terminal consolidation in the absence, as of September 1973, of an implementing agreement and, thus, constituted a violation of the merger agreement.

Carrier resists the claims on several grounds: Initially Carrier points out that no specific rule of the schedule Agreement is cited by Petitioner in support of the claim, although inferentially it appears to allege a Scope Rule violation of Article I. We note also that Petitioner referenced the Seniority Rule in its Ex Parte Submission but this is one of the matters mentioned supra which was not raised on the property and, accordingly, comes too late for our consideration. Carrier maintains that even if arguendo the Scope Rule was relevant it has not been violated because: 1) There is no third shift supervisory yardmaster work extant at Downtown Yard because no switching crew is assigned there third shift any night but Wednesday 2) Whatever work remains on the third shift on nights other than Wednesday consists of clerical and ministerial chores not exclusively reserved to yardmasters either by express contract or by custom practice or tradition; 3) The second trick Downtown Yard Yardmaster lays out and programs for relay through a train dispatcher whatever limited orders regarding track selection for pick ups and set outs by road crews needed during the third shift; and, 4) The East Wayne Yardmaster is not supervising third trick Downtown Yard service because for all intents and purposes there was no such work after September 14, 1973 due to business decline.

We have considered carefully the entire record herein and the Awards cited by each of the parties. The evidence shows that not only the position of third trick yardmaster, but virtually all yard service on the third trick at Downtown Yard has been abolished since September 14, 1973. On Wednesday nights the yard service is supervised by a third trick relief yardmaster. On all other

nights there are no exclusively reserved yardmaster duties performed by clerical employees at Downtown Yard. Nor, as we have observed in several earlier cases, is it a violation when second trick yardmasters programs and relays limited orders for pick ups and set outs to third trick road crews through non-yardmaster employees. See eg.,Awards 2367, 3009 and authorities cited therein.

On the basis of our foregoing review of the record the Board must hold that the claim cannot be sustained. Petitioner has not shown by probative evidence on the record that either the applicable schedule Agreement or the merger Agreement have been violated as alleged in these claims. Accordingly we are constrained to deny the 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: Assistant Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1976.