

Referee David Dolnick

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Southern Railway Company

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

Claim on behalf of Yardmaster C. A. Lamb, Bulls Gap, Tenn. for one days' pay at appropriate yardmaster rate of pay for April 22, 1974, and each day thereafter, until condition complained of is corrected, including rest day and vacation allowances, between the hours of 4:00 P.M. to 11:00 P.M.

OPINION OF BOARD: Only one Yardmaster has been assigned to Bulls Gap since 1954. Claimant occupied that position since October, 1967. His regularly scheduled hours were from 7:00 A.M. to 4:00 P.M. six days a week, and five days a week since June 1, 1971. His rest days were Saturday and Sunday. Claimant is the only one with Yardmaster seniority at Bulls Gap. One yard engine works at Bulls Gap from 6:00 A.M. to 2:00 P.M.

On the claim date, there were three operator positions at Bulls Gap, one on each shift. Two yard clerk positions were abolished on April 22, 1974 and their duties were assigned to the agent-operator and clerk-operators.

Petitioner takes exception to four specific duties assigned to the agent-operator and clerk-operators contained in Bulletin No. 11 dated April 15, 1974, which read as follows:

- "5. Instruct trains concerning set-outs and pick-ups and where to yard trains
- "6. Instruct yard crews on switching to perform
- "7. Call crews and report crews off duty to the Call Office at Knoxville
- "8. Other duties as directed from proper authority."

It is the position of the Petitioner that the assignment of this work to the agent-operator and to clerk-operators violates the Scope Rule of the schedule agreement.

As provided in Section 3, First, (j) of the Railway Labor Act, as amended, the Brotherhood of Railway Clerks (BRAC) was notified of the proceedings pending on this claim and filed an ex parte submission with this Board. They allege that the duties enumerated in Bulletin No. 11 have been performed by clerical employes at least since 1954 "without claim or complaint from the yardmasters." It is work which clearly comes within Scope Rule A-1 of the Clerks' Agreement. Their submission also contains the following statement:

"The sole and only reason for Bulletin No. 11 was that under the provisions of the merged Clerk-TCU Agreement the two positions of clerk were being abolished effective April 22, 1974 and the positions of operators had been reclassified as Agent-Operator and Clerk-Operators and they are being instructed as to the duties formerly performed by clerks which they would be required to perform in addition to their operator duties on and after April 22, 1974. The operators were not assigned any duties which had not formerly been performed by clerks nor were the duties and assignment of the yardmaster changed in any manner."

Carrier affirms the contention that the duties of the Agent-Operator and Clerk-Operators, as contained in Bulletin No. 11, were not expanded. They are the duties which the clerks and operators previously performed.

It is true, as we have said in Award No. 2032, that the "primary duties of a Yardmaster are to supervise the switching of cars in the freight yard and to issue orders to all yard employes". While the Yardmasters' Scope Rule neither defines nor describes the work of Yardmasters, Carrier's Operating Rule No. 1201 does. It states, among other things, that Yardmasters "have charge of their respective yards, of the making up and distribution of trains and the handling of cars therein, of yard employes, and train and engine crews while within yard limits (page 5 of BRAC Submission).

"Instruct trains concerning set-outs and pick-ups and where to yard trains" and "Instruct yard crews on switching to perform" generally fall within the description of Yardmaster work which exclusively belongs to them under the Scope Rule. It is not work which belongs exclusively to Clerks.

But a special situation exists here. Only one yardmaster has occupied a position at Bulls Gap for more than twenty years. He works only one shift, five days a week. And only one yard engine works that location and then only during the hours when the yardmaster is on duty. No yard engine work on the second or third tricks. It is clear that the Agent-Operator and the Clerk-Operators do not supervise any yard crews engaged in switching of cars in the yard. They have no yard crews to supervise or to instruct. If other yard engines worked the second and third tricks when no yardmaster was on duty and they were instructed and supervised by an Agent-Operator and Clerk-Operators, Carrier would have violated the Yardmasters' Scope Rule.

What, if any, trains arrive or leave Bulls Gap when the Yardmaster is not on duty is not clearly shown in the record. Nor is there relevant evidence that train crews pick up and set out cars in that yard when the Yardmaster is not there. But if this condition does exist and the Agent-Operator and Clerk-Operators do supervise such crews and instruct them about set-outs and pick-ups, there would be no violation of the Scope Rule because the Petitioner has condoned this condition to exist for more than twenty years and has permitted clerical forces, by history and custom, to assume these duties. It has been established, without contradiction, that the duties described in Bulletin No. 11 were no different from the duties performed by clerks and operators at least since 1954. No new duties were assigned to them by that Bulletin. Nor was the single Yardmaster position adversely affected by that Bulletin.

The unchallenged evidence is that Bulletin No. 11 was issued only because of the BRAC-TCU Merger. The merger provided for a combining of clerk and operator forces. Two clerical positions were, accordingly, abolished. New positions of Agent-Operator and Clerk-Operators were established. Bulletin No. 11 describes the duties of the new positions, all of which had been performed by clerks.

Because the claim is denied on its merits, there is no need to discuss and adjudicate the procedural issues raised by the Carrier.

For all of the reasons herein stated, the Board finds that there is no merit to the claim.

FINDINGS:

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

The carrier and the employes 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 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.

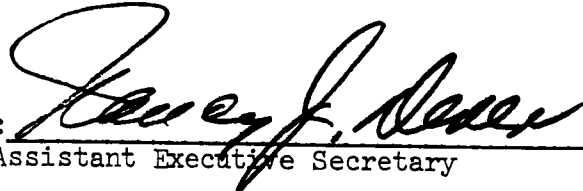
A W A R D

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 4th day of February 1976