Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award No. 3335
Docket No. 3318

Referee David Dolnick

PARTIES TO DISPUTE: Railroad Yardmasters of America

The Atchison, Topeka and Santa Fe Railway Company

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

Claim in behalf of Yardmaster B. J. Williams for one day's pay at punitive yardmaster rate for each of the following days: November 27, 28, 29, December 2, 3, 4, 5, 6, 9, 11, 12, 15, 16, 17, 18, 19, 20, 21, 23, 26, 27, 30, and 31, 1974 in violation of Article 1, Section 1-a and 1-b of the current Agreement, and Section 6, General duties, Seventh of the Railway Labor Act.

OPINION OF BOARD: It is agreed that effective February 10, 1971, the second and third shift yardmaster assignments and the relief yardmaster assignment at Gallup, New Mexico, were abolished. From that date until November 27, 1974 the first shift yardmaster - Claimant - worked overtime whenever the yard crew worked overtime. Claimant was instructed on the latter date to discontinue working overtime at the end of his shift. He was also instructed to line up all work to be performed by the yard crew on overtime before leaving at the end of his shift. The claims are predicated on the allegation that Yardmaster work was performed by employes other than yardmasters.

It is a well established principle of this Division that a Carrier may abolish a position providing work of that position does not continue and no employes other than those covered by the applicable collective bargaining agreement perform work belonging to the employes whose positions were abolished. Thus, the Carrier had the right to abolish the yardmaster positions effective February 10, 1971. See Award 3148 on this property.

From February 10, 1971 until November 27, 1974 the Claimant worked overtime whenever the yard crew also worked overtime. No violation within that period of time is claimed and none exists.

It is also a well established principle that a yardmaster may lay out or program work to be performed by a yard crew after the yardmaster completes his tour of duty. In Award 2367 this Board said:

> "The Board finds nothing untoward in Carrier's use of Yardmasters on the first and third tricks to carry out yardmaster duties if there is not an adequate amount of Yardmaster work in the second trick and it can be done without improperly invading the scope of the Yardmaster Agreements".

And in Award 3206 this Board said:

> "We find nothing in the docket to require us to depart from the precedents established in Awards 733, 737, 797, and 2502 whereby, absent contractual limitation, the programming of work by Yardmasters for execution beyond their respective tours of duty is not per se violative of the Scope Rule" (Emphasis Retained).

There is no rule in the agreement between the parties that requires the Carrier to perpetually work the first shift yardmaster overtime when the yard crew also works overtime. We recognize that the elimination of overtime work for the Claimant substantially reduced his earnings. In a period of economic uncertainty, and rising living costs, reduced earnings adversely affects his standard of living. But this Board may not determine the issue before it solely on equitable considerations. The Carrier did not violate the Agreement when it eliminated overtime work for the Claimant and when it instructed the Claimant to program or layout work for the yard crew to be performed after he concluded his shift.

"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" (Award 2032). And what constitutes exclusive yardmaster work must be determined from the Scope Rule and from any existing applicable Operating Rule.

Petitioner alleges that on the dates in the claim yard crews were supervised and given switching orders by either Trainmaster Bootman or Agent Latta or by both. There are no specific allegations. The record does not show what switching orders were given to the yard crew by either the Trainmaster or the Agent. Nor is there substantive evidence that Bootman or Latta supervised the yard crew on any of the claim dates. General allegations are mere assertions and not evidence.

Upon the entire record, the Board concludes that the burden of proof is upon the Petitioner. That proof has not been met. There is no probative evidence that non-yardmasters performed a substantial amount of yardmaster work on the claim dates.

Carrier has raised a number of procedural and jurisdictional issues. Since the claim is denied on the merits, it is not necessary to consider them.

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: Nancy J. Dever
Assistant Executive Secretary