Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 3480
FOURTH DIVISION Docket No. 3481

Referee James C. McBrearty

PARTIES TO DISPUTE: Railroad Yardmasters of America

Norfolk and Western Railway Company

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

Claim of Yardmaster R. B. Jankey for 8 hours at time and one half rate account not being used to perform regular yardmaster duties on November 27, 1975 (Holiday). Duties performed by Trainmaster D. K. Elder. Violation of Holiday Rule.

OPINION OF BOARD: Claimant's assignment as second trick (2:30 PM to 10:30 PM) Yardmaster at Carrier's South Lorain, Ohio Yard was annulled on Thanksgiving Day, November 27, 1975, pursuant to the terms of Article III, Section 4 of the November 29, 1967 National Holiday Agreement between the parties to the instant dispute.

Section 4 reads as follows:

"In instances when a recognized holiday, or the day such holiday is observed by the State or nation, falls on an assigned work day of a regular yardmaster assignment, the carrier shall have the right to blank such position on that day and Yardmaster then holding such assignment shall be paid for that day on the basis of his regular straight time rate of pay, provided he does not render other compensated service for the railroad during the hours of such yardmaster assignment. If any work of such position is performed by other than the incumbent on the shift on which it is blanked, it shall be performed in accordance with existing schedule rules." (Emphasis added)

Now, Petitioner alleges that the following regular Yardmaster duties were performed by Carrier's Trainmaster on November 27, 1975:

> "Lake Terminal Railroad delivered to C-3 (36 cars), C-5 (38 cars), C-10 44 cars. These tracks were assigned to the LTRR by Trainmaster Elder.
> Extra crew (Conductor L. Van Fleet) switching in the South Lorain, Lorain Area. This crew received their instructions and were supervised by Trainmaster Elder. Conductor D. Hartman brought 89 coal to N-1 and N-4, took 27 hoppers off C-13 to Shinrock. Conductor Woodruff brought 81 MTY hoppers from CEI to the WLE - main track."

Petitioner's General Chairman heard Trainmaster Elder assign the above work on the radio to Carrier's crews, and Carrier made no attempt to deny the performance of the above work under the supervision and direction of its Trainmaster.

At this point, the Board must ask, "What are the duties of a Yardmaster?"

The Scope Rule, as such, does not define or describe the work of Yardmaster, merely saying:

> "The term yardmaster as herein used shall be understood to include Freight General Yardmasters, Assistant General Yardmasters and Yardmasters."

However, Carrier's Operating Rule 520 under the heading "Yardmaster" states:

> "They will have charge of the yards, the persons employed, and the movement of trains and engines and distribution of cars therein."

Carrier objects to any consideration of its Operating Rules on the ground that such rules "are applied unilaterally by the Carrier." However, as to the propriety of considering Operating Rule 520, it must be understood that this rule was presented for the purpose of disclosing the manner by which the Yardmaster determines his duties, and what duties Carrier expects of him in connection with his employment. For this purpose the evidence is admissible. (See Fourth Division Awards 3335, 3297, 2769, 2032, 1380, 102, 100, 88 and 86).

Therefore, comparing the duties and responsibilities listed in Carrier's Operating Rule 520 with the work performed by the Trainmaster on November 27, 1975, it appears that indeed there was a violation of the Holiday rule, since the latter explicitly says, "If any work of such position is performed by other than the incumbent ... it shall be performed in accordance with existing schedule rules." (Emphasis added).

The parties are agreed that the phrase "in accordance with existing schedule rules" means a Yardmaster will be used where yardmaster work is required.

Carrier argues, however, that no work of the Yardmaster position was performed on November 27, 1975, since the crews supervised and directed by the Trainmaster were road crews and not yard crews thereby putting this case "on all fours" with PLB No. 1148, Case No. 2, Award No. 2, where a denial of the claim was issued.

Nevertheless, after a carefull review of the record in the instant case, the Board finds persuasive Petitioner's argument that "... all crews in the area are road crews and there are no yard crews anywhere at anytime, in the South Lorain-Sheffield Area..." In other words, the so-called yard crews at South Lorain Yard always are "road crews working under yard agreements but not within yard limits." These "road crews" are "Short Run" crews working out of Bellevue into the South Lorain-Sheffield area. Normally they do the switching at this location, under the direction and supervision of a Yardmaster.

Such argument was presented to Carrier in Petitioner's letter of September 6, 1976, and, for whatever reason, Carrier failed to challenge or deny that statement on the property and in its submission to this Board.

Consequently, the Board finds that the instructions issued by Carrier's Trainmaster to "road crews" on November 27, 1975, pertaining to the yarding of deliveries by the LTRR, switching by an extra crew, bringing 89 coal cars to tracks N-1 and N-4, taking 27 hoppers off C-13 to Shinrock, and bringing 81 MTY hoppers from CEI to WLE-Main Track, were indeed Yardmasters' work in conformity with Carrier's Operating Rule 520 the Scope Rule, and prior Awards of this Board. (See, for example, Fourth Division Award 2032).

Carrier argues further, though, that such Yardmaster work must be "exclusively reserved" to Yardmasters under the Scope Rule. Now, it is true that several awards of this Board have held that where there is a Scope Rule which does not define the duties to be performed by Yardmasters, nevertheless, the Scope Rule must be construed to cover work belonging to that craft. The reasoning

is that to hold otherwise would be to render the whole agreement nugatory. (See Fourth Division Awards 3184, 2627, 2189, and 1343).

Two awards of this Board have held, moreover, that exclusivity of work is not the determining factor in cases involving the work of positions blanked on holidays. Rather, in these cases, it was decided that the central question was whether the work was part of the Yardmaster position's work content. The reasoning was that if such work was Yardmasters' work on other dates of the year, it also should be on holidays. (See Fourth Division Awards 3024 and 2574).

On the other hand, there are numerous awards of this Board that do not support Petitioner's theory of independent violation of the Holiday Rule without recourse to other Yardmaster rules, especially the Scope Rule. The vital contract clause is not a blanket prohibition on performance of work of the blanked position by other than the incumbent. It expressly indicates that the parties contemplated such occurrances by using the predicate phrase, "If any work of such position is performed by other than the incumbent..." The clause then continues, not by way of prohibition or penalty, but by establishing the condition that, "... it shall be performed in accordance with existing schedule rules." (Emphasis added). As we read this clause then it provides an express incorporation by reference of all of the existing schedule rules, including the Scope Rule, and mandates that they be complied with if someone other than the incumbent performs some of the work the latter would have performed during his shift but for the fact it was blanked on his holiday. (Emphasis added). To the extent that the Holiday Rule thus incorporates the Scope Rule of a Schedule agreement it also adopts the long line of established precedent relative to the need to prove substantial performance of work reserved to Yardmasters by custom practice and tradition in order to establish violation of a general scope rule. In this connection it is noted that the Holiday Rule was consumated in November 1967 and the Board precedent on these points had long been known to both parties. Nowhere does that Rule disavow these concepts or establish separate standards for Holiday disputes, and we may not redraft the language by arbitration award to do so. (See Fourth Division Awards 3420, 3415, 3407, 3373, 3372, 3317, 3257, 3168, 2803, 2563, 2533, 2522, 3473, and 2226).

We have considered the record before us, in detail, as well as the plethora of awards cited by each of the parties in support of their positions, and note that the issue presented is not one of easy determination. Nevertheless, we feel the weight of the evidence and the past decisions of this Board force us to deny the claim for lack of proof that substantial exclusive Yardmaster functions were performed by Carrier's Trainmaster on November 27, 1975.

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

Dated at Chicago, Illinois, this 8th day of June 1977