

Referee James C. McBrearty

PARTIES Railroad Yardmasters of America
TO
DISPUTE: Norfolk and Western Railway Company

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

Claims of Yardmaster H. H. Watson for September 7, 8, 14, 15, 1975; R. Jankey for September 9, 10, 16, 17, 1975; and E. Mortland for September 12, 13, 19, 20, 21, 23, 26, October 1, 1975 and subsequent dates and continuing until complained of condition is corrected.

Claim being made for 8 hours at pro-rata rate account of violation of Scope Rule.

OPINION OF BOARD: Carrier abolished the third trick Yardmaster position at South Lorain, Ohio effective September 6, 1975. Petitioner alleges, however, that the work of the Yardmaster position did not disappear, but was delegated to Carrier's Trainmasters, Assistant Trainmasters, Train Dispatchers, General Car Foremen, and Clerks.

Petitioner, in a letter to Carrier's Trainmaster on October 26, 1975, went into great detail describing the alleged Yardmaster work being performed by non-Yardmaster personnel on each of the 15 dates mentioned in the Statement of Claim.

The work complained of included such things as the Trainmaster issuing orders to train crews on where to yard certain cars, and what cars to pick up on what tracks, as well as making out "turnover" reports, and ordering extra Brakemen and Conductors on the job.

Carrier has not attempted to deny the performance of the above work by non-Yardmaster personnel, but rather, takes the position that Petitioner is attempting to claim work which has been proven by past practice, custom and tradition, not to belong exclusively to the Yardmaster craft.

According to Carrier, from 1941 to December 1, 1966, an appointed supervisor with the title of General Yardmaster acted as a Yardmaster, working a trick and directing crews in the Lorain-South Lorain area. When the incumbent General Yardmaster retired on December 1, 1966, the title went with him. Thereupon, the title of "Assistant Trainmaster" was assigned to the position at

Lorain, and held by various supervisors. Carrier claims that the work thereafter for some period of time was carried out by a Trainmaster or Assistant Trainmaster assigned at Lorain, who delegated the work and acted as a trick Yardmaster at Lorain. As the business continued to increase, trick Yardmaster assignments were reinstated, resulting in a 1st, 2nd, and 3rd trick Yardmaster being assigned at South Lorain, all of which were contract Yardmasters. At the time of the instant claim, the business had dropped off, and a reduction in Yardmasters occurred. Carrier states that in the absence of the Yardmaster, the Assistant Trainmaster, formerly General Yardmaster, has issued instructions, and worked as a trick Yardmaster. Allegedly this situation is unchanged to this day. The Carrier's position in sum, is that through all of the years, both contract and non-contract people have worked at South Lorain without complaint from the Organization.

Petitioner agrees with Carrier that until 1966, the South Lorain Yard was indeed operated on first trick by a non-contract "General Yardmaster". However, Petitioner argues that the "General Yardmaster was limited to first trick only, with second and third trick being advertised and filled in accordance with existing rules for Contract Yardmasters.

According to Petitioner, the use of the "General Yardmaster" on first trick was condoned by the Organization and the Carrier by mutual agreement until 1966, at which time the "General Yardmaster" retired. Thereupon, Petitioner claims the position was advertised to contract Yardmasters, thus making all three tricks subject to the rules of the working agreement between the RYA and the N&W. Petitioner says there was nothing to complain about from 1966 until 1975, because Yardmasters were working around the clock, seven (7) days per week. Those Yardmasters came under the Scope Rule of the Agreement. Petitioner's complaint now is that Carrier has violated history and tradition by arbitrarily abolishing the third trick Yardmaster's position, and put Trainmasters "out there" to perform the work of the former Yardmaster without "just cause."

A review of the foregoing arguments of the parties reveals there is conflicting testimony as to whether or not a third trick Yardmaster position was in effect before 1966 (as implied by Petitioner and seemingly denied by Carrier), as well as conflicting testimony as to the respective functions of "Trainmasters" v. "Yardmasters" after 1966.

It is not the function of this Board to resolve conflicts in testimony. However, a careful review of the entire record indicates that both parties agree that the third trick Yardmaster position at South Lorain has been in effect "for some 4 years or longer."

On the other hand, however, the 14 affidavits submitted by Petitioner purport to show that for as long as 32 years, the Engineers, Brakemen, Conductors, and Clerks, who signed these statement have always received their orders from the Yardmaster as to the performance of their duties until the third trick position was abolished, and now they get such orders from personnel who are not Yardmasters.

Petitioner fails to explain how if the third trick Yardmaster position was only in effect for something more than four (4) years, these other employees could have been receiving instructions from only the Yardmaster for as long as 32 years.

Now, in the instant type of case, for Petitioner to prevail, it has the burden to prove that the work performed by the Trainmaster, Train Dispatcher, and Clerks, by history, tradition, and custom was, system-wide, exclusively performed by Yardmasters. (See Third Division Awards 18555 and 18441).

We must emphasize at this point, that the burden of proving that such work is reserved exclusively to employees covered by the Agreement by tradition custom and practice is upon the Petitioner. (See Third Division Awards 18927, 16544 and 11963).

Consequently, this Board finds that Petitioner has failed to sustain the burden imposed on it to prove its claim by substantive evidence, and, therefore, we have no alternative but to dismiss the claim for lack of proof.

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.

Form 1

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Award No. 3482
Docket No. 3483

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 June 1977.