Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award Number 3802
Docket Number 3801

Referee Rodney E. Dennis

PARTIES TO DISPUTE: Railroad Yardmasters of America

Southern Railray Company

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

Claiming one day at yardmaster rate for G. D. Fish, Yardmaster at Winston-Salem, N.C., for 5 days beginning July 15, 1979 through July 19, 1979, and 4 days on behalf of C. K. Roberts, Yardmaster at Winston-Salem, N.C. beginning July 20, 1979 through July 23, 1979 account Yardmaster position being abolished on July 15, 1979 and the General Chairman not notified until July 23, 1979 in violation of Mediation Agreement Case No. A-9288 and the current Working Agreement.

A continuous claim for eight (8) hours per day at the yardmaster rate of pay from date of July 24, 1979 and every day thereafter for extra yardmasters C. K. Roberts, P. C. Willard and G. D. Fish account the work, duties and responsibilities of yardmasters now being performed by Company personnel other than a yardmaster.

OPINION OF BOARD: On July 15, 1979, Carrier abolished the third trick yardmaster assignment at Winston Salem, N.C. The General Chairman was notified of this action on July 23, 1979. The Organization alleged that Carrier, by doing so, violated the controlling agreement, as well as the Mediation Agreement (Case No. A-9288), by failing to give the General Chairman a timely and proper notice of a job abolishment and by transferring work, duties, and responsibilities of yardmasters to other company personnel.

Carrier denied the organization's allegations and argued that even if it was guilty of not giving timely notice of the job abolishment to the General Chairman, no penalty is authorized. It further argued that the Organization failed to carry its burden of proof in the instant case. It did not demonstrate that the work in question belong exclusively to yardmasters or, if it did belong exclusively to yardmasters, that it was of sufficient quantity to warrant keeping a full-time yardmaster employed on the third trick at Winston Salem.

In July 1977, Carrier eliminated the third trick yard crew and the third trick yardmaster at its Winston Salem yards. It also eliminated the third trick yard clerks, car inspectors, and laborers. Eventually, a third trick road crew was also eliminated. In the final analysis, this left an operator on the third trick at Winston-Salem. The issue of this case, simply stated, is, who now does the work formerly done by the third trick yardmaster at Winston Salem and did the Carrier have the right, under Mediation Agreement No. A-9288 and the Schedule Agreement, to assign this work to them?

In its exparte submission to this board, the organization further narrowed the issue by its concluding paragraph: "The entire case comes down to this: Is it permissible for Carrier to abolish a position and have the work previously performed by a yardmaster on that position and for the past twenty or more years now be turned over to one of its officers? That is the issue here. S/S A. T. Otto Jr. President."

It is clear from the record of this case that Carrier had effected certain economies in regard to the making up of trains. It opened a new automated hump yard at Linwood, North Carolina. As a result, Carrier chose to eliminate the third trick yard crew at Winston Salem. It also eliminated the required support personnel. In addition, the yardmaster was eliminated, inasmuch as he now would be responsible for only the movement of four trains in an eight-hour shift. Carrier chose to shift the responsibility for the movement of these trains to the first and second trick yardmasters.

No. 132 is a turn-around local out of Winston Salem. It leaves on its second trick and returns on the third. When the train left on the second trick, the second trick yardmaster would designate the track to yard the train on upon its return.

Another train, Road Train No. 16, was scheduled to arrive at Winston Salem on the second trick. If it was delayed, the second trick yardmaster would contact the crew on the road and give them instructions on yarding the train. In these instances, the work of the third trick yardmaster was transferred to the second trick yardmaster.

In its submission to the Board, the Organization does not appear to be pressing the claim that Carrier has violated the Mediation Agreement or the Schedule Agreement by this action. The work done was formerly and is presently being done by a covered employe.

What is left for discussion, however, is Carrier's right to require the general yardmaster on the day shift at Winston Salem to line up the two day-shift yard crews and the crew of train No. 76. The Organization contends that the abolished third trick yardmaster had for twenty years assumed these duties. These crews report to work at 6:30 AM and 6:45 AM.

The general yardmaster who worked the day shift at Winston Salem never reported to work until 7:00 AM -- after these two crews had received their orders and started to work and train No. 76 had left the yard. Since the third trick yardmaster was eliminated, the general yardmaster has been reporting to work at 6:30 A.M. so that he can line up the crews. The Organization alleged that this constitutes a violation of the scope rule of the Schedule Agreement and Mediation Agreement, Case No. A 10183. It bases this position on the wording of Article 1 of that agreement, to wit: "Existing scope rules shall be amended by the addition of the following: the duties and responsibilities of a yardmaster include:

> "a. Supervision over employes directly engaged in the switching, blocking, classifying and handling of cars and trains and duties directly incidental thereto that are required of the yardmaster in a territory as designated by the carrier."

It argues that since the Mediation Agreement was signed, it is clear that all the listed duties belong to yardmasters and to no other company employes or crafts. It interprets this agreement to extend to the general yardmaster in Winston Salem. The Union argues that since the third trick operator always performed the specific duties involved in this dispute and since the Mediation Agreement clearly specifies that these duties are duties belonging to yardmasters, carrier cannot transfer them to any other employe. If they are performed, they must be performed by a covered yardmaster. This Board, however, is of the opinion that this is a tortured application of the applicable rules and it cannot prevail.

Carrier argues that the Interpretation Letter of September 21, 1978, signed by both parties, clearly states that the only purpose of the National Agreements was to enumerate the principal duties automatically and traditionally performed by the craft of yardmasters. It was not intended to eliminate any existing rights of the parties contained in the applicable collective agreement. Carrier, therefore, asserts that by agreement, it was authorized to employ a noncovered general yardmaster prior to September 21, 1978. Therefore, it maintains this right after the National Agreement of September 1978 became effective. Carrier further asserts that the general yardmaster, as a noncovered company employe, has always been available for work when called by Carrier. Traditionally, general yardmasters on this property, as well as on other properties, have worked much more than the normal eight-hour shift. Even if the general yardmaster at Winston Salem does report for work prior to 7:00 A.M., it has always been carrier's prerogative to assign the work in question to the general yardmasters. Carrier's arguments on this point are persuasive.

With the elimination of the yard crew on the third trick at Winston Salem, it was no longer necessary to employ a fulltime yardmaster on the third trick. Carrier gave some of the work to the second trick yardmaster. This Board sees no irregularity in such an action. Carrier assigned the work of lining up the crew for train No. 76 and two switching crews to the general yardmaster at the location. The Organization has not been successful in persuading this Board that Carrier's action in this instance was in violation of any rule or agreement. Carrier has acted out of economic necessity in its Winston Salem yard operation. Absent a rule or agreement clause that prohibits Carrier from effecting economies or making certain assignment or duties, this Board cannot conclude, based on the record before it, that Carrier has violated the local or national agreement by abolishing the third trick yardmaster position.

The Organization has progressed a two-part claim to this Board. The Board chose to address the merits of the claim before discussing the allegation that carrier failed to properly notify the General Chairman when it intended to abolish the yardmaster's position at issue in this case.

It is clear from the record of this case that Carrier has violated the February 2, 1973 Mediation Agreement. That agreement requires that Carrier notify the General Chairman when it intends to abolish a yardmaster's position ten days prior to the date of the abolishment. In the instant case, Carrier did not notify the General Chairman of the abolishment until July 23, 1979, nine days after it took place.

Carrier has failed in its handling of this case on the property or before this board, to put forth any arguments that would justify this Board's finding a violation in this instance but not assessing a penalty for such violation. It is this Board's opinion that the instant case cannot be disposed of without a penalty being imposed on carrier. The parties agreed at the national level that when a carrier intends to abolish a yardmaster's job, it is required to notify the General Chairman. A sense of urgency in these situations is clear, as evidenced by the requirement that Carrier phone the General Chairman and follow up with a letter or a telegram. That requirement is not insignificant and cannot be ignored by this Board when it is violated.

This same issue has been addressed by this Board in Award No. 3056, R. M. O'Brien, Referee. We see no reason to not follow the Board's opinion in that case, as well as in numerous other cases we have decided on the application of Mediation Agreement A-9288. (See, for example, Fourth Division Awards No. 3211, 3479, 3054).

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

The claim is sustained in regard to the organization's request on behalf of G. D. Fish and C. K. Roberts. It is denied in all other respects.

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 12th day of February 1981.