

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISIONAward Number 4089  
Docket Number 4088

Referee Robert W. McAllister

PARTIES TO DISPUTE: Railroad Yardmasters of America  
Terminal Railroad Association of St. Louis

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

Yardmaster C. Heisinger be allowed one yardmaster day at the holiday rate of pay for November 11, 1981 (Veteran's Day) account having hold down on that position on claim date and Carrier called and used an extra yardmaster.

OPINION OF BOARD: On November 11, 1981, the Claimant, C. Heisinger, a yardmaster, was "old heading" the third trick yardmaster position at NEWB Madison Yards. That day was one of the Claimant's days of rest and was also the Veterans Day holiday. The Organization asserts a temporary vacancy existed and was filled by the Claimant on a hold down (old heading). It then became his full time position, which required him to protect that position as his regular assignment. This position, according to the Organization, was to the exclusion of any other work. The Claimant was not permitted to work off the extra board and, thereby, was not entitled to any other extra work. The Organization argues that, once the Claimant took the vacancy by "old heading," it became his regular assignment with regularly assigned hours along with all other conditions that go with such a position. Thus, the Organization believes the Claimant should have been afforded the opportunity to work on November 11, 1981, rather than the extra yardmaster called and used by the Carrier.

The Carrier contends the Claimant, when working as an extra yardmaster, does not become the incumbent of the position he is "old heading". There isn't a dispute over the fact the Claimant filled the position in question in accordance with a Memorandum of Agreement dated April 18, 1975, which, in part states:

"... (It is further recognized that yardmasters assigned to the extra board may old head vacancies on the same basis as regularly assigned yardmasters in accordance with existing rules and practices, but with the understanding that all yardmasters old heading take the conditions of the job being old headed and must remain on such job for the duration of the vacancy.)"

The Carrier avers that by reference to the language "existing rules and practices," this means the person who desires to "old head" must make a timely written request to do so.

Secondly, the Carrier argues that, should the Board find in favor of the Claimant, it must be noted that the Claimant received a make-whole allowance under certain agreed upon provisions which call for payment of the minimum monthly salary of yardmaster if a yardmaster is attached to the extra board for a full calendar month.

The Carrier cites Awards, Nos. 3853 and 2862, in support of its position. The Claimant, in Award 2862, an extra yardmaster, was denied holiday pay because the Board found the agreement language provided holiday pay only for the yardmaster holding a regular assignment. In Award 3853, the Claimant had been given the specific assignment of temporarily replacing a regular yardmaster. The Board, in Award 3853, again referring to the language of the Agreement, stated:

"We find that the language in Section 4: namely, 'The yardmaster holding such assignment' refers to the incumbent holding such 'regular assignment' and not a temporary replacement."

Singularly, the Board noted, in Award 3853, that the Claimant did not contend that his right is a substitute for the right of the incumbent. We endorse the principle enunciated that, under like language, there is only one individual yardmaster who is the regularly assigned incumbent.

Herein, however, the parties saw fit to enter into a Memorandum of Agreement on April 15, 1975, whose relevant provisions are quoted above. Notwithstanding the fact there is only one recognized, "regularly assigned yardmaster," the parties specifically provided that extra board yardmasters may old head vacancies "on the same basis as a regularly assigned yardmaster" in accordance with existing rules and practices and with the additional understanding the yardmaster "old heading" takes the conditions of that job.

The Board finds the language to be clear and unambiguous and will not interfere with its intended application on the basis of prior awards dealing with like or similar circumstances but governed by different language. There is no doubt the Claimant is an extra yardmaster and is not the regularly assigned incumbent. In that status, the parties specifically agreed to treat such employees on the same basis as regularly assigned yardmasters. Having entered into such an agreement, the Carrier is not in a position to attempt to invoke other aspects of the contract to void the clear intent of the April 18, 1975, Memorandum of Agreement.

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 Employes 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.

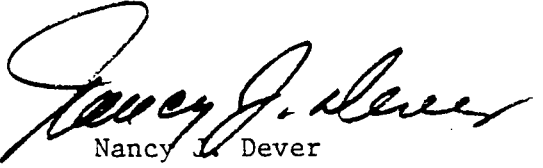
The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST:



Nancy J. Dever  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March, 1984.