

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISION

Award Number 4119  
Docket Number 3935

Referee Martin F. Scheinman

PARTIES Railroad Yardmasters of America  
TO  
DISPUTE: Baltimore and Ohio Railroad Company

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

Yardmaster Jack Hill, Jr. be allowed 2 days at time and one-half current yardmaster rate on August 24, 1980 (11:00 P.M. to 7:00 A.M.) account Extra Yardmaster D. E. Miller improperly used to fill these positions in violation of Article 10(b) of the current and applicable Agreement.

OPINION BOARD: The relevant facts of this claim are not in dispute. In August of 1980, Trainman, D. E. Miller, held a regularly assigned position as a yard brakeman at Carrier's Lima, Ohio facility. In addition, Brakeman Miller also held an Extra (Substitute) Yardmaster's position there. On August 23, 1980 at 2:25 p.m. Miller was displaced from his regular Trainman's assignment until 3:55 p.m. on August 25, 1980. In the interim, Carrier called and used Extra Yardmaster Miller on a Yardmaster vacancy at 11:00 p.m. on August 24 and again at 3:00 p.m. on August 25.

The Organization contends that Carrier's actions on August 24 and 25, 1980 violates Article 10(b) of the Agreement. That provision reads, in relevant part:

"Except when prohibited from working his regular assignment in another craft due to the Hours of Service Law, in the application of Article 10(a) and (b), an unassigned or substitute yardmaster who does not work his regular assignment under another agreement will not be considered as available for Yardmaster service for a period of 24 hours, computed from the starting time of his regular assignment.

EXAMPLE 1. An Extra Yardmaster has a regular assignment under another agreement 8:00 a.m. to 3:00 p.m. If extra yardmaster service is required at 7:01 a.m. or any time from then until 2:59 p.m. he will not be considered available for such extra Yardmaster service.

2. If the same employee does not work his regular position under another agreement in order to work as a yardmaster outside the hours of his regular assignment, i.e. 3:00 p.m. to 7:00 a.m., he will be considered not available for a period of 24 hours which in this case would be until 7:00 a.m. the following day."

The Organization maintains that Carrier has clearly circumvented the Agreement here. In its view, Trainman Miller was not simply displaced from his regularly assigned position as yard brakeman. Instead, according to the Organization, he refused to exercise his seniority in order to hold a regular position during the period August 23 to August 25, 1980. Thus, the Organization reasons that Trainman Miller intentionally held himself off his Trainman's position so as to qualify for extra yardmaster work.

Furthermore, the Organization points out that the potential for serious loss of work opportunity for its yardmasters exists here. It suggests that, if Carrier prevails, regularly assigned brakemen would be permitted to work as extra yardmasters while refusing to be displaced into their own craft. According to the Organization, this would result in diminished overtime opportunities for members of its own craft. Thus, the Organization concludes that to uphold Carrier's position here is to seriously disadvantage its own members.

Finally, the Organization suggests that many similar instances have arisen in the past. It contends that each occurrence was resolved by Carrier officials in its favor. Therefore, the Organization argues that a similar result is warranted here.

For these reasons, the Organization asks that the claim be sustained. It seeks two days' pay at the time and one half rate for Yardmaster J. Hill, Jr.

Carrier, on the other hand, insists that its actions violated neither the Agreement nor the past practice between the parties. Carrier points out that Trainman Miller was displaced from his regularly assigned position during the time period at issue. As such, it contends, he was neither laid off nor was he held off from that assignment. Thus, Carrier reasons that the provisions of Article 10(b) do not apply here since Trainman Miller did not have a regular assignment while he performed extra Yardmaster service on the days in question. Accordingly, Carrier asks that the claim be rejected in its entirety.

A careful reading of Article 10(b) convinces us that the claim must fail. That article prohibits an extra yardmaster from performing such service if he "does not work his regular assignment under another agreement." Moreover, the example contained in Article 10(b) requires that the extra yardmaster have a "regular assignment" during the applicable time period. Here, it is clear that Extra Yardmaster Miller was displaced from his regular position from 2:25 p.m. on August 23, 1980 until 3:55 p.m. on August 25, 1980. As such, he did not have a "regular position" for that time period as contemplated by Article 10(b). Accordingly, its provisions simply do not apply to Extra Yardmaster Miller and he was free to perform yardmaster service on two tricks on those days.

In addition, our findings are consistent with those of this Board in Award No. 3900. That case involved these same parties. There, an extra yardmaster was permitted to perform such service after "he had been displaced from his clerical position and had not exercised his seniority to displace on another clerical position." We see no reason to reach a different conclusion here. In fact, under the time honored principle of stare decisis, we are obliged, absent unusual circumstances, to follow the rationale of that award. No such circumstances exist here. Accordingly, and for the foregoing reasons, the claim must fail.

**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 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:

  
Nancy J. Dover  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May, 1984