Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Award Number 4306
Referee Edward L. Suntrup Docket Number 4221

PARTIES TO DISPUTE: Railroad Yardmasters of America
Chicago and North Western Transportation Company

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

Yardmaster G. Schang be paid eight (8) hours straight time rate of pay for each day May 21, 22, 23, 25, 26, 27, 28, 29, June 1, 2, 3, 4, 5, 8 and 9, 1982. Carrier permitted District #8 Yardmaster G. Walker to bump Claimant from his District #9 yardmaster position. This violated Rules 3(b) and 5(d) of the controlling agreement.

OPINION OF BOARD: The instant time claim alleges that the Carrier violated current Agreement Rules 3(b) and 5(d) when it permitted Mr. G. Walker to bump the Claimant, Mr. G. Shang on the dates in the Statement of Claim. According to the claim, Mr. Walker was a District #8 Yardmaster allegedly assigned to a District #9 position for the 15 days in question.

The Agreement Rules at bar state the following:

"Rule 3(b): Seniority will be confined to the seniority district in which employed as follows:

No. 2 Central
No. 3 Illinois
No. 4 Iowa
No. 5 Lake Shore
No. 6 Western
No. 7 Twin Cities
No. 8 Wisconsin
No. 9 Chicago"

"Rule 5(d): The exercise of seniority to positions outside the terminal or switching district where employed is subject to agreement between the Director of Labor Relations (non-operating) and the General Chairman."

A review of the record shows that the September 1, 1955 Agreement between the Carrier and the Organization was amended in 1974 and 1976. Both the 1974 and 1976 Agreements, at Rule 3(b) quoted above, reorganized seniority districts as they were found in the 1955 Agreement. At issue here is the meaning, application and Carrier request to further change that reorganization. The Carrier states, on property, that "...(t)he seniority dates of the yardmasters previously shown in the two separate seniority districts of the Chicago Division which were consolidated into one seniority district (in the) October 1,

1976 (and 1974 Agreement) were to be merged by 'dovetailing'". There is no evidence of record, however, that the Carrier ever implemented this dovetailing. First of all, the Carrier's supervision continued the seniority arrangement of the 1955 Agreement as far as these districts are concerned until October 15, 1980. At that time it recognized the "erroneous manner in which (the) roster (had been) compiled...(and then took)...corrective action." The corrective action was to allow 5 Yardmasters from new District 8 prior seniority rights in new District 9. This was to be done by a letter of concurrence which was sent to the Organization on April 28, 1981 in order to change the 1976 Agreement Rule 3(b) which the Carrier now called "outdated" due to the demise of one division and the establishment of several others by the Carrier. The Board has searched the record and there is no evidence that the Organization ever signed the proposed Memorandum of Agreement sent to it by the Carrier in April of 1981.

It is unclear to the Board why the Carrier did not implement the dovetailing of seniority districts immediately after the signing of the 1974 and 1976 Agreements. Apparently, as the record states, this was the result of managerial error. But once the error was detected it is furthermore unclear from the record why the Carrier implemented unilaterally the seniority consolidating that it did if, at the same time, it thought further negotiated changes were necessary in Rule 3(b) in order to legitimately do so. The proposed changes sought were never signed by the Organization although the Carrier proceeded as if they had been. Nor did the Organization ever obtain assent of the General Chairman for the exercise of seniority relative to the case at bar as required by current Agreement Rule 5(d). On merits, the instant claim is sustained.

The only question which remains is that relative to the proper compensation to the Claimant as a result of the Agreement violation at bar. There is considerable precedent emanating from this Board when it has dealt with cases similar to the instant one which point to the appropriateness of granting monetary claims when employees have lost their rightful opportunity to perform the work to which they were entitled because of Agreement violation by the Carrier (Third Division Awards 20754, 20892, 21678).

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 were granted the privilege of appearing before the Division, with the Referee sitting as a member thereof, to present oral argument.

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 18th day of July 1985.