

PUBLIC LAW BOARD NO. 3056

Parties: Railroad Yardmasters of America
and
Baltimore & Ohio Railroad Company

Statement of Claim: "Claim of regular Yardmaster H. E. Casto, ID. NO. 1101117, Parkersburg, West Virginia, for one day at the punitive rate of pay for October 18, 1979 account of not being used for 11:55 P.M. yardmaster vacancy and extra Yardmaster S. L. Daggett allegedly being improperly used."

Background: On the claim date, October 18, 1979, Extra Yardmaster S. L. Daggett was regularly assigned to an 11:55 P.M. - 7:55 A.M. Yard Foreman position at Parkersburg, West Virginia. On this date, Mr. Daggett was used to fill an 11:55 P.M. yardmaster vacancy. The Organization filed a claim on behalf of the Claimant, on the ground that it was improper to use Mr. Daggett for the yardmaster vacancy because Mr. Daggett had already been assigned to a 3:55 P.M. yard foreman turn by Bulletin No. 77.

Article 10 states in its relevant parts:

"(b) 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."

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Organization's Position

The Organization states that Mr. Daggett was awarded the 3:55 P.M. yard foreman job. This job was advertised by Bulletin No. 77 which closed at 10:00 A.M., October 17. The Organization states that the Carrier contends that since the Carrier failed to notify Daggett that he was the successful bidder, it could therefore properly use him for the 11:55 P.M. yardmaster job that night. The Organization states the Carrier is trying to justify its action because it made an error in not informing the Claimant in time for him to occupy his 3:55 P.M. yard foreman position. The Organization further states the Carrier defends its position by contending the announcement was not typed or distributed until 5:00 P.M., October 18. However, the Organization maintains it is not germane when the Bulletin is distributed. What is critical is when bids are advertised to close. Since bids were closed on October 17, at 10:00 A.M., the Carrier knew that day the successful bidder. The assignment of a job to a successful bidder does not depend when the Carrier notifies the successful bidder. The Organization states that if this were true the Carrier could keep a successful bidder off his assignment for an indeterminate period merely by not telling said bidder he had been awarded the job for which he had bid. The Organization asserts the Carrier knew full well that Mr. Daggett owned the 3:55 P.M. job for it had to fill it with an extra man. It adds that it is immaterial whether the fault was due to the Carrier or Daggett himself. The fact that is important is that as of October 17, 1979, at 10:00 A.M., the yard foreman job belonged to Daggett because his seniority entitled him to hold it. It was a violation of the Agreement to use Daggett on the 11:55 P.M. yardmaster job when he owned the 3:55 P.M. position.

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The Organization stated the evidence shows that the Carrier timely closed Bulletin No. 77. There was another 3:55 P.M. yard job advertised thereon. A Mr. Dailey was awarded a job from that Bulletin and he worked the 3:55 P.M. job on October 17 and 18 in accordance with that Bulletin. The Organization stated that if Mr. Dailey knew he was assigned to the 3:55 P.M. job on October 17 then Mr. Daggett should also have worked on October 18 as assigned, and the Carrier should not have held him off his assigned job. The Organization states the Carrier's allegation that a trainman does not take a position until he is notified is irrelevant under the Yardmaster Agreement. The Organization states the Carrier violated Article 10(b) regardless of its error to notify Mr. Daggett. The Carrier had the responsibility to inform and to use Daggett on the 3:55 P.M. yard job and its refusal to do so violated the Yardmasters' Agreement and consequently the claim should be honored.

Carrier's Position

The Carrier denied that it breached the Yardmaster's Agreement in this case. Mr. Daggett held a yard foreman's job working 11:55 P.M. While it is true that he was awarded by Bulletin No. 77 a 3:55 P.M. yard job, nevertheless, the Bulletin was not typed and distributed until 5:00 P.M. on October 18, which was after the starting time of the 3:55 P.M. job. The Carrier adds that Mr. Daggett did not mark up or work the 3:55 P.M. job on October 18 when he was used for the 11:55 P.M. yardmaster vacancy that day.

The Carrier added that a trainman takes a position when he is notified thereof. Consequently, Mr. Daggett did not hold the

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3:55 P.M. job when he was used for the 11:55 P.M. yardmaster job. The Carrier states that the Organization's proof with regard to Mr. Dailey, also awarded a job by Bulletin No. 77, only shows that Mr. Dailey was notified so he worked his new position on October 17. All that this proves is that Mr. Dailey was notified but it does not prove that Mr. Daggett was also notified prior to his working the 11:55 P.M. yardmaster position. Both the Chief Caller and Mr. Daggett filed statements asserting that Daggett was not timely called. Therefore, Mr. Daggett's regular position on October 18 was the 11:55 P.M. yard foreman's job, and it was contractually correct to use him for the 11:55 P.M. yardmaster position. The Carrier stresses the record contains no evidence to show that it held Mr. Daggett off the 3:55 P.M. yard job. He was not notified, and as a trainman, he does not take a position until notified thereof. The Carrier asserts that the Organization has not met its burden of proof to show a rule violation and therefore the claim should be either dismissed or denied.

Findings: The Board, upon the whole record and all the evidence, finds that the employee and Carrier are Employee and Carrier within the Railway Labor Act; that the Board has jurisdiction over the dispute, and that the parties to the dispute were given due notice of the hearing thereon.

 The Board finds that Carrier erred in utilizing Mr. Daggett on October 18, 1979 for the 11:55 P.M. yardmaster job after he became the successful bidder for the 3:55 P.M. yard job. When the announcement for the yard jobs closed at 10:00 A.M. on October 17, 1979, and the decision made, Mr. Daggett's right to be 3:55 P.M. yard job vested. The Carrier is not entitled to determine at its leisure when an applicant is

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a successful bidder, and to contend that an employee's seniority rights do not vest until the Carrier gets around to notifying the successful applicant, is to weaken, if not vitiate, the attributes of seniority. The Board finds that seniority is a contractual right that vests when a determination is made that the employee's seniority rights have prevailed as against other bidders. It then became operative rather than when the Carrier finds it convenient or practical to notify an affected employee that he is the successful bidder. To accept the Carrier's application of seniority in this case is to weaken the seniority principle. Moreover, the Board finds it difficult to comprehend how, from the same Bulletin, one successful bidder could be notified before 3:55 P.M. on October 17, while another successful bidder was not notified until late in the day of October 18. The application of seniority in awarding jobs ought not to be subject to such vagaries.

The Board finds that Article 10(b) holds that an unassigned yardmaster cannot be considered available for yardmaster service if he does not work his regular assignment under another agreement. By 11:55 P.M. on October 18, Mr. Daggett was actually, if not constructively, the holder or possessor of the 3:55 P.M. yard job and it was contractually impermissible for the Carrier to use Mr. Daggett for the 11:55 P.M. yardmaster job.

Award: Claim sustained.

Order: The Carrier is directed to comply with the Award, on or before April 4, 1982.

Jacob Seidenberg
Jacob Seidenberg, Chairman and Neutral Member

W. C. Comiskey
W. C. Comiskey, Carrier Member

R. C. Arthur
R. C. Arthur, Employee Member

March 3, 1982