

Award No. 24  
Case No. 24

PUBLIC LAW BOARD NO. 4357

PARTIES                      United Transportation Union (Yardmasters)  
TO  
DISPUTE:                      and  
  
Norfolk and Western Railway Company

STATEMENT OF CLAIM:

Claim of Yardmaster, J. L. Griggs, for eight (8) hour days at time and one half, for August 10, 11, 12 and 16, 1992, as he would have been compensated at this rate had he not been deprived of these earnings due to not being called to work when a junior Yardmaster was working these vacancies at time and one-half.

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

During the four days cited in the claim, there were vacancies on a regular Yardmaster's position because the incumbent was on vacation. During those four days, Carrier used Extra Yardmaster, C. Sorrenson, who had seniority as an Extra Yardmaster, but who was on vacation as a clerk, to fill the vacancies. Claimant herein had more seniority than Mr. Sorrenson.

Petitioner first raises the issue of procedure in that, as in prior claims before this Board, Carrier had not furnished the Organization with the names of the Carrier officials authorized to receive claims. That issue will not be dealt with further herein since the Board has already resolved that issue in the prior cases before this Board, and Petitioner's position does not have merit.

Petitioner insists that Carrier violated the Agreement when it permitted the Extra Yardmaster, while on vacation from his clerical position, to fill the Yardmaster's vacation vacancy. This, according to the Organization, deprived the Claimant of the right to fill the vacancy in question at the time-and-one-half rate. In addition, Petitioner notes that the request for time-and-one-half is appropriate under the Agreement, and is apparent, since that was the penalty payment, which Claimant should have been receiving for the work in question.

Carrier argues that the Organization here did not have power to interpret an Agreement, other than their own, such as the Clerical Craft's Agreement, which has been cited by Petitioner. In addition, Carrier notes that there is nothing in the rules which prevents Carrier from using Extra Yardmasters, while regularly assigned to other crafts, from working on their vacation, even from a vacation in another craft. Carrier believes that there is no merit whatsoever in the claim and no rule support for such claim.

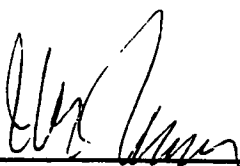
The Board is not convinced that Carrier's position has merit. On the contrary, it is quite apparent that Claimant herein was the most senior Yardmaster of the two individuals involved in this matter, and should have been awarded the position in question. While the Board does not question Carrier's right to assign an Extra Yardmaster who had seniority in another craft to a vacancy in this instance, the individual who filled the position did not have sufficient seniority. In short, this was a matter of Carrier selecting the wrong employee for the vacation vacancy. Claimant had sufficient seniority to be called for the position and was available at the time. He should have been called, and based on Carrier's actions, was deprived of the work which was rightfully his. For the reasons indicated, therefore, the claim must be sustained.

AWARD

Claim sustained.

ORDER

Carrier will comply with the Award herein within thirty (30) days from the date hereof.



I. M. Lieberman, Neutral-Chairman



K. J. O'Brien  
Carrier Member



R. J. Cooper  
Employee Member

Norfolk, Virginia  
July 25, 1994