

Public Law Board 6485

Parties to Dispute

United Transportation Union)	
Yardmasters Department)	
)	
vs)	Case 8/Award 8
)	
Burlington Northern Santa Fe Railroad)	

Statement of Claim

Yardmaster Tammy M. Smith worked two shifts on the calendar days of July 19 and 22, 2002. She was paid straight time rate for the second shifts she worked on both days. She should have been paid time and a half for the second shifts. Claim is for the difference between the overtime rate for the second shifts for both of the days in question and the straight time rate.

Introduction

The Claimant to this case, Tammy M. Smith, filed two claims on August 25, 2002 alleging that the Carrier violated the operant Agreement between the parties on the dates of July 19, 2002 and July 22, 2002 when it paid her the incorrect rate for the second shifts she had worked on both of these days. According to the claim(s), Ms. Smith states that she was "...shorted a half day's pay..." on each of the dates in question. There is no disagreement between the parties that on the dates in question Yardmaster Smith was working on the Guaranteed Rotating Extra Board (GREB) and that she was a GREB Yardmaster.

The claims were denied on property and handled properly in accordance with Section 3 of the Railway Labor Act and the labor Agreement. A number of arguments are

put forth by the Carrier when denying the claims but those stated by the Director of Labor Relations and Manpower Planning in a denial letter of December 12, 2002 fairly well encapsulates the position of the Carrier. This Carrier officer states the following in response to an earlier appeal by the General Chairman of the Yardmasters.

"The Carrier's position in regards to GREB's working two straight shifts in one day is that there is no rule in the Agreement that disallows this practice. Rule 2 (D) states that a Yardmaster cannot work more than 16 hours in any 24 hour period. The Claimant only worked 16 hours. Rule 1(E) states that a Yardmaster must have 8 hours off after being relieved from a previous shift. The Claimant had 8 hours off....".

The Carrier also asserts that the Claimant "...is not an extra list employee, but is a GREB Yardmaster...".

Absent settlement of the claims on property they were docketed before this Board for final adjudication.

Discussion

This is a contract interpretation case and the union is the moving party. Burden of proof that there has been a violation of the labor Agreement lies with that side. According to the union Yardmaster Smith was entitled to overtime pay for having worked a second shift on each of the days in question if the labor contract between the parties is read as a whole and if the language contained in it is not "cherry picked". The UTU cites arbitral precedent that states variously that the parties are bound by their written agreements, and that Boards such as this are limited by the RLA to the interpretation of such agreements and when doing so agreements should be viewed in their entirety. According to the UTU

a Board such as this ought to presume that the intent of the parties is "...merged in the written agreement...".

According to the UTU the instant case centers on the language of Rules 2, 4 and 8 of the labor Agreement. The Board cites these Rules as follows, in pertinent part.

Rule 2 - Hours of Service and Overtime

- A. Eight (8) consecutive hours or less shall constitute a day's work.
- B. All time worked in excess of eight (8) hours shall be paid for at the rate of time and one-half on the minute basis.
.....
- D. Yardmasters shall not be required to work more than 16 consecutive hours in any 24-hour period.
- E. Yardmasters shall not be required to commence a tour of duty in less than 8 hours after being relieved from a previous shift.

Rule 4 - Guaranteed Rotating Extra Boards

- A.

All Yardmaster positions on the GREB will be considered as regular permanent assignments and will be 'Right of Appointment' positions under the provisions of Rule 7 of this Agreement. Employees assigned to a GREB will work on a first-in, first-out rotating basis and will not be assigned rest days.

- B.

The term "Calendar Day" is understood to encompass the 24-hour period from 12:00 midnight to 12:00 midnight each full calendar day.
.....

- H. Nothing contained herein shall be construed as modifying, amending, or superseding any of the provisions of the current Yardmasters' schedule

Agreement between the parties except as specifically provided here. This agreement will be the only agreement applicable to Yardmaster guaranteed extra boards. Any rules, practices, and/or understandings in connection with yardmaster extra boards that are in conflict with the terms of this agreement are likewise suspended.

Rule 8 - Exercise of Seniority

.....

- I. Except as provided hereinbefore, a Yardmaster will be required to hold a regular assignment, including a position on the Guaranteed Rotating Extra Board, or forfeit seniority. Other duly qualified Yardmasters will constitute the yardmaster extra list...It is understood that an extra Yardmaster is not considered to be available when s/he has already worked one shift as yardmaster on the same calendar day...".

Citing the above provisions of the Agreement the union also argues that the merit of the claim stands, in its estimation, on the premise that a GREB Yardmaster is also an extra Yardmaster which is what the "E" in the GREB acronym means anyway.

Argument by the Carrier, in addition to citation of the fact that the contract permits a Yardmaster to work 16 out of a 24 hour day as long as there is an 8 hour hiatus between shifts, is that a GREB Yardmaster has first-in and first-out status. What this means leads the Carrier to employ, as far as the Board can determine, a rather obtuse line of reasoning. If the union is right on this claim, according to the Carrier, then it would have to call an extra board Yardmaster to fill a shift such as the second shifts filled by the Claimant, presumably to avoid paying overtime, and at the same time potentially pay a GREB Yardmaster such as the Claimant her guarantee. But since a GREB Yardmaster such as the Claimant may not have been called, in favor of an extra Board Yardmaster, as the Carrier states was her right, this in turn could lead to some other adverse

developments. This could just lead to a time claim by a GREB Yardmaster such as the Claimant that she was not properly called. Further, according to the Carrier, it has in fact called GREB Yardmasters to work on numerous occasions :

"...at 1500 to 2300 (hours) and then called the same GREB Yardmaster to work at 0700 on the next day (and) (t)he Organization has not objected to the use of GREB Yardmasters in this type of situation and has even stated that this is correct under the Agreement..."¹

So, it claims, there is a practice on the property contrary to the intent of the claim filed in this case. The Carrier also argues that GREB Yardmasters are regularly assigned Yardmasters: "...the GREB Yardmaster holds an assignment under the Yardmaster Agreement, and extra Yardmaster(s) do...not...". The Carrier also argues that "...after 1994 there are actually two 'extra' lists..." since the older contract language conserving the Yardmaster extra board remained even though Rule 4 had established GREBs. According to the Carrier the instant claim was filed by the Organization for the Claimant, who was a GREB, by resorting to the older language dealing with the extra board.

Findings

This case can be resolved by establishing a number of points in a preliminary manner.

First of all, it is about shifts worked by a GREB on a calendar day, not about shifts worked between calendar days. Rule 4(B) clearly states that a calendar day for a GREB is

¹Carrier's Exhibit 6, AVP of Labor Relations letter to the General Chairman dated January 22, 2003 denying the claim. Also cited at Carrier's Submission @ p. 7.

defined from mid-night to mid-night of the same day. The Carrier on property and in its submission cites an example of GREBs working up to 11:00 PM and after an eight hour hiatus being called at 7:00 AM the next day. According to the Carrier the union has never complained about this practice since GREBs were established in 1994. The reason the union had not complained is because this is a correct application of the Rule 4 of the Agreement. The example cited by the Carrier and the past practice it addresses is moot. This case is about 2 shifts worked within a 24 hour period as defined by Rule 4(B). It is not about 2 shifts worked between calendar days.

Secondly, the Board will dismiss out of hand the argument by the union that the instant claim should be sustained because the Claimant was an extra board Yardmaster. She was not. She was a Yardmaster on a regular, permanent assignment as Rule 4(A) clearly states that she was. Whether this claim is to be sustained or not will be determined by the language of the operant Agreement protecting the Claimant as a regularly assigned Yardmaster on the two days in question who worked two different shifts on contractually defined calendar days.

When the parties established the special status of GREB Yardmasters they did so by means of a special agreement. Such agreements are commonly added to schedule Agreements as sidebars, or letters of understanding, or even as separate mini-agreements appended to schedule or general agreements. In the instant case, which was their prerogative, the parties negotiated a special agreement giving special status to Yardmasters working for this Carrier "...at its discretion..." under title of GREB

Yardmasters. The Carrier provides some historical background about this special agreement in its arguments before this Board stating that it resulted from the 1994 negotiations. The union does not dispute any of this history. What the parties also did, the Board observes, was to integrate this special agreement into the framework of the schedule agreement and they called it simply: Rule 4.

What the parties subsequently disagree about is exactly what rights and privileges GREB Yardmasters have under the schedule Agreement with respect to compensation rights. After all, how much an employee gets paid for working for an employer is pretty fundamental and the Board finds it a bit curious that this problem did not surface until some 8 years after Rule 4 was ratified. Maybe it did not because in most cases GREB Yardmasters were assigned shifts between calendar days and not within the same calendar day. The record does not enlighten the Board on this matter.

Despite the fact that Rule 4 is inserted into the schedule agreement as one of its rules, as a special agreement, its provisions have priority over the schedule Agreement as a general agreement. That special agreements, dealing with specific topic matters, have priority over general agreements is such a fundamental rule of contract interpretation in this and other industries that the experienced parties to this Board need not be reminded of this point.² Extra Yardmasters are not regularly assigned Yardmasters. GREB

²In the railroad industry see, for example, PLB 1398, Award 1 & PLB 5225, Award 32. In other industries see, for example, Central Newspapers, Inc. vs Teamsters Local 133 (Grievance 64829)(Suntrup, 1999), Indianapolis, Indiana. The parties themselves in Rule 4 (H) state that Rule 4's provisions will not modify, amend or supersede "...any of the provisions of the...schedule agreement...except as specifically provided herein...". Obviously the last paragraph is of paramount importance here.

Yardmasters are. Rule 4 says they are. As a special agreement its authority in this matter cannot be ignored.

Rule 4 creates a particular status of Yardmaster. It is up to the Carrier to activate any Yardmasters into this status. Theoretically there does not even have to be GREB Yardmasters on this property.³ But there are, or at least there was in August of 2002, and the Claimant to this case was a GREB Yardmaster.

GREB Yardmasters are not exactly the same as regular assignment Yardmasters, and they are not exactly the same as Yardmasters on the extra boards. They are sui generis. As a matter of function, but not status, they share some of the characteristics of regular assignment Yardmasters, and of extra board Yardmasters. Therein lies the problem. Although it should be clear from the language of contract, the parties cannot seem to agree on whether GREB Yardmasters are regular, or extra, Yardmasters. The union appears to think they are a species of extra Yardmaster and the Carrier itself cannot seem to quite remove itself totally from such thinking when it states, for example, that there are "...actually two 'extra' lists...". So the parties have come to this Board to sort this out. Any clues to the intent of the parties about the privileges and rights of GREB Yardmasters must be found in the language of Rule 4.

Rule 4 states that GREB Yardmasters shall have right of appointment under Rule 7 and will work on a first-in and first-out rotating basis. But unlike other regularly assigned

³Rule 4 (A).

Yardmasters GREB Yardmasters do not have regularly assigned rest days and there are obviously other characteristics associated with GREBs that they do not share with other regularly assigned Yardmasters, who are not GREB Yardmasters, as Rule 4 makes clear. But there can be no doubt that when the parties negotiated Rule 4 they intended that GREB assignments be considered regular permanent assignments and not extra assignments. This is stated unambiguously in the language of Rule 4 (A) that says: "...All Yardmaster positions on the GREB will be considered as regular permanent assignments...". There can be no misconstruing the clear meaning of this language. The Carrier seems to want to believe this although it tends to fudge a bit when it starts talking about two extra lists. Further, in order to make sure that they meant what they wrote here about the regular, permanent status of GREB Yardmasters in Rule 4, the parties revisited this subject in Rule 8 of the Agreement, which undoubtedly had to have been amended when or after Rule 4 was incorporated into it by stating, which we cite here again for emphasis:

Rule 8 (I)

Except as provided hereinbefore, a Yardmaster will be required to hold a regular assignment, including a position on the Guaranteed Rotating Extra Board, or forfeit seniority. Other duly qualified Yardmasters will constitute the yardmaster extra list... (Emphasis provided).⁴

The long and the short of all this is that GREB Yardmasters, therefore, have the

⁴The Carrier appears to argue in its Submission @ p. 4 that the language of Rule 8 was negotiated prior to 1994. That is not logically possible since Rule 4, dealing with GREBs, did not exist prior to 1994.

privileges, rights and benefits of other regularly assigned Yardmasters except for the functional limitations put on them in Rule 4. But Rule 4 puts no limitations on their basic status. Therefore, they fall squarely under the purview of the operant Agreement, including Rule 2 inter alia.

In denying the claim the Carrier uses a variety of arguments stating, for example, that the Claimant only worked 16 hours in a 24 hour period and that she had 8 hours off between shifts in accordance with Rule 2 (D)(E).⁵ This is all true. But this does not lead to the conclusion that she should have been paid straight time for both shifts. Rule 2(D)(D) does not tell us anything about compensation. That is reserved for Rule 2 (A)(B). And the latter tells us that 8 hours shall constitute a day's work and that all time worked in excess of 8 hours shall be paid at the premium rate. As a regularly assigned Yardmaster, albeit one with special GREB status, this is exactly what the Claimant had done on the two dates in question. So she should have been compensated the second shift at the premium rate.

The Carrier spends considerable time arguing before this Board, if it understands the rationale of the Carrier's arguments correctly, that in a nutshell GREB Yardmasters have some special advantage because they are first-in, first-out on a rotating basis which would put them, it appears, in an advantageous position for working a second shift in a work day and thus be in a more favorable position to collect overtime on a second shift

⁵See Carrier's Exhibit 4 and 2 wherein somewhat similar arguments are enumerated by the Carrier at different levels of handling of the claim on property.

assignment. Since this is so, according to the Carrier, the claim should be denied. While what the Carrier argues may be factually true this is insufficient reason to deny the claim. As Yardmasters holding "...regular permanent assignments...", as Rule 4 states, GREB Yardmasters also enjoy the privileges and benefits of all Yardmasters on regular permanent assignments under Rule 2 (A)(B) of the schedule Agreement. There is nothing found in the language of Rule 4, or any place else in the operant Agreement that has been brought to the attention of this Board, that changes that.

On basis of the language of contract, if not on basis of all of its arguments presented to the Board, the union has sufficiently met its burden of proof in this case and the claim is sustained in full. Yardmaster Tammy M. Smith shall be paid the difference between the time and one half rate, and the straight time rate, for the two second shifts she worked on the calendar days of July 19 and 22, 2002. This amounts to eight (8) hours' pay at the level of compensation she was receiving as a GREB Yardmaster in July of 2002.

Award

The claim is sustained in accordance with the Findings. Implementation of this Award shall be within thirty (30) days of its date.



Edward L. Suntrup, Chairman & Neutral Member

G. L. Shire, Carrier Member

J. R. Cumby, Employee Member

Date:

9/10/03