

NATIONAL RAILROAD ADJUSTMENT BOARD**FOURTH DIVISION**

Referee William H. Coburn

PARTIES TO DISPUTE:**RAILROAD YARDMASTERS OF AMERICA****LEHIGH VALLEY RAILROAD COMPANY**

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

1. The Yardmaster work, duties and authority shall be restored on the Third Trick at Bethlehem Yard and the Carrier required to restore and bulletin the Yardmaster position Third Trick, Bethlehem, in accordance with provisions of the Yardmaster Agreement.

2. Mr. A. N. Lukachek be paid for all time lost including rest days and vacation allowances, account being deprived of the Yardmaster work on the Third Trick at Bethlehem Yard, April 12, 1966 and until the condition complained of is corrected.

EMPLOYEES' STATEMENT OF FACTS: Effective on April 12, 1966 the Carrier abolished the 11 P. M., to 7 A. M., Yardmaster assignment at Bethlehem. Concurrent with this action the Carrier also issued instructions for the 3 P. M., to 11 P. M., Yardmaster at Bethlehem at the conclusion of his tour of duty to furnish a complete yard situation report to the Assistant Chief Dispatcher to facilitate the handling of through trains. He was also instructed to notify the Yardmasters at Packerton and Richards as to tracks to be used for set offs and pick ups by eastbound and westbound trains. This action violates Rules 1, 2 (c), 6 and 12 of the Schedule Agreement.

CARRIER'S STATEMENT OF FACTS: The schedule of rules Agreement between the parties, effective August 16, 1953, copy of which is on file with this Board, are by reference made a part of this submission.

Bethlehem Yard is located within the yard switching limits of Bethlehem, Pennsylvania, a point on the main line of this Carrier.

Prior to April 12, 1966, yardmaster assignments were maintained around the clock at Bethlehem Yard. For many months prior to April, 1966 there was a continuing decline in business in this area. This decline in business was such this Carrier was forced to eliminate all yard engine service in Bethlehem Yard during the third trick, 11:00 P. M., to 7:00 A. M.

Therefore, on April 6, 1966, the Carrier notified the employes involved, one of which was the claimant, as follows:

"April 6, 1966

Yardmasters - Bethlehem Yard
Richards Yard

Effective with completion of tour of duty Monday, April 11, 1966 the position of Yardmaster Bethlehem Yard, Pa., working 11:00 P. M. to 7:00 A. M. is abolished.

Relief assignments will be established effective April 12, 1966 to cover regular assigned yardmaster relief days at Bethlehem Yard and Richards Yard as follows:

Relief Yardmaster working Bethlehem and Richards

3:00 PM to 11:00 PM Bethlehem Thursday and Friday
7:00 AM to 3:00 PM Bethlehem Saturday and Sunday
11:00 PM to 7:00 AM Richards Monday

Relief Yardmaster working Richards

3:00 PM to 11:00 PM Richards Thursday and Friday
7:00 AM to 3:00 PM Richards Saturday and Sunday
11:00 PM to 7:00 AM Richards Sunday

This for your information. Employees affected by this abolishment 11:00 P. M. yardmaster at Bethlehem and by change in relief assignments may exercise seniority to position held by junior yardmaster."

On and after the date of this claim (April 12, 1966), the yard engine assignments at Bethlehem, Pa., yard were one yard engine 7:00 A. M. to 3:00 P. M. and one yard engine 3:00 P. M. to 11:00 P. M.

In the opinion of the Carrier's supervisory officer, since its yard engine operations during the third trick hours at Bethlehem Yard were abolished, that full yardmaster supervision of the yard without any yard engine operation during the third trick hours involved in this claim was not justified or necessary, and such yard could properly operate without full time yardmaster supervision. Actual operation of the yard subsequent to April 12, 1966, has convincingly indicated that this opinion was correct.

On April 18, 1966, the Trainmaster, Easton, Pa., received a letter filing the instant claim.

The Trainmaster denied the claim in letter dated April 19, 1966.

The General Chairman appealed the claim to the Superintendent Transportation in letter dated May 5, 1966. The appeal was denied by the Superintendent Transportation in letter dated August 23, 1966.

The General Chairman then appealed the claim to the Chief of Personnel on July 2, 1966. Conference was scheduled and held for the purpose of discussing this claim on August 16, 1966. After reviewing the facts and circumstances involved, the Chief of Personnel denied the claim in letter dated August 23, 1966.

OPINION OF BOARD: The Employes have objected to the Board's consideration of certain documents offered by the Carrier in its *ex parte* submission (at pp. 7-8, and '10 through 22) for the reason that this evidence was never made of record or presented to the Employes during the handling of the claim on the property. There is merit in that contention. Under the provisions of the Railway Labor Act, as amended, and this Board's Rules of Procedure (Circular No. 1) such evidence is inadmissible. Accordingly, it will be given no consideration here.

The essential and material facts of this case are that due to a decline in business at Bethlehem Yard the Carrier eliminated yard engine service during the 11:00 P.M. to 7:00 A.M. shift and, thereafter, abolished the Yardmaster job working those hours. Road crews picking up or setting off cars during that period received instructions from the towerman.

The claim is based upon the Employes' contention that the effective Agreement between these parties was violated because after the abolishment of the third trick Yardmaster position, work belonging thereto remained to be performed and was performed by others (towermen) not covered by the Yardmasters' Agreement.

The difficulty with the Employes' theory of the case is that all yard service on the third trick at Bethlehem had been abolished prior to the elimination of the third trick Yardmaster position. Hence, there was no yard service, as such, to direct and supervise. A straight set-off or pick-up by a road crew within yard limits is not treated as yard work belonging exclusively to yard crews. Nor is the supervision and direction of such work an exclusive work right of yardmasters, unless the agreement so provides. In the agreement in evidence no such provision appears. Consequently, the burden of showing that exclusive yardmaster duties were performed by others rests upon the Employes. No such showing has been made here. The claim, therefore, will be denied.

FINDINGS: The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employe 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION

ATTEST: Muriel L. Humfreville
Secretary

Dated at Chicago, Illinois, this 18th day of June, 1968.

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