

Award No. 807

Docket No. 735

2-N&W-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Bruce Blake when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That G. W. Grimm, car inspector regularly assigned to the West-Yard transportation on the third (3rd) shift Shaffers Crossing shop is frequently being wrongfully displaced by a shop track carman in violation of Rule Nos. 17 and 30 and the memorandum agreement dated July 7, 1941. The employees are requesting that G. W. Grimm be not disturbed from his regular assigned job to fill vacancies in other parts of the yard, thereby placing a shop track carman on his job in the West-Yard transportation.

EMPLOYEES' STATEMENT OF FACTS: G. W. Grimm, bid in the West Transportation Yard job approximately two years ago of which said job was bulletined on the bulletin boards. Mr. Grimm was assigned to the job regularly account being the senior man making application for same under the provisions of Rule 17 and Rule 30 of the current agreement. He has continuously worked this job in the West Yard Transportation at Shaffers Crossing ever since he has been assigned to it, until the first part of October, 1941. Beginning in October, 1941, the railroad company commenced taking Mr. Grimm off his regular job in the West Yard Transportation, third shift, and sending him to the Middle Yard Transportation on the same shift to fill vacancy in a gang where a man is off once in a while, and at the same time, the company would place a shop track carman on his job. This shifting of Grimm to fill vacancy in the Middle Yard happens anywhere from one day to three days per week more or less. G. W. Grimm is senior in seniority to the shop track carmen who are being permitted to displace him from his regular job in the West Yard.

POSITION OF EMPLOYEES: The employees contend that G. W. Grimm, car inspector in the West Yard Transportation, Shaffers Crossing Shop, is being wrongfully displaced every time he is removed from his regular job and a shop track carman placed on it, and that Rules 17 and 30 and the Memorandum Agreement dated July 7, 1941, is being violated. We quote as follows the reading of Memorandum Agreement dated July 7, 1941:

"MEMORANDUM AGREEMENT

At principal transportation yards, where carmen are regularly assigned to gangs, such as West End of Yard and East End of Yard, when jobs are advertised the bulletin will indicate on what part of the yard the job is open.

This not to be construed to mean that a carman cannot be shifted temporarily from one gang to another as the work in various gangs might demand, and it is understood that while such employee is shifted

rules of the agreement with the carmen which gives a shop track carman priority over a West Yard carman to temporary service on the Middle Yard.

If a vacancy of more than one day on the third shift in the Middle Yard on regular week days is known in advance, a first trick shop track carman, under practice, fills the vacancy from 11:00 P. M. until 7:00 A. M. But if a vacancy on the third shift in the Middle Yard is not ascertained until after the night trick shop track men have gone on duty at 9:00 P. M., and if a shop track man be deemed to have priority to the vacancy, he will be on duty for 10 hours, with two hours at time and one-half. The rates of pay of shop track men, car inspectors on the West Yard and car inspectors on the Middle Yard are identical, so the object of this claim is to secure two hours at the overtime rate for shop track men under emergency conditions. That would be the practical result of confining Mr. Grimm to work with the West Yard gang, which is the manner adopted for the prosecution of the claim. The Memorandum Agreement expressly recognizes the carrier's right to do that which was done in this case.

There may be occasions in the future when an emergency vacancy occurs on the third shift in the Middle Yard and the work on the West Yard may then be of such volume that a carman from the West Yard cannot be used to advantage to fill the vacancy. In that case a shop track man would be called as the employees now demand as a matter of implied right. It is the position of the carrier that where a single seniority roster is involved it enjoys complete freedom of action to use the men to the best advantage of the service, so long as seniority rights are not breached. No such rights were breached in this case.

Because of the number of carmen employed in the West Yard it is only necessary to fill the position made vacant by the shifting of Mr. Grimm for 2 or 3 hours of the shift. This condition was recognized by men and management and it was thoroughly discussed with the general chairman when the Memorandum Agreement was made. The second paragraph of that agreement expressly provides for temporary transfer, and it further provides:

"* * * that while such employee is shifted temporarily another employee may be used on the work on which the man who has been temporarily shifted is regularly assigned to." (Emphasis ours.)

So far as Sundays and holidays are concerned, Mr. Grimm has no "regular assigned job" on the West Yard. He has seniority right throughout the transportation yard, and he has a corresponding duty to perform service throughout that yard in accordance with the needs of the work. His temporary transfer to the Middle or Park Street Yards on these days does not diminish his earnings nor violate the rights of other carmen. To contend that Mr. Grimm must be confined to the West Yard is only to say that the carrier cannot reduce the carmen force on Sundays and holidays. The force of carmen on the shop track is reduced to the number of men commensurate with expectable and essential repairs on this day, and if Mr. Grimm is to be confined to the West Yard, some other carman will have to be employed unnecessarily for service on the Middle and Park Street Yards. Again the Memorandum Agreement expressly sanctions this temporary transfer and that agreement is simply a mutual recognition of a long established practice.

The carrier requests that the claim be denied.

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

The carrier or carriers and the employe or employes 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.

Under the facts disclosed by the record, we can find no violation of the controlling agreement which is the memorandum of July 7, 1941.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this third day of August, 1942.