Award No. 3337
Docket No. 3199
2-P&LE-TWUOA-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

RAILROAD DIVISION, TRANSPORT WORKERS UNION OF AMERICA, A. F. of L.—C. I. O. (Carmen)

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY THE LAKE ERIE & EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

On. Dec. 18, 19, 23, 1957 R. Dutton, Car Inspector started to work at West End of the Interchange Yard. He was then told to go to the West Yard to work.

Then another employe was taken from the East End of the Interchange Yard and sent to the West End of the Interchange Yard to perform the work of R. Dutton.

The Organization feels that this action taken by the carrier is incorrect. R. Dutton had a job, yet he was removed from his job and another employe performed this work.

For this reason the Organization requests that R. Dutton be compensated eight (8) hours for Dec. 18, 19, 23, 1957, due to fact that he was removed from his job and another employe performed his work.

EMPLOYES' STATEMENT OF FACTS: That this case arose at Youngstown, Ohio and is known as Case Y-78.

That R. Dutton, car inspector had a regular bid job at the West End of the Interchange Yard, yet on Dec. 18, 19, 23, 1957 he was removed from this job and told to go to work at the West Yard.

That another employe then was sent to fill R. Dutton's job on the given days.

to be enforced as made. Practical application maybe considered along with all other circumstances in determining what the parties had in mind when they wrote the rule, when the rule is ambiguous and not plain. It is evidentiary under such circumstances, but not necessarily a controlling factor.

"The record establishes, also, that employes in the various freight houses at Union Street have been used at freight houses other than the one designated as their headquarters point for many, many years without complaint. It is fundamental that a practice once established remains such unless it is specifically abrogated by the contract of the parties. The practice is likewise strong evidence of what the parties meant when the agreement was written. The long practice without complaint with reference to the application of an ambiguous rule is strong evidence of the mutual intent of the parties as to its meaning.

"We necessarily conclude, after a consideration of the rules and the evidence, that the word 'location' in the instant case means the whole freight house operation at Union Street and not the particular freight house which may have been designated as the employe's headquarters point. This being true, the claimants designated in part (2) of the claim were not engaged in extra work when they were used in House No. 4, but were in fact performing work of their own assigned positions. The Claimants listed in part (3) of the claim likewise have no cause for complaint since any violation as to them is necessarily grounded on a finding that the claimants in part (2) were improperly used. A denial award is required."

In Awards 7223, 7224 and 7226 of the Third Division, the question at issue was identical in principle with that in Award 7166, which award was relied upon by the Board in sustaining the carrier's position in Awards 7223, 7224 and 7226.

CONCLUSION:

The issue to be resolved by this Board stems from the meaning attached to the word "location." The carrier has established without a doubt that the word "location" applies in this instance to the entire seniority district and not only to the specific point shown on the job bulletin. There is no rule in the agreement which would prohibit the carrier from deploying an employe from one point to another within the same seniority district.

Awards of the Third Division, National Railroad Adjustment Board, have been cited by the carrier in support of its position.

The carrier respectfully submits that the agreement was not violated and the Board should so hold.

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.

Parties to said dispute were given due notice of hearing thereon.

Claimant Dutton was a regularly assigned car inspector with headquarters at the west end of the Interchange Yard, Struthers, Ohio. On each of the three dates involved in this claim he reported and went off duty at his headquarters but during a portion of the trick he was assigned work in the West Yard. While Claimant was performing service at the latter location, work developed at the west end of the Interchange Yard and a car inspector from the east end of the Interchange Yard was sent to perform this work. All three of the involved locations are in the same seniority district. Claim is made that carrier violated the Agreement by removing Dutton from his job and assigning another employe to do his work.

We find no violation of the Agreement in the instant case. The bulletined location of a position does not delimit the geographical area within the seniority district where service is to be performed. Awards 3144, 3208. Thus carrier was permitted to assign work in the West Yard to Claimant Dutton in the instant situations. When work subsequently arose at Claimant's headquarters point, there was no contract bar to assigning a car inspector with headquarters at another point in the same seniority district to do with work. Claimant did not have a prior right to said work. The specification of his headquarters entitled him only to reporting on and off duty at that location.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of October, 1959.