

Award No. 4873

Docket No. CL-4903

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

ST. JOSEPH UNION DEPOT COMPANY

STATEMENT OF CLAIM: Claim of Station Masters for one minimum day's pay in addition to other compensation earned, by each of them on May 19, 1949, and all subsequent dates of record, account of being required in addition to performing their duties as Station Master, at the north end of the depot, to handle switches at the south end of the depot to permit trains to enter and leave the depot.

EMPLOYEES' STATEMENT OF FACTS: Prior to May 19, 1949, there were three Station Masters employed at the north end of the depot. There were also two switchtenders stationed at the south end of the depot. The Station Masters were and still are worked around the clock. The two switchtenders were employed in continuous service from 4:45 A.M. to 8:45 P.M. The Station Masters handled switches at the north end of the depot and also supervised and instructed the switchtenders at the south end of the depot with respect to the service they were to perform in regard to letting trains in and out. Since May 19, 1949, one of the switchtenders' positions has been abolished. The remaining switchtender is on duty from 10:30 A.M. to 6:30 P.M. The services formerly performed by the one switchtender have subsequently been absorbed by the Station Masters. There are approximately forty-two train movements in and out of the depot within a twenty-four hour period. The Station Masters are on a separate seniority roster.

POSITION OF EMPLOYEES: The committee is of the opinion that if the carrier wished to discontinue a switchtender assignment that they were within their rights to do so, but, the committee does not agree that it is proper to discontinue an assignment of switchtender and then transfer the work to the Station Master. The committee believes their position is supported by the rule because the station masters never did work as switchtenders at the south end of the depot. The mere discontinuance of any assignment does not confer any rights upon the carrier to have Station Masters, who work under contract, perform other than their usual duties. Rule Two in the effective agreement between the Brotherhood of Railroad Trainmen and the St. Joseph Union Depot Company reads:

Paragraph A. Station Masters and switchtenders shall perform the usual duties required of them for many years.

Paragraph B. All existing practices pertaining to working conditions involving employes subject to the terms of this agreement and proprietary lines, which are not clearly and specifically abrogated by the rules of this agreement shall remain in full force and effect

1. For many years, the handling of switches has comprised the major portion of the Stationmasters' duties.
2. The right of Stationmasters to continue to perform such duties was recognized by the parties in Rule 2(a), and nothing in the agreement circumscribes that right to any certain switch or switches.
3. The abolishment of the switchtender position referred to herein resulted from a decrease in the amount of work to be performed. The subsequent handling of switches by another employe within the scope of the agreement whose "usual duties" included the handling of switches cannot possibly be construed as a violation of the agreement.
4. The position of the respondent company in this respect is squarely in accord with the pattern set by previous awards of the First and Third Divisions referred to in this submission.

In consummating the current schedule of rules agreement the parties created Rule 2(a) with full knowledge of the nature of the "usual duties" recognized and perpetuated therein. The petitioning organization is now asking the Board to nullify the rule. A sustaining award would do inestimable damage to the basic concepts of collective bargaining. The claim presented herein is lacking in merit or equity, and should therefore be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The trackage of the Carrier consists of approximately two-thirds of a mile. The Organization has been authorized to represent the Carrier's station masters and switchtenders since October 18, 1945, and the current Agreement was negotiated on November 30 of that year. The applicable rule of the Agreement is as follows:

"(a) Station masters and switch tenders shall perform the usual duties required of them for many years.

(b) All existing practices pertaining to working conditions involving employes subject to the terms of this agreement and employes of proprietary lines, which are not clearly and specifically abrogated by rules of this agreement, shall remain in full force and effect insofar as the parties hereto are concerned until changed by said parties in accordance with the procedure set forth in Section 6 of the Amended Railway Labor Act."

Rule 12 provides that switch tenders shall be promoted to station masters where ability is equal to service requirements and that separate seniority rosters shall be maintained for switchtenders and station masters. Station masters are higher rated employes and are granted more favorable vacation privileges.

Prior to May 19, 1949, three station masters and two switch tenders were employed. The station masters were assigned to three shifts in continuous 24-hour service. One switchtender worked from 4:45 A. M. to 12:45 P. M. and the other from 12:45 P. M. to 8:45 P. M. The station masters handled the switches at the north end of the station while the switchtenders handled the switches at the south end. Effective May 19, 1949, one switchtender's position was abolished and the remaining switch tender assigned to work 10:30 A. M. to 6:30 P. M. The station masters thereupon handled the switches at the south end of the depot during the hours when no switch tender was on duty.

The Carrier urges that we should dismiss the claim because the Employes involved were engaged in yard service, which is within the jurisdic-

tion of the First Division, but it seems sufficient to say, in that regard, that matters pertaining to station masters properly come before this Division and that it is immaterial to us that yard service may have been incidentally involved.

There does not appear to be any dispute about the fact that both before and after the current Agreement was negotiated the Carrier's station masters handled the switches at the north end of the station. In view of the general character of the scope rule of the current Agreement, the language therein preserving existing practices pertaining to working conditions, and the further fact that station masters hold unrestricted seniority as switch tenders, we do not find any violation of the Agreement resulting from the Carrier's action of May 19, 1949. It seems inconceivable to us that there should be found a proper basis for distinction in the manner in which the work might be assigned between the north and south ends of this very small property. This is more especially true when it is remembered that the Carrier's entire property constituted one unit for its seniority rosters, and that the work here involved was compensated for at the station masters' rate.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement as charged in the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 13th day of June, 1950.