

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 19

Heard at Montreal, Monday, January 10th, 1966

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF RAILROAD TRAINMEN

DISPUTE:

Twenty-one time claims submitted by various relief yardmasters at Belleville for loss of earnings.

JOINT STATEMENT OF ISSUE:

On June 8, 1962 Yardmaster J. L. Casey worked his last shift at Belleville, Ont. prior to retirement from the service of the Company. The position he vacated was discontinued as of that date. Relief yardmasters at Belleville submitted 21 time claims between January 20, 1964 and March 18, 1964 for loss of earnings of varying amounts on the grounds that they were not used to fill the position vacated by Yardmaster Casey, and in so doing the Company had violated article 2 rule (b), article 3 rule (d) and article 9 rule (c) of the agreement.

The Company declined payment of the claims.

FOR THE EMPLOYEES:

(SGD.) W. G. FLOOD
ASSISTANT GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) T. A. JOHNSTONE
ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

K. L. Crump	– Assistant Manager Labour Relations, Montreal
R. St. Pierre	– Labour Relations Assistant, Montreal
A. D. Andrew	– Senior Agreements Analyst, Montreal
A. J. DelTorto	– Labour Relations Officer, Montreal
A. J. Lomas	– Superintendent of Transportation, Belleville

And on behalf of the Brotherhood:

W. G. Flood	– Assistant General Chairman, Toronto
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AWARD OF THE ARBITRATOR

Mr. Flood explained this dispute involved a protest because Mr. J. Dall, described by the Company as at that time being an assistant statistician, took over the duties of shift yardmaster J.L. Casey, who retired on June 20, 1962.

Prior to that date the supervision of this yard was under General Yardmaster J.W. Ross, who was due to retire from the Company's services in July, 1964. However, in May, 1962, Mr. Ross advised he intended to retire on December 31 of that year. The Company deemed it necessary to train someone to take over his duties. It was claimed that for that purpose an Assistant General Yardmaster's position was established for a temporary period from June 8 until November 30, 1962. Mr. Dall was selected, because of his extensive yard office experience and because, in the Company's opinion, he possessed the necessary qualifications to succeed Mr. Ross.

Mr. Flood told that prior to June, 1962, Mr. Ross worked the day shift and was in charge of all yard operations in the Belleville Yard. He had under him three regular shift yardmasters, responsible for their prescribed duties on their shifts.

It was claimed by the Company that Mr. Ross was placed on the night assignment in August, because the preponderance of passenger and freight traffic was handled during the night hours. Mr. Dall performed his duties on the day shift under the surveillance of other transportation officers, from whom he received further guidance and training.

Mr. J. L. Casey, a shift yardmaster, worked from 8:00 a.m. to 4:00 p.m. He was due for retirement as of June, 1962. On June 1, 1962, Mr. Dall was placed on the day shift with Mr. Casey. When he went on vacation in June, 1962, Mr. Dall took over the shift yardmaster's duties.

It was Mr. Flood's contention that when Mr. Casey retired the position should have been bulletined and filled by one of the yardmasters of the seniority district involved.

Mr. Flood contended that failure to follow this procedure represented a violation of article 2, rule (b), article 3, rule (d) and article 9, rule (c) of the agreement.

Article 2 (b) of the Yardmaster's Schedule reads:

Yardmasters are defined as those who are directly responsible for yard operations in a certain specified territory during the hours of their assignment.

Mr. Flood contended that when Mr. Dall took over Mr. Casey's duties, he was actually a shift yardmaster who had been given a new title, namely, Assistant General Yardmaster. This, he claimed, was on the pretext that Mr. Casey's assignment had been abolished and that Mr. Dall was now in an appointive position not covered by the agreement.

Article 3 (d) of the Schedule reads:

Established positions shall not be discontinued and new ones created covering relatively the same class of work, for the purpose of reducing the rate of pay.

The final provision used for Mr. Flood's argument was article 9 (c) reading:

Newly created positions of more than thirty days' duration and permanent vacancies shall be bulletined in their respective seniority groups, within five days of such new positions being established or vacancies occurring, it being understood that new positions of indefinite duration need not be bulletined, until the expiration of twenty-five days from date created.

Questioned as to why this was not done, Mr. C. A. Berube, General Manager of the St. Lawrence Region replied by letter in a manner that Mr. Flood believed furthered his contention. One paragraph of this letter read:

Following review of traffic trends at Belleville during May 1962, it was apparent that the greater density of traffic was during the night, and, for this reason, General Yardmaster was assigned to work at night rather than daytime.

Paragraph three of the letter read:

J. W. Ross, present General Yardmaster, had advised he would seek an early retirement effective December 31, 1962. A survey for a potential replacement was undertaken. Following a review of several candidates an employee was selected who it was considered would suitably handle the position of General Yardmaster upon Mr. Ross' retirement. In order to acquaint him with the duties, he was appointed Assistant General Yardmaster and assigned to work during day hours in order to familiarize himself with the various problems. It was lined up that he would successively work on the afternoon and night shifts so as to have a general all around knowledge of the duties and responsibilities of the General Yardmaster whom he would ultimately replace.

From this Mr. Flood urged the candidate chosen obviously did not have knowledge of the yard operation and required training before he could cover the assignment. At that time, it was claimed, there were two relief yardmasters working in the Belleville Yard who were fully qualified, fully conversant with the yard operation and capable of working any assignment.

Mr. Flood also referred to another letter from Mr. Berube, dated December 18, 1962, which stated:

While on the subject I would like to point out that the yardmaster's position held by Mr. J. L. Casey prior to his retirement would have been discontinued in 1961 had it not been that he was due to retire June 30, 1962. In other words, this day yardmaster's job would have been abolished in 1961, but the Company, out of consideration for the incumbent, Mr. Casey, withheld action until the date of his retirement.

Mr. Flood stated the Brotherhood had no objection to management creating new positions. They did object when shift yardmasters positions were filled by men from another seniority group doing the same work as a shift yardmaster as defined in article 2 (b) of the Yardmaster's Schedule.

For the Company Mr. St. Pierre told that on June 5, 1961, the Company opened a new electronic hump yard at Montreal which greatly improved the marshalling of trains and thereby reduced the amount of switching required on trains at Belleville. As a consequence, during the summer of 1961 few yard shifts were worked by yard engines at Belleville and the amount of work performed by the day yardmaster diminished and eventually fell off to the point where the position could no longer be justified. However, Yardmaster Casey being due to retire in June, he was maintained in that position until he retired.

Following Mr. Casey's retirement the Brotherhood asked the Company to continue the day yardmaster's position. Because it was not considered justified this request was declined.

Mr. St. Pierre explained that while it might be considered there was a relationship between the abolition of the day yardmaster's position at Belleville and the establishment of the Assistant General Yardmaster's position, the two events were actually not related in any way. The date for abolition of the day yardmaster's position had been determined in the summer of 1961. The date for the establishment of the other position was dictated by the General Yardmaster's retirement plans.

The core of the Company's contention was that the day yardmaster position was discontinued because the work load had fallen off to the point where the position was no longer warranted. The assistant general yardmaster's position was initially established on a temporary basis for one purpose, that of grooming a successor for the general yardmaster. It was retained because the added supervision produced an improvement in yard operations significant enough to justify its continuance.

Mr. St. Pierre firmly rejected the Brotherhood's contention that the duties of the Assistant General Yardmaster were those of a yardmaster. He explained that Yardmaster Casey on arrival at work was required to check the log book for track designations and peruse the line-up of trains that could be expected during the next four hours. The General Yardmaster's instructions were given to him with respect to the addition or removal of cars from trains moving through Belleville prior to noon, as well as other switching required. This procedure was repeated following the lunch period. The switch lists covering the work to be performed during a shift was prepared by the Chief Clerk and any special instructions with respect to lining up supply cars, work equipment, or any coordination or liaison with other yard facilities were given to him by the General Yardmaster. The main function of Yardmaster Casey's position was to convey the General Yardmaster instructions to the Yard Foremen in charge of yard locomotives and also to transmit the switch lists from the chief clerk to the yard foremen. Much of this instruction was transmitted by the yardmaster to the yard foremen by radio.

The duties performed by the Assistant General Yardmaster, however involved much greater responsibility. A considerable portion of the Assistant General Yardmaster's time is devoted to planning for immediate and long term yard operations to ensure that the terminal function efficiently. He must determine where and when the change or reassignment of yard crews is necessary to meet changes in traffic patterns due to work equipment programs or changes in train operations. In particular he must continually review, and where necessary revise wayfreight and road switcher service to meet the needs of industry. He must control the flow of cars to and from the cleaning tracks as well as ensure that adequate trained staff is available to protect yard assignments and yard office assignments; he must handle complaints and grievances of employees; supervise yard office staff; supervise engine and train crew dispatches; process correspondence pertaining to delays, mishandling of rough handling of cars, missed connections and equipment damages.

From the foregoing it is seen the principal question to be answered is whether a job covered by the collective agreement can be discontinued due to lack of work, brought about by a change in operations designed to more efficiently carry out management's responsibility.

Mr. St. Pierre pointed to the effort to create a job ownership for yardmasters as indicated in the Brotherhood's contract renewal demands, served recently upon the company:

A rule to define dispatching of work to yard foremen as strictly under the scope of the yardmaster's collective agreement.

Mr. St. Pierre suggested this demand showed the effort to obtain the ruling sought by the Brotherhood in this claim was an acknowledgement it was not presently possessed.

As to article 3, rule (d), Mr. St. Pierre claimed the alleged violation is based on an assumption that the rate of pay of the non-unionized position of Assistant General Yardmaster was less than the rate of pay of Yardmaster Casey. This, it was stated, was quite erroneous. The standard rate of pay for positions of Assistant General Yardmasters is and has always been higher than that of a yardmaster.

Rule (d), Mr. St. Pierre stated, made it abundantly clear that the signatories to the agreement fully recognized that the Company retained the exclusive right to discontinue positions of yardmaster and assistant yard master as and when warranted. The only restriction placed therein is the exercise of such right in a manner which would result in jobs being discontinued and "new ones created covering relatively the same class of work for the purpose of reducing the rate of pay." Here the reduced duties of the day yardmaster position were absorbed by a higher rated position.

Article 9, rule (c), dealing with advertising a permanent vacancy allegedly created by the retirement of Yardmaster Casey, obviously had no application, Mr. St. Pierre claimed. When Yardmaster Casey retired, there was no vacancy – the post was abolished.

No evidence was offered by Mr. Flood to dispute the statement by management as to the reduction in the duties of the yardmaster in this yard, brought about by the reasons given. This would be an essential element for any hope of success in this claim. There is no guarantee of continued employment in any classification covered by this agreement. For many reasons work is reduced, both in industry and on railroads. Some are of a temporary nature, when layoffs are necessary; others, because of more efficient operations can be permanently discontinued. There is nothing in the collective agreement preventing this occurring.

At the time of Yardmaster Casey's retirement, there were only two yard engine assignments, together with a portion of another yard engine assignment, operating at Belleville during the hours of the day yardmaster's shift. This, I am satisfied, the diminishing of the work to a point where it could no longer reasonably be justified, was the cause for what occurred.

Further, there was no evidence offered by the Brotherhood to dispute the scope of duties required of one in the office of assistant general yardmaster. Clearly, as described, they are far removed from those of a yardmaster.

For these reasons I find no violation of the terms of the agreement relied upon by the Brotherhood occurred. The claim must therefore be disallowed.

(signed) J. A. HANRAHAN
ARBITRATOR