FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD
39 S. LaSalle St., Chicago 3, Illinois
The First Division consisted of the regular members and in addition Referee Ernest M. Tipton when award was rendered.

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN
NEW ORLEANS AND NORTHEASTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Yard Foreman J. M. Pittman and Switchmen F. A. Varnado and E. Havens for a day's pay each at yard rates account the following work performed by road crews in Hattiesburg Yard, April 7, 1941:

Second No. 51 switched seven cars to scales, one car to back track doubled from back track with 22 cars to train. Extra 6906 North, 8:30 P. M., picked up three Pullman cars from lead track and switched next to caboose on train.

This claim made for this and all subsequent dates for the men shown and all other yardmen who are deprived of work by the practice of using road crews to perform yard service in this yard in violation of yard schedule.

EMPLOYEES' STATEMENT OF FACTS: Hattiesburg, Mississippi is a main line district yard, through and into and out of which trains operate in both directions on N. O. & N. E. Railroad; is the away-from-home terminal for local freight trains Nos. 61 and 62 operating between Meridian, Mississippi and Hattiesburg, a distance of 84 miles, and the away-from-home terminal for local freight trains Nos. 63 and 64 operating between New Orleans, Louisiana and Hattiesburg, a distance of 115 miles, and the away-from-home terminal for pool freight crews on Hattiesburg turns operating between Meridian and Hattiesburg.

Hattiesburg is an established yard where both regular and extra yardmen have for many years been maintained to perform yard service governed by N. O. & N. E. Yardmen's Agreement.

On dates shown while the claimants in this case stood for service road crews were used as shown in statement of claim in violation of schedule rules, for which claim was made for a day at yard rates by the claimants, which was denied by Carrier.

POSITION OF EMPLOYEES: Article 26-(b), a joint N. O. & N. E. road and yard rule, provides:

"(b) Yardmen will not hold any rights in road service, nor will trainmen hold rights in yard service, but men in either service may be transferred to the other temporarily without losing their rights."
Article 34, N. O. & N. E. Yardmen’s Agreement, provides:

“Eight hours or less shall constitute a day’s work.”

Article 41-(c), N. O. & N. E. Yardmen’s Agreement, provides:

“(c) Yardmen will hold seniority only in the yard in which they are employed. The seniority of yardmen will date from the time they enter the service in the yard.”

The original claim for this offense, as shown in statement of claim, is listed as Claim No. 1, and as claims accumulated they were referred to Carrier’s officials designated to handle in installments, the first installment showing Nos. 1 to 42, inclusive, outlining the work performed by road crews in each instance.

These claims have at this time accumulated to the extent that they run from Nos. 1 to 783, each claim showing men for which made and work performed by road crews on which claims are based, all handled with Carrier’s officials, and to avoid showing each claim separately, making an unwieldy volume, we submit only Claim No. 1, all others being similar thereto.

The men shown in statement of this claim are extra men and were unemployed on date of claim. All claimants, however, in the 783 cases are not extra men due to the fact that extra men were not, in some instances, available account a limited number of men employed. Claimants in all cases, even though regular men, were off duty and had the required amount of rest, and the Committee representing the Brotherhood of Railroad Trainmen contend, were entitled to yard work for which road crews were used.

Prior to 1930 there were employed in this yard as many as seven full-time engines, which number during the depression was reduced to two engines, and possibly at times only one regular engine. Before the erection of Camp Shelby was begun three engines had been regularly assigned, and though pool freight crews, account of the abnormally heavy business increase, increased from two crews to 25 or more, which would indicate that account of Camp Shelby and the general increase of business several yard engines would be necessary to handle this increase in business, we still have only three yard engine assignments, which, in our opinion, would make it clear to the Board that yard work is being imposed on road crews at the expense of both yard and road men. Yardmen, as shown in Article 41-(c) of that schedule, hold seniority only in the yard in which employed, and where the Company declines to employ and use additional yardmen we contend the work still belongs to yardmen if and when available for service in preference to road crews. For 35 years prior to date of these claims yard crews have performed the work complained of in Hattiesburg yard.

The Carrier takes position that Hattiesburg is an intermediate point on line of road and that road crews would be permitted to perform switching service as shown in Article 15, N. O. & N. E. Trainmen’s Agreement, reading:

“When through freight crews are required to do switching on line of road which is not incident to or a part of their train movement they will be paid local freight rates. Picking up and setting off cars shall be considered part of their train movement. If in setting out cars, crews are required to place cars at a certain point on a designated track for loading or unloading, local freight rates will be paid. This does not apply to branch, specified, and anomalous runs listed as excepted runs in the schedule.”

Which rule is, of course, not applicable for the reason that “on line of road” means intermediate points where yard service is not maintained. Regularly assigned yard service maintained in Hattiesburg yard, governed by N. O. & N. E. Yardmen’s Agreement, could certainly not be classed an intermediate point at which through freight crews would be permitted to perform
switching service. The Carrier further contends that through freight crews have the right to make set-out and pick-up movements in yard, with which position we do not agree, as, in addition to showing actual switching by road crews, we direct attention to Webster's definition of switching which is shunting cars from one track to another.

Employees feel that when the Board gives consideration to the increased business in this yard as shown by the addition of 28 to 25 pool freight crews, you must realize that yard work is being delegated to road crews, and that the facts together with rules quoted warrants a favorable award. There are many favorable Awards in similar claims with which the Board is familiar and we will not burden the records with references thereto.

All data used in this submission was made a part of handling with Carrier.

Oral hearing not desired unless requested by Carrier.

CARRIER'S STATEMENT OF FACTS: The New Orleans and North-eastern Railroad extends from Meridian, Mississippi, to New Orleans, Louisiana, a distance of approximately 202 miles. Hattiesburg, Mississippi, located approximately 85 miles southwest of Meridian, is a conditional terminal for crews on Meridian-Hattiesburg turnaround runs (i.e., they may or may not be relieved at Hattiesburg), but is an intermediate point for crews on through freight trains operated between Meridian and New Orleans.

On April 7th, 1941, J. M. Pittman, one of the claimants in this case, held a regular assignment as yard helper on the third shift yard crew in Hattiesburg Yard, with assigned hours 11:00 P.M. to 7:00 A.M. He worked on his regular assignment from 11:00 P.M., April 6th to 7:00 A.M., April 7th, and from 11:00 P.M., April 7th, to 7:00 A.M., April 8th, 1941. His claim in the instant case is for pay from 3:00 P.M. to 11:00 P.M., April 7th, 1941.

On April 7th, 1941, F. A. Varnado was an extra yardman in Hattiesburg Yard. He worked from 7:00 A.M. to 3:00 P.M., April 7th and from 11:00 P.M., April 7th, to 7:00 A.M., April 8th. His claim is for pay from 3:00 P.M. to 11:00 P.M., April 7th, 1941.

On April 7th, 1941, E. Havens was an extra yardman in Hattiesburg Yard but did not work on that date. His claim is for pay from 3:00 P.M. to 11:00 P.M., April 7th, 1941.

As will be noted from General Chairman Roberts' notice letter of August 27th, 1942, to Secretary McFarland, Messrs. Pittman, Varnado and Havens claimed pay on account of second No. 51 and Extra 6906, north, setting out and picking up cars in Hattiesburg Yard.

The statement in Mr. Roberts' notice letter of the work done by second No. 51 and Extra 6906, north, is misleading and couched in such language as to leave the impression that the crews of those trains did yard switching. Such was not the case. Second No. 51 arrived Hattiesburg with the head car in the train destined to New Orleans and the next seven cars destined to Hattiesburg. The eight cars were cut off, seven of them were set on the scale track, the engine and one car was then moved to the back track where 21 cars were picked up, thus making 22 cars coupled to the engine and these 22 cars were doubled to the train. In other words the crew simply made their set off and pick up with one car, destined to New Orleans, coupled to the engine. In the case of Extra 6906, north, the three Pullman cars were simply coupled to and backed onto the caboose.

The work in question was not yard switching but was nothing more than work incident to the movement of the two through freight trains involved, i.e., the work at an intermediate point of picking up cars that were to move and setting out cars that had moved in those trains; work that is clearly a part of the work of through freight crews under Article 15, Switching, of the Agreement (supra) which reads:
"When through freight crews are required to do switching on line of road which is not incident to or a part of their train movement they will be paid local freight rates. Picking up and setting off cars shall be considered part of their train movement. If in setting out cars, crews are required to place cars at a certain point on a designated track for loading or unloading, local freight rates will be paid. This does not apply to branch, specified and anomalous runs listed as excepted runs in the schedule."

Article 15, Switching, was originally adopted in the latter part of the year 1922 through negotiations between the representatives of the engineers and firemen and the Southern Railway Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, Alabama Great Southern Railroad Company, New Orleans and Northeastern Railroad Company and Georgia Southern and Florida Railway Company. Subsequently, or in the year 1923, the representatives of the conductors and trainmen on the five lines named requested the rule and their request was granted with the understanding that they would accept the interpretations of the same that had been agreed upon by the representatives of the engineers and firemen and the Carriers. At the time of the next revision of the engineers', the firemen's and the conductors', trainmen, yardmen and switchtenders' agreements on the lines in question, March 1st, 1924, the Article was incorporated in those agreements and has since remained therein without change.

Both the writer and the signer of this submission were present at all of the conferences leading up to the adoption of Article 15 and both assert positively that it was never understood nor even suggested that the Article was applicable only at points where yard engine service was not maintained. To the contrary, it was intended to apply and has been applied at all points on line of road regardless of whether yard engine service was or was not maintained at such points. During the entire time the Article has been in effect or for a period of more than fifteen (15) years prior to the time the instant claim was filed, through freight crews have set out and picked up cars at intermediate points where yard engine service was maintained, both while yard crews were and were not on duty, without either complaints or claims from the yardmen and without even a contention that they were entitled to perform the service. This interpretation and application of the rule was continued in effect by the first paragraph of the "Terms of Agreement" appearing on pages 30 and 38 of the March 1st, 1924, and pages 35 and 44 of the March 16th, 1927, N. O. & N. E. Railroad Agreements with the conductors, trainmen, yardmen and switchtenders * * * and on pages 38 and 46 of its current agreement with the trainmen, yardmen and switchtenders which became effective June 1st, 1941. The paragraph in question reads:

"This agreement supersedes and cancels all former agreements, but does not, except where rules are changed, alter former accepted and agreed to practices, working conditions or interpretations."

This paragraph was intended to and did continue in effect interpretations of and practices under the rules of prior agreements which were carried forward without change to revised agreements, which was true of the rules involved in this case, and inasmuch as those rules have never required a payment to yardmen when through freight crews picked up and set off cars in yards in which yardmen were employed, they cannot now require such a payment.

The last paragraph of General Chairman Roberts' notice letter of August 27th, 1942, addressed to Secretary McFarland, reads:

"This claim made for this and all subsequent dates for the men shown and all other yardmen who are deprived of work by the practice of using road crews to perform yard service in this yard in violation of yard schedule."

It will be noted from this paragraph that General Chairman Roberts is endeavoring to have the Board give consideration to certain alleged claims that are unidentified as to names of claimants other than those involved in the instant case, and dates of claims, and are simply stated as being "for the men shown and all other yardmen who are deprived of work by the practice of using road crews to perform yard service in this yard in violation of yard schedule." This statement of the alleged claims is, of course, intended by the representative of the employees to leave the impression with the members of the Board that the work of picking up and setting out cars that move into and out of Hattiesburg in through freight trains is "yard service" and, therefore, that the performance of this work by the through freight crews involved is "in violation of yard schedule." As will hereinafter be shown in connection with the Pittman-Varnado-Havens claim, this is an entirely erroneous premise and the members of the Board should be in no way influenced by the prejudicial language used by the representative of the employees.

The claim of Yardmen J. M. Pittman, F. A. Varnado and E. Havens for pay for one day each at yard rates on April 7th, 1941, is properly before the Board, it having been given handling in the manner required by the N. O. & N. E. Railroad trainmen, yardmen and switchtenders agreement and by the Railway Labor Act, Amended.

The claims referred to in the last paragraph of General Chairman Roberts' notice letter of August 27th, 1942, addressed to Secretary McFarland, asserted as being—

"for this and all subsequent dates for the men shown and all other yardmen who are deprived of work by the practice of using road crews to perform yard service in this yard in violation of yard schedule."

are not properly before the Board, in that they have not been submitted in the manner required by that part of paragraph (i) of Section 8, First, of the Railway Labor Act, which provides:

"* * * the disputes may be referred by petition of the parties, or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."  (Emphasis supplied.)

POSITION OF CARRIER:

As to the claims referred to in the last paragraph of General Chairman Roberts' notice letter of August 27th, 1942, addressed to Secretary McFarland.

As shown in the Carrier's Statement of Facts, these claims have not been submitted to the National Railroad Adjustment Board, First Division, in the manner required by that part of paragraph (i) of Section 8, First, of the Railway Labor Act, Amended, and the New Orleans and Northeastern Railroad Company hereby enters formal protest against the said Board giving consideration to these claims and rendering an Award in connection therewith.

As to the claim of Messrs. Pittman-Varnado and Havens for pay for one day each on April 7th, 1941.

This claim, we understand, is grounded upon a contention that so far as trainmen are concerned, the agreement between the New Orleans and Northeastern Railroad Company and its conductors, trainmen, yardmen and switchtenders, which became effective March 16th, 1927, constitutes two separate agreements, one between the Railway Company and its road trainmen and the other between the Railway Company and its yardmen and switchtenders, and that, on this basis, despite the fact that under Article 5, Basic Day, and Article 6, Beginning and Ending of Day, Freight Service, the crews of through freight trains Second No. 51 and Extra 6906 were on duty and under pay
and the further fact that Article 15, Switching, was in operation during the
time they were engaged in picking up and setting out at Hattiesburg, the
claimant yardmen are entitled to pay for a day at yard rates under Article 34,
Basic Day, and Article 41 (c), Seniority, Yard Service, on account of not
having been used to do that work.

The employees' contention is paradoxical; they say that the yardmen are
not a party to the section of the agreement containing rules applicable to
roadmen and that the road trainmen are not a party to the section of the
agreement containing rules applicable to yardmen, yet in another case, i.e.,
that of the claims of road trainmen B. L. Sutherland and J. A. Stroble, which
is before this Division under Docket No. 15497, they rely upon one of the
yard rules (Article 34) in an effort to support their claim, and this despite
the fact that companion rules (Article 5-(a), Article 6 and Article 15) gov-
erning men in through freight service, were in operation during the time the
work was being done.

With the employees' contention that so far as the trainmen, yardmen and
switchtenders are concerned, the agreement of March 16th, 1927, constitutes
two separate agreements with the employees divided as between road service
and yard service, the New Orleans and Northeastern Railroad Company just
cannot agree and respectfully insists that in order to show the fallaciousness
of that contention it is only necessary to review and comment upon some of
the provisions of that agreement, which we now do.

By reference to the agreement in question, it is found that yardmen or
yardmen and switchtenders are specifically included in the following articles
or sections of articles:

Article 12—Deadheading—Sections (a), (b) and (c).

Article 13—Attending Court and Investigations, Sections (a), (b),
(d), (f), (g) and (h).

Article 23-(b)—Method of Pay Under Hours of Service Laws, para-
graph (i).

Article 26—Seniority and Filling Vacancies,
Section (a), Seniority Lists, Section (b), Seniority Rights
and Paragraph 5 of Section (e), Promotion.

Article 27—Leave of Absence.

Article 29—Miscellaneous, Section (d), Service Letters, the note
under paragraph (3) of Section (f), application for a
minimum day's pay, also paragraphs 1 and 2 of Section
(g), Negro Trainmen.

Article 31—Investigation and Discipline.

The following articles and sections of articles are also applicable to yard-
men or to both yardmen and switchtenders or to switchtenders:

Article 13—Attending Court and Investigations, Sections (e), (i)
and (j).

Article 15—Switching, as affecting the rights of yardmen to perform
this service.

Article 26—Section (g), Statute of Limitation.

Article 29—Miscellaneous, Section (g), paragraph (3).

Article 32—Adjustment Matters.

While the foregoing is sufficient in itself to leave no question of doubt as
to the agreement being one agreement between the Railroad Company and
the trainmen, yardmen and switchtenders as one group, that it is one agree-
ment is further borne out by the fact that it was negotiated by a Committee composed of both roadmen and yardmen, acting as a unit, each member of which was fully aware of each of the provisions of the same, and the further fact that the articles of the agreement are numbered in continuity, Articles 1 to 32, inclusive, consisting of rules, applicable to roadmen or to both roadmen and yardmen and Articles 33 to 41, inclusive, consisting of rules applicable to yardmen.

While it is shown on page 35 of the printed agreement that the original agreement was signed by both the General Chairman of the Order of Railway Conductors and the General Chairman of the Brotherhood of Railroad Trainmen at the conclusion of the road section of the same, and as shown on page 44 of the printed agreement that the original was again signed, at the conclusion of the yard section of the same, only by the General Chairman of the Brotherhood of Railroad Trainmen, the explanation as to the necessity for this dual execution by the General Chairman of the Brotherhood of Railroad Trainmen is simple: The articles of road section of the agreement, i.e., those carried on pages 1 to 35, inclusive, are applicable either to conductors, represented by the Order of Railway Conductors, or to trainmen, represented by the Brotherhood of Railroad Trainmen, or to both conductors and trainmen, including yardmen, while the rules of the yard section of the agreement, carried on pages 36 to 44, inclusive, are applicable only to yard men, the representation of whom rests solely with the Brotherhood of Railroad Trainmen. It was, therefore, necessary that the road section of the agreement be signed by both representatives to avoid the impression (which might be gained if that section of the agreement had been signed only by the representative of the conductors) that the Order of Railway Conductors represented and legislated for both road conductors and trainmen. It was, of course, then necessary that only the General Chairman of the Brotherhood of Railroad Trainmen sign at the conclusion of the yard section of the agreement, because of the fact that the Order of Railway Conductors does not represent any classes of yard men. Had the Order of Railway Conductors represented yard conductors, as they do road conductors, this dual execution of the agreement would not have been necessary, and the signatures would all have followed the "Terms of Agreement" at the conclusion of the yard section of the agreement. This is clearly evidenced by the New Orleans and Northeastern Railroad Engineers' and Firemen's Agreements. Although the Engineers' Committee and Firemen's Committee represent men in both road and yard service, there is no dual execution of the agreements but they are each executed as one agreement following the "Terms of Agreement" at the conclusion of the rules applicable to men in yard service.

The Carrier respectfully insists that, as hereinbefore shown, the conclusion that the agreement in question is one agreement is inescapable.

With respect to the employees' contention that the claimants in this case are entitled to pay for a day at yard rates on account of the crews of through freight trains, Second No. 51 and Extra 6906, north, picking up and setting out at Hattiesburg, on April 7th, 1941, the Carrier insists that this claim is without merit and is unsupported by schedule rules, as will hereinafter be shown.

The New Orleans and Northeastern Railroad Schedule of Wages and Rules and Regulations for Trainmen, Yardmen and Switchtenders, effective March 16th, 1927, constitutes a contract to which the employees in question as one group are one party and the Railroad Company the other party. It is a unit of expression of contractual intent. It must be considered as a whole and each of its provisions interpreted in whatever light is thrown on it by any or all of the other provisions.

Having hereinbefore shown that the agreement involved in this case is one agreement with the trainmen, yardmen and switchtenders as one group, the Carrier submits that the work in connection with which the claim was filed, i.e., the work of picking up and setting out cars at points on line of road, falls squarely under Article 15, captioned "Switching," which reads:
“When through freight crews are required to do switching on line of road which is not incident to or a part of their train movement they will be paid local freight rates. Picking up and setting off cars shall be considered part of their train movement. If in setting out cars, crews are required to place cars at a certain point on a designated track for loading or unloading, local freight rates will be paid. This does not apply to branch, specified and anomalous runs listed as excepted runs in the schedule.”

As shown in “Carrier’s Statement of Facts,” the circumstances surrounding the adoption of Article 15 were that it was first negotiated between the representatives of the engineers, the firemen and the Company. In these negotiations definite understandings as to the application and non-application of the provisions of the rule in given sets of circumstances were had. One of these understandings was that the rule did not require additional payments to through freight crews for picking up cars in and setting off cars from their trains, as was done in the instant case. As a matter of fact the rule itself clearly provides that “picking up and setting off cars shall be considered part of their train movement.” In other words, the rule provides, in effect, that the work of picking up and setting off cars is a part of the work of through freight crews for which no additional payment is required.

Subsequent to the adoption of the rule by the engineers and firemen, request was received from the representatives of the conductors and trainmen that it also be incorporated in their agreement. The representative of the carrier advised them of his willingness to extend the rule to the classes of employees represented by them, but only with the distinct understanding that they would accept the interpretations of the same that had been agreed to between him and the representatives of the engineers and firemen. These interpretations were fully and clearly explained to the representatives of the conductors and trainmen in a conference at which the representatives of the engineers and firemen were present, and they accepted the rule and interpretations without change.

The records show that Article 15 in its present form became effective for conductors and trainmen on the N. O. & N. E. Railroad in February 1923. Between that time and the time the instant case arose, or for approximately 18 years, through freight crews have (as their representatives agreed they would do) picked up or set out cars without receiving any additional pay and without even claiming that they should receive additional pay. In other words, they carried out the understanding had at the time the rule was adopted.

There is no merit in the contention of the employees that Article 15 was intended to apply only at points where yard engine service was not maintained. Had the rule been so intended it would have contained specific language so restricting it. The facts are that more than 18 years ago, the representatives of the trainmen entered into an agreement with the carrier (Article 15) under which through freight crews could be used to pick up and set out cars at points on line of road without additional payment and could even be used to do switching at such points if paid at local freight rates. The men who drafted and agreed upon the Article in question were all practical railroad men. They knew full well that at many of the points on line of road yardmen were employed and the rules applicable to men engaged in yard service, including Article 84, Basic Day, and Article 41 (c), Seniority, were in effect but knowing that all yard switching could not with a reasonable degree of economy be done by yardmen and, being reasonable men, were willing to and did contract with the carrier to permit some of this work to be done by through freight crews and thus, to that extent, restricted the rights of the men engaged in yard service.

By reference to Article 15, it will be found to specifically provide that “Picking up and setting off cars shall be considered a part of their (through freight crews) train movement.” It is in no way restrictive as to the manner in which this work may be done or as to the points at which it may be done
so long as they are points on line of road, as in the instant case. In the light of the clear language of this Article, it is obvious that the rights of yardmen, under Article 41 (c) and other Articles applicable to yard service employees, are curtailed to the extent that through freight crews may, under Article 15, be used to pick up and set out cars moving in their trains. This was the intent of the rules at the time they were agreed upon; they have been so applied during the entire time they have been in effect, and until the recent past no other application of them has ever even been contended for.

The rules involved in this case have been interpreted and applied in the manner outlined herein during the entire time since Article 15 was adopted, or for more than 18 years, and this interpretation is definitely continued in effect by the first paragraph of the "Terms of Agreement" appearing on pages 35 and 44 of the printed agreement which reads:

"This agreement supersedes and cancels all former agreements, but does not, except where rules are changed, alter former accepted and agreed to practices, working conditions or interpretations."

The intention of the first paragraph of the "Terms of Agreement" was to continue in effect recognized interpretations of and practices under those rules of the prior agreement which were carried forward to the new agreement without change, which was true of the rules involved in this case. The interpretations of and practices under the rules involved in this case were continued in effect by the paragraph in question and inasmuch as those rules, as interpreted by understanding and practice over a period of more than 18 years, have never required payment for a day to yard crews on account of through freight crews picking up and setting out cars in yards in which yardmen were employed, they cannot now require such a payment.

In conclusion, the Carrier submits:

(a) That its agreement with the trainmen, yardmen and switchtenders is one agreement with those employes as one group and not two agreements with the respective classes of employes as divided between road service and yard service;

(b) That being one agreement, each of its provisions must be interpreted in whatever light may be thrown upon it by the other provisions;

(c) That the work involved in this case is properly a part of the work of through freight crews, as provided in Article 15, for which they are not entitled to any additional compensation, and on account of the performance of which the yardmen are not entitled to any compensation;

(d) That in view of the fact that the agreement contains a specific rule (Article 15) applicable to through freight crews picking up and setting out cars at points on line of road, the rights of the yardmen under Article 41 (c) of the agreement are to that extent curtailed;

(e) That for more than 18 years through freight crews have picked up and set out cars in yards in which yardmen were employed, that the yardmen have never received or, until the recent past, even contended that they were entitled to pay on account of that work having been done by through freight crews but have recognized the fact that, in view of the provisions of Article 15, they were not entitled to any pay;

(f) That the schedule rules involved in this case were applied in accordance with their true intent and meaning and in accordance with the recognized interpretations placed upon them by at least
tacit agreement between the parties over a period of more than
18 years, and that those interpretations were continued in effect
by the first paragraph of the “Terms of Agreement” hereinbefore
quoted.

The Carrier respectfully insists that, for the reasons given herein, the
claims should be denied and requests that the Board so decide.

All data submitted in support of the Carrier's position has been presented
to the representative of the Employees and is a part of this dispute.

Oral hearing is desired only in the event such a hearing is requested by
the representative of the employees.

FINDINGS: The First 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 waived hearing thereon.

A decision in this claim involves an interpretation of Article 15. It is
contended by the employes that this rule does not apply at Hattiesburg, an
intermediate point, where yard service is maintained. To support their con-
tention they say "For 35 years prior to the date of these claims yard crews
have performed the work complained of in Hattiesburg Yard." On the other
hand the carrier contends that this rule applies to all points on the line re-
gardless of whether yard service was or was not maintained at such points
and state such has been the practice ever since the rule has been adopted,
which was over fifteen years.

The contention of the parties cannot be settled by the language used in
this rule, and the rule is ambiguous on this point. It must be governed by
the interpretation put upon this rule by the parties as evidenced by past
practice at this point. There is a sharp conflict in the record in reference to
past practice. If the employes' contentions are true that in the past this work
was performed by yard crews then there should be an affirmative award, but
if the past practice has been as carrier contends, then the claim should be
denied. To ascertain the facts, the case is referred back to the parties.

AWARD

Claim remanded, with right to refile same if parties cannot agree.

BY ORDER OF FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

ATTEST: (Sgd.) T. S. McFarland
Secretary

Dated at Chicago, Illinois, this 25th day of October, 1943.