Award 15230
Docket 23868

NATIONAL RAILROAD ADJUSTMENT BOARD

FIRST DIVISION

39 South La Salle Street, Chicago 3, Illinois

With Referee A. Langley Coffey

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE VIRGINIAN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of Conductor G. C. Keeney and Brakemen W. B. Manning and W. R. Mallory, time ticket dated June 28, 1946, claiming one minimum yard day's pay, account of performing yard switching at Princeton Yard."

JOINT STATEMENT OF FACTS: On June 28, 1946, claimants Conductor G. C. Keeney and Rear Brakeman W. B. Manning were assigned to local freight service on bulletin reading as follows:

"Train	Conductor	Brakemen
Local Frt. (63-64) between Roanoke and Princeton. Princeton. Sunday layover Roanoke.		Home Terminal
	G. C. Keeney	20—M. O. White H X—W. B. Manning R"

Claimant W. R. Mallory, an extra brakeman, was filling the position of head Brakeman M. O. White.

This crew, on date of claim, handled its assignment, westbound local freight Train No. 63, from Roanoke, Virginia, the away-from-home terminal, to Princeton, West Virginia, the home terminal. At Whitethorne, an intermediate point, there was an empty tank car, GRCX-3125, with a defective coupler on the east end of the car. Conductor Keeney and crew picked this car up on the end of their train behind the caboose, thus using the good coupler on the west end of the tank car.

On arrival at Princeton, the home terminal, No. 63 consisted of the engine, NYC 159002 destined Princeton, caboose, and empty tank GRCX-3125, in order named. The crew pulled through the yard to the west lead (see Joint Exhibit "A"), set the bad order car GRCX-3125 in No. 5 track, and set the caboose and NYC 159002 in No. 2 track. In setting the two latter cars in No. 2 track the caboose was cut loose and shoved back to couple to the cars standing on the east end of this track. Claimants were thereupon relieved.

The cars on the east end of No. 2 track had previously been made up by the yard crew as No. 64, eastbound local freight, for June 29, 1946. On the morning of June 29, 1946, claimants Conductor Keeney and Brakemen Manning and Mallory reported at Princeton for their assignment, No. 64.

They coupled up their engine to their train which included their caboose as coupled up the previous evening, made necessary air tests, and left Princeton eastbound.

POSITION OF EMPLOYES: Princeton is an intermediate yard on the line of the carrier. On date of claim one yard crew was employed on this yard. Yardmen at the Elmore Terminal hold exclusive seniority rights on Princeton Yard, and are entitled to all yard switching. At this point, when Conductor G. C. Keeney and crew arrived at Princeton on June 28, 1946, on train No. 63, they had instructions to do yard switching which they performed as follows:

> They arrived Princeton with Engine and two cars and caboose car, they were instructed to pull through No. 1 track and back GRCX-3125 bad order car which was behind caboose into No. 5 track, then they backed their caboose and NYC 159002 into No. 2 track coupling caboose on to No. 64 train, which had been made up by yard crew.

This train left Princeton the following day, June 29, 1946. They left the NYC car in No. 2 track and engine was put on pit track. The assigned yard crew had gone off duty when No. 63 train arrived and No. 64 train was due to leave before the reporting time of the assigned yard crew, and No. 63 crew was required to perform the above switching for no other reason than to avoid bringing a yard crew on duty to perform the switching that No. 63 crew performed.

The General Committee representing the Brotherhood of Railroad Trainmen have negotiated with the Management a Schedule of wages for trainmen and yardmen each being separate and each containing rates of pay and rules applicable to the classes of service covered in their respective schedules.

For the ready reference of your Board, we quote the following rules of agreement which support this case:

"ARTICLE 15

SWITCHING

> At initial terminals where switch engines are employed, conductors and trainmen will not be called upon to perform switching, but should they be required to perform such service, they will be paid therefor at overtime rates applicable to the time switching is performed for all time so engaged.

ARTICLE 26 (s)

> Roadmen will hold no yard rights. Roadmen may be used for temporary yard service in cases of emergency.

YARD SERVICE

PREAMBLE

> The word 'Yardmen' where used in this schedule includes yard conductors and yard brakemen.

ARTICLE 33

RATES OF PAY

	Per Day	Overtime
Conductors	$12.11	$2.2705
Brakemen	$11.26	$2.1125
Switchtenders	$ 9.71	$1.8225

ARTICLE 34

BASIC DAY

Eight hours or less shall constitute a day's work.

ARTICLE 41 (b)

Where regularly assigned to perform service within switching limits, yardmen shall not be used in road service when road crews are available, except in case of emergency. When yard crews are used in road service under conditions just referred to they shall be paid miles or hours, whichever is the greater, with a minimum of one hour, for the class of service performed in addition to the regular yard pay and without any deduction therefrom for the time consumed in said service."

In further support of this claim we wish to call your attention to the settlement of Claim No. 37 handled in conference at Norfolk, Va., with Mr. L. A. Markham, Assistant to President, Virginian Railway Company, during the week of April 14, 1944.

Claim No. 37: Claim of Conductor T. J. Henretta and crew April 14, 1942, for yard day at Princeton, account required to runaround train to set off eight cars on rear.

Decision: Allowed.

For The Virginian Railway Company

Mr. L. A. Markman,

.....

Assistant to President

Your Honorable Board in Award 3110 held:

"In scores of cases, including decisions by six Referees, this Division has held that yard work as to which seniority is held by yardmen cannot be taken away from them and turned over to roadmen to perform. Whether it be so expressly stipulated in the schedule or not, is not controlling as such would necessarily be implied if not expressed since the work is the very subject matter of the contract with the yardmen, and to hold it to be the prerogative of one party to the contract to destroy the subject matter of it would be to hold that no contract exists."

The committee wishes to call your particular attention to Award No. 11200 (Docket No. 20070), of the First Division, National Railroad Adjustment Board, rendered on this particular carrier. We wish to quote findings:

"The parties to said dispute waived hearing thereon. The work described in this docket was yard work and was within the jurisdiction of yardmen and not roadmen. Article 15 does not authorize road crews to perform this work at 'initial and final terminals' where switch engines are employed except in cases of emergency as provided in Article 26 (s).

Claim sustained."

Your Board's attention is also called to Awards Nos. 11946 and 11230, which were rendered on this same carrier, and Award 11946, on the same yard in question. The committee further contends that Awards Nos. 7932, 7934, and 8433 further support this claim.

In further support of this case we quote instructions issued by the carrier to Conductor Keeney, regularly assigned to Trains 63 and 64.

"Princeton, West Virginia
January 19, 1944.

CONDUCTOR KEENEY

No. 63

Effective today and until further advised, bring empty coal cars into Princeton on head-end—other thru cars next—cars for Princeton on rear—pull thru No. 1 track, set all thru cars on No. 3 track for west local the following day—put cars for Princeton and caboose on No. 2 track—couple caboose to cars on No. 2 track—this is rear of No. 64 for following day.

G. B. D."

"January 29, 1948

CONDUCTOR KEENEY

EFFECTIVE TODAY: Discontinue doing any switching at Princeton Yard, except on special instructions from Yard Conductor. Comply with any instructions the yard conductor gives you. If the yard conductor fails to give you a track to leave your train on, pull in No. 1 track and leave your train on this track. I have no objections to your cutting caboose off from train and stopping it at passenger station.

M. M. Shumate
Trainmaster"

"Princeton—January 29, 1948.

CONDUCTORS

Mr. G. C. Keeney—Princeton

Mr. M. L. Woods—Princeton

In the future, unless you are given a track in which to pull in at Princeton, pull by and back in No. 2 track.

(s) M. M. Shumate
Trainmaster

CC—Mr. B. K. Wysong, Yard Conductor
Mr. E. A. Rose, Yard Conductor
Princeton"

"Princeton, W. Va.
March 17, 1948

C&E No. 63

Please arrange to pull your train by and back in No. 2 track Princeton your train for east made up on No. 2, no yard crew on duty at Princeton and put cab on rear of train in No. 2 track.

H. M. Strong,
Chief Dispatcher."

Committee contends that the claimants, when required to perform switching described in joint statement of facts at the intermediate yard Princeton, a point where regular yard service is maintained, are entitled to a minimum yard day's pay, and in view of the facts and rules cited above claim is justified and we respectfully request the Board to so sustain.

It is affirmed that all evidence and data herein has been presented to the carrier and made a part of the question in dispute.

Oral hearing not desired by employes.

POSITION OF CARRIER: The claim in this case is made under the terms of a schedule agreement between the carrier and its road and yard conductors effective July 1, 1928, as amended. This agreement, together with its amendments, is on file with your Board and is hereby specifically made a part of the evidence in this case.

By reference to the Joint Statement of Facts it will be seen that the claimants in this case, Conductor G. C. Keeney and Brakemen W. B. Manning and W. R. Mallory, constituted a regularly assigned local freight crew operating between Princeton, W. Va., and Roanoke, Va., with home terminal at Princeton. On June 28, 1946, this crew handled the westbound local freight train No. 63 into Princeton and on June 29th it handled eastbound local freight train No. 64 out of Princeton. On arrival at Princeton on June 28, 1946, this crew's train consisted of engine, car, caboose and bad order car in the order named. The bad order car was behind the caboose because its coupling on the east end was defective. As shown on Joint Exhibit "A" the bad order car (yellow) was placed in track No. 5 and the caboose (red) and the other car (blue) were placed in track No. 2. The caboose was cut loose from the car and shoved down to couple on to the west end of cars already in track No. 2. These latter cars had been switched together by the yard crew at Princeton to make up train No. 64 of the following day. The road crew of Conductor Keeney and Brakemen Manning and Mallory are claiming a yard day in addition to a road day because of this work performed at Princeton on June 28, 1946.

On August 3, 1938, an amendment of the schedule agreement was negotiated reading as follows:

> "After conference between the parties signatory hereto the following memorandum regarding switching service under Article 15 of the Conductors' and Trainmen's Agreement, effective July 1, 1928, in connection with the yarding of trains on arrival at terminals or the assembling of trains before departure from terminals, was reached and is effective August 1, 1938.
>
> 1. Road crews required to put their train on two tracks on arrival at terminals, or to get their train from two tracks before departing from terminals, when one track will hold the entire train, Conductors and Trainmen will be paid for time consumed in such work under Article 15 of the Agreement. When two tracks will not hold the entire train the third track may be used without pay for switching.
>
> 2. The present practice of placing cars on engine track to be backed on train by road crew on Symbol Train 72 at Roanoke is not affected by this memorandum.
>
> 3. The handling of cabooses in terminals by road crews will be classed as switching and paid for under Article 15 of the Agreement.
>
> THE VIRGINIAN RAILWAY COMPANY
>
> (s) L. A. MARKHAM
> Assistant to President
>
> FOR THE EMPLOYES:
>
> (s) W. D. JOHNSON
> Vice President, Order of Railway Conductors
>
> (s) T. J. HENRETTA
> General Chairman, Order of Railway Conductors
>
> (s) E. E. OSTER
> Vice President, Brotherhood of Railroad Trainmen
>
> (s) D. E. FARMER
> Vice Chairman, Brotherhood of Railroad Trainmen
>
> Norfolk, Va., August 3, 1938."

Under this agreement a road crew on arrival at its terminal can be required to place the cars in its train on two tracks, even though one track would hold all the cars, and can be required to handle its caboose and payment for such work will be made under terms of Article 15 of the schedule. Article 15 provides payment not of a yard day, as claimed in this case, but of additional time at road rate on the minute basis. Conductor Keeney and crew were allowed payment for the time consumed in placing their train on two tracks and in handling their caboose in accordance with the provisions of the above noted agreement of August 3, 1938.

This amendment to the agreement has already been interpreted by your Board. In the case covered by your Docket 20303 a claim was made for a yard day in addition to a road day for a road crew which was required to pick up its train from two tracks in Elmore Terminal when one of the tracks would have held the entire train. In its Award 10896 your Board states:

> "The Division holds that the pick-up in Elmore Yard on the date in question could be made and paid for under Supplemental Agreement made August 3, 1938.
>
> Claim denied."

Again, in your Docket 7410 claim was made for yardmen at Victoria for a yard day each date road crews performed service in that yard. Your Award 11912 reads, in part:

> "The Division decides that under circumstances described in the case in Item 17 the claim . . . is good to August 1, 1938, and thereafter when it is shown any switching was performed, except that provided for in Items 1, 2, and 3 of agreement signed August 3, 1938, effective August 1, 1938.
>
> Claim sustained in accordance with these Findings."

Your Docket 20402 covers a claim of a road crew for a yard day in addition to a road day because the crew was required to switch its caboose out from behind two other cabooses on the caboose track at Dickinson terminal. Your Award 11359 stated:

> "The Supplementary Agreement negotiated between the parties expressly provides for the handling of cabooses in terminals by road crews.
>
> Claim denied."

The Supplementary Agreement referred to in this award was the agreement of August 3, 1938, quoted above.

A time claim was presented by representatives of conductors, trainmen and yardmen for payment to a road crew of 55 minutes' terminal switching at Elmore, W. Va., for a road crew in short turnaround service out of Elmore on March 7, 1945. This was a claim that terminal switching allowance should be made for work at Elmore on the intermediate trips in and out of that terminal, as well as on the initial trip out and the final trip in. This payment was allowed and the settlement accepted by the employes as is evidenced by attached Carrier's Exhibit "A".

A time claim was presented by representatives of the road brakemen and yard conductors and brakemen for payment under Article 15 for a road crew which picked up its train from two tracks at Sewalls Point (Norfolk, Virginia) Terminal on an outbound trip or which left its train on two tracks on an inbound trip when one track would hold the entire train. Payment of this claim was allowed under date of July 8, 1948, and the settlement was accepted by representative of employes, as is indicated by attached Carrier's Exhibit "B".

It is thus perfectly clear that a road crew which at its terminal performs the service defined in Items 1, 2, and 3 of the agreement of August 3, 1938, is not entitled to a yard day for such service, nor is a yard crew entitled to any compensation.

As is shown in the Joint Statement of Facts in the present case, claimants Conductor Keeney and crew merely placed their train on two tracks, when one track would hold the entire train (Item 1 of the agreement of August 3, 1938), and handled their caboose (Item 3 of that agreement) and in accordance with that agreement and its interpretation, both by the parties thereto and by your Board, these claimants have been already properly paid. Under that agreement and its interpretations the claim for a yard day in addition to a road day in the present instance has no foundation whatsoever.

All data in support of carrier's position has been furnished representatives of employes.

Oral hearing is waived by carrier.

(Exhibits not reproduced.)

EMPLOYES' REBUTTAL STATEMENT: Referring to the following quotation: (Excerpts from the Carrier's Position.)

On August 3, 1938, an amendment of the schedule agreement was negotiated reading as follows:

> "After conference between the parties signatory hereto the following memorandum regarding switching service under Article 15 of the Conductors' and Trainmen's Agreement, effective July 1, 1928, in connection with the yarding of trains on arrival at terminals or assembling of trains before departure from terminals, was reached and is effective August 1, 1938.
>
> 1. Road crews required to put their train on two tracks on arrival at terminals, or to get their train from two tracks before departing from terminals, when one track will hold the entire train, Conductors and Trainmen will be paid for time consumed in such work under Article 15 of the Agreement. When two tracks will not hold the entire train the third track may be used without pay for switching.
>
> 2. The present practice of placing cars on engine track to be backed on train by road crew on symbol Train 72 at Roanoke is not affected by this memorandum.
>
> 3. The handling of cabooses in terminals by road crews will be classed as switching and paid for under Article 15 of the Agreement." (Underscoring ours.)

The Committee wishes to point out certain facts concerning the above referred to memorandum, to your Honorable Board.

In all submissions from this carrier concerning road and yard work, to your Board, they have referred to the above memorandum as a supplemental agreement, now in this submission they refer to it as an amendment to the schedule agreement.

We quote: Definition of Memorandum (Webster's Dictionary):

> "Something to be remembered; a note to help the memory; a brief entry in a diary; diplomacy; a summary of the state of a question; or a justification of a decision adopted."

The Committee contends that the memorandum dated August 3, effective August 1, 1938, is an interpretation of Article 15 of the Trainmen's Agreement and is a part thereof, and that the same interpretation should be placed on the memorandum as was placed on Article 15 by your Board in Awards Nos. 11200, (Docket No. 20070); 11230, (Docket No. 20072); 11358, (Docket No. 20401); 11357, (Docket No. 20364); 11360, (Docket No. 20404); and in further support of the Committee in regard to the memorandum of August 1, 1938, we desire to quote a paragraph of the carrier's submission in (Docket No. 20303), Award No. 10896, which reads as follows:

> "At the time Article 15 was first negotiated, November, 1917, and for a long time thereafter, doubling of a train from two or more tracks when one track would hold it, or yarding it on two or more tracks when one would hold it, was not recognized as switching under Article 15, and when performed it was paid for on the basis of continuous time from the time called to report until released. However, in practically every conference between the Carrier and the Employes' representatives the question was argued, so at a conference on August 3, 1938, an agreement was reached as per the Supplementary Agreement of August 1, 1938, quoted above."

The committee wishes to call your Board's particular attention to the memorandum referred to above by the Carrier as Supplementary Agreement of August 1, 1938, it is the contention of the committee that there is no evidence that the negotiation of the memorandum by the parties August 3, 1938, abrogated any part of the Yardmen's Schedule dated July 1, 1928.

In the carrier's position page five (5), they make reference to your Board Award 10896 (Docket 20303), which reads as follows:

> "This Amendment to the Agreement has already been interpreted by your Board. In the case covered by your Docket 20303 a claim was made for a yard day in addition to a road day for a road crew which was required to pick up its train from two tracks in Elmore Terminal when one of the tracks would have held the entire train."

In its Award 10896 your Board states:

> "The Division holds that the pick-up in Elmore Yard on the date in question could be made and paid for under Supplemental Agreement made August 3, 1938.
>
> Claim denied."

In support of the employes the Committee makes reference to your Board Award 11796 (Docket 7409). In this case a yard crew made claim for one minimum yard day's pay account road crew yarding their train on two tracks at the Sewalls Point Terminal. Your Board states in its findings:

> "On October 7, 1938, the crew in charge of through freight train No. 72 set off car URT 91277, loaded with beer, consigned to the Milwaukee Bottling Co., and spotted the same for unloading on Levin Siding, a point within Sewalls Point Yard limits. Agreement concerning the application of Article 15, entered into on August 1, 1938, made no provision for spotting cars as in this case.
>
> It is asserted that the claimants were the available men for the work in question, and there is nothing to indicate they would not have been called to perform such work.

The Division therefore holds that spotting this car was yard work generally performed by yardmen, and the claim for a minimum day at yard rates October 7, 1938, for Yard Conductor W. E. Carter, Yard Brakemen E. H. Bowles and L. D. Monger is sustained. No other claims were handled with the Carrier, and consequently are not passed on.

Claim disposed of per Findings."

The Carrier makes further reference in their position on page five (5) to your Board, Award No. 11912 (Docket No. 7410), we quote:

"Again, in your Docket 7410 claim was made for yardmen at Victoria for a yard day each date road crews performed service in that yard. Your Award 11912 reads, in part:

'The Division decides that under circumstances described in the case in Item 17 the claim . . . is good to August 1, 1938, and thereafter when it is shown any switching was performed, except that provided for in Items 1, 2, and 3 of Agreement signed August 3, 1938.

Claim sustained in accordance with these findings.' "

In further support of the employes the Committee makes reference to your Board Award 11200 (Docket 20070). In this case a road crew made claim for one minimum day's pay at yard rate, account required to make up their own train at Victoria, this was the same work complained of by yardmen in Docket 7410, Award 11912. Your Award 11200 reads, in part:

"The work described in this docket was yard work and was within the jurisdiction of yardmen and not of road men. Article 15 does not authorize road crews to perform this work at 'initial and final terminals' where switch engines are employed except in cases of emergency as provided in Article 26 (s).

Claim sustained."

The Carrier also makes reference in their position on page six (6), to Award 11359, Docket 20402, we quote:

"Your Docket 20402 covers a claim of a road crew for a yard day in addition to a road day because the crew was required to switch its caboose out from behind two other cabooses on the caboose track at Dickinson terminal. Your Award 11359 stated:

'The Supplementary Agreement negotiated between the parties expressly provides for the handling of caboose in terminals by road crews.

Claim denied.' "

The committee desires to make particular reference to your Board Award 11357 (Docket 20364). This was a claim of a road crew for one minimum day's pay at yard rate, account required to handle caboose No. 55 in Elmore Yard. Your Award 11357 stated:

"The facts show the work complained of to be yard work. As such it is violative of the rules urged by claimants and forms basis of a claim.

Claim sustained."

The carrier further states in their position on page seven (7), we quote:

> "As is shown in the Joint Statement of Facts in the present case, claimants Conductor Keeney and crew merely placed their train on two tracks, when one track would hold the entire train (Item 1 of the agreement of August 3, 1938), and handled their caboose (Item 3 of that agreement) and in accordance with that agreement and its interpretation, both by the parties thereto and by your Board, these claimants have been already properly paid."

The facts in this case are that Conductor Keeney and crew were instructed and did finish making up No. 64 train on June 28, 1946, and the committee affirms that they have never agreed to any such interpretation of their schedule as outlined by the carrier's representatives.

And for the information of your Board the Carrier is now having the work complained of in this submission performed by yard men.

CARRIER'S REBUTTAL STATEMENT: In the "Position of Employes" and the "Employes' Rebuttal Statement" it is argued that Princeton, West Virginia, is an "intermediate" yard. Princeton is located 34 miles east of Elmore and 97 miles west of Roanoke. For crews with initial and final terminals at Elmore and Roanoke, Princeton is obviously an intermediate yard. For claimants G. C. Keeney and crew, however, the Joint Statement of Facts shows that Princeton is the home terminal. Since a point could not be both the home terminal and an intermediate yard for a road crew the statement that Princeton was an intermediate yard in the present instance is clearly in error.

Such error throws out the applicability to the instant claim of the following cases to which the employes have referred:

> "1. Claim No. 37, Conductor T. J. Henretta and crew for April 14, 1942. Conductor Henretta and crew were assigned with Elmore and Roanoke as home terminal and away-from-home terminal, respectively. Their claim at Princeton therefore involved work at an intermediate yard.
>
> 2. Award 11946, Docket 20363, of your Board. This case concerned work performed at Princeton by crews assigned with home terminal Elmore and away-from-home terminal Roanoke, in which case Princeton was an intermediate yard."

Reference is made by employes to Award 11200, Docket 20070, of your Board. From the Carrier's Statement of Facts in that case it is seen that the crew for which claim was made performed service at its initial terminal beyond that specified in the memorandum agreement effective August 1, 1938. Award 11200 is thus not pertinent to the present claim of Conductor Keeney and crew, inasmuch as the service of this crew on which the present claim is based with within the provisions of said memorandum. Furthermore, Award 11200 is not contrary to the decisions of Awards 10896, 11359, and 11912, referred to previously by the carrier, since these latter decisions were made in cases which did involve service performed within the provisions of that agreement. (Award 11912 covered work, some of which was within and some of which was outside the service specified in the Memorandum Agreement effective August 1, 1938.)

Similarly, Award 11230 covering a case where a passenger crew moved cars from the passenger station to the coach tracks, Award 11796, which covered a case where a road crew spotted a car for unloading at an industry within the final terminal, and Award 11357, where a road crew switched a car from one track to another at its final terminal, which awards have been referred to by the employes, are not pertinent to the claim of Conductor

Keeney and crew because those three cases all involve service in yards beyond the provisions of the Memorandum Agreement effective August 1, 1938.

Two other cases to which the employes refer are Awards 11358 and Award 11360. The first award covers a case where a road crew made a coupling in a cut of cars previously made up by a yard crew. The second concerns a road crew which set out of a train one car over tonnage and a bad order. These awards, like the others discussed above, are obviously not pertinent to the instant case.

In their rebuttal statement it appears that the employes are contending that the Memorandum Agreement effective August 1, 1938, is limited to only "emergency" situations. Your Board, however, has decided otherwise. In cases where the service comes within that specified by the Memorandum Agreement your Board has stated the Memorandum Agreement applies both to claims by road crews for a yard day for service they may regularly perform in a yard (Awards 10896 and 11359) and to claims by yardmen for a yard day because of service regularly performed by a road crew in a yard (Award 11912). These decisions, furthermore, dispose of the argument that there are two separate and distinct agreements for yardmen and for roadmen, at least insofar as the Memorandum Agreement effective August 1, 1938, is concerned. That Agreement has already been applied by your Board to both groups.

In reply to the statements made in employes' rebuttal concerning instructions to the road crew as to performance of work at its home terminal the carrier is content to remark that the instructions to the crews may vary from time to time. The employes will doubtless readily admit that these instructions do not constitute binding interpretations of the schedule agreement and even if they were contrary to the agreement (which they are not) they would have no bearing on the instant case. The Joint Statement of Facts sets forth the service performed on which the present claim is based.

In summary, the carrier believes that it has shown that there is no inconsistency in your Board's interpretations of the application of the Memorandum Agreement effective August 1, 1938; that the work performed by Conductor Keeney and crew at their home terminal on June 28, 1946, is specifically covered by that Memorandum Agreement; and that their claim for a yard day in addition to a road day is contrary to previous decisions of your Board.

(Exhibits not reproduced.)

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing waived.

Claimant, a road crew, on arriving at Princeton, its home terminal, with a train of three cars (one car NYC 159002 destined to Princeton, the caboose, and a bad order empty tank car in that order from the engine) was required to place the empty tank car on one track then go to another track, complete making up the train for the following day by coupling the caboose on a lineup of cars set out on that track by the yard crew, and finally pulling back the remaining car a short distance and dropping it.

The crew claims a minimum yard day's pay account performing yard switching at its home or final terminal. The service was paid for under Article 15 of the schedule and the carrier denied the claim.

May a road crew on this property be required to do switching at its home terminal in yarding its train on two tracks when no emergency exists, and when overtime compensation is paid for the service?

This is not a new and novel question arising on the Virginian Railway under its schedule with the Brotherhood of Railroad Trainmen. Neither is it the first time the Division has been called on to assist in interpreting and applying Article 15 of the schedule along with a memorandum of understanding first made effective August 1, 1938.

The difficulty comes from the wide divergency of opinion expressed in the awards of the Division. For varying reasons assigned by referees assisting the Division the predominant and prevailing opinion sustains petitioner's contention here that Article 15 and the Memorandum of Agreement of August 1, 1938 must be construed to include the word "emergency" used in Article 26 (s) of the confronting agreement on the pari materia doctrine.

Award 11200 is the first to sustain that view. The last sustaining award to the same effect is Award 13742. These awards, and some made in between seem to hold to the view that Article 15, to which the memorandum effective August 1, 1938 attaches, standing alone, is ambiguous and requires resort to another part of the schedule for clarification or to determine the true intent of the contracting parties. Thus, the awards turn on the time tested rule that a contract is to be construed so as to give full force and effect to all its terms and where ambiguity exists the instrument will be interpreted by "its four corners".

The weight of the precedent is impressive and imposing. But the precedents of this Division representing as they do a valuable storehouse of knowledge, nevertheless, present many pitfalls for the unwary. A conflict of opinion results not only by reason of the class and character of work in issue and a difference in rules but also from the wide variety of application given the same rules on different properties as, for instance, the so-called standard rules are applied differently on different railroads by mutual consent to meet local conditions. Nevertheless, one cannot dismiss lightly what the Division has done in times past in dockets like the instant one where the same rule on the same property, on similar factual situations, has been before this Division and awards have been made which come back to confront us. Such approach would only lead to greater instability than that which must exist because of variables over which the Division has no control. But the Division can and should re-examine its thinking from time to time under such circumstances.

In re-examining the past sustaining awards we are caused to ask, (1) was it necessary to look beyond the confronting rule, and if so, was the applied rule of construction controlling, and (2) in applying a rule of unquestioned application to commercial contracts and writings was sight lost of the more practical considerations having peculiar application to railroad working schedules?

On the first of the two self-imposed questions there exists some doubt that it was necessary to resort to Article 26 (s) and further, on doing so, whether it is correct to say that Article 26 (s) is controlling over Article 15, and the related memorandum, when it might just as properly be said that Article 15 is a special rule in connection with a related subject or in any event serves as an express exception to Article 26 (s).

Again, and as to the first of the above mentioned propositions, the beginning approach should be to look at the substance of the rule through the eyes of the experienced carrier and labor members of this Board and endeavor to ascertain the reasonable intent of the parties in relation to the subject matter over which they were bargaining. In that connection Article 15 is manifestly the result of compromise, something not entirely foreign to the processes of collective bargaining.

The one and only sentence of the rule provides that conductors and trainmen will not be called upon to perform switching, but if they are they will be paid at overtime rates. Thus, it appears reasonably certain that in negotiations the organizations objected to road crews switching, but concessions were made on consideration that the work would be paid for in addition to the road trip at overtime rates.

The intent seems reasonably clear that the rule was to apply only in connection with making up the train for the road trip at the initial terminal and in yarding it at the final terminal. Any doubt existing is to some extent allayed by examples written into the schedule, and we must assume written for a purpose, showing a division between time at the terminal and time in road service, the terminal time in each instance being by example for nominal periods both before and after the road trip.

To reason as above one only need be aware of conditions governing the making of collective agreements in the bargaining process between labor and management. On railroads it is more a process of legislating rules of conduct and rates of pay than it is contract making. The rules are written under some stress and strain but the parties are not strangers to the job at hand and need no help in driving the best possible bargain. Compromise is a moving factor. Rules are steeped in tradition. Language means little, as long as the rule presents a skeleton to which the great body of usage, custom, and practice can be molded. Thus, there is greater eloquence in what is left unsaid than that which is put in writing. The parties understand their rules better than anyone else and while living harmoniously under them, as they do for a time if there has been a meeting of minds, there grows up a history of uniform application serving the best possible advantage in interpreting and construing the intent of the rule. Unforseen problems arising later, or growing ambition, or continued dissatisfaction, causes one or the other to seek either a broader or narrower scope of the rule, or a new rule altogether. Under the Railway Labor Act (45 U.S.C.A. 151 et seq.) the parties cannot attain their goal except through further negotiation and bargaining. At times, however, it may have been found profitable to come to this Board with their disputes. Unwittingly, in handling past disputes on the instant property under the confronting rules this Division may have assisted in the escape from the consequences of a rule fairly bargained but it is ever mindful that it has no authority to take away from either party that which has been gained through collective bargaining. Neither will the Division knowingly impose conditions on which agreement has not been reached.

For the reasons just stated it is seldom best to go to the ordinary rules for construing contracts except as a last resort after more practical considerations have failed. But the practical considerations are not all on the side of the carrier in the instant docket. Although we have here a schedule with the same representative bargaining for rights of yardmen and roadmen we are still conscious of how jealously the work is protected as between the two crafts. Thus, we are caused to wonder if the normal rights of yardmen would have been consciously bargained away although the rule seems to so imply. The surer answer lies in the historical practices on the property under the rule and the history of the rule itself.

A complete history of Article 15 to the date of this claim is found in Docket 7410, Award 11912. From the carrier's submission in that docket we learn that the Virginian Railway commenced operations in the year 1909 from the West Virginia coal fields to Tidewater. The first schedule with a labor organization was made and agreed to with the Order of Railway Conductors and the Brotherhood of Railroad Trainmen jointly, in both road and yard service, the date not shown, but the first revision was made November 1, 1917 followed by later revisions on December 1, 1919 and July 1, 1928, the last named agreement, together with supplements and interpretations, controlling the disposition of this claim.

Article 15, in its present language, has been carried forward in all later schedules since the revision of December 1, 1919. Prior to that time, according to the schedule of November 1, 1917, there designated as Article 35, it read:

> "At terminals where switch engines are employed trainmen will not be called upon to do switching, but should they be required to perform such service they will be paid therefor at overtime rates for all time so engaged; this to be allowed in addition to any overtime made on run.
>
> INTERPRETATION: Ordinary doubling a train over, either before departure or after arrival, shall not be considered 'switching'. This article not to apply to work trains, wrecking trains or relief trains; although when switch engine is available it will make up and put away such trains."

Examples do not appear to have been written into the schedule until December 1, 1919 when the present rule was first limited to initial and final terminals only. A change in language was also made in the "interpretation" by which it was made to read:

> "INTERPRETATION: In calculating the time engaged in switching, it is understood that the time will be continuous from the time the work is begun until it is completed and the train is coupled together. This article not to apply to work trains although when switching engine is available it will make up and put away such trains."

The "interpretation" in its present language first appeared in the agreement of July 1, 1928, the only change being to again insert "wrecking trains" and "relief trains" in the last sentence along with "work trains".

Prior to August 1, 1938, according to the carrier's submission in Docket 20303, continuous time instead of overtime as provided by Article 15 was paid a road crew for doubling or yarding its train on two or more tracks when one track would hold it. On protest being made by the organizations the parties entered into the agreement of August 1, 1938, which had the effect of making the disputed service subject to Article 15. It is significant that the parties did not see fit to write in the word "emergency" at that time if intending to further limit doubling or yarding a train on more than one track to emergency situations.

The first unsettled claim arising on the property under the subject rule of which the Division has knowledge was one for service performed on October 3, 1938 covered by Docket 20303, denial Award 10896. In that docket the carrier contended the practice of using road freight crews to perform terminal switching at initial or final terminals when necessary in connection with making up or yarding trains had been in effect on this railroad for more than twenty-five years. To show that it was an accepted practice, the carrier submitted documentary proof of time tickets filed and payments made covering the period August 15, 1936 to September 11, 1942. Settlement of the last mentioned time ticket was made April 14, 1944 while the dispute in Docket 20303 was pending.

In the last mentioned docket the Division in Award 10896, without the aid of a referee, concluded that the service there in question constituted a pickup and payment was proper under the memorandum of August 3, 1938 effective August 1. That award, as we view it, may not be exactly in point on the facts before us but unlike the sustaining awards it did not have the effect of overthrowing the historical practice on the property.

In the two subsequent Awards 11912 and 11359 the Division again rejected the contention that the memorandum agreement of August 3, 1938 is limited by Article 26 (s) of the schedule to emergency situations.

On the basis of the above and foregoing, it is here held that the switching required of the road crew at its home terminal in yarding its train on the two tracks and the handling of the caboose, as directed, is not violative of the agreement and the crew is entitled to overtime compensation in lieu of the additional yard day's pay which is claimed.

AWARD: Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FIRST DIVISION

ATTEST: (Signed) J. M. MacLeod
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March, 1952.