

Award 15709

Docket 24424

NATIONAL RAILROAD ADJUSTMENT BOARD

FIRST DIVISION

39 South La Salle Street, Chicago 3, Illinois

With Referee Ernest M. Tipton

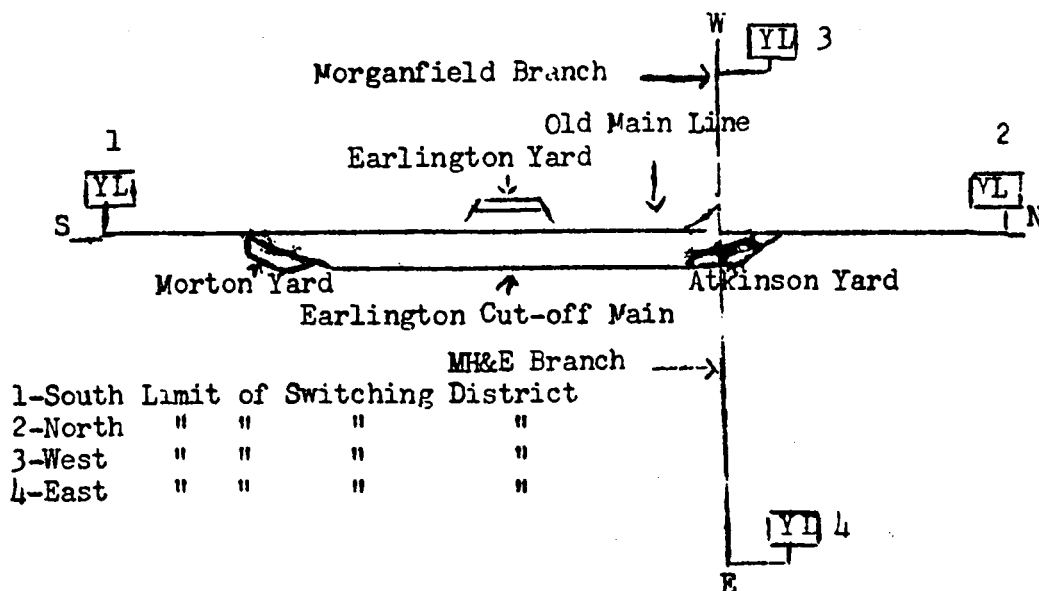
PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

LOUISVILLE & NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of yardman C. Gamblin for day's pay at foreman's rate, and yardman D. Hinton for day's pay at switchmen's rate, account runaround by road train crew used to perform yardmen's work in Earlington-Atkinson-Morton Switching District, April 15, 1947."

EMPLOYES' STATEMENT OF FACTS: Earlington-Atkinson-Morton Switching District is a closed yard where yardmen (the claimants here and others) hold rights. This switching district is comprised of three separate yard units and the main tracks connecting them, i. e., Earlington yard, Atkinson yard, located North of Earlington, and Morton yard located South of Earlington, as shown in diagram below:



Earlington yard is terminal for all road crews and starting point for all yard crews originating in the switching district.

On April 15, 1947 road crew (Conductor M. B. Smoot) in charge of road train Extra 1547, was given the following message before departure from

Earlington en route to Radnor, its away-from-home terminal, approximately 107 miles South of Earlington:

"Go to Atkinson move South loads from Atkinson and Morton
Switching out the South loads at Morton if necessary."

(Signed) B. C. C. (Chief Dispatcher)

(Underscoring ours.)

This road crew moved northward from Earlington, via, Old Main line six miles to Atkinson; there picked up south loads as directed, and proceeded southward over Earlington cut-off main seven miles to Morton. At Morton the Agent-operator handed the conductor a switch list, showing as follows:

LOUISVILLE & NASHVILLE RAILROAD COMPANY

(Tralk No. 3 South End Up)

Train Ex 1567—Swift

Date 4/15, 1947

Initial	Number	Contents	Tons	Destination	Remarks
L&N	84268	Coal		187	(Station Numbers shown in destination column mean: 187-Nashville, Tenn. (South) H313-Henderson, Ky. (North) H216-Guthrie, Ky. (South) H325-Evansville, Ind. (North) H240-Hopkinsville, Ky. (South)
"	82878	"		187	
IC	81341	"		187	
L&N	97102	Mty		187	
IC	16330	Cement		H313	
Erie	24052	Coal		187	
B&LE	60924	"		187	
NYC	841521	"		187	
NYC	640246	"		H216	
L&N	52181	"		H325	
"	53839	"		H216	
"	56462	"		H240	
"	181656	"		H325	
"	52718	"		H216	
"	89934	"		H325	
"	54506	"		H313	
"	65363	"		H216	
"	72039	"		H216	
"	186264	"		R325	
"	68264	"		H325	
"	28334	"		H325	
"	54151	"		H325	
"	89052	"		H325	
"	184112	"		R325	
"	56306	"		R325	
"	50126	"		R325	
"	53403	"		H325	

(North End)

(14-0 North)

(12-1 South)

In compliance with message quoted above, the road crew detached its engine from train at 11:45 A. M., backed in track No. 3 and performed the following switching: Cut off behind 18th car in the track, pulled to lead and switched 2 to train, 2 to track No. 3, 2 to train, 1 to track No. 3, 4 to train, 1 to track No. 3, and 4 to train. Switching completed and train coupled up at 12:35 P. M.—50 minutes switching.

The claimants were on yardmen's extra board at Earlington and were available for this work. They filed claim for day's pay account road conductor and trainmen performing it. Carrier has declined to allow the claim.

POSITION OF EMPLOYES: The claimant yardmen, instead of the road train crew, stood for and should have been used to perform this switching under provisions of a local agreement dated July 9, 1924, reading as follows:

"Understanding reached on July 9th, 1924 between Committees representing Brotherhood of Railroad Trainmen and Order of Railway Conductors and J. J. Grosche, Assistant to General Manager L&N RR., concerning the application of terminal switching and final terminal delay rules to road service originating and terminating at Earlington, and concerning the application of Article 41 of the Trainmen's Agreement to Yard crews required to perform service beyond the Earlington-Atkinson-Morton switching districts.

It is understood that—

The switching district to remain as at present as defined by yard limit boards located as follows:

2809 feet north of Junction switch, Arklo.

2007 feet north of Como, Morganfield Branch.

2367 feet north of crossing of M&HE and Earlington cut off, Atkinson.

5050 feet south of south main track connection, South Diamond.

All switching within the switching district to be handled by yard crews.

Yard limit boards, to govern final terminal delay time at Earlington, to be placed at the same location at Barnsley and New Victoria, which have governed the payment of final delay time for the past several years.

Yard crews required to perform service outside the switching district to be paid in accordance with Article 41 of the Trainmen's Agreement.

Road crews required to perform switching within the switching district, to be paid in accordance with Sections (b) and (c) of Article 22, of the Trainmen's Agreement, and Article 15 of the Conductors' Agreement, switching by road crews to be defined as follows:

When they are required to—

Set out cars from two or more different places in their train.

Set out cars on more than one track.

Place cars set out behind other cars already on a track.

Pick up cars from more than one track.

Switch out cars picked up from behind other cars on the same track.

Switch cars picked up into two or more different places in their train.

Also when required to pick up or set out cars on more than one track, or to pick up cars on one track and set out cars on other track, or vice versa, within the switching district.

(NOTE) This construed to mean that if cars are set out or picked up on one track at Atkinson and, in addition cars are picked up or set out on one track at Morton, or other points within the switching districts, that the actual time consumed at the various points will be added together and paid for as switching time.

This definition of terminal switching to apply only to the Earlington District.

All claims for final terminal delay at Earlington, which are based on the present switching district boards, to be withdrawn.

(NOTE) The above does not apply to trains doubling over from one track to another at either initial yard or final yard account one track not holding entire train."

(Underscoring ours.)

Since they were not used, they were runaround and are du pay as claimed, as provided in Section (c) of Article 36 of the General Agreement, reading:

"When yardmen are run-around through no fault of their own, the man runaround will be allowed one minimum day's pay and stand last out."

The above quoted local agreement, was amended by an understanding set out in the then Assistant General Manager, W. E. Smith's letter of February 25, 1928, to the then Assistant to the General Manager, T. B. Turner, copy of which was furnished the then General Chairman J. W. McCall of the conductors and the then General Chairman of the Trainmen, E. E. Oster, reading as follows:

"Please refer to that part of the understanding reached with the Conductors and Trainmen on July 9, 1924, in connection with the application of terminal switching and final terminal delay rules to road service, originating and terminating at Earlington, etc., which reads:

When they are required to—

Set out cars from two or more different places in their train.

Set out cars on more than one track.

Place cars set out behind other cars already on a track.

Pick up cars from more than one track.

Switch out cars picked up from behind other cars on the same track.

Switch cars picked up into two or more different places in their train.

Also when required to pick up or set out cars on more than one track, or to pick up cars on one track and set out cars on other track, or vice versa, within the switching district.

(Note) This construed to mean that if cars are set out or picked up on one track at Atkinson and, in addition, cars are picked up or set out on one track at Morton, or other points within the switching district, that the actual time consumed at the various points will be added together and paid for as switching time.

This definition of terminal switching to apply only to the Earlington district.

The particular paragraphs quoted above are superseded by that part of the understanding reached with the Conductors and Trainmen on February 9, 1928, defining terminal switching, which now applies generally, and which reads:

'Question of points outside of the terminal yard from which trains arrive or depart, constituting a stop:

Article 15 to govern within terminal switching limits, terminal switching time to be computed from time engines or cars are detached from train for the purpose of beginning the work, until switching is completed and train is coupled together. The loading or unloading of package freight within terminal switching limits will not be considered as terminal switching under this rule.'

In other words—setting out or picking up of cars within the Earlington-Atkinson-Morton Switching District by trains originating or terminating at Earlington, constitutes station switching, and is subject to the provisions of Article 15.

Please instruct accordingly.

(Sgd.) W. E. Smith,
Asst. General Manager."

(Underscoring ours.)

Please note particularly that the Assistant General Manager in his letter above quoted said:

"... Setting out and picking up cars within the Earlington-Atkinson-Morton Switching District by trains originating or terminating at Earlington, constitutes station switching, and is subject to provisions of Article 15." (Underscoring for emphasis.)

Significantly he did not say "switching" by road crews in the district is subject to provisions of Article 15. There was a reason for this, as will be shown later.

The local agreement of July 9, 1924, as amended in 1928, now, and on date of this claim, actually reads:

"Understanding reached on July 9th, 1924 between Committees representing Brotherhood of Railroad Trainmen and Order of Railway Conductors and J. J. Grosche, Assistant to General Manager L&N RR., concerning the application of **terminal switching and final terminal delay rules** to road service originating and terminating at Earlington, and concerning the application of Article 41 of the Trainmen's Agreement to Yard crews required to perform service beyond the Earlington-Atkinson-Morton switching districts.

It is understood that—

The switching district to remain as at present as defined by yard limit boards located as follows:

2809 feet north of Junction switch, Arklo.

2007 feet north of Como, Morganfield Branch.

2367 feet north of crossing of M&HE and Earlington cut off, Atkinson.

5050 feet south of south main track connection, South Diamond.

All switching within the switching district to be handled by yard crews.

Yard limit boards, to govern final terminal delay time at Earlington, to be placed at the same location at Barnsley and New Victoria, which have governed the payment of final delay time for the past several years.

Yard crews required to perform service outside the switching district to be paid in accordance with Article 41 of the Trainmen's agreement.

Road crews required to perform switching within the switching district, to be paid in accordance with Sections (b) and (c) of Article 22, of the Trainmen's Agreement, and Article 15 of the Conductors' Agreement, switching by road crews to be defined as follows:

Question of points outside of the terminal yard from which trains arrive or depart, constituting a stop:

Article 15 to govern within terminal switching limits, terminal switching time to be computed from time engines or cars are detached from train for the purpose of beginning the work, until switching is completed and train is coupled together. The loading or unloading of package freight within terminal switching limits will not be considered as terminal switching under this rule."

Article 15 of the Trainmen's General Agreement, referred to in the special agreement quoted above reads as follows:

"(a) Trainmen in other than passenger service performing work at initial terminal such as switching or picking up or setting off cars, loading or unloading freight or assisting trains, etc., as much as one hour, will be paid for one hour; one hour and thirty minutes to be paid as two hours, etc., at pro rata rates. When time consumed in such work is used for the purpose of computing road overtime, this article will be disregarded.

This rule does not apply to mine and switching crew runs, Birmingham Mineral crews, crews on branch line runs, and locals at outlying points where train yard engines are not employed.

SWITCHING AT TERMINALS

(b) Trainmen in main line freight service required to do switching at initial or final terminal, where switch engines are employed, will be paid for the actual minutes consumed in switching at pro rata rates.

When time consumed in such work is used for the purpose of computing road overtime, this Article will be disregarded."

The Committee contends that the second section of the local agreement of July 9, 1924, reading:

"All switching within the switching district to be handled by yard crews."

definitely established the right of yard crews to perform all classification and industrial switching, which includes switching such as that performed by the road crew on April 15, 1947.

This case turns on the correct answer to the question: What does the provision "All switching in the switching district to be handled by yard crews" in the July 9, 1924 Agreement mean?

The Committee insists that this provision means that yard crews will perform all switching, except that road crews may, without infringing upon rights of yardmen, pick up from one track in more than one yard within the district, cars that have previously been switched and classified by yard crews, and set out in one track in more than one yard cars in block (but not spot or place for loading or unloading) that are handled into the district by them.

For many years prior to July 9, 1924 yard crews had performed all classification and industrial switching in this switching district. During the same period road crews originating at Earlington had picked up out of more than one track tonnage previously switched and classified by yard crews. As an example, a road crew would be called from Earlington, its train made up by yard crew. It would then proceed northward 6 miles to Atkinson, still within the switching district, and there pick up cars previously switched and classified by yard crews, then move 7 miles southward to Morton, still within the switching district, and there also pick up cars previously switched and trained up for movement by yard crews. Likewise, a road crew arriving in the district might be instructed to leave a certain number of cars in block at Moton and bring remainder to Earlington. But road crews had never been required to actually switch out their trains for movement from the district, nor to do classification switching in setting off cars in more than one track upon arrival in the district. Yard crews had always performed this type of switching.

(Underscoring for emphasis.)

When negotiating the local agreement of July 9, 1924 the Committee was on the alert to preserve for yardmen the work they had always performed. It recognized that Article 17 (predecessor rule to present Article 15) might someday be construed as arresting the sweep of Article 26(h), just as Referee Wolf in Award 7201 and others eventually held, and it insisted upon that section of the July 9, 1924 Agreement reading **"All switching in the district to be handled by yard crews"** for this very purpose. There could have been no other reason for its inclusion in the agreement.

We have previously referred to the significance of the fact that Mr. W. E. Smith, former Assistant General Manager, who represented the Carrier in negotiation of the July 9, 1924 Agreement, in his letter of February 25, 1928, amending the July 9, 1924 Agreement referred to road crews **"picking up and setting out cars"** within the district and that he did not use the all inclusive term **"switching"**. The reason he did not do so is obvious. The July 9, 1924 Agreement does not permit **"switching"** by road crews in the district. Road crews may **"set out and pick up cars"** in the district but **"switching"** is reserved for yard crews. Mr. Smith knew this and fully recognized it in his letter of February 25, 1928.

Attached are statements, marked Exhibits A, B, and C from Mr. J. W. McCall, who was General Chairman of the Order of Railway Conductors on the L&N, Mr. F. A. Ashby, Local Chairman O. R. C. on the Henderson Division of the L&N and Mr. N. E. Lane, Local Chairman, B. of R. T. on Henderson Division, at time the July 9, 1924 Agreement was negotiated and signed, testifying to the correctness of the Committee's position as above outlined.

The Carrier has stated its position in this case in a letter dated October 26, 1948, signed by Mr. G. C. Howard, its Director of Personnel, addressed to C. J. McClain, General Chairman. It is quoted below:

"It has been explained several times since this claim was presented that the intent of the Agreement of July 9, 1924 is that yard crews will switch the mines, transfer cars from one yard to another and perform the station switching within the Earlington-Atkinson-Morton switching district; and that road crews of trains originating and terminating at Earlington may perform switching in connection with cars moving into or out of the switching district in their trains, under the provisions of Article 15, without payments to yardmen therefor.

As we understand it, the trainmen are resting their position entirely upon the argument that while it was agreed that road

crews originating and terminating at Earlington are subject to the provisions of Article 15 of the General Agreement when required to perform switching within the Earlington-Atkinson-Morton switching district, the company agreed to pay extra yardmen for not being used when road crews performed such switching. Such position is wholly inconsistent with the intent of the agreement reached on July 9, 1924, the manner in which it was applied without question for more than 22 years, and the principles enunciated by the First Division of the National Railroad Adjustment Board in awards on this property.

The awards to which we refer are Awards 7201, 7202, 7203 and 7204 (Dockets 7173, 8179, 10726 and 13808, respectively). We quote in part the findings of the Board in those awards because what was said is so pertinent here and we think you should be governed thereby:

"Dockets Nos. 7173, 8179, 10726 and 13808 involve claims by yardmen for a runaround by trainmen. They require special treatment. On this road yardmen are included in the agreement with trainmen. Rules are assembled under the titles of 'Passenger Service', 'Freight Service' and 'Yard Service' where they are capable of separation for convenient arrangement, but they are all part of the same agreement. The Brotherhood of Railroad Trainmen represented both the road trainmen and the yard trainmen at the same conference where Articles 15 and 11 were formulated. When it as agent agreed to permit roadmen to do certain yard work on the minute basis where yardmen werer employed, it necessarily must have agreed on behalf of the yardmen to recede to the degree required to permit exercise of those rights. Even if roadmen and yardmen are considered as being separately represented on the theory that their domain of work is separated, Article 15, which limited the sweep of Article 26(H) must have been considered as assented to by the yardmen. The giving of roadmen rights to do switching at terminals involved the correlative recession by the yardmen to the extent necessary to give roadmen that concession, both being parties to the same agreement. The intent of the parties must govern. In Award 4245 it was said, 'To give the agreement the meaning contended for by the organizations would lead to an absurd conclusion; that the carrier agreed to pay roadmen an arbitrary for doing work while still remaining obliged to pay laid off yardmen therefor.' If we omit the words 'laid off' from the quotation it applies here exactly.

The claims were denied."

(Carrier's underscoring.)

In first paragraph of its position as quoted above the Carrier says, "the intent of the Agreement of July 9, 1924 is that yard crews will switch the mines, transfer cars from one yard to another and perform the station switching within the Earlington-Atkinson-Morton switching district; and that road crews of trains originating and terminating at Earlington may perform switching in connection with cars moving into or out of the switching district in their trains. . . ."

The Committee agrees with Carrier's statement of "intent" of the local agreement with respect to yardmen's work, i. e., switch the mines, transfer cars from one yard to the other, and perform station switching . . . within the district; with the understanding, of course, that "station switching" means all switching of any description at the station, i. e., the Earlington-Atkinson-Morton Switching District.

The Committee disagrees with Carrier's statement that the intent of the agreement is that "road crews . . . may perform switching in connection with cars moving into or out of the switching district in their trains" and denies that there is any basis whatsoever for its position. The Committee asserts that there is no authenticated record anywhere to support Carrier's position.

The Committee has stated the true intent of the agreement and will submit proof of the correctness of its statement. We defy the Carrier to produce a scintilla of acceptable evidence in refutation of our statement as to its "intent".

In second paragraph of its position above quoted the Carrier states it understands we are arguing that while it was agreed that road crews originating and terminating at Earlington are subject to provisions of Article 15 of the General Agreement "when required to perform switching . . . the Company agreed to pay extra yardmen . . . etc."

The Committee's position was clearly set out in two letters to the Director of Personnel in connection with this case.

They are quoted below:

(C. J. McClain to G. C. Howard—May 20, 1947)

"Claim of Foreman W. W. Wilke, Jr., and Switchman G. T. Wyatt, Henderson Division yardmen, for day's pay each account road crew switching in Earlington-Atkinson-Morton Switching district, April 15, 1947, has been referred to me for handling. (Claim later filed for G. Gamblin and D. Hinton instead.)

I am attaching copy of Local Chairman Lane's letter of May 12, 1947 to Assistant Superintendent Deitz, which outlines the position of our committee with respect to this claim.

Kindly direct allowance and advise."

(N. E. Lane to H. E. Deitz—May 12, 1947)

"I have for handling claim of Foreman W. W. Wilke, Jr., and Switchman G. T. Wyatt, Henderson Division yardmen, for day's pay each account road crew (Conductor Smoot) switching in Earlington-Atkinson-Morton switching district, April 15, 1947.

Extra 1567 south in charge of Conductor Smoot performed the following switching at Morton on April 15th:

'Backed in south end of track No. 3, picked up 18 cars, pulled them out and switched 2 to train, 2 back in No. 2, 1 to train, 1 in No. 2, 2 to train, 1 to No. 2, 4 to train, 1 to No. 2, and 4 to train, making a total of 8 switches to get the cars to go in his train.'

Special Agreement of July 9, 1924, covering switching in Atkinson-Earlington-Morton territory provides:

'All switching within the switching district to be handled by yard crews.'

These two yardmen were available and should have been used to perform this switching. Please allow the claims and advise."

(C. J. McClain to G. C. Howard—Nov. 10, 1947)

"Claim of Foreman W. W. Wilke, Jr., and Switchman G. T. Wyatt, Henderson Division yardmen, for day's pay each, account

road crew (Conductor Smoot) switching in Earlington-Atkinson-Morton switching district, April 15, 1947."

This case was discussed in conference between Mr. Stewart and officers of our Committee on June 13, 1947. At that time Mr. Stewart advised that he wished to study further the question involved before rendering decision. At the same time we advised him that we desired that road crews be stopped from switching in the Earlington-Atkinson-Morton district, and that we would hold the claim in abeyance for a few weeks to see if an improvement was made.

We do not know what, if any, instructions were given the local officials in this respect. The facts are, however, that road crews are continuing to perform switching in the district. They are being required to switch out their cabooses at Earlington and to perform switching in connection with picking up at Madisonville and Atkinson.

In view of the fact that no improvement has been made, we must insist that you let us have your decision in the above referred to claim, in order that, if settlement cannot be affected on the property, we can handle to conclusion through appeal to the Adjustment Board.

The Local Agreement of July 9, 1924, applicable to the Earlington-Atkinson-Morton switching district, definitely provides:

"All switching within the switching district to be handled by yard crews."

Road crews, when required to switch in this territory, are performing work belonging exclusively to yardmen. We cannot acquiesce in a continuance of this practice and must, therefore, insist upon definite settlement of the question.

We hope that settlement can be effected without necessity of filing a great number of expensive penalty claims.

Please advise.

The Carrier further states in second paragraph of its position—"Such position is wholly inconsistent with intent of the agreement reached on July 9, 1924 (and) the manner in which it was applied without question for more than 22 years."

The Committee's position is definitely not inconsistent with "intent" of the July 9, 1924 Agreement. We have stated elsewhere in this submission the true "intent" of the Agreement. We definitely and unqualifiedly deny that our position is inconsistent with manner in which the agreement was applied for twenty-two years. Here again, we defy the Carrier to produce evidence in support of its statement. At no time has the Committee recognized that road crews may, under the July 9, 1924 Agreement, perform switching other than picking up from one tack in more than one yard tonnage previously switched and classified by yard crews, and setting out in one block (but not placing or spotting for loading or unloading) cars in their train upon arrival in the district, in one track in more than one yard. Former Assistant General Manager Smith in his letter of February 25, 1928, previously quoted herein, recognized the correctness of the Committee's position.

Further in the second paragraph of its position, the Carrier endeavors to tie this claim into the principle laid down by Referee Wolf in Award 7201 and others in cases from this property. Its position is inconsistent with the facts.

The "findings" in Award 7201 are based upon relation of provisions of Article 15 to Article 26 (h), both General Agreement rules. The instant

claim is based upon "intent" of a special local agreement dated July 9, 1924. The "findings" in Award 7201, which are based entirely upon General Agreement rules, have no bearing on this case.

The local agreement of July 9, 1924 superseded the provisions of Article 15 and Article 26(h) of the General Agreement to the extent set out in the agreement itself, and it provides that:

"All Switching in the Switching district to be handled by yard crews."

Referee Wolf did not have this rule nor a rule analogous to it before him at time he wrote the findings and decision in Award 7201. The principle of this Award, therefore, has no application to the present case.

The Committee submits that the Carrier is forcing this appeal to your Board on the theory that it has **all to gain and nothing to lose** by doing so, i. e., if the Board sustains the claim the Carrier will merely comply with the Agreement—**nothing lost**; if the Board denies the claim, the Agreement will be of no effect and the carrier will be at liberty to eliminate yard crews and have their work performed by road crews originating and terminating at Earlington, at very little, if any, additinal cost—**all to gain**.

The Committee reiterates:

The July 9, 1924 Agreement, provides that yard crews will handle all switching in the district.

The switching performed by the road crew in this case was yardmen's work within scope of the July 9, 1924 Agreement.

The claimants here were yardmen who stood for the work under the July 9, 1924 Agreement, should have been used, were runaround and due pay within purview of Section (c), Article 36 of the Agreement, account not used.

The Carrier has indicated its intention of taking position before your Board that this case is outlawed by time under provisions of Article 30 of current agreement on the ground the Committee failed to institute proceedings for final disposition of it within one year from date it was declined by highest officer designated by the Carrier, i. e., the Director of Personnel.

Article 30 reads as follows:

"When time is not allowed as per time slip, the men interested will promptly be notified and reason given therefor.

Decision by the highest officer designated by the carrier to handle claims shall be final and binding unless within one year from the date of said officer's decision such claim is disposed of on the property or proceedings for the final disposition of the claim are instituted by the employe or his duly authorized representative and such officer is so notified. It is understood, however, that the parties may by agreement in any particular case extend the one year period herein referred to."

The Committee instituted proceedings for final disposition of the claim within one year from time it was formally declined (by letter) by the Director of Personnel, and it is in nowise outlawed by time under provisions of Article 30 above quoted. In support of this statement, we give below history of handling. This claim was declined by Management within purview of Article 30, on July 24, 1948.

The Committee, on May 20, 1947, presented claim of Yardmen W. W. Wilke and G. T. Wyatt for day's pay account road crew performing yard-

men's work in Earlington-Atkinson-Morton Switching District April 15, 1947 by letter to the Director of Personnel as follows:

"May 20, 1947

Mr. G. C. Howard
Director of Personnel, L&N RR

Dear Sir:

Claim of foreman W. W. Wilke, Jr., and Switchman G. T. Wyatt, Henderson Division yardmen, for day's pay each account road crew switching in Earlington-Atkinson-Morton Switching district, April 15, 1947, has been referred to me for handling.

I am attaching copy of Local Chairman Lane's letter of May 12, 1947, to Assistant Superintendent Deitz, which outlines the position of our committee with respect to this claim.

Kindly direct allowance and advise.

Very truly yours,

(sgd.) C. J. McClain
General Chairman"

This claim (Wilke & Wyatt) was discussed in conference between Employee representative and representatives of the Carrier's Director of Personnel on June 13, 1947. Committee notes made during this conference are quoted below:

"HRS (Mr. H. R. Stewart, Staff Assistant to Carrier's Director of Personnel) feels that under Wolfe decisions road crews can switch in Earlington territory. However, he indicated he feels his position is weak, and that he is not sure. Said he wanted to study the matter further before final decision.

NEL (Vice Chairman Trainmen's General Committee) said he would hold in abeyance for a few weeks to see what happens. He requested HRS to stop road crews switching in Earlington District."

(Parenthesis added.)

The Committee heard nothing further from the Director of Personnel, and on November 10, 1947 wrote him as follows:

"November 10, 1947
File 242-3802

Mr. G. C. Howard
Director of Personnel, L&N RR

Claim of Foreman W. W. Wilke, Jr., and Switchman G. T. Wyatt, Henderson Division yardmen, for day's pay each, account road crew (Conductor Smoot) switching in Earlington-Atkinson-Morton switching district, April 15, 1947.

This case was discussed in conference between Mr. Stewart and officers of our Committee on June 13, 1947. At that time Mr. Stewart advised that he wished to study further the question involved before rendering decision. At the same time we advised him that we desired that road crews be stopped from switching in the Earlington-Atkinson-Morton district, and that we would hold the claim in abeyance for a few weeks to see if an improvement was made.

We do not know what, if any, instructions were given the local officials in this respect. The facts are, however, that road crews are continuing to perform switching in the district. They are being required to switch out their cabooses at Earlington and to perform switching in connection with picking up at Madisonville and Atkinson.

In view of the fact that no improvement has been made, we must insist that you let us have your decision in the above referred to claim, in order that, if settlement cannot be effected on the property, we can handle to conclusion through appeal to the Adjustment Board.

The Local Agreement of July 9, 1924, applicable to the Earlington-Atkinson-Morton switching district, definitely provides:

'All switching within the switching district to be handled by yard crews.'

Road crews, when required to switch in this territory, are performing work belonging exclusively to yardmen. We cannot acquiesce in a continuance of this practice and must, therefore, insist upon definite settlement of the question.

We hope that settlement can be effected without necessity of filing a great number of expensive penalty claims.

Please advise.

Very truly yours,

(sgd.) C. J. McClain
General Chairman"

On November 29, 1947 we traced him for reply, as follows:

"Mr. G. C. Howard
Director of Personnel, L&N RR

Dear Sir:

Claim of Foreman W. W. Wilke, Jr., and Switchman G. T. Wyatt, Henderson Division yardmen, for day's pay each, account road crew (Conductor Smoot) switching in Earlington-Atkinson-Morton switching district, April 15, 1947.

Please see our letters of May 20th and November 10, 1947, and refer to our conference with Messrs. Stewart and Stopinski June 13, 1947, and let us have your decision.

Very truly yours,

(sgd.) C. J. McClain
General Chairman"

Nothing further was heard until March 25, 1948, four months later. On that date Mr. H. R. Stewart of the Carrier Director of Personnel's office, called the General Chairman on telephone and orally advised that his investigation had disclosed that the two claimants (Wilke and Wyatt) were both on duty at time the road crew performed the switching on April 15, 1947, and gave him the following information to support his statement:

April 15, 1947—Road crew (Conductor Smoot) called for 10:45 A. M., switched at Morton 11:50 A. M., to 12:35 P. M.

April 15, 1947—W. W. Wilke and G. T. Wyatt, the claimants, worked as switchmen 6:45 A. M., to 4:00 P. M.

The Director of Personnel confirmed this by letter dated April 1, 1948, quoted below:

“April 1, 1948
K-173-18
K-173

Mr. C. J. McClain, General Chairman
Brotherhood of Railroad Trainmen.

Dear Sir:

‘Claim of Foreman W. W. Wilke, Jr., and Switchman G. T. Wyatt, Henderson Division yardmen, for day’s pay each account road crew (Conductor Smoot) switching in Earlington-Atkinson-Morton switching district, April 15, 1947.’

Please refer to your letter of November 29, 1947, on this subject.

Conductor M. B. Smoot and crew were called to depart from Earlington at 10:45 A. M., April 15, 1947, en route to Radnor. Conductor Smoot’s time return for the trip shows that the engine was cut off at Morton at 11:50 A. M., and that the train was coupled up at 12:35 P. M., 45 minutes being consumed in switching out the cars picked up and handled southward on the road trip.

The switching performed by this road crew at Morton was permissible under the agreement. This is clear from the special agreement reached on July 9, 1924 (dated July 12, 1924), the amendment thereto of February 25, 1928, and Article 15. It might be well for you to again review the findings of the National Railroad Adjustment Board, First Division, in cases on this property covered by Dockets Nos. 7173, 8179, 10726 and 13808, Awards 7201, 7202, 7203 and 7204, respectively.

Another fact which you seem to have overlooked is that the claimants, W. W. Wilke, Jr., and G. T. Wyatt, were on duty at the time this road crew, which originated at Earlington, performed the switching at Morton, within the Earlington-Atkinson-Morton switching district. They went on duty at Earlington at 6:45 A. M., April 15, 1947 on yard job No. 7, engine 1571, and did not go off duty until 4:00 P. M. Mr. Stewart gave this information to Mr. Lane by telephone a few days ago.

The claim is not valid under the agreement, and it should be withdrawn.

Yours truly,

(sgd.) G. C. Howard
Director of Personnel.”

The Committee then investigated and found that Mr. Howard’s statement that the claimants Wilke and Wyatt were on duty as yardmen at time the road crew performed the switching, 11:45 A. M., to 12:35 P. M., April 15, 1947, was correct. At same time it was determined that yardmen C. Gamblin, W. W. Fitch and D. Hinton were available and unassigned at time the road crew performed the switching on April 15, 1947, and on June 1, 1948.

Claim was filed for these three men by letter to the Director of Personnel as follows:

"June 1, 1948
File 242-3802

Mr. G. C. Howard
Director of Personnel, L&N RR

Dear Sir:

Claim of Foreman W. W. Wilke, Jr., and Switchman G. T. Wyatt, Henderson Division yardmen, for day's pay each account road crew (Conductor Smoot) switching in Earlington-Atkinson-Morton switching district, April 15, 1947. Your file K-173-18.

Receipt is acknowledged of your letter of April 1, 1948, in connection with the above claim.

We have made some further investigation and find that your statement as to time that W. W. Wilke, Jr., and G. T. Wyatt, went on duty April 15th, is correct. We are, therefore, withdrawing their particular claim.

We have also determined that extra switchman C. Gamblin, W. W. Fitch and D. Hinton stood on the Earlington Board in the order named on the date and the hour that this road crew performed switching at Morton in violation of the local agreement dated July 9, 1924. We, therefore, respectfully request that you allow these three yardmen who stood for this service, pay as provided in Article 36, Section (c), Trainmen's Agreement.

The claim is valid under terms of the aforementioned agreement and will be prosecuted to a definite conclusion. Please advise.

Very truly yours,

(s) C. J. McClain,
General Chairman."

This new claim was discussed in conference between Carrier and Employee representatives on July 20, 1948, and was declined by the Carrier. This was confirmed by letter dated July 24, 1948, quoted below:

"Mr. C. J. McClain, General Chairman,
Brotherhood of Railroad Trainmen,
Louisville, Kentucky.

Dear Sir:

Claim of Foreman W. W. Wilke, Jr., and Switchman G. T. Wyatt, (re-submitted in favor of Switchmen C. Gamblin, W. W. Fitch and D. Hinton) for a day's pay each account road crew switching in Earlington-Atkinson-Morton switching district April 15, 1947.

This claim was discussed by Vice Chairman Lane, representing you, and Mr. Stewart, representing me, on July 20, 1948, and the claim as re-submitted was declined for the reasons set forth in the third paragraph of my letter of April 1, 1948.

Furthermore, I would like to call attention to the fact that W. W. Fitch was on duty at the time the road crew which originated at Earlington performed the switching at Morton. He was used on the 7:55 A. M., yard job on the date of this claim.

Yours truly,

(s) G. C. Howard,
Director of Personnel."

On July 27, 1948, the Committee instituted proceedings for final disposition of the claim by letter to the Carrier's Director of Personnel as follows.

"July 27, 1948
File 242-3802

"Mr. G. C. Howard,
Director of Personnel, L&N RR.

Dear Sir:

Claim of Foreman W. W. Wilke, Jr., and Switchman G. T. Wyatt (re-submitted in favor of Switchman C. Gamblin, W. W. Fitch and D. Hinton) for a day's pay each account road crew switching in Earlington-Atkinson-Morton switching district April 15, 1947.

Receipt is acknowledged of your letter of July 24th, your file K-173-18, advising that the above captioned claim is declined.

Unless settlement is reached between us, we propose to submit these claims to Division 1, National Railroad Adjustment Board for decision. We, therefore, consistent with terms of understanding reached between Committee of Railroad Presidents and a like Committee of Chief Executives of the five transportation organizations, New York City, June 6-7, 1945, request as follows:

1. That you confirm our understanding that this dispute has been properly discussed in conference as intended by the Railway Labor Act, and that it is now one that may be properly submitted to Division 1, National Railroad Adjustment Board for decision.
2. That you join us in submitting this case to Division 1, National Railroad Adjustment Board.
3. If you are unwilling to join us in submitting the case, please join us in an agreed statement of facts in the case.

Kindly advise.

Very truly yours,

(s) C. J. McClain,
General Chairman."

At that time the Committee was, by regulation issued by President A. F. Whitney of the Brotherhood of Railroad Trainmen, in keeping with an understanding reached between a Committee of Railroad Presidents and a like Committee of Chief Executives of the Railroad Operating Brotherhood, at New York City June 6-7, 1945, prohibited from submitting a case to Division 1, National Railroad Adjustment Board, until a letter, as above quoted, had been written, and reply received from Carrier.

The Committee traced the Director of Personnel for reply on September 23, 1948, quoted below:

"Mr. G. C. Howard,
Director of Personnel, L&N RR.

Dear Sir:

Claim of Foreman W. W. Wilke, Jr., and Switchman G. T. Wyatt (re-submitted in favor of Switchmen C. Gamblin, W. W. Fitch and D. Hinton) for a day's pay each account road crew switching in Earlington-Atkinson-Morton switching district, April 15, 1947.

Please refer to our letter of July 27, 1948, your file K-173-18, requesting your answer to three questions preparatory to our appealing this case to the National Railroad Adjustment Board, Division 1, for decision, and let us have reply.

Very truly yours,

(s) N. E. Lane,
Acting General Chairman."

and finally, on October 26, 1948 he replied as follows:

K-173-18
K-173
JKL-151-18

"Mr. N. E. Lane, Acting General Chairman,
Brotherhood of Railroad Trainmen,
Louisville, Kentucky.

Dear Sir:

Please refer to Mr. McClain's letter of July 27, 1948, and your letter of September 23, 1948, file 242-3802, captioned:

'Claim of Foreman W. W. Wilke, Jr., and Switchman G. T. Wyatt (re-submitted in favor of Switchmen C. Gamblin, W. W. Fitch and D. Hinton) for a day's pay each account road crew switching in Earlington-Atkinson-Morton switching district, April 15, 1947.'

It is our understanding that this dispute has been properly discussed in conference as intended by the Railway Labor Act and is one which may be properly submitted to the First Division of the National Railroad Adjustment Board.

We are not willing to join you in submitting it, because it is not one with which the Board should be burdened.

It has been explained several times since this claim was presented that the intent of the Agreement of July 9, 1924 is that yard crews will switch the mines, transfer cars from one yard to another and perform the station switching within the Earlington-Atkinson-Morton switching district; and that road crews of trains originating and terminating at Earlington may perform switching in connection with cars moving into or out of the switching district in their trains, under provisions of Article 15, without payments to yardmen therefor.

As we understand it, the trainmen are resting their position entirely upon the argument that while it was agreed that road crews originating and terminating at Earlington are subject to the provisions of Article 15 of the General Agreement when required to perform switching within the Earlington-Atkinson-Morton switching district, the company agreed to pay extra yardmen for not being used when road crews performed such switching. Such position is wholly inconsistent with the intent of the agreement reached on July 9, 1924, the manner in which it was applied without question for more than 22 years, and the principles enunciated by the First Division of the National Railroad Adjustment Board in awards on this property.

The awards to which we refer are Awards 7201, 7202, 7203 and 7204 (Dockets 7174, 8179, 10726 and 13808, respectively). We quote in part the findings of the Board in those awards because what

was said is so pertinent here and we think you should be governed thereby:

'Dockets Nos. 7173, 8179, 10726 and 13808 involve claims by yardmen for a runaround by trainmen. They require special treatment. On this road yardmen are included in the agreement with trainmen. Rules are assembled under the titles of 'Passenger Service,' 'Freight Service' and 'Yard Service' where they are capable of separation for convenient arrangement, but they are all part of the same agreement. The Brotherhood of Railroad Trainmen represented both the road trainmen and the yard trainmen at the same conference where Articles 15 and 11 were formulated. When it as agent agreed to permit roadmen to do certain yard work on the minute basis where yardmen were employed, it necessarily must have agreed on behalf of the yardmen to recede to the degree required to permit exercise of those rights. Even if roadmen and yardmen are considered as being separately represented on the theory that their domain of work is separated, Article 15, which limited the sweep of Article 26(h) must have been considered as assented to by the yardmen. The giving of roadmen rights to do switching at terminals involved the correlative recession by the yardmen to the extent necessary to give roadmen that concession, both being parties to the same agreement. The intent of the parties must govern. In Award 4245 it was said, "To give the agreement the meaning contended for by the organizations would lead to an absurd conclusion; that the carrier agreed to pay roadmen an arbitrary for doing work while still remaining obliged to pay laid off yardmen therefor." If we omit the words "laid off" from the quotation it applies here exactly.' (Our underscoring.)

The claims were denied.

While we are not agreeable to joining you in submitting this case to the Adjustment Board, if you are still determined to submit it, we are willing to attempt to arrive at an agreed statement of facts, having in mind that an agreed statement of facts might lighten the burden on the Board.

We again call your attention to the fact that one of the claimants, W. W. Fitch, was on duty at the time the road crew performed the switching in picking up at Morton.

Yours truly,

(sgd.) G. C. Howard,
Director of Personnel."

At this time, and this time only, the Committee was free to file appeal submission to Division 1, National Railroad Adjustment Board.

The claim before your Board was declined within purview of Article 30 of the Agreement by "highest officer designated by the Carrier" on July 24, 1948.

Therefore, this submission is being made to your Board well within the one year limit as provided in Article 30.

Even though your Board should agree with the Carrier's contention that this particular claim was declined by highest officer designated by the Carrier on April 1, 1948, proceedings for final disposition were instituted by the employes on July 27, 1948 as shown by our letter of that date quoted above, addressed to the Director of Personnel, which was well within the limit of one year from time the first claim was declined. The Board will please note also that the Carrier did not in its letter of April 1, 1948 formally decline the claim of Wilke and Wyatt.

The Committee pleads for a favorable decision in order to preserve the rights of yardmen to perform their work under existing agreement rules.

All data referred to herein has been presented to or discussed with representatives of the Carrier during handling of this claim on the property.

Oral presentation not desired unless requested by Carrier.

CARRIER'S STATEMENT OF FACTS: This claim is now barred by Article 30 of the agreement between this company and its trainmen, as revised by memorandum agreement dated January 27, 1948, reading as follows:

"Pursuant to Agreement made and executed by the Carriers Conference Committee and the employes represented by the Brotherhood of Railroad Trainmen, in Chicago, Illinois, on the 12th day of December, 1947, in connection with Item FIFTH of Memorandum of Understanding of November 14, 1947, Article 30, TIME CLAIMS, of the Agreement between the Louisville and Nashville Railroad Company and its Trainmen, is revised effective February 1, 1948, as follows:

1. When time is not allowed as per time slip, the men interested will promptly be notified and reason given therefor.

2. Decision by the highest officer designated by the carrier to handle claims shall be final and binding unless within one year from the date of said officer's decision such claim is disposed of on the property or proceedings for the final disposition of the claim are instituted by the employe or his duly authorized representative and such officer is so notified. It is understood, however, that the parties may by agreement in any particular case extend the one year period herein referred to.

It is agreed between the Louisville and Nashville Railroad Company and its Trainmen that a decision rendered prior to February 1, 1948, by the highest officer designated by the carrier to handle claims, shall be final and binding unless, before February 1, 1949, such claim is disposed of on the property or proceedings for the final disposition of the claim are instituted by the employe or his duly authorized representative and such officer is so notified. It is understood, however, that the parties may by agreement in any particular case extend the period herein referred to.

FOR THE LOUISVILLE & NASHVILLE R. R. CO.:

(Sgd.) G. C. Howard
Director of Personnel

FOR THE EMPLOYES CONCERNED:

(Sgd.) C. J. McClain
General Chairman, B.R.T.

Louisville, Kentucky,
January 27, 1948."

On this railroad, the Director of Personnel is the highest officer designated by the carrier to handle claims.

The claim was appealed on May 20, 1947, in the names of Foreman W. W. Wilke, Jr., and Switchman G. T. Wyatt, in letter reading as follows:

"GENERAL GRIEVANCE COMMITTEE
BROTHERHOOD OF RAILROAD TRAINMEN
L. & N. R. R. System

May 20, 1947
File 242-3802

Mr. G. C. Howard
Director of Personnel, L&N RR
9th and Broadway
Louisville, Ky.

Dear Sir:

Claim of Foreman W. W. Wilkie, Jr., and Switchman G. T. Wyatt, Henderson Division yardmen, for day's pay each account road crew switching in Earlington-Atkinson-Morton Switching district, April 15, 1947, has been referred to me for handling.

I am attaching copy of Local Chairman Lane's letter of May 12, 1947, to Assistant Superintendent Deitz, which outlines the position of our committee with respect to this claim.

Kindly direct allowance and advise.

Very truly yours,

(s) C. J. McClain
C. J. McClain
General Chairman

CJM:m"

"May 12, 1947

Mr. H. E. Deitz,
Asst. Supt., L&N R. R.

Dear Sir:

I have for handling claim of Foreman W. W. Wilkie, Jr., and Switchman G. T. Wyatt, Henderson Division yardmen, for day's pay each account road crew (Conductor Smoot) switching in Earlington-Atkinson-Morton switching district, April 15, 1947.

Extra 1567 South in charge of Conductor Smoot performed the following switching at Morton on April 15th:

Backed in south end of track No. 3, picked up 18 cars, pulled them out and switched 2 to train, 2 back in No. 2, 1 to train, 1 in No. 2, 2 to train, 1 to No. 2, 4 to train, 1 to No. 2, and 4 to train, making a total of 8 switches to get the cars to go in his train.

Special Agreement of July 9, 1924, covering switching in Arkinson-Earlington-Morton territory provides:

'All switching within the switching district to be handled by yard crews.'

These two yardmen were available and should have been used to perform this switching. Please allow the claims and advise.

Very truly yours,

N. E. Lane
Local Chairman

NEL:m

Cy Mr. J. A. Oakes
Mr. H. E. Larkin
Mr. W. W. Wilkie, Jr."

The claim was discussed with the representatives of the trainmen on June 6, 1947 and March 5, 1948. The efforts of the Trainmen at that time were directed, not so much toward the collection of the claim, but toward trying to persuade the company to issue instructions prohibiting road crews originating and terminating at Earlington from performing switching in the Earlington-Atkinson-Morton switching district. However, it being within the carrier's agreement rights to require switching of road crews as here involved, the following decision was given the Trainmen on April 1, 1948:

"LOUISVILLE AND NASHVILLE RAILROAD COMPANY

Office of Director of Personnel
Louisville, Kentucky

April 1, 1948

K-173-18

Mr. C. J. McClain, General Chairman,
Brotherhood of Railroad Trainmen,
Louisville, Kentucky.

Dear Sir:

'Claim of Foreman W. W. Wilke, Jr., and Switchman G. T. Wyatt, Henderson Division yardmen, for day's pay each account road crew (Conductor Smoot) switching in Earlington-Atkinson-Morton switching district, April 15, 1947.' Your file 242-3802.

Please refer to your letter of November 29, 1947, on this subject.

Conductor M. B. Smoot and crew were called to depart from Earlington at 10:45 A. M., April 15, 1947, en route to Radnor. Conductor Smoot's time return for the trip shows that the engine was cut off at Morton at 11:50 A. M., and that the train was coupled up at 12:35 P. M., 45 minutes being consumed in switching out the cars picked up and handled southward on the road trip.

The switching performed by this road crew at Morton was permissible under the agreement. This is clear from the special agreement reached on July 9, 1924 (dated July 12, 1924), the amendment thereto of February 25, 1928, and Article 15. It might be well for you to again review the findings of the National Railroad Adjustment Board, First Division, in cases on this property covered by Dockets Nos. 7173, 8179, 10726 and 13808, Awards 7201, 7202, 7203 and 7204, respectively.

Another fact which you seem to have overlooked is that the claimants, W. W. Wilke, Jr. and G. T. Wyatt, were on duty at the time this road crew, which originated at Earlington, performed the

switching at Morton, within the Earlington-Atkinson-Morton switching district. They went on duty at Earlington at 6:45 A. M., April 15, 1947 on yard job No. 7, engine 1571, and did not go off duty until 4:00 P. M. Mr. Stewart gave this information to Mr. Lane by telephone a few days ago.

The claim is not valid under the agreement, and it should be withdrawn.

Yours truly,

(Sgd.) G. C. Howard,
Director of Personnel."

The following correspondence was then exchanged:

"GENERAL GRIEVANCE COMMITTEE
BROTHERHOOD OF RAILROAD TRAINMEN

L. & N. R. R. System

June 1, 1948
File 242-3802

Mr. G. C. Howard,
Director of Personnel, L&N RR.,
9th and Broadway,
Louisville, Ky.

Dear Sir:

Claim of Foreman W. W. Wilke, Jr., and Switchman G. T. Wyatt, Henderson Division yardmen, for day's pay each account road crew (Conductor Smoot) switching in Earlington-Atkinson-Morton switching district, April 15, 1947. Your file K-173-18.

Receipt is acknowledged of your letter of April 1, 1948, in connection with the above claim.

We have made some further investigation and find that your statement as to time that W. W. Wilke, Jr., and G. T. Wyatt, went on duty April 15th, is correct. We are, therefore, withdrawing their particular claim.

We have also determined that extra switchman C. Gamblin, W. W. Fitch and D. Hinton stood on the Earlington Board in the order named on the date and the hour that this road crew perform switching at Morton in violation of the local agreement dated July 9, 1924. We, therefore, respectfully request that you allow these three yardmen who stood for this service, pay as provided in Article 36, Section (c), Trainmen's Agreement.

The claim is valid under terms of the aforementioned agreement and will be prosecuted to a definite conclusion. Please advise.

Very truly yours,

(Sgd.) C. J. McClain,
General Chairman.

CJM:mL"

"LOUISVILLE AND NASHVILLE RAILROAD COMPANY

Office of Director of Personnel
Louisville, Kentucky

July 24, 1948

K-173-18
K-173
JKL-151-18

Mr. C. J. McClain, General Chairman,
Brotherhood of Railroad Trainmen,
Louisville, Kentucky.

Dear Sir:

Claim of Foreman W. W. Wilke, Jr., and Switchman G. T. Wyatt (re-submitted in favor of Switchmen C. Gamblin, W. W. Fitch and D. Hinton) for a day's pay each account road crew switching in Earlington-Atkinson-Morton switching district April 15, 1947.

This claim was discussed by Vice Chairman Lane, representing you, and Mr. Stewart, representing me, on July 20, 1948, and the claim as re-submitted was declined for the reasons set forth in the third paragraph of my letter of April 1, 1948.

Furthermore, I would like to call attention to the fact that W. W. Fitch was on duty at the time the road crew which originated at Earlington performed the switching at Morton. He was used on the 7:55 A. M. yard job on the date of this claim.

Yours truly,

(Sgd.) G. C. Howard,
Director of Personnel."

"GENERAL GRIEVANCE COMMITTEE

BROTHERHOOD OF RAILROAD TRAINMEN

L. & N. R. R. System

July 27, 1948
File 242-3802

Mr. G. C. Howard,
Director of Personnel, L&N RR.,
9th and Broadway,
Louisville, Ky.

Dear Sir:

Claim of Foreman W. W. Wilke, Jr. and Switchman G. T. Wyatt (re-submitted in favor of Switchmen C. Gamblin, W. W. Fitch and D. Hinton) for a day's pay each account road crew switching in Earlington-Atkinson-Morton switching district April 15, 1947.

Receipt is acknowledged of your letter of July 24th, your file K-173-18, advising that the above captioned claim is declined.

Unless settlement is reached between us, we propose to submit these claims to Division 1, National Railroad Adjustment Board for decision. We, therefore, consistent with terms of understanding reached between Committee of Railroad Presidents and a like

Committee of Chief Executives of the five transportation organizations, New York City, June 6-7, 1945, request as follows:

1. That you confirm our understanding that this dispute has been properly discussed in conference as intended by the Railway Labor Act, and that it is now one that may be properly submitted to Division 1, National Railroad Adjustment Board for decision.

2. That you join us in submitting this case to Division 1, National Railroad Adjustment Board.

3. If you are unwilling to join us in submitting the case, please join us in an agreed statement of facts in the case.

Kindly advise.

Very truly yours,

(Sgd.) C. J. McClain,
General Chairman.

CJM:mL"

Acting General Chairman Lane traced for a reply on September 23, 1948, and on October 26, 1948, the carrier wrote:

"LOUISVILLE AND NASHVILLE COMPANY

Office of Director of Personnel

Louisville, Kentucky

October 26, 1948

K-173-18
K-173
JKL-151-18

Mr. N. E. Lane, Acting General Chairman,
Brotherhood of Railroad Trainmen,
Louisville, Kentucky.

Dear Sir:

Please refer to Mr. McClain's letter of July 27, 1948, and your letter of September 23, 1948, file 242-3802, captioned:

'Claim of Foreman W. W. Wilke, Jr. and Switchman G. T. Wyatt (re-submitted in favor of Switchmen C. Gamblin, W. W. Fitch and D. Hinton) for a day's pay each account road crew switching in Earlington-Atkinson-Morton switching district, April 15, 1947.'

It is our understanding that this dispute has been properly discussed in conference as intended by the Railway Labor Act and is one which may be properly submitted to the First Division of the National Railroad Adjustment Board.

We are not willing to join you in submitting it, because it is not one with which the Board should be burdened.

It has been explained several times since this claim was presented that the intent of the agreement of July 9, 1924 is that yard crews will switch the mines, transfer cars from one yard to another and perform the station switching within the Earlington-Atkinson-Morton switching district; and that road crews of trains originating and terminating at Earlington may perform switching in connection with cars moving into or out of the switching district in their trains,

under the provisions of Article 15, without payments to yardmen therefor.

As we understand it, the trainmen are resting their position entirely upon the argument that while it was agreed that road crews originating and terminating at Earlington are subject to the provisions of Article 15 of the General Agreement when required to perform switching within the Earlington-Atkinson-Morton switching district, the company agreed to pay extra yardmen for not being used when road crews performed such switching. Such position is wholly inconsistent with the intent of the agreement reached on July 9, 1924, the manner in which it was applied without question for more than 22 years, and the principles enunciated by the First Division of the National Railroad Adjustment Board in awards on this property.

The awards to which we refer are Awards 7201, 7202, 7203 and 7204 (Dockets 7173, 8179, 10726 and 13808, respectively). We quote in part the findings of the Board in those awards because what was said is so pertinent here and we think you should be governed thereby:

'Dockets Nos. 7173, 8179, 10726 and 13808 involve claims by yardmen for a runaround by trainmen. They require special treatment. On this road yardmen are included in the agreement with trainmen. Rules are assembled under The titles of "Passenger Service," "Freight Service" and "Yard Service" where they are capable of separation for convenient arrangement, but they are all part of the same agreement. The Brotherhood of Railroad Trainmen represented both the road trainmen and the yard trainmen at the same conference where Articles 15 and 11 were formulated. When it as agent agreed to permit roadmen to do certain yard work on the minute basis where yardmen were employed, it necessarily must have agreed on behalf of the yardmen to recede to the degree required to permit exercise of those rights. Even if roadmen and yardmen are considered as being separately represented on the theory that their domain of work is separated, Article 15, which limited the sweep of Article 26 (h) must have been considered as assented to by the yardmen. The giving of roadmen rights to do switching at terminals involved the correlative recession by the yardmen to the extent necessary to give roadmen that concession, both being parties to the same agreement. The intent of the parties must govern. In Award 4245 it was said, "To give the agreement the meaning contended for by the organizations would lead to an absurd conclusion; that the carrier agreed to pay roadmen an arbitrary for doing work while still remaining obliged to pay laid off yardmen therefor." If we omit the words "laid off" from the quotation it applies here exactly.' (Our underscoring)

The claims were denied.

"While we are not agreeable to joining you in submitting this case to the Adjustment Board, if you are still determined to submit it, we are willing to attempt to arrive at an agreed statement of facts, having in mind that an agreed statement of facts might lighten the burden on the Board.

"We again call your attention to the fact that one of the claimants, W. W. Fitch, was on duty at the time the road crew performed the switching in picking up at Morton.

Yours truly,

(Sgd.) G. C. Howard,
Director of Personnel."

POSITION OF CARRIER: Nothing further was heard from the Trainmen concerning the claim during the more than five months between October 26, 1948 and April 1, 1949, the date it became barred by Article 30. However, on May 11, 1949, Acting General Chairman Lane called by telephone and requested that an effort be made to arrive at an agreed statement of facts. He was informed that, this being the same claim in which the carrier had rendered a decision on April 1, 1948, the time limit provided in Article 30 for instituting proceedings for final disposition had expired.

Mr. Lane then took the position that their request that C. Gamblin and D. Hinton be paid was a new claim on which the time under Article 30 did not start running until July 24, 1948, and that the letter of July 27, 1948, in which the General Chairman stated "unless settlement is reached between us, we proposed to submit these claims to Division 1, National Railroad Adjustment Board for decision," constituted the institution of proceedings for final disposition of the claim within the scope of Article 30. He also accused the carrier of unnecessarily delaying the handling of the claim.

Notwithstanding Mr. Lane's position to the contrary, this is the claim in which the carrier rendered its decision on April 1, 1948. The decision adverse to the employees was not primarily because Yardmen Wilke and Wyatt were on duty at the time, but because "the switching performed by this road crew at Morton was permissible under the agreement." The occurrence is the same. The date is the same. Only the names of the claimants have been changed. When the Trainmen, in their letter of June 1, 1948, and in conference on July 20, 1948, asked that C. Gamblin, W. W. Fitch and D. Hinton, instead of W. W. Wilke, Jr., and G. T. Wyatt, be paid, the carrier referred back to the third paragraph of its letter of April 1, 1948, in which it stated: "The switching performed by this road crew at Morton was permissible under the agreement." Incidentally, it will be noted that the names of W. W. Wilke and G. T. Wyatt were used consistently in the caption of the correspondence in the handling of the claim up to the time of the Trainmen's notice of May 20, 1949 of their intention to submit it to the Board.

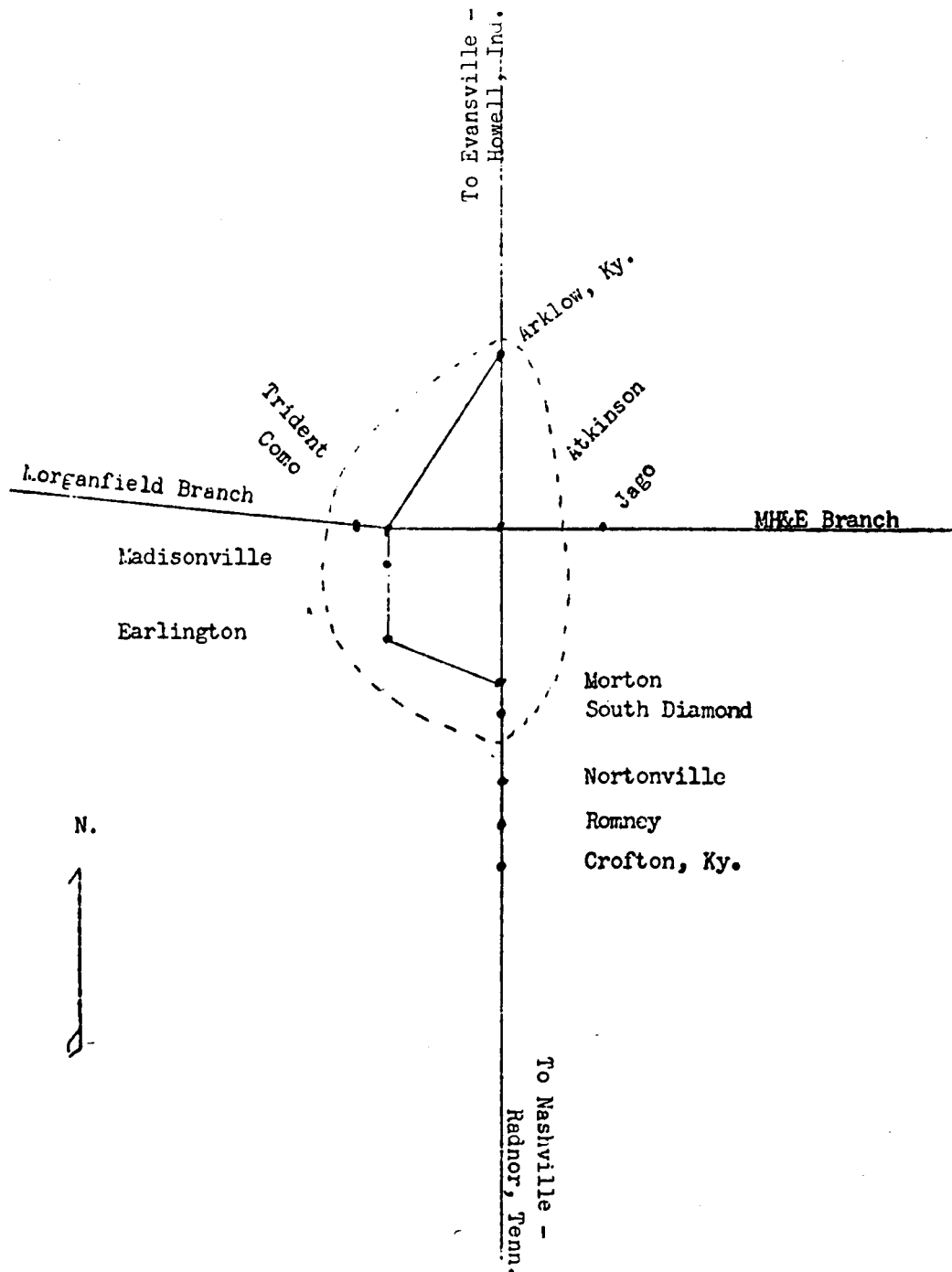
The contention that the Trainmen's letter of July 27, 1948 constituted institution of proceedings for the final disposition of the claim and notice to the carrier within the scope of Article 30 is defeated by the letter itself. The Trainmen said: "Unless settlement is reached between us, we propose to submit these claims to Division 1, National Railroad Adjustment Board for decision." This was merely a threat to institute proceedings for the final disposition of the claim. It was not an actual institution of such proceedings.

As for the accusation that the carrier unnecessarily delayed the handling of the claim, the Trainmen had more than five months between October 26, 1948 and April 1, 1949 in which to complete their handling. During the one year April 1, 1948 to April 1, 1949, the claim was in the hands of the Trainmen, awaiting action on their part, for more than seven months. The record does not support the charge.

While insisting that the claim is now barred by Article 30, the carrier, without prejudice to that position, sets forth hereinafter the circumstances in the case, the history, intent, and application of the agreement of July 9, 1924, and its answer to the position of the Trainmen as they stated it during the handling of the claim on the property.

THE CIRCUMSTANCES IN THE CASE: The scene of the claim is the Earlington-Atkinson-Morton switching district, located on the Henderson Sub-

division, which extends between Evansville, Indiana and Nashville, Tennessee. A sketch of the Henderson Sub-division, with the Earlington-Atkinson-Morton switching district indicated by dashed lines, follows:



Earlington, Madisonville, Trident, Arklow, Atkinson and Morton, which are frequently referred to in this submission, are within the Earlington-Atkinson-Morton switching district where yard engines are employed. The limits of the switching district are defined by special agreement of July 9, 1924, quoted hereinafter.

Road crews originating and terminating at Earlington, required to perform switching within the switching district in connection with cars moving into or out of the switching district in their trains, are subject to the provisions of Article 15, the terminal switching rules of the conductors' and trainmen's agreements.

There is no such thing as a "closed yard" on this railroad. Road crews may be required to perform switching at initial and final terminals where yardmen are employed without the payment of an additional day to the roadmen and without payment to yardmen for not being used. See National Railroad Adjustment Board, First Division, Awards 7193 to 7204, inclusive, denying claims of both roadmen and yardmen on this property.

On the morning of April 15, 1947, Conductor Swift and crew (in a pool of train crews maintained at Earlington, standing to protect service between Earlington and Radnor, train yard for Nashville, Tennessee, and other service originating at Arklow and south thereof, in accordance with agreement of July 14, 1925—Carrier's Exhibit "AA") set out a total of 27 cars at Morton on the northward leg of their trip Earlington to Crofton and return. The nine cars on the north end of the cut were picked up at Romney and contained coal for Evansville. The 18 cars on the south end of the cut were picked up at Nortonville, four miles south of Morton, and consisted of cars destined to points both north and south of Nortonville. To avoid blocking the main track at Nortonville incident to switching out the north cars there, the entire cut was picked up and the southward cars were handled into Morton along with the northward cars. Both Nortonville and Romney, as the sketch shows, are outside the Earlington-Atkinson-Morton switching district.

On the same date, Conductor M. B. Smoot and crew (in the same pool of train crews at Earlington) were called to depart Earlington at 10:45 A. M., for a trip to Radnor. Before leaving Earlington they were instructed to go to Atkinson and move south loads from Atkinson and Morton, switching out the south loads at Morton if necessary. According to Conductor Smoot's time return and delay report (Carrier's Exhibit "BB"), the crew cut off at Atkinson at 11:05 A. M., and coupled up at 11:30 A. M., consuming thirty minutes switching in picking up cars at Atkinson, and cut off at Morton at 11:50 A. M., and coupled up at 12:35 P. M., consuming forty-five minutes switching in picking up cars at Morton. All of the cars switched out were picked up and handled southward on the road trip. The switching at Morton consisted of switching out and picking up the 12 southward loads and one southward empty which originated at Nortonville and were handled into the switching district and set off at Morton by Conductor Swift and crew. Conductor Smoot and crew claimed and were paid a total of one hour and fifteen minutes terminal switching time under Article 15 of the agreements for switching at Atkinson and Morton.

The claimants, C. Gamblin and D. Hinton, were extra yardmen and were first and second out, respectively, on the extra board at the time of this occurrence.

HISTORY OF THE AGREEMENT OF JULY 9, 1924: Prior to 1911 the yard and switching limit boards for Earlington yard were located 1.6 miles from each end of the yard.

In 1911 a low grade cut-off was completed and placed in operation between Arklow and Morton (route as shown via Atkinson on the sketch).

When the cut-off (sometimes referred to as the Earlington cut-off) was placed in service, road crews were assigned at Atkinson, and they worked the coal mines on the cut-off between Morton and Atkinson, taking the loads to Atkinson or Morton to be picked up by through trains, and also worked Sunset and Victoria coal mines, between Madisonville and Earlington.

Yard crews were placed in service at Atkinson in 1912. In the years following that time Atkinson yard engines worked the mines on the cut-off, between Atkinson and Morton, and sometimes placed empties and moved loads from the mines between Madisonville and Earlington. However, road crews also continued to work Sunset and Victoria mines and move loads from Victoria to Earlington, and occasionally Earlington yard engines were sent to Sunset and Victoria mines to place empties and move loads. Very little use

was made of the yard crews for transfer work between Atkinson and Earlington, as road crews usually performed that work. Transfer work between Atkinson and Morton was handled by yard crews, although road crews were formerly used in that service. (See Carrier's Exhibit "CC" which is a letter written by M. Devney, Superintendent of the Henderson Division, on December 18, 1923.)

Earlington yard crews began filing claims for additional pay when they were run beyond the Earlington yard boards to perform service at the mines between Earlington and Madisonville. They relied upon that part of Article 41, Trainmen's Agreement, reading:

"Yardmen required to perform service outside of switching limits will be paid miles or hours, whichever is greater, for the class of service performed with a minimum of one hour; this to be in addition to the regular yard pay and without any reduction therefrom for the time consumed in such service. This provision not to be applicable to crews engaged in transfer service. Where it has been the practice for yard crews to do pusher service as part of their work, this practice is not affected by this rule."

As a result of these claims, Assistant Superintendent Kemper issued bulletin No. 79, December 8, 1920, reading as follows:

"A change has been made in the location of the yard limit boards in the Earlington-Atkinson-Morton district and the boards are now located as follows:

2809 feet north of Junction switch, Arklow.

2007 feet north of Como, Morganfield Branch.

2367 feet north of crossing of MH&E and Earlington cutoff, Atkinson.

5050 feet south of south main track connection, South Diamond.

These boards located as indicated above embrace the Earlington-Atkinson-Morton switching district and the limits as above outlined will be continuous. All concerned will be governed accordingly."

Under this bulletin the only yard boards left were the extreme outside boards on each outside edge of the entire switching district. Subsequently, the road crews with terminal at Earlington began claiming initial and final terminal switching time and final terminal delay time on the basis of the switching district limits. Carrier's Exhibit "D" is a statement submitted by Superintendent Devney, of the Henderson Division, on October 22, 1923, and Carrier's Exhibit "EE" is a statement submitted by Local Chairman N. E. Lane, upon appeal of the claim of Conductor H. A. Crosby and Brake-men W. C. Huffman, J. N. Long and M. McCracken, train No. 49, for one hour final terminal delay September 17, 1923, two hours September 24, 1923, and two hours September 26, 1923. Much of the switching time and final terminal delay time claimed by road crews was attributable to working the mines in the switching district and transferring cars between the yards. Note that the statement submitted by Superintendent Devney contains the following:

"When there is work to be done at Madisonville or Victoria mines it would hardly be possible for trains to reach Earlington without earning final terminal delay if the time should be counted from the time the trains pass the board at Atkinson."

Thus, prior to July, 1924, at least three different types of claims had been presented to the carrier in connection with operations in the switching district. With a view to composing the differences insofar as the conductors and trainmen (including yardmen) were concerned, the understanding of July 9, 1924 was negotiated and executed. The understanding reads:

"Understanding reached on July 9th, 1924 between Committees representing Brotherhood of Railroad Trainmen and Order of Railway Conductors and J. J. Grosche, Assistant to General Manager L&N RR concerning the application of terminal switching and final terminal delay rules to road service originating and terminating at Earlington, and concerning the application of Article 41 of the Trainmen's Agreement to Yard crews required to perform service beyond the Earlington-Atkinson-Morton switching district.

It is understood that—

The switching district to remain as at present as defined by yard limit boards located as follows:

2809 feet north of Junction switch, Arklo.

2007 feet north of Como, Morganfield Branch.

2367 feet north of crossing of M&HE and Earlington cut off, Atkinson.

5050 feet south of south main track connection, South Diamond.

All switching within the switching district to be handled by yard crews.

Yard limit boards, to govern final terminal delay time at Earlington, to be placed at the same location at Barnsley and New Victoria, which have governed the payment of final delay time for the past several years.

Yard crews required to perform service outside the switching district to be paid in accordance with Article 41 of the Trainmen's agreement.

Road crews required to perform switching within the switching district, to be paid in accordance with Sections (b) and (c) of Article 22, of the Trainmen's agreement, and Article 15 of the Conductors' agreement, switching by road crews to be defined as follows:

When they are required to—

Set out cars from two or more different places in their train.

Set out cars on more than one track.

Place cars set out behind other cars already on a track.

Pick up cars from more than one track.

Switch out cars picked up from behind other cars on the same track.

Switch cars picked up into two or more different places in their train.

Also when required to pick up or set out cars on more than one track, or to pick up cars on one track and set out cars on other track, or vice versa, within the switching district.

(NOTE) This construed to mean that if cars are set out or picked up on one track at Atkinson and, in addition, cars are picked up or set out on one track at Morton, or other points within the switching district, that the actual time consumed at the various points will be added together and paid for as switching time.

This definition of terminal switching to apply only to the Earlington district.

All claims for final terminal delay at Earlington, which are based on the present switching district boards, to be withdrawn.

(NOTE) The above does not apply to trains doubling over from one track to another at either initial yard or final yard account one track not holding entire train.

(S) E. E. Oster
General Chairman, Brotherhood
of Railway Trainmen

(S) J. J. Grosche
Assistant to General Manager

APPROVED:

(S) J. W. McCall
General Chairman Order of
Railroad Conductors

(S) W. E. Smith
Assistant General Manager

(Signed July 12, 1924)"

THE INTENT OF THE AGREEMENT OF JULY 9, 1924.

The record of the manner in which the work in the switching district was handled prior to July, 1924, the types of claims which had been presented by the employes, and an examination of the whole agreement of July 9, 1924, make its intent clear.

Earlington yard crews sent to Victoria Mine and elsewhere beyond the Earlington Yard limit boards had claimed additional pay under Article 41. Road crews were switching the mines and transferring cars from one yard to another in the switching district, and, when the Earlington yard boards were removed, they began claiming terminal switching time and final terminal delay time on the basis of the limits of the switching district. This work, which involved the movement of cars wholly within the switching district, was the root of the difficulties. Therefore, it seemed desirable to use yard crews exclusively for it.

When the negotiators wrote:

"All switching within the switching district to be handled by yard crews."

they had in mind the movement of cars wholly within the switching district or, in other words, the working of the mines and transferring the loads to Earlington, Atkinson and Morton yards for further movement in road trains, transferring cars from one yard to another, and station switching (moving cars from one track to another for placement for loading or unloading). This is obvious because they definitely reserved to the carrier the right to

require road crews to switch in connection with cars they handle into or out of the switching district in their trains by providing that road crews required to switch within the switching district will be paid under the terminal switching rules and then defining switching by naming moves made in connection with cars moving in their trains.

That it was intended that road crews originating and terminating at Earlington may perform switching in the Earlington-Atkinson-Morton switching district in connection with cars moving into and out of the switching district in their trains is clearly shown by the caption of the agreement and that part of the agreement relating to the application of Sections (b) and (c) of Article 22 of the trainmen's agreement and Article 15 of the conductors' agreement to such road crews.

Note that the caption specifically refers to the application of the terminal switching rules to road service originating and terminating at Earlington.

Also note that the body of the agreement contains the following:

"Road crews required to perform switching within the switching district, to be paid in accordance with Sections (b) and (c) of Article 22, of the Trainmen's Agreement, and Article 15 of the Conductors' Agreement, switching by road crews to be defined as follows:"

This provides that road crews originating and terminating at Earlington will be paid in accordance with Sections (b) and (c) of Article 22 of the trainmen's agreement and Article 15 of the conductors' agreement (terminal switching rules) when required to perform switching at any point within the switching district. The entire switching district is treated as a terminal for crews originating and terminating at Earlington insofar as terminal switching rules are concerned.

The terminal switching rules in effect on July 9, 1924, read:

ARTICLE 22

TRAINMEN'S AGREEMENT

(April 1, 1924)

Work at Initial Terminal.

(b) Trainmen in other than passenger service performing work at initial terminal such as switching or picking up or setting off cars, loading or unloading freight or assisting trains, etc., as much as one hour, will be paid for one hour; one hour and thirty minutes to be paid as two hours, etc., at pro rata rates. When time consumed in such work is used for the purpose of computing road overtime, this article will be disregarded.

This rule does not apply to mine and switching crew runs, Birmingham Mineral crews, crews on branch line runs, and locals at outlying points where train yard engines are not employed.

Switching at Terminals.

(c) Trainmen in main line freight service required to do switching at initial or final terminal, where switch engines are employed, will be paid for the actual minutes consumed in switching at pro rata rates.

When time consumed in such work is used for the purpose of computing road overtime, this article will be disregarded.

CONDUCTORS' AGREEMENT

(April 1, 1924)

FREIGHT CREWS DOING SWITCHING AT INITIAL AND FINAL TERMINAL.

(a) When conductors in freight service are required to do switching at their initial terminal or after arrival at final terminal, they will be paid for the actual time consumed on the minute basis at pro rata rates.

(b) When road overtime, computed from time required to report for duty until final release at the end of the run at the road overtime rate, produces a greater amount for the trip than would be earned under the foregoing rule, the service performed under this rule will be paid for as road overtime.

This article not to apply to Birmingham Mineral freight and mixed runs, work or wreck trains at any point, or to locals or mine switching runs operating out of or into terminals or other points where switch engines are not employed.

It will be noted that the definition of switching in the agreement of July 9, 1924, contains the following:

"Switch out cars picked up from behind other cars on the same track."

In view of the plain wording of the agreement, it can not be doubted for a moment that it was intended and agreed that road crews may be required, under the provisions of the terminal switching rules, to switch out cars picked up from behind other cars on the same track, which is exactly what Conductor Smoot and crew did in this case.

APPLICATION OF THE AGREEMENT OF JULY 9, 1924.

Not only does the wording of the agreement make it absolutely clear that it is permissible for road crews to perform switching within the switching district, under the provisions of the terminal switching rules, in connection with cars moving into or out of the switching district in their trains, but the application of the agreement has been consistent herewith throughout the 25 years since it was made. Moreover, this is consistent with the position of the representatives of the employees up to the time this claim was filed. Never before had they taken the position that the agreement of July 9, 1924 prohibited such switching as was done by this road crew at Morton on April 15, 1947. These things are shown by the following.

On September 23, 1924, Mr. T. B. Turner, Assistant to the General Manager, issued general instructions that the conductors' and trainmen's terminal switching and terminal delay rules would not apply to branch line runs to which they did not apply previous to Supplement No. 15 to General Order No. 27, basing his position on Question 63 of Interpretation No. 1 to Supplement No. 15, in connection with Article IX (b).

In 1924, branch line runs Nos. 46, 47, 48 and 49, operating on the Morganfield Branch and the M.H. & E. Branch, originated and terminated at Earlington and were being required to perform switching within the Earlington-Atkinson-Morton switching district in connection with cars moving into and out of the switching district in those trains. Upon receipt of Mr. Turner's instructions of September 23, 1924, the division officials began declining the claims of the conductors and trainmen on these branch line

runs for terminal switching time within the switching district and final terminal delay time at Earlington. The result was that the claims of Conductor D. S. Allen for 23 minutes switching at Earlington and 15 minutes switching at Atkinson, train No. 48, October 9, 1924 and for 15 minutes switching at Atkinson, train No. 48, October 11, 1924, were appealed to Assistant Superintendent R. E. Kemper at Evansville, Indiana, by Local Chairman F. A. Ashby on October 24, 1924, his letters reading as follows:

"Evansville, Ind. Oct. 24th, 1924.

Mr. R. E. Kemper,
Asst. Supt., City.

Dear Sir:

Please refer to your form 131 of the 21st instant, declining claim of conductor D. S. Allen for 23 minutes switching time at Earlington on No. 48 of the 9th instant; I beg to call your attention to the note added to the **Special Agreement reached at Louisville, Ky., July 9th, 1924.** I also wish to call your attention to the fact that Conductor Allen is entitled to the 23 minutes at Earlington and in addition 15 minutes switching at Atkinson. **He had to switch out this coach at Earlington and pick up out of a track at Atkinson and the note plainly states that when such is the case the time consumed at both places will added together and paid for as switching time.** Will you please so allow?

Yours truly,

(Signed) F. A. Ashby,
Local Chairman O.R.C."

(Emphasis added.)

"Evansville, Ind., Oct. 24th, 1924.

Mr. R. E. Kemper,
Asst. Supt., City.

Dear Sir:

Please refer to your form 131 No. 27 of the 21st instant, declining 15 minutes switching time claimed by conductor D. S. Allen, on No. 48 of the 11th instant. As Allen explained the case to me I am of the opinion that he has claimed his time correctly. He states that he picked up at Atkinson and that a part of his pick up was behind the No-bill car and as such a move is specifically named in the special Agreement reached at Louisville July 9th, 1924, as being one of the reasons for paying switching time at this point I can not agree with you that the Agreement does not support his claim and thereby ask that the 15 minutes be allowed as claimed by Mr. Allen.

Yours truly,

(Sgd.) F. A. Ashby,
Local Chairman, O.R.C."

(Emphasis added.)

Following these letters, the claim of Conductor Allen for October 9, 1924, and several other similar claims were apealed by General Chairman J. W. McCall, of the conductors, and General Chairman E. E. Oster, of the trainmen. Mr. McCall's letter appealing the claim of October 9, 1924, reads:

"ORDER OF RAILWAY CONDUCTORS

Paris, Tennessee.
Feb. 16, 1925.
File 381-137

Mr. T. B. Turner,
Asst. to Gen. Mgr.,
Louisville, Ky.

Dear Sir:

I am appealing claim of Conductor D. S. Allen of the Henderson Division for 15 minutes switching at Atkinson and 23 minutes at Earlington, Train No. 48, October 21st, 1924 (correct date October 9, 1924).

Article 15 of the Conductors' Agreement, in connection with Agreement reached relative to the establishment of the Earlington Switching District, fully supports the claim of Conductor Allen.

You will please list this for handling at our next conference, unless you are in position to advise disposition at this time.

Yours truly,

(Sgd.) J. W. McCall,
General Chairman.

(Emphasis added.)

JWM:PR"

At a conference on March 19, 1925, Assistant General Manager W. E. Smith concurred in the position of General Chairmen McCall and Oster, and the claim of Conductor Allen and other pending claims were settled accordingly, as shown by Mr. Smith's letter of March 23, 1925, reading:

"Louisville, Ky. March 23rd, 1925.

Mr. J. W. McCall,
General Chairman, ORC,
Willard Hotel,
Louisville, Kentucky.

Dear Sir:

Question of proper payment of final terminal delay and switching trains 46, 47, 48 and 49 at Earlington. Your file 381-46.

At conference on the 19th instant we agreed that branch line mixed runs terminating within the Earlington-Atkinson-Morton switching district, **come under the provisions of Articles 15 and 22 of the conductors' agreement, subject to the understanding reached on July 9th, 1924** in connection with the Earlington-Atkinson-Morton switching district.

Pending claims will be settled accordingly.

Yours truly,

(s) W. E. Smith,
Assistant General Manager.

c/c Mr. E. E. Oster.

The above letter also refers and applies to trainmen in connection with Article 22 of your agreement, and the understanding referred to."

(Emphasis added.)

The understanding was so applied thereafter.

Mr. Turner notified General Chairman Oster of the correction of his instructions of September 23, 1924 in his letter of April 6, 1925, reading:

"Louisville, Ky. April 6, 1925,
H&StL-381.

Mr. E. E. Oster,
General Chairman, BRT,
Union Labor Temple,
Louisville, Ky.

Dear Sir:

Referring to yours of the 13th ultimo, **relative to payment for final terminal delay and switching** on local freight trains Nos. 46, 47, 48 and 49, Henderson Division.

Previous instructions covering this question have been corrected.

Yours truly,

(Sgd.) T. B. Turner,
Asst. to Genl. Mgr.

T-Br"

(Emphasis added.)

In the Sixth Edition of the Trainmen's Agreement published February 1, 1927, the terminal switching rules appearing in the April 1, 1924 agreement as Sections (b) and (c) of Article 22, were transferred to Article 15, reading:

"WORK AT INITIAL TERMINAL

(a) 1. Trainmen in other than passenger service performing work at initial terminal such as switching or picking up or setting off cars, loading or unloading freight or assisting trains, etc., as much as one hour, will be paid for one hour; one hour and thirty minutes to be paid as two hours, etc., at pro rata rates. When time consumed in such work is used for the purpose of computing road overtime, this article will be disregarded.

2. This rule does not apply to mine and switching crew runs, Birmingham Mineral crews, crews on branch line runs, and locals at outlying points where train yard engines are not employed.

SWITCHING AT TERMINALS

(b) 1. Trainmen in main line freight service required to do switching at initial or final terminal, where switch engines are employed, will be paid for the actual minutes consumed in switching at pro rata rates.

2. When time consume in such work is used for the purpose of computing road overtime, this Article will be disregarded."

There was no change in the rules other than in the article number and section letters. The same rules were in effect on April 15, 1947, the date of this claim.

In 1927, with a view to providing better service at Jago Mine, a new coal mine on the M.H. & E. Branch, just outside the limits of Earlington-Atkinson-Morton switching district, a proposal was made to the conductors and trainmen to amend the agreement of July 9, 1924, so as to include that mine within the limits of the switching district. Local Chairman N. E. Lane,

of the Brotherhood of Railroad Trainmen, wrote Assistant Superintendent Kemper on August 19, 1927 (Carrier's Exhibit "F") agreeing to the extension of the switching limits as a temporary arrangement, subject to the approval of the Henderson Division trainmen and the general committee of the Brotherhood of Railroad Trainmen. He stated, however:

"It should be understood, of course, that all provisions of the agreement and all special arrangements governing final terminal delay and switching time for road crews in the Atkinson territory will be extended to the new location of the yard limit board."

Mr. Lane's letter is evidence that he knew that road crews were switching in the Earlington-Atkinson-Morton switching district and were being paid therefor under the provisions of the terminal switching rules, and that yardmen were not entitled to a day's pay on that account. He did not say, as he does now, that road crews could not perform switching within the switching district, and that, if such switching was required of road crews, yardmen would be entitled to a day's pay. On the contrary, he was very careful to say that arrangements for payment of switching time for road crews in the switching district must be extended so as to include the new territory taken into the switching district.

Effective February 1, 1927, Article 11, providing for conversion from through freight rate to local freight rate, was incorporated in the conductors' and trainmen's agreements. One of the provisions for conversion was picking up or setting out cars at four or more points between terminals during any one trip or tour of duty. After this rule became effective, question arose as to whether picking up cars (not necessarily first out or on one track) or setting out cars at points outside of the terminal yard from which a train departed, or in which it arrived, constituted a stop toward local rate. The result was an understanding (Carrier's Exhibit "GG") in conference between the Assistant General Manager and the General Chairmen of the Conductors and Trainmen on February 9, 1928, reading in part:

"(1) Question of points outside of the Terminal yard from which trains arrive or depart, constituting a stop.

Article 15 to govern within terminal switching limits, terminal switching time to be computed from time engine or cars are detached from train for the purpose of beginning the work, until switching is completed and train is coupled together. The loading or unloading of package freight within terminal switching limits will not be considered as terminal switching under this rule. All claims pending under Article 11—under this item—to be adjusted on this basis, and the understanding to be applied generally on the system as soon as instructions can be issued." (Emphasis added.)

Since it was agreed that the understanding was "to be applied generally on the system", the agreement of July 9, 1924, covering the Earlington-Atkinson-Morton switching district, was amended. See Assistant General Manager W. E. Smith's letter of February 25, 1928, Carrier's Exhibit "HH". This had the effect of making the application of Article 15 (the terminal switching rules) exactly the same in the Earlington-Atkinson-Morton switching district, insofar as cars moving into or out of the switching district in trains are concerned, as in any other terminal.

This understanding is more favorable to the employes in that it provides for the payment of switching time to roadmen in a greater variety of circumstances than the definition of switching written into the agreement of July 9, 1924. For example, it gives them switching time for setting out cars from one place in their train within the switching district, as well as when they "set out cars from two or more different places in their train", as provided in one of the definitions of switching in the July 9, 1924 agreement.

Under Article 15 of the general agreements, road crews may switch

cars moving wholly within the terminal switching limits (this right was confirmed in First Division Awards 7195, 7200 and 7201) as well as cars moving into or out of the terminal switching limits in their trains. However, on July 9, 1924, it was agreed that the switching of cars moving wholly within the Earlington-Atkinson-Morton switching district would be handled by yard crews. Thus, switching by road crews in the switching district was confined to that required in connection with cars moving into or out of the switching district in their trains. When the Assistant General Manager wrote:

"In other words—setting out or picking up cars within the Earlington-Atkinson-Morton Switching District by trains originating or terminating at Earlington, constitutes terminal switching, and is subject to the provisions of Article 15."

In his letter of February 25, 1928 (Carrier's Exhibit "HH"), he was merely calling attention to the fact that this difference still existed in the Earlington-Atkinson-Morton switching district. There was no dispute at the time about road crews originating and terminating at Earlington switching in the switching district in connection with cars moving into or out of the switching district in their trains. The sole purpose of the amendment of the July 9, 1924 agreement was to make the application of Article 15 exactly the same in the switching district, insofar as cars moving into or out of the switching district in trains are concerned, as in any other terminal. As the employees have recognized for more than 19 years, it does not in any way restrict the amount of switching road crews may be required to do in connection with cars moving into or out of the switching district in their trains or the location of the cars in the tracks.

As the carrier had the right to do under the special agreement of July 9, 1924 and Article 15, it continued to require road crews originating at Earlington to switch cars they picked up in the Earlington-Atkinson-Morton switching district from behind other cars. A number of such cases are cited hereunder for the record.

Conductor Tom Longstaff and Trainmen Everett Marshall and Pat H. Coleman, Morganfield Branch mixed local No. 40, originating at Earlington, February 17, 1938, switched out the way cars they picked up at Madisonville and claimed eight minutes switching time therefor. See Carrier's Exhibit "II", in which Conductor Longstaff explained the switching performed. The claim was declined for the reason that no switch engine was on duty in the Earlington-Atkinson-Morton switching district at the time. However, it was submitted to the First Division of the National Railroad Adjustment Board on August 12, 1939. It was the position of the employees that switching pay was due under Article 15, the terminal switching rules of the conductors' and trainmen's agreements, since yard engines were employed in the Earlington-Atkinson-Morton switching district, although not on duty at the particular time. The Board sustained the claim, along with claims for two other dates, in Award 6867, finding in part:

"It is in evidence that yard engines were in fact, on the dates cited, 'employed' in the Earlington-Atkinson-Morton Switching District and the Division holds that they were so employed within the meaning of the rules cited and relied upon by the parties. Claims asserted herein are accordingly held to be valid."

On April 28, 1938, and again on April 30, 1938, Conductor Tom Longstaff and Trainmen Lonnie G. Webb and Pat H. Coleman, on this same train, claimed terminal switching time in the Earlington-Atkinson-Morton switching district. The claim for April 28, 1938 included five minutes switching at Madisonville, making switch on mdse. car". The claim for April 30, 1938 included five minutes switching at Madisonville, "switching out mdse. car". (The quotations are Conductor Longstaff's explanation of the switching done as shown by him under "remarks" on time returns for the trips.) The claims

were adjusted under the terminal switching rules, Article 15, of the conductors' and trainmen's agreements.

An Earlington pool crew was operated out of Earlington for a period of time in 1937 and 1938. This crew, which was precisely the same type of crew as the one in charge of Conductor Smoot on April 15, 1947 and stood for the same kind of service, was established by bulletin reading:

"Evansville, Ind. Sept. 18, 1937

BULLETIN-BOARD ORDER NO. 171

Conductors and Trainmen, H.D.:

Effective Monday, Sept. 20, 1937, Earlington pool crew for service out of Earlington, will be re-established.

A Conductor, Flagman and Head brakeman will be required for this crew.

Applications to fill these positions will be received in my office until 9 o'clock A. M., September 23rd. If more than one position applied for, state your choice.

C. R. Bowman,
Train Master

d-"

On February 1, 1938, this Earlington pool crew, manned by Conductor Joe Brinkley, Brakeman R. T. O'Bannon, and Flagman N. E. Lane, was called to depart Earlington at 2:45 P. M., for a trip to serve the coal mines in the vicinity of Romney. The crew claimed 35 minutes terminal switching time at Earlington, from 2:40 P. M. to 3:15 P. M. (see Carrier's Exhibit "JJ"). When Conductor Brinkley was requested to give information concerning the switching performed, he wrote:

"Feb. 14

Mr. W. W. Wright,
Asst. Supt.

Dear Sir:

Attached.

On Feb. 1st I had 15 hoppers out of Earlington. To get these together caused considerable switching. No yard on division separates hoppers and plains. These cars stood practically 1 out and 1 in. I am unable to say just what switching was done after 3:00 P. M. but train OK to go at 3:20 P. M. At Atkinson I went to north end of yard and shoved my train in No. 5 track on other cars. Made no switch to set out at Atkinson but setting out on other cars in dark consumes time. Hope this explains.

(Sgd.) Joe Brinkley,
Conductor."

(Emphasis added.)

Investigation not having been completed in time for payrolling on first period of February payroll, Flagman N. E. Lane wrote the Auditor of Disbursements concerning a shortage in his earnings, to which the Auditor replied:

"Office of Auditor of Disbursements, Louisville, Ky., March 11, 1938

Our file Sig. 6-MHS

Mr. N. E. Lane
Brakeman
Howell, Indiana.

Dear Sir:

Yours of the 7th inst. received, with reference to shortage of \$1.21 in your earnings for first-period February.

Your claims for terminal switching on February 1-2-3, have not been allowed, due to the fact that these claims have not been approved for payment.

You will be notified later, regarding these claims.

Yours truly,

J. C. WILLCOX
Auditor of Disbursements
Room 1102

WHS:MMcG"

The claim was later adjusted under the provisions of Article 15, the terminal switching rules of the conductors' and trainmen's agreements.

On February 8, 1938, Earlington pool crew, Conductor P. H. Coleman and Trainmen A. L. Hill and L. G. Webb, called to depart Earlington at 2:45 P. M., for a trip to serve the mines in the vicinity of Romney, claimed 25 minutes terminal switching "acct. picking up gons & hops. out 3 tracks at H-271 (Earlington) & setting out train in nth yd HC. 275 (Atkinson)."*

On February 11, 1938, Earlington pool crew, Conductor P. H. Coleman and Trainmen John Kollenberg and R. T. O'Bannon, called to depart Earlington at 2:45 P. M., for a trip to serve the mines in the vicinity of Romney, claimed 25 minutes terminal switching "acct. switching out 15 hoppers at H-271 (Earlington) & setting out at Atkinson."*

These claims were likewise adjusted under the provisions of Article 15.

On February 5, 1938, Earlington pool crew, Conductor P. H. Coleman and Trainmen A. L. Hill and L. G. Webb, called to depart from Earlington at 2:45 P. M., for a trip to the Morganfield Branch, consumed 10 minutes "picking up 10 gons"* at Atkinson, and 20 minutes "picking up GM&N gons & 7 hoppers behind 5 plain gons,"* at Trident. However, as the crew earned 2 hours and 45 minutes overtime on the trip, which produced more than the terminal switching time, the service was paid for as road overtime, in accordance with Article 15.

Date	Train No.	Conductor	Trainmen	Time Claimed and Paid	Description of Switching
/ 2/46	40	W. L. Teague	R. E. Buchanan, Jr. J. M. Hicks	25"	make up train at Trident
/21/46	40	W. O. Griffin	W. L. Teague J. M. Hicks	20"	switching out mdse. car at Madisonville
/28/46	40	W. L. Teague	P. K. Blankenship J. M. Hicks	40"	switching out train at Atkinson
/24/46	40	W. O. Griffin	W. L. Teague J. M. Hicks	20"	switching out coal cars at Earlington

* Quotations from crews' time returns.

Date	Train No.	Conductor	Trainmen	Time Claimed and Paid	Switching Description of
1/29/46	40	W. L. Teague	J. T. Stringer J. M. Hicks	25"	switching out train at Tident
2/ 4/46	40	O. Clark	R. E. Buchanan, Jr. J. M. Hicks	30"	switching out mdse. car : Madisonville and pickir up train at Atkinson
2/ 6/46	40	O. Clark	R. E. Buchanan, Jr. J. M. Hicks	35"	switching out mdse. : Madisonville and switcl ing out train at Atkinso
2/19/46	40	O. Clark	R. E. Buchanan, Jr. M. R. Parker	1' 20"	switching out train at A kinson
2/25/46	40	O. Clark	R. E. Buchanan, Jr. M. R. Parker	1' 10"	switching out train at A kinson
9/18/46	40	O. Clark	R. T. O'Bannon, Jr. W. L. Teague	1'	swg. at Madisonville an swg. out train at Atkinso

Effective November 1, 1946, Article 15 of the conductors' agreement was amended to read:

"ARTICLE 15

FREIGHT CREWS DOING SWITCHING AT INITIAL AND FINAL TERMINAL

(a) When conductors in freight service are required to do switching at their initial terminal or after arrival at final terminal, they will be paid for the actual time consumed on the minute basis at pro rata rates. When they are required to perform switching at two or more points within the same terminal, the running time between the points, computed according to the distance between the points at a speed basis of 12½ miles per hour, will be added to the actual time consumed in switching at the points and the total will be paid for on the minute basis at pro rata rates.

(b) 1. When road overtime, computed from time required to report for duty until final release at the end of the run at the road overtime rate, produces a greater amount for the trip than would be earned under the foregoing rule, the service performed under this rule will be paid for as road overtime.

2. This article not to apply to Birmingham Mineral freight and mixed runs at other than Boyles-Birmingham Terminal, work or wreck trains at any point, or to locals or mine switching runs operating out of or into terminals or other points where switch engines are not employed."

This was the conductors' rule in effect on April 15, 1947. The only change as compared with the conductors' rule in effect on July 9, 1924 is the addition of the second sentence of Section (a) and the amendment to Paragraph 2 of Section (b) so as to provide for pay for conductors of Birmingham Mineral freight and mixed runs when required to perform switching at Boyles-Birmingham Terminal which is not involved here.

Throughout all the years since July 9, 1924, conductors and trainmen of road crews originating at Earlington have been paid under the provisions of Article 15 of the conductors' and trainmen's agreements when required to switch out cars picked up from behind other cars in the Earlington-Atkinson-Morton switching district. That is true of Conductor Smoot and crew who performed such service at Morton on April 15, 1947, and which is the basis for this claim. Never before had the Trainmen taken the position that, under the agreement of July 9, 1924, extra yardmen should be paid for not

being used when such service was required of road crews originating at Earlington.

It should also be borne in mind that there is no limitation on either the number of switches or the time consumed by road crews switching at initial and final terminals under Article 15, and, as stated before, the article applies in the Earlington-Atkinson-Morton switching district, so far as cars moving into or out of the switching district in the train are concerned, exactly the same as it does on the system generally. Awards 7193 to 7204 inclusive, of the First Division of the National Railroad Adjustment Board, in claims of both roadmen and yardmen on this property, cover various types of switching service at terminals. Awards 7196, 7197, 7198, 7199 and 7203 are of particular interest because they involve making up or disposing of the trains the road crews handle out of or into the terminals.

Award 7196 covers the claims of road crews on trains Nos. 9 and 10 for an additional day's pay at yardmen's rates account of making up and disposing of their trains at their terminal, Owensboro, Kentucky, where yard engines were employed. It was shown in the carrier's statement of facts that No. 10 set out Owensboro proper cars in Chestnut Street Yard, Owensboro, then proceeded to Doyle, where the remainder of train was set out, after which engine and caboose were returned to Chestnut Street Yard and tied up. No. 9 picked up caboose in Chestnut Street Yard and went to Doyle where the train was switch out and picked up and then proceeded on the road trip. The crews used from 20 minutes to one hour performing the work. All the points mentioned are within the terminal switching limits of Owensboro.

Award 7197 is in the claim of roadmen for an additional day's pay at yardmen's rates, and Award 7203 covers the claim of Owensboro yardmen for a day's pay because the roadmen on a trip from Louisville to Owensboro, Kentucky, with a carnival train, were required to switch and place the cars for unloading. The carrier's statement of facts showed the road crew consumed seven hours and five minutes performing this switching at Owensboro, the terminal of the run.

Award 7198 pertains to the claim of the road conductor on train No. 9 for an additional day's pay at yard foreman's rate account of being required to make up his train at his initial terminal at Owensboro, Kentucky, where yard engines are employed. The carrier's statement of facts showed that the crew consumed 45 minutes in making up their train at Doyle, within the Owensboro Terminal switching limits.

Award 7199 covers the claim of a road crew for additional day's pay at yardmen's rates on account of being required to switch out and pick up cars at Latonia, within the terminal switching limits of Cincinnati, their initial terminal, where yard engines are employed. This road crew departed from DeCoursey with engine and caboose and was required to switch out and pick up their train at Latonia, consuming 24 minutes doing so.

All of these claims were denied.

CARRIER'S ANSWER TO THE POSITION OF THE TRAINMEN

In the handling of the claim on the property the Trainmen at first took the position that the carrier, in the July 9, 1924 agreement, agreed to pay both roadmen and yardmen when road crews were required to perform switching in the Earlington-Atkinson-Morton switching district—the road crews to be paid under the terminal switching rules and the yardmen to be paid a day's pay for not being used. Later they took the position that it is simply not permissible to require road crews originating and terminating at Earlington to perform switching in the switching district. They have also given the carrier copies of three statements, two dated May 3, 1949 and the other dated May 20, 1949, signed by J. W. McCall ex-General Chairman,

O.R.C., L&N System, Fred A. Ashby, ex-Local Chairman, O.R.C., Henderson Division, L&N Railroad, and N. E. Lane, Local Chairman, B.R.T., Henderson Division (including Earlington-Atkinson-Morton switching district), in which they, seemingly from memory, give their views of the meaning of the agreement of July 9, 1924, 25 years after it was made.

Mr. J. J. Grosche, Assistant to General Manager, who represented the carrier in the negotiation of the agreement of July 9, 1924 and wrote the Assistant General Manager's letter of February 25, 1928, died in February, 1947, two months before this claim was made. If it were necessary for the carrier to rely upon the memory of those who negotiated the agreement, it would be in a difficult position. But, that is not the case. The carrier relies upon the records made at the time of the occurrence, by those whose duty it was to make them, and the action of the parties, including those who signed the statements referred to above, under the agreement for more than 22 years.

As has already been shown, it was never intended that there be any prohibition against road crews with terminal in the Earlington-Atkinson-Morton switching district performing switching in the switching district in connecton with cars they handled into or out of the switching district in their trains. However, if the paragraph

"All switching within the switching district to be handled by yard crews."

should be construed as such a prohibition, then the paragraph of the agreement providing

"Road crews required to perform switching within the switching district, to be paid in accordance with Sections (b) and (c) of Article 22, of the Trainmen's agreement, and Article 15, of the Conductors' agreement * * *"

limits the first paragraph quoted herein to the extent necessary to permit exercise of the rights conferred by the paragraph last quoted herein. The Brotherhood of Railroad Trainmen represented both the road trainmen and the yard trainmen in the conferences where the agreement of July 9, 1924, was negotiated. The claimants here would be in precisely the same position as the yardmen on this property in First Dipision Awards 7201, 7202, 7203 and 7204, in which the Board, in denying the claims, said in part:

"The Brotherhood of Railroad Trainmen represented both the road trainmen and the yard trainmen at the same conference where Articles 15 and 11 were formulated. When it as agent agreed to permit roadmen to do certain yard work on the minute basis where yardmen were employed, it necessarily must have agreed on behalf of the yardmen to recede to the degree required to permit exercise of those rights. Even if roadmen and yardmen are considered as being separately represented on the theory that their domain of work is separated, Article 15, which limits the sweep of Article 26(h) must have been considered as assented to by the yardmen. The giving of roadmen rights to do switching at terminals involved the correlative recession by the yardmen to the extent necessary to give roadmen that concession, both being parties to the same agreement. The intent of the parties must govern. In Award 4245 it was said, 'To give the agreement the meaning contended for by the organizations would lead to an absurd conclusion; that the carrier agreed to pay roadmen an arbitrary for doing work while still remaining obliged to pay laid off yardmen therefor.' If we omit the words 'laid off' from the quotation it applies here exactly."

The conclusions of the Board in these awards should forthwith dispose of the contention that the carrier agreed to pay both the roadmen and the yardmen.

Likewise, the provisions of the agreement of July 9, 1924 that road crews required to perform switching within the switching district are to be paid in accordance with the terminal switching rules, the payments made throughout all the years, and the position of the representatives of the employes prior to April 15, 1947, as shown in the record, should forthwith dispose of the contention that it is simply not permissible to require road crews originating and terminating at Earlington to perform switching in the switching district. First Division Awards 7193 to 7204, inclusive, are again referred to. In those awards the Board held that, under the terminal switching rules, it is permissible for this carrier to require road crews to perform switching at initial and final terminals without payment of an additional day to roadmen and without payment to yardmen for not being used.

The statements of Messrs. McCall, Ashby, and Lane read as follows:

“May 3, 1949

TO WHOM IT MAY CONCERN:

I have carefully reviewed brief prepared for submission to Division 1, National Railroad Adjustment Board by General Chairman, C. J. McClain of the Brotherhood of Railroad Trainmen on the L&N Railroad in the following styled case:

‘Claim of yardman C. Gamblin for day’s pay at foreman’s rate, and yardman D. Hinton for day’s pay at switchman’s rate, account runaround by road train crews used to perform yardmen’s work in Earlington-Atkinson-Morton Switching District, April 15, 1947.’

and I state unqualifiedly that the ‘Committee’s Position’ is correct in every respect. I also state that the Carrier’s statement as to ‘intent’ of the July 9, 1924 agreement, as set out in Director of Personnel Howard’s letter of October 26, 1948, quoted in the submission, is entirely erroneous.

I was Chairman of the Conductors’ General Grievance Committee, representing Conductors on the L&N system at the time the July 9, 1924 agreement was negotiated. I participated in all the negotiations, and I know that no such interpretation of it as that now advanced by the Carrier was ever agreed to. In fact I can positively state that no such interpretation was ever mentioned between the negotiators.

The representatives of the employes were very much on the alert to protect road crews from being used to perform switching in the district at expense of yard crews, who had always done the work. That is why the Committee insisted upon inclusion in the Agreement of the unqualified section reading:

‘All Switching Within the Switching District to be handled by yard crews.’

(Sgd.) J. W. McCall
J. W. McCall
Ex. General Chairman, O.R.C.
L&N System.”

“May 3, 1949

TO WHOM IT MAY CONCERN:

I have carefully review brief prepared for submission to Division 1, National Railroad Adjustment Board by General Chairman C. J. McClain of the Brotherhood of Railroad Trainmen on the L&N Railroad in the folowing styled case:

'Claim of yardman C. Gamblin for day's pay at foreman's rate, and yardman D. Hinton for day's pay at switchman's rate, account runaround by road train crews used to perform yardmen's work in Earlington-Atkinson-Morton Switching District, April 15, 1947.'

and I state unqualifiedly that the 'Committee's Position' is correct in every respect, and that the Railroad's statement as to 'intent' of the July 9, 1924 agreement as set out in Director of Personnel Howard's letter of October 26, 1948, quoted in the submission is entirely incorrect.

I, as representative of the Conductors on the Henderson Division of the L&N, participated in the negotiation of the July 9, 1924 Agreement, and I know no such interpretation of it as that now advanced by the Carrier was ever agreed to or even mentioned. The agreement would have never been accepted by the employees with any such an interpretation.

The representatives of the employees were on the alert to protect road crews from being used indiscriminately to perform switching that yard crews had always done up to that time and which the Committee expected to see to it that they continued to do. That is why the Committee insisted upon the inclusion in the Agreement of the unqualified section reading:

'All Switching Within the Switching District to be handled by yard crews.'

(Sgd.) Fred A. Ashby
Fred A. Ashby
Ex-Local Chairman, O.R.C.
Henderson Division, L&N RR."

"May 20, 1949

TO WHOM IT MAY CONCERN:

I have carefully review brief prepared for submission to Division 1, National Railroad Adjustment Board by General Chairman, C. J. McClain of the Brotherhood of Railroad Trainmen on the L&N Railroad in the following styled case:

'Claim of yardman C. Gamblin for day's pay at foreman's rate, and yardman D. Hinton for day's pay at switchman's rate, account runaround by road train crews used to perform yardmen's work in Earlington-Atkinson-Morton Switching District, April 15, 1947.'

and I state unqualifiedly that the 'Committee's Position' is correct in every respect. I also state that the Carrier's statement as to 'intent' of the July 9, 1924 Agreement, as set out in Director of Personnel Howard's letter of October 26, 1948, quoted in the submission, is entirely erroneous.

I was Chairman of the B. of R. T.'s local committee representing the yardmen in the Earlington-Atkinson-Morton Switching District at time the July 9, 1924 Agreement was negotiated. I participated in all the negotiations and I know that no such interpretation of it as that now advanced by the Carrier was ever agreed to. No such interpretation was ever mentioned between the negotiators.

The representatives of the employees were very much on the alert to protect road crews from being used to perform switching in the district at expense of yard crews, who had always done the

work. That is why the Committee insisted upon inclusion in the Agreement of the unqualified section reading:

‘All Switching Within the Switching District to be handled by yard crews.’

(Sgd.) N. E. Lane
N. E. Lane
Local Chairman, B. of R. T.
Henderson Division
(Including Earlington-Atkinson-
Morton Switching District)”

While signed by three men, the language used makes it obvious that they were written by the same person.

All three statements say, “I stated unqualifiedly that the ‘Committee’s Position’ is correct in every respect.” As we have already said, we do not know the position of the committee in their submission, but if it is the same as the position taken in the handling of the claim with the carrier, the statements, as well as the position of the committee, are at variance with the July 9, 1924 agreement itself and the action of the parties, including these three gentlemen, under it for more than 22 years.

They further say that the carrier’s statement as to the intent of the agreement is “entirely erroneous” or “entirely incorrect”. It should suffice to call attention to the differences between what these men now say and their actions and statements in correspondence in former years.

In writing about the claim of Conductor Allen of October 9, 1924, Mr. Ashby said on October 24, 1924:

“I beg to call your attention to the note added to the Special Agreement reached at Louisville, Ky., July 9, 1924. I also wish to call your attention to the fact that Conductor Allen is entitled to the 23 minutes at Earlington and in addition 15 minutes switching at Atkinson. He had to switch out this coach at Earlington and pick up out of a track at Atkinson and the note plainly states that when such is the case the time consumed at both places will added together and paid for as switching time.”

On the same day Mr. Ashby wrote in connection with the claim of Conductor Allen of October 11, 1924:

“He states that he picked up at Atkinson and that a part of his pick up was behind the no-bill car and as such a move is specifically named in the special agreement reached at Louisville July 9th, 1924, as being one of the reasons for paying switching time at this point I can not agree with you that the agreement does not support his claim * * *”

On February 16, 1925, Mr. McCall, in appealing the claim of Conductor Allen of October 9, 1924, wrote:

“Article 15 of the Conductors’ Agreement in connection with Agreement reached relative to the establishment of the Earlington Switching District, fully supports the claim of Conductor Allen.”

These claims, along with other similar claims of conductors and trainmen, were paid after conference with representatives of the employees.

On August 19, 1927, when consideration was being given to extending the switching district limits to include Jago, Mr. Lane wrote:

“It should be understood, of course, that all provisions of the agreement and all special arrangements governing final terminal

delay and switching time for road crews in the Atkinson territory will be extended to the new location of the yard limit board."

Mr. Lane was a member of the Earlington pool crew which switched out the 15 empty hopper cars at Earlington, which were handled on the road trip on February 1, 1938, and which the conductor said "stood practically 1 out and 1 in". When he did not receive pay for the time consumed in this switching on payroll for that pay period, he wrote the Auditor to ascertain why the shortage existed.

At no time in the handling of these claims and questions did these three men take the position that the agreement of July 9, 1924 was being violated. Just the opposite is true. They called attention to the agreement of July 9, 1924 and Article 15, which they said provided that the time consumed would be paid for as switching time and fully supported the claims. And they collected the claims. Mr. Lane was careful to have it understood, if the switching district was extended to include Jago, "all provisions of the agreement * * * governing * * * switching time for road crews in the Atkinson territory" must be extended to the new location of the yard limit board.

They say they participated in the negotiations of the agreement of July 9, 1924 and know that no such interpretation of it as that now advanced by the carrier was ever agreed to, that no such interpretation was ever mentioned between the negotiators, and that the agreement would have never been accepted by the employes with any such an interpretation. They say this notwithstanding the agreement itself plainly reads:

"Road crews required to perform switching within the switching district, to be paid in accordance with Sections (b) and (c) of Article 22 Trainmen's agreement, and Article 15 of the Conductors' agreement * * *"

and gives one of the definitions of switching as:

"Switch out cars picked up from behind other cars on the same track."

which is what the road crew did in this case.

These gentlemen also say the representatives of the employes were very much on the alert to protect road crews from being used to perform switching in the district at expense of yard crews, who had always done the work.

These are strange statements from Messrs. McCall and Ashby, considering the fact that they represented the road conductors and a loss of work and earnings was not to the interest of the men they represented. Moreover, the statement that yard crews had always done the work is at variance with the record. The record shows that for several years prior to December 1923 it was the practice to have road crews work Sunset and Victoria mines, between Earlington and Madisonville. Some of the yard crews had been claiming additional pay under Article 41 when they were required to do such work. The December 1923 record also shows that road crews were moving loads from Victoria to Earlington and transferring cars between Atkinson and Earlington, and further that road crews had formerly transferred cars between Atkinson and Morton.

Under the general agreements, the carrier has now, and has always had, the right to require road crews to perform switching at initial and final terminals, even though yard engines are employed in such terminals. See First Division Awards 7193 to 7204, inclusive. The agreement of July 9, 1924 changed the method of working the coal mines and transferring cars from one yard to another within the Earlington-Atkinson-Morton switching district, but it did not change the right of the carrier to require road crews with terminal in the Earlington-Atkinson-Morton switching district to per-

form switching in connection with cars they handle out of or into the switching district in their trains. Neither has any amendment to the July 9, 1924 agreement changed that right.

The carrier declined the claim on April 1, 1948, because, as shown herein, the switching performed by this road crew at Morton was permissible under the agreement. It is now barred by Article 30. It should be denied.

All data submitted in support of carrier's position has been presented to the representatives of the employees.

Oral hearing is not desired unless requested by the employees.

(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 employee within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

This claim is based upon a local agreement dated July 9, 1924 and amendments thereto made in 1928. It involves what is known as the Earlington-Atkinson-Morton Switching District.

The employees contend that this agreement was violated on April 15, 1947 when switching in that district was performed by a road crew whose train originated in that district. To support their claim the employees rely upon the following sentence in that agreement: "All switching within the switching district to be handled by yard crews."

A single sentence in an agreement cannot be relied upon to give its true meaning. When construing an agreement the rule is well settled that every paragraph, sentence, phrase, and word must be given a meaning if possible and the agreement must be construed as a whole.

Another paragraph of this agreement reads: "Road crews required to perform switching within the switching district, to be paid in accordance with Sections (b) and (c) of Article 22, of the Trainmen's Agreement, and Article 15 of the Conductors' Agreement, switching by road crews to be as follows: . . ."

Certainly this paragraph plainly contemplates that certain road crews are to do some switching in the Earlington-Atkinson-Morton Switching District.

Subsequent paragraphs of this agreement tell exactly what switching is to be done by road crews. Among other things a road crew is required to: "Pick up cars from more than one track. Switch out cars picked up from behind other cars on the same track . . ."

This is exactly what the claimants did at the time in question. When this agreement is read as a whole, as it should be, this Board thinks that the switching done by the road crew in this record is within the terms of this local agreement and there was no violation of it.

AWARD: Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FIRST DIVISION

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

Dated at Chicago, Illinois, this 12th day of September, 1952.