

Award No. 86

Docket No. 85

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

The Fourth Division consisted of the regular members and in addition Referee Fred W. Messmore when award was rendered.

PARTIES TO DISPUTE:

THE AMERICAN RAILWAY SUPERVISORS'
ASSOCIATION, INC.

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Request that the C. & N. W. Ry. (hereafter referred to as carrier) be required to reestablish yardmasters' positions at yard (9) Proviso, Ill., for the (24) hour period daily, and that employes protest of rule violation, and claim for compensation in full, or any differential that has been received, be allowed until a final adjustment has been made.

EMPLOYES' STATEMENT OF FACTS: On April 17, 1938, the (3) positions of yardmasters', covering the (24) hour period at Proviso, Ill., were abolished and the supervisory duties that are required in a large yard were and are since the above date being performed by the following employes not covered in the scope of the agreement covering the positions as to classification etc.; yard clerks, yard conductors, switch tenders, and trainmasters (the last named being an official). On the above date the carrier established (3) positions of yard clerks in this yard, to cover the (24) hour period, which employes contend were in violation of the agreement, and will present evidence and exhibits to substantiate that there was no work in the yard that could be properly classified to necessitate the establishment of (3) yard clerks positions in lieu of (3) yardmasters positions, as well as distributing the supervisory duties and allowing to be performed by the other named persons.

It is a fact, substantiated by employes presentation of evidence and exhibits contained herein, that this dispute has been handled in accordance with instructions set forth in Section 3, First, Paragraph (i) of The Railway Labor Act, of 1934.

"An agreement bearing the date, effective August 1, 1936, amended effective January 1, 1939, amended effective January 1, 1941, covering rules as to compensation and working conditions relative to yardmasters is in effect between the parties to the dispute."

This agreement has rule 10 (a) and (b) as a part thereof, which it is employes contention has been violated. Exact wording of rule follows for reference:

RATES—ESTABLISHED POSITIONS:

10 (a) Positions coming within the scope of this agreement will not be reclassified for the purpose of establishing a less favorable rate or condition of employment.

NEW POSITIONS:

10 (b) When a new position is created the rate of pay will be established in conformity with positions of similar character and responsibility.

Any compensation allowed to employes affected contained in this dispute, claimed after June 20, 1939, which date carrier was served notice that further refusal on their part would be prosecuted with the request that compensation be allowed.

POSITION OF EMPLOYES: In the presentation of evidence to substantiate the contention of the employes, we desire to present it in exhibit form from "A" to "I," which has been taken from original copies in the files, which will be produced upon request.

EXHIBIT "A"

Rules contained in the carriers book of rules governing the duties of Yard Masters, contained in their instructions to employes in the Operating Department which have been followed preponderately prior to the date of this dispute.

YARD MASTERS

890. Yard masters report to and receive their instructions from the superintendent or train master, and will comply with instructions from the chief train dispatcher.

891. They will have charge of the yards located in their territory, of the men employed, the movements of trains and engines, and the distribution of cars therein. See that trains are made up and leave at the designated time; that proper slips or waybills accompany each car; that doors of all loaded cars are properly secured and sealed; that doors of all empty cars are closed and secured; that trains are made up in the order designated.

892. Keep a record of all trains and cars, note all irregularities, and see that reports of same are made to the proper officer.

893. See that yards are kept in good order; that opportunity is given for the proper inspection of cars; that such inspections are made and that cars requiring repairs are properly placed or sent to the shops as the case may require.

When necessary to move cars in bad order, men doing the work should be notified so that proper care will be exercised in handling them.

894. Report all cars arriving without proper waybills, and cars of freight received in damaged condition, or improperly loaded.

In presenting these rules the employes state that it is the practice of the carrier when making a change in operating rules, they issue supplements, which has not been done in this instance, this is presented to substantiate how the employes determine what is their duties relative to the classification of a yardmaster.

EXHIBIT "B"

Excerpts taken from the Rules for Reporting Information on Railroad Employes, relative to classification, etc.; issued by U. S. Railroad Labor Board, and approved by the Interstate Commerce Commission.

YARD MASTER GROUP Symbol (SYM)

This Group includes positions in which the preponderant duties of incumbents are to supervise or to assist in supervising the work of employes engaged in the making up, breaking up and movement of trains within a yard.

This Group includes the following distinctive classes of positions:

GRADE 1: Assistant Yard Master
GRADE 2: Yard Master

GRADE 1—YARD MASTER GROUP
SYMBOL (SYM-1)

Distinctive Class of Positions:

ASSISTANT YARD MASTER

Description of Class:

The above class includes positions in which the preponderant duties of incumbents are to assist supervising the work of employes engaged in breaking up, making up and handling trains and in general yard switching over a small yard or an assigned district of a large railroad yard; and to perform related work.

GRADE 2—YARD MASTER GROUP
SYMBOL (SYM-2)

Distinctive Class of Positions:

YARD MASTER

Description of Class:

The above class includes positions in which the preponderant duties of incumbents are to supervise the work of employes engaged in breaking up, making up and handling trains and general yard switching within a railroad yard or an assigned district of a large railroad yard; and to perform related work.

Employes contend that the carrier by their action in abolishing the (3) yardmasters positions, violated the scope rule 10 (a) and (b), and in addition to establishing the (3) yard clerks positions, they assigned the preponderating part of supervisory (yardmaster) duties to other classes of employes outside of the scope rule, these duties defined by employes exhibits "A" and "B" as well as past practice of the carrier.

Employes present excerpts of a letter dated August 31, 1938, from Asst. to President, of the carrier directed to the petitioners, relative to the carriers explanation of their position in regards to the abolition of the (3) yardmasters positions in the dispute.

"It is our understanding you contend that the above rule has been violated at the points enumerated, for the reason it is alleged that the work formerly assigned to yardmasters' positions which were abolished on or about April 1, 1938, has now been assigned to employes of other classifications receiving rates of pay less than those established for yardmasters.

Our investigation in respect to disposition of work formerly performed by yardmasters at the respective points developed the following:

Yard 9, Proviso: Positions of yardmasters at this point were abolished April 17, 1938, and such supervision as is necessary in connection with yard movements in Yard 9 is given by the yardmaster at the crest of the hump.

You, of course, understand that at the present time we are operating but two yard engine shifts at the hump. This action on the part of operating department officers did not result in violation of Rule 10, supervisors' agreement, for the reason that the duties of yardmaster were not transferred to an employe of another classification. The territory assigned to the yardmaster at the crest of the hump was merely extended to include yard operations in yard 9, and we do not understand there was any usurpation of yardmasters duties by employe of other classes."

The carrier had always maintained the supervisory position of yardmaster in Yard 9, since the opening of the yard which was prior to the slack business

period from 1930 through to August 1, 1936, at which date the assignment of yardmasters hours was reduced from 12 hours to 9 hours by agreement. The fact that it was not recognized that there was no need for yardmaster supervision in this large yard prior to representation, indicates to some degree that the employees contention of rule violation, and reclassification of recognized duties from the supervisory class to another class not included in the scope, should be sustained.

In the presentation of Exhibit "C," the employees desire to fully familiarize the board with the physical characteristics of this large Yard (9) as well as Yard (5) which the carrier has referred to as the crest of the hump, and this will help to substantiate employees claim that the carriers explanation of their assignment of supervisory duties to yardmaster at the crest of the hump would be a physical impossibility, impractical, regardless of the increase or decrease of business, but that as long as the yard is operated 24 hours daily there is need for a yardmaster.

Evidence presented in Exhibit "C," are the results of checks and investigations made from time to time by employees authorized representatives fully familiar with yardmasters duties, and are excerpts taken from a proposed joint statement of facts submitted to the carrier for their review at their request, but never recognized as received or acknowledged.

EXHIBIT "C"

On April 17, 1938, the carrier abolished the positions of yardmasters for the twenty four (24) hour period at Yard (9) Proviso, Ill., allowed and put into practice the supervising of the operation on this yard by yard clerks, yard conductors, and Trainmasters at times.

When the positions of yardmasters were abolished in this yard the carrier established a twenty four hour assignment of yard clerks (three eight hour shifts), which were new jobs, and these same yard clerks performed a portion of the duties that the yardmaster had performed.

The carrier contended that the yardmaster at the crest of the hump would have charge of this yard after the date of abolition. The employees representatives contend that this was and is not practicable, as this yardmaster at the crest of the hump yard is located two or more miles away, further he has charge of the hump yard, which consists of 59 tracks that are approximately one mile long, and in operation 24 hours almost daily.

In addition to overseeing the running of the hump operation proper, which consists of switch engine crew working at hump, three and sometimes more riders, what is known as skatemen that are down in the yard to see that the brakes are securely set on the tracks at the opposite end of the yard, and the three employees that operate the automatic switches that form the routine of classifying the cars to their respective tracks in the operation of the method of hump switching. He also has various transfers and foreign railroad crews coming from both directions to put away cars on tracks in this hump yard known as Yard (5), which these various crews pull from time to time. He has two and three engines shoving and pulling trains up to the hump to be switched which consumes his supervisory ability.

Yard (9) that was supposedly by the carrier, put under this yardmaster's supervision, when the 24 hour assignment was abolished, has the following capacity and routine business therein. Thirty two (32) tracks approximately one mile long, two of these are main lines through the yard, and a third track is also used as a running track at the direction of employees that it is contended are performing the yardmasters duties. 29 of these tracks are receiving tracks for road trains coming into this large terminal of the carrier from two divisions and their branch sub-divisions. The clerks and yard conductor on duty in this yard direct switch tenders and operators at the two entrances to this vast yard where to track all trains, and after train is yarded see that road engine is dispatched to the round house.

These clerks and yard conductors that are performing the yardmasters duties, forward way bills from the road trains to agents office by pneumatic tubes, keep the records as to arrival of trains, tracks that they are put on, tie up time of road crews, detailed information necessary for records kept in the running of the yard.

These yard conductors do not work with the crew they are assigned to, but permit the two yard brakemen to work alone in the shoving of trains to the crest of the hump, where another crew switches them.

These yard conductors spend the greater portion of the time that they are on duty, in the yard office and collaborate with the yard clerk on duty there, as well as the General Yardmaster, and Trainmaster, who are three to five miles away, as to the running and supervisory performance of duty that is and shall be required from time to time during the twenty four hours of every day. When written orders are needed for a yard or transfer crew to perform switching or any operating work in this yard (9), the yard conductor or yard clerk on duty at the time, write them out and sign the yardmasters name to them who is on duty two (2) miles away in the hump yard (5) and in the greatest majority of the time does not authorize this procedure at all, and even ever have any knowledge that it is taking place. Any work done in this yard not directed by the above mentioned (forged signature system), is given verbally in most instances by the yard clerk or yard conductor, with the fictitious wording of (yardmaster on duty at the hump yard (5) told me to tell you to do this next) and also a great portion of these so called relayed verbal supervisory orders are given at the behest of the yard clerk or yard conductor, and this yardmaster at the crest of the hump yard (5) does not issue them or ever have any knowledge that they were given by his supposedly previous instructions.

This Yardmaster on duty at the crest of the hump yard (5) is required to remain at the crest of the hump exclusively all the time it is in operation, and to substantiate this, it is his duty to check off of his written sheet each car that goes by in the process of switching, see that it goes into the proper track, if not, when the opportunity comes he has to direct that the car be switched out and placed on the correct track, also he must be in constant touch with the yard conductor operating the switch engine at the hump, in order to make changes in the switching that comes from the agents office after the so called classification sheets are issued and often times operations started on same. He is also required to keep an accurate record of cars that have to be ridden by the riders to avoid damage to the contents, and the absence of a rider to authorize the yard conductor to permit the car to go over the hump without a rider, to avoid stopping the entire hump operation. He is also required to be in touch by telephone with the yardmaster at the opposite end of the hump yard (5) to know when various crews are pulling tracks at that end, or may be waiting for cars to be changed to another track so that they may be forwarded quicker to their destination than is the usual routine, or some change that they could make to better the operation that they had previously agreed to earlier.

It has been stated that the capacity of this hump yard (5) can handle three thousand cars in twenty four hours, the possible average is between the eighteen and twenty five hundred figure.

It is the employes representatives contention that Rule 10 (a) and (b) have been violated since the carrier has abolished the twenty four (24) assignment of yardmasters in Yard (9) at Proviso, Ill., permitted and put into practice the handling of the yard by other employes and at times Officials, continuously as evidence within this statement of facts explain.

Employes present, in addition to all previous evidence contained in this Exhibit, the following:

On February 3, 1941, this evidence was taken from the carriers records in Yard (9), these records are kept and maintained by the other classes of employes which it is contended are performing the yardmasters' duties.

On February 1, 1941, there were (35) arrivals of road crews with a combined total of 2,156 cars received.

On February 2, 1941 (Sunday), there were (28) arrivals of road crews with a combined total of 1,768 cars received.

On February 3, 1941 from 12:01 A. M. until 4:00 P. M. there were (16) arrivals with a combined total of 721 cars, and as the bulk of the arrivals arrive after 4:00 P. M. the total for the 24 hour period would be near the total of the combined figure listed on February 1.

It is the employees contention that the maintenance of records in a yard relative to the operations therein, making out of switch lists, or orders to make switching movements in a yard where yard engines are employed, the directing of switching by telephone, are all duties of the supervisory class (yardmaster), and exist in a preponderant degree for the (24) hour period in the yard in this dispute, and that the carrier in their action in the abolition of the yardmasters' positions have allowed and put into practice, other employees outside of the scope of the class to function as yardmasters' in an apportioned manner.

The employees submitted a joint statement of facts to the carrier on November 25, 1940, relative this dispute, and directly after that date and almost continuously since, the carrier has had a trainmaster supervise in Yard (9), especially when business has been equivalent to that as listed previously on February 1, 1941.

The carrier has (4) Trainmasters, (2) Asst. Trainmasters, (5) General Yardmasters in their Chicago Terminal, and it has been the general practice since the abolition of approximately (7) yardmasters' positions in 1938, for Trainmasters to go into these yards where no yardmaster was on duty and function as yardmasters, which employees also contend is a violation of agreement. It is also a fact that Trainmasters contact yard clerks, switchtenders, at yards where there is no yardmaster on duty, and direct the running of such yards on orders of the Trainmaster.

EXHIBIT "D"

July 2, 1938

Supt. Freight Term'ls
C. & N. W. Ry. Co.
Chicago, Illinois

Dear Sir:

In the past four months several yardmasters positions in the Chicago Freight Terminals have been abolished, due to declining business conditions we are advised.

During this entire period we are in receipt of evidence and complaint that in all cases it has not seemed justifiable, in explanation we mean that there was need for supervisory forces in some places where they were abolished, but this work has been performed by other employees and in some cases Officials.

We realize the importance of curtailing expenses to meet declining revenues, but do not think it is the intention of the Officers in charge to put into practice a program and continue it whereby work heretofore performed by supervisors be given to other classes not qualified to perform such duties, and even entitled to it according to fairness and past practice.

Rule 10 (a) and 10 (b) in current supervisory agreement prohibit the establishment of such practice.

With the upturn in business and the increased work in the past two weeks, we respectfully request you to investigate the following yards listed and see if we are not justified in making this complaint.

E. End Yard No. 9 at Proviso
 " No. 6 at Proviso
 Mayfair industrial center and yard
 Grand Avenue Yard

We shall appreciate your co-operation in the above, and a reply to same at your convenience.

Yours truly,

Wm. Y. Norris,
 Chairman of Opr. Dept.

EXHIBIT "E"

Chicago, July 14th, 1938.
 12-Y

Chairman, Operating Department
 American Ry. Supervisors' Assn., Inc.
 1220 North Laramie Avenue
 Chicago, Illinois

Dear Sir:

Please refer to your letter of July 2nd, 1938, in which you refer to several yards in the Chicago Freight Terminal where yardmaster positions have been abolished and ask that they be re-established.

I cannot concur that any of your schedule rules were violated in the abolishment of these positions. There were no employees added to perform supervisors' work in violation of schedule rules.

I am sorry to say that the up-turn of business which you talk about is not evident in the Chicago Freight Terminal—our traffic is at least 17% under last year and particularly evident in the yards mentioned in your letter.

Yours truly,

Superintendent Freight Terminals.

EXHIBIT "F"

June 12, 1939

Supt. Freight Terminal
 Chicago & North Western Ry.
 Pulaski Road and Kinzie St.
 Chicago, Illinois

Dear Sir:

Our attention has again been called to the fact that other than Yardmasters, are performing the work that should be performed by Yardmasters, therefore, it is our desire to make a check of Mayfair, East End of Yard 8, and Yard 9 at Proviso, and North Avenue Yard. Will you kindly assign someone from your office, who is familiar with the duties of the Yardmasters to accompany operating Chairman, of our Association, to conduct an investigation regarding the duties now being performed at the various yards mentioned above.

Operating Department Chairman will be at the Mayfair Yard, Wednesday morning at 7:00 A. M., June 14, to start this investigation. I hope you will be able to send someone over there to accompany him.

Yours very truly,

General Chairman,
 2221 Addison Street,
 Chicago, Illinois

No reply received by employes to EXHIBIT "F."
EXHIBIT "G"

June 20, 1939.

Mr. N. L. Waterman,
Supt. Freight Terminals
Chicago & North Western Ry.
Pulaski Rd. and Kinzie St.
Chicago, Illinois

Dear Sir:—

In April and after of 1938, seven or more yardmasters positions in the Chicago Freight Terminals were abolished, apparantly on account of slack business. This Association questioned this in 1938 and we were notified by Mr. M. E. Pangle in writing that business did not warrant the re-establishment of any of these positions, and further that there were none in the yardmasters duties previously performed by any of the incumbents assigned prior to abolition, being performed by other persons or employes in violation of our Agreement as it was our contention at that time.

On June 12, 1939, Mr. W. R. Reiman, General Chairman of this Ass'n., requested in writing that you assign a representative from your office, that would be familiar with the duties that should be performed by a yardmaster, according to all rules and past practices in the Chicago Freight Terminals. This representative was to accompany the undersigned in making a thorough check of the yards herein set forth and also stated in Mr. Reiman's formal request.

Your office being unable on that date to furnish such representative, or to set a date in the near future when you would be in a position to comply with the request, the undersigned made and completed a check of said points stated in Mr. Reiman's letter and we herewith disclose the results of our investigation.

It being the case at Mayfair Yard and industrial center, since the abolition of the yardmasters position the Yard Clerk is performing a major portion of the duties heretofore performed by the yardmaster, also at this point the Agents office has been moved into the same office as the yardmaster formerly occupied, and that this Agent and his clerk are also performing duties that we contend that should be performed by a yardmaster. This practice as above stated is a direct violation of Rules 10 (a) and 10 (b) of current Schedule governing the assignment of yardmasters in the territory mentioned before.

Further, we find that an Asst. Trainmaster spends some time at this Mayfair Yard and also performs duties that are duly recognized as work heretofore performed by yardmasters. In the recent ruling of The Interstate Commerce Commission at Washington, D. C., dated March 29, 1939, and known as, Ex Parte 72 (Sub. No. 1) the practice of a carrier assigning and establishing duties rightfully being recognized as those being performed by trick yardmasters and asst. yardmasters, to other Officials namely, Trainmasters, Asst. Trainmasters, and General Yardmasters, would be construed as an attempt to re-classify and take such positions out of the Employe's class or Subordinate officials class as they are now recognized under the interpretation of Ex Parte 72 and the Railway Labor Act, bringing them under the Official class for the purpose to defeat, they being as recognized as coming within the scope of The Act, in regards to representation of Rates of Pay, Hours of Service, and Agreements covering working conditions.

The practice of Trainmasters, Asst. Trainmasters, and General Yardmasters in the Chicago Terminal District, of performing a

portion of the duties that are duly recognized as those performed by yardmasters, is in great excess as to what would be really needed to meet the requirements of the service in a fair comparison with the aforementioned decision known as Ex Parte 72 (sub. No. 1).

At Proviso yard, Wood Street Yard, Grand Ave. Yard—the following employes are performing various duties that are recognized as those performed by yardmasters, Yard Clerks, Switchtenders, Conductors and Trainmen.

It is our request, that within thirty days of this date that you re-establish the positions of yardmasters at the following yards: Mayfair, Grand Ave. for the 24 hour period, at Yard (9) Proviso for the 24 hour period, at the East End of Yard 6, 7, 8, at Proviso for the 24 hour period, and at all territory coming within the territory of Wood St. Yard if business requires it.

Should it not be consistent to comply with this request, please be advised that it is our intention to establish the fact that after this 30 day period that such persons, in the said places heretofore mentioned are performing the duties of yardmasters, and we also request that the oldest eligible Yardmaster be compensated for the entire period that the practice is continued and until such time an adjustment is made of all positions stated.

Gen. Chairman W. R. Reiman and the undersigned will discuss the matter further should it be your desire.

Yours truly,

W. Y. Norris,
Chairman of Operating Dept.

No reply received to EXHIBIT "G."

EXHIBIT "H"

January 6, 1940.

Mr. M. E. Pangle
Director of Personnel
Chicago & North Western Ry. Co.
400 West Madison Street
Chicago, Illinois

Dear Sir:

REQUEST OF SUPERVISORS' ASSOCIATION THAT
YARDMASTERS' POSITIONS BE RE-ESTABLISHED
AT RACINE, WISCONSIN, WAUKEGAN, AND MAY-
FAIR, ILLINOIS, AND OTHER YARDS IN THE
CHICAGO SWITCHING DISTRICT.

Confirming our conference of November 27, 1939, wherein we discussed with your Mr. Stephens the above subject.

We would appreciate very much an early reply regarding this matter.

Yours very truly,

General Chairman

Conferences were held from time to time, as well as lengthy exchanges of correspondence, between the carrier and employes, in addition to these presented in Exhibits. The carrier usually ended the conference with the verbal conjecture, that they would give the representatives something on the matter.

EXHIBIT "I"

December 9, 1940

Mr. G. F. Stephens
 Director of Personnel
 Chicago & North Western Ry. Co.
 400 W. Madison St., Chicago, Illinois

Dear Sir:—

May we have some form of a reply to our letter and submissions of November 25, 1940, relative to your files No. 99D-17-8 and 99A-18-3.

Our files contain every evidence that we have been consistently patient and cooperative in an effort to arrive at an adjustment relative to the subject matter contained in the above files mentioned.

Further delay beyond ten days on the carriers part without any recognition of our exchanges of correspondence, shall necessitate our submission of these cases to the Fourth Division of The National Railroad Adjustment Board ex-parte.

Yours truly,

Wm. Y. Norris,
 Chairman of Appeal Committee

The employes prepared and submitted a joint statement of facts to the carrier for their review during the interim, of dates shown in EXHIBITS: "H" and "I," which can be substantiated by the files.

The employes request for compensation, and or any differential in wage loss sustained until an adjustment is made should be determined by seniority as there would be several involved, and subject to the approval of the petitioners.

Oral presentation desired.

CARRIER'S STATEMENT OF FACTS: In April, 1938, the arrangement under which yardmasters were assigned to exclusive supervision of operations in yard 9 for the 24 hour period each day was discontinued and the handling of work in that yard placed under the jurisdiction of yardmasters located at the west end yard No. 5 (hump yard). The employes contend such action was in violation of the provisions of rule in supervisors' agreement and also alleged that other classes of employes are now performing the duties formerly assigned to yardmasters in yard 9.

POSITION OF CARRIER: Yard 9 at Proviso is a receiving yard from which yard crews shove cars to the crest of the hump at the west end of yard 5. All of the yard engines handling these cars from yard 9 as well as yard engines handling the cars over the hump are worked as a unit under the direction of the yardmasters located at the crest of the hump. These yardmasters exercise full supervision over the operations in yard 9 and at the west end of hump yard No. 5.

When yardmaster positions were discontinued in yard No. 9 additional yard clerk positions were established for the purpose of performing only work recognized as properly assignable to that class of employes such as keeping record of cars into and out of the yard, handling the bills, from incoming trains and tubing to the agent's office, answer telephone and communicate to yard conductors instructions received from the crest yardmaster who is directly in charge of yard 9 as well as yard 5. Yard conductor in charge of engines in the pool assigned to yards 9 and 5 have nothing whatsoever to do with supervision or direction of work in these yards. Duties formerly assigned to yardmasters located in yard 9 have not been at frequent times carried out by trainmasters as alleged by the employes. Trainmasters are not performing service in yard 9 except of a

general supervisory nature in their capacity as a division officer. There would be no necessity for them doing so for the reason that adequate supervision of operations in that yard is now given by yardmasters.

The question of whether yardmaster positions shall be established as well as the territory to be supervised by incumbents of such positions must be determined on basis of the requirements of the service.

Rules for Reporting Information on Railroad Employees, as to classification, etc., issued by the United States Railroad Labor Board and approved by the Interstate Commerce Commission classifies positions of yardmasters as follows:

"The above class includes positions in which the preponderant duties of incumbents are to supervise the work of employes engaged in breaking up, making up and handling trains and general yard switching within a railroad yard or an assigned district of a large railroad yard; and to perform related work."

It is the position of the Railway Company that the employes' contention that employes under classification other than that of yardmaster are performing in yard 9 at Proviso, service of a class that any schedule rules or agreements require must be handled only by employes classified as yardmasters is not based on facts of evidence.

The present arrangement which provides adequate supervision of the work in yard 9 is not in violation of any schedule rules or agreement. There are no rules or agreements that restrict the district over which a yardmaster may be assigned.

All data in support of the railway company's position in this case has been submitted to the duly authorized representative of the employes involved and made a part of the particular question in dispute.

OPINION OF BOARD: Request the carrier be required to reestablish yardmasters' positions at yard 9, Proviso, Illinois, for the 24-hour period daily, that employes protest rule violation and claim compensation in full or any differential that has been received be allowed until a final adjustment has been made.

On April 17, 1938, three positions of yardmasters covering the 24-hour period at Proviso, Illinois, were abolished and the employes claim supervisory duties incident to the yard have since been performed by yard clerks, yard conductors, switchtenders and trainmasters, such employes not covered by the scope agreement. On the same date three positions of yard clerks were created to work in yard to cover the 24-hour period, which employes contend is a violation of agreement for the reason there was no work in the yard that could be properly classified to necessitate the establishment of three yard clerk positions in lieu of three yardmaster positions. This case is presented under an agreement in effect between the carrier and The American Railway Supervisors' Association, Inc., entered into August 6, 1936, amended January 1, 1939, and January 1, 1941, covering rules of compensation and working conditions relative to yardmasters. Rule 10 (a) of the agreement provides: "Positions coming within the scope of this agreement will not be reclassified for the purpose of establishing a less favorable rate or condition of employment." Rule 10 (b) provides: "When a new position is created the rate of pay will be established in conformity with positions of similar character and responsibility."

The carrier's book of rules governing the duties of yardmasters, contained in their instructions to employes in the Operating Department, contains the following:

"YARD MASTERS

890. Yard masters report to and receive their instructions from the superintendent or train master, and will comply with instructions from the chief train dispatcher.

891. They will have charge of the yards located in their territory, of the men employed, the movements of trains and engines, and the distribution of cars therein. See that trains are made up and leave at the designated time; that proper slips or waybills accompany each car; that doors of all loaded cars are properly secured and sealed; that doors of all empty cars are closed and secured; that trains are made up in the order designated.

892. Keep a record of all trains and cars, note all irregularities, and see that reports of same are made to the proper officer.

893. See that yards are kept in good order; that opportunity is given for the proper inspection of cars; that such inspections are made and that cars requiring repairs are properly placed or sent to the shops as the case may require.

When necessary to move cars in bad order, men doing the work should be notified so that proper care will be exercised handling them.

894. Report all cars arriving without proper waybills, and cars of freight received in damaged condition, or improperly loaded."

The foregoing rules are presented for the purpose of disclosing how the employe determines his duties and what the employer expects him to perform in connection with his employment.

Excerpts taken from the Rules for Reporting Information on Railroad Employes, relative to classification, etc., issued by the United States Railroad Labor Board and approved by the Interstate Commerce Commission:

**"YARD MASTER GROUP
SYMBOL (SYM)**

This Group includes positions in which the preponderant duties of incumbents are to supervise or to assist in supervising the work of employes engaged in the making up, breaking up and movement of trains within a yard.

This Group includes the following distinctive classes of positions:

GRADE 1: Assistant Yard Master
GRADE 2: Yard Master

**GRADE 1—YARD MASTER GROUP
SYMBOL (SYM-1)**

Distinctive Class of Positions:
ASSISTANT YARD MASTER
Description of Class:

The above class includes positions in which the preponderant duties of incumbents are to assist supervising the work of employes engaged in breaking up, making up and handling trains and in general yard switching over a small yard or an assigned district of a large railroad yard; and to perform related work.

**GRADE 2—YARD MASTER GROUP
SYMBOL (SYM-2)**

Distinctive Class of Positions:
YARD MASTER
Description of Class:

The above class includes positions in which the preponderant duties of incumbents are to supervise the work of employes engaged in breaking up, making up and handling trains and general yard switching within a railroad yard or an assigned district of a large railroad yard; and to perform related work."

The contention on employes' part is that the carrier in abolishing the yardmasters' positions as aforesaid and assigning supervising duties generally performed by yardmasters to other classes of employes outside the scope rule constitutes a violation of the scope agreement. The duties of the yardmasters as hereinbefore stated is based on the past practice of the carrier. The carrier contends that the supervisory position of a yardmaster has at all times been maintained and denies that any class of employes outside of the scope rule have been vested with any of the duties of a yardmaster.

To ascertain the relative merits of the respective contentions, the following brief summary of the evidence is necessary. The employes contend the yard clerks and yard conductors perform the yardmasters' duties in the following respects: (a) forward waybills from road trains to agent's office by pneumatic tubes, (b) keep the records as to arrival of trains, (c) the tracks they are placed on, (d) tie-up time of road crews, all constituting detailed information necessary for records kept in the running of the yard; that the yard conductors do not work with the crew they are assigned to but permit the two yard brakemen to work alone in the shoving of trains to the crest of the hump; and that the yard conductors spend a greater portion of their time on duty in the yard office for the purpose of collaborating with the yard clerk on duty there as well as the general yardmaster and trainmaster, who are three to five miles distant, as to the running and supervisory performance of duty required from time to time during the 24-hour period each day. When written orders are required for a yard or transfer crew to perform switching or any operating work in this yard, the yard conductor or yard clerk on duty writes such orders out, signing thereto the name of the yardmaster who is on duty two miles distant in the hump yard (5), the yardmaster in the majority of such instances having no knowledge of the signature and not authorizing it in a great many instances. Other work not included in the signature system is given verbally by the yard clerk or yard conductor as emanating from the yardmaster who has no knowledge of such fact. The yardmaster on duty at the crest of the hump yard (5) must remain at the designated place to check off of his written sheet each car passing in the process of switching to see that it goes to the proper track and, if not to be prepared to properly allocate such cars. He must also be in constant touch with the yard conductor operating the switch engine at the hump to make proper changes in the switching that comes from the agent's office after the classification sheets are issued. He is further required to keep accurate record of cars that have to be ridden to avoid damage to the contents. He must be in touch with the yardmaster at the opposite end of the hump yard (5) to ascertain when various crews are pulling tracks at that end or to effect any required change. To clarify, it is the employes' contention that maintenance of records in a yard affecting the operations therein, making out of switch lists or orders to make such movements in a yard where yard engines are used, the directing of switching by telephone are all duties of the supervisory class pertinent to yardmasters and exist in a preponderant degree for the 24-hour period in the yard in dispute. The record contains correspondence which we refer to for its value as stated in the employes' presentation of the case and set forth therein but which will not here be set out.

The carrier's position and contention briefly stated: In April, 1938, the arrangement under which yardmasters were assigned to exclusive supervision of yard operations in yard 9 for the 24-hour period each day was discontinued and the handling of work in that yard placed under jurisdiction of yardmasters located at west end of yard 5, hump yard. For the reason yard 9 at Proviso is a receiving yard and not a breakup yard, practically all of the switching in this yard consists of removing caboose cars from incoming trains and doubling over tracks or cuts of cars preparatory to shoving the cars to the crest of the hump at the west end of yard 5. All these yard engines handling these cars over the hump are worked as a unit under the direction of the yardmaster located at the crest of the hump who exercises full supervision over the operations in yard 9 and the west end of the hump yard 5. When yardmaster positions were terminated, additional

yard clerk positions were established for the purpose of performing only work recognized as properly within their field, such as keeping record of cars into and out of the yard, handling the bills from incoming trains and tubing to the agent's office, answer telephone and communicate to yard conductors instructions received from the crest yardmaster directly in charge of yard 9 as well as yard 5. Yard conductors have nothing to do with supervision or direction of work in these yards. Duties formerly assigned to yardmasters have in some respects been handled by trainmasters in their official capacity as division officers. The question as to whether yardmasters' positions shall be established, as well as the territory to be supervised by such incumbents, must be determined on the basis of requirements of the service.

The above class includes the preponderant duties of incumbents to supervise work of employes engaged in breaking up, making up and movement of trains and general yard switching within a railroad yard or an assigned district of a large railroad yard and to perform related work. There are no rules that restrict a district over which a yardmaster may be assigned.

The employes have presented an analysis of the physical facts containing statistics with reference to the yard in question and, in addition, with reference to the handling of cars therein, also three days' business transacted in the yard in February. The carrier has presented in evidence a map of the yard. The foregoing will not be detailed but have been considered.

The carrier states that it has been the custom, in existence over a period of 40 years, and the recognized practice to have agents, yard engine foremen and other employes delegated to see that service as outlined in operating rules 890 to 894, inclusive, *supra*, is properly performed and it has likewise been recognized that even at points where conditions justify the establishment of yardmaster positions the work in respect to maintaining records, compiling reports and other service of a clerical nature is not performed by yardmasters but assigned to employes of a class coming within the scope of clerk's agreement. During the period of abolishing the yardmaster positions in yard 9, Proviso, Illinois, there have been no employes at that point whose preponderant duties justify their classification of yardmaster. All supervision necessary in the operation of the yard has been taken care of by the yardmaster at the crest of the hump. The carrier takes issue with the employes on questions as to the practicability of the yardmaster remaining in the position claimed and performing the duties as contended for by the employes, producing a controverted issue.

We have detailed the evidence to some considerable extent to disclose the full purport of the controversy and deem further statement thereon unnecessary. This brings us to the direct issue submitted and in this respect we say with candor there has not been formulated insofar as the attention of this Board has been directed to or within the record of the instant case a scope rule defining the specific duties of a yardmaster. The carrier in the instant case promulgated a set of rules outlining duties properly assignable to the yardmasters, rules 890 to 894, *supra*, which are self-explanatory. These rules form the basis of the yardmasters' duties so far as the carrier is concerned and are proper to consider here. It is well settled by many decisions of the Third Division of the Board and predecessor boards that as an abstract principle a carrier may not let out to others the performance of work of a type embraced within one of the collective agreements with its employes * * * this conclusion is reached not because of anything stated in the schedule but as a basic legal principle that the contract with the employes covers all work of the kind involved except such as may be specifically excepted; ordinarily such exception appears in the scope rule but the decisions likewise recognize there may be other exceptions, very definite proof of which, however, is necessary to establish this limitation upon the agreement. (See Third Division Award No. 757.)

The foregoing establishes that employees are entitled to all of the work of their distinctive class and positions embraced within the scope of an agreement. Authority does appear with reference to a scope rule as follows (Third Division Award No. 523): "The scope rule of the agreement between the parties is specific in designation of the classes of service to which employees may be assigned." Award No. 529: "The scope and other rules of the agreement defines both the character of the work that is to be rendered by the employees, the conditions under which that work is to be performed, and that apply when the classification or work is changed and by which a less favorable rate of pay or condition of employment is established." This language would seem to import a variance in awards made by this Board. This is true in part but there is no apparent deviation from the consistent rules of this Board covering many awards, which we deem unnecessary to set out with the exception of the generally excepted rule. Third Division Award No. 604: "This board, and others, have held, in many decisions, that work of a class covered by the agreement belongs to the employees upon whose behalf it was made and cannot be delegated to others without violating the agreement." We recognize the language of decisions affecting scope rule agreements due to the fact that cases such as the one here considered involving the agreement to be considered have not been previously tested before any Division of this Board. Yardmasters are supervisory employees. Their duties are many and varied. Experience teaches that a specific line of demarcation as to the limitations of such duties has never been adequately presented. Basically the carrier has defined such duties in rules 890 to 894, inclusive, to its satisfaction. The scope agreement does not define them. The scope agreement with consideration of such duties of the carrier would be meaningless in attempting to adjudicate disputes of this character if the rules of the carrier could and should not be considered in conjunction therewith. Rules of the carrier affecting this supervisory position are applicable. They are evidence of the carrier's own making and by them it is bound. In consideration of the whole evidence the carrier delegated duties to employees other than those included in the scope agreement to the detriment of those included therein and by so doing violated the scope agreement with its yardmasters. Where work is supervisory, especially where yardmasters have the responsibility as appears in this record, a certain amount of clerical work, and especially so in this yard, must be performed by him and the orders he gives in the control and management of the yard, in directing the switching and in the responsibility charged. The work preponderant presents no obstacle under the circumstances of this case. We find no evidence with degree of certainty that the work of the yardmaster class was not in yard 9. Very properly the requirements of the service with reference to need of such employees based on reasonable requirements of business transacted must be considered and so must the financial status of the carrier. That is, it cannot be compelled nor forced to maintain operations or positions where it is obvious they are not required. However, the obligation is dual, resting equally upon both the carrier and the employees. Where it is apparent from the record there is not need for any given employment due to such conditions, the carrier may properly dispense with such employment. The request of the employees to require reinstatement of certain yardmasters and, likewise claims for compensation in full or differential that has been received should be and is hereby held in abeyance pending conference by and between the carrier and its proper representatives and the employees and their proper representatives which is recommended. As to the need for the employment of yardmasters, the number thereof be based on service requirements as hereinbefore stated. In the event of failure to reach a comprehensive understanding on this one issue, this matter again may be referred to this Board on this one issue only. All other contentions of the employees raised in this case are determined in their favor.

FINDINGS: The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The carrier violated the terms of the existing agreement between the parties with the exception hereinafter noted.

The request of the employes to require reinstatement of certain yardmasters and claims for compensation in full or differential that has been received be held in abeyance pending conference which is recommended between the carrier and its proper representatives and the employes by and through their proper representatives as to the need of such employment, based on service requirements in conformity to business transacted at such yard. Upon failure to reach a comprehensive understanding on this issue this matter may be again referred to this Board presented and brief on this issue only.

Claim sustained in part as appears in the Opinion.

AWARD

All issues determined affirmatively in behalf of employes with the exception of issue noted in Findings subject to further consideration under the terms of the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: R. B. Parkhurst
Secretary

Dated at Chicago, Ill., this 18th day of June, 1941.