

**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 the yardmaster position at Mayfair Yard and Industrial Center, and that employes protest of rule violation, and claim for compensation in full, or any differential in wage loss, be allowed until a final adjustment has been made.

EMPLOYES' STATEMENT OF FACTS: In May, 1938, the carrier abolished the position of yardmaster at Mayfair Yard, and Industrial Center, and the recognized duties of the yardmaster class are being performed by other employes of another class not coming within the scope agreement covering yardmasters on the property. Employes registered complaint of rule violation to the proper Officer, and on June 20, 1939, the carrier was notified that compensation would be claimed until a final adjustment was made.

It is a fact, substantiated in 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 rules 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

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

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 "D" 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 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 yardmaster position, violated the scope Rule 10 (a), and 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.

EXHIBIT "C"

Chicago, June 29, 1939.

Mr. G. L. Thorpe, T. M. Proviso
Mr. A. J. Kelley, G. Y. M. 40th St.
Mr. C. J. Schuster, Y. M. Wood St.
Mr. L. A. Brennan, Y. M. State St.
Mr. L. Lynn, Y. M. North Ave.
Mr. J. P. Sheahan, Y. M. Grand Ave.
Mr. J. E. Wilson, Y. M. Chicago Shops
Mr. Wm. Jordan, Mayfair

Confirming 'phone conversation this date:

Between now and the middle of next week there will be many extra passenger trains and sections of the regular trains running. See that all concerned understand this and that crews are properly equipped with flagging utensils and caution each crew before leaving your respective district with respect to doing a good job of flagging. Do this each day and on each trick wherever the engine might start from so there will be no failure to give necessary protection.

N. L. Waterman,
Superintendent Freight Terminals.

EXHIBIT "D"

Chicago, June 29, 1939.

Mr. G. L. Thorpe, T. M. Proviso
Mr. A. J. Kelley, G. Y. M. 40th St.
Mr. C. J. Schuster, Y. M. Wood St.
Mr. L. A. Brennan, Y. M. State St.
Mr. L. Lynn, Y. M. North Ave.
Mr. J. P. Sheahan, Y. M. Grand Ave.
Mr. J. E. Wilson, Y. M. Chicago Shops
Mr. Wm. Jordan, Mayfair

Confirning 'phone conversation this date:

We are going to witness a heavy run of traffic over the holidays and in some cases it will be necessary to furnish freight conductors and trainmen for extra passenger trains.

Before you let any conductors or trainmen, or switchtenders, lay off see that you first handle with Kedzie Avenue if your yard board is exhausted to know whether or not you will be able to get extra men.

N. L. Waterman,
Superintendent Freight Terminals.

In making direct reference to Exhibits "C" and "D," the name "Mr. Wm. Jordan, Mayfair," contained therein, is an employe of another class outside of the supervisory class, and the fact that the carrier has included his name in the instructions to the other seven employes who are yardmasters, denotes the carriers recognition that the position that Mr. Jordan is on has supervisory duties and that he is recognized as the employe performing them.

Mr. Jordan, whose employe classification is yard clerk, in addition to carrying out the supervisory instructions contained in Exhibits "C" and "D," performs all of the yardmasters duties outlined in Exhibits "A" and "B" in this yard.

The carrier has taken the position at various conferences, as well as stated in exchanges of correspondence, that there being only one switch engine at this point there is no need for a yardmaster.

Employes contention that there is no need for a clerk is a more substantial argument, because the clerk functions as a yardmaster, and if the actual time that he was performing as a clerk were recognized there would be none.

Employes present the amount of switch engine assignments over a period of recent date to show that there is more than one switch engine assignment.

MONTH	TOTAL ENGINES	DAYS WHEN 2 USED
July, 1940	41	15
August, 1940	40	14
September, 1940	45	19
October, 1940	48	22
November, 1940	41	16
December, 1940	51	26
January, 1941	51	26

There are no switch engine assignments in this yard on Sunday or holidays, and in offering the above we assume it to be approximately correct.

The Employes contention of rule violation of Rule 10 (a) can be more definitely categorized by comparison with Awards 535-553-607-609-610-612-630-637-638-639-661, issued by the Third Division of the National Railroad Adjustment Board.

The decisions in these above awards, recognize the fact that it is not the prerogative of a carrier to arbitrarily abolish positions coming within a class of employes covered by the scope of an agreement, and reclassify the preponderant part of the duties to another position outside the Agreement covering the class of Employes involved, as has been done in this case.

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: The Mayfair industrial district is primarily composed of coal and oil firms. During the summer months the traffic in this district is reduced to such an extent that only one yard engine is regularly assigned. During the period of greater activity in the district two yard engines are assigned, one engine usually working 7:00 A. M. to 3:00 P. M. and one 8:00 A. M. to 4:00 P. M. The position of yardmaster assigned in this district was abolished during the slack season in 1938 and after a survey of the service requirements the position was discontinued entirely effective May 17, 1939.

POSITION OF CARRIER: The employes in their claim for reestablishment of yardmaster position at Mayfair cite rules 10 (a) and 10 (b) of supervisors' agreement, in support of their contention. The provisions of these rules are not involved in this case. There has been no reclassification of a position coming within the scope of supervisors' agreement as referred to in rule 10 (a), neither has a new position been created as referred to in rule 10 (b). When the yardmaster position was eliminated at Mayfair there was no additional position established. The employes also allege that since the position of yardmaster has been discontinued work formerly assigned to yardmaster has been assigned to a yard clerk, the agent and an assistant trainmaster. The yard clerk after checking yard, contacts the various industries on the telephone to ascertain cars needed for placement, then makes up list of such cars. He also answers telephone, books cars and performs other routine work required of yard clerks wherever employed. All of this service is the same detailed work performed by the yard clerk at Mayfair for many years, regardless of whether a yardmaster was or was not assigned at that point.

The employes have referred to locating the agent in building where yardmaster formerly had his office. The movement of agent's quarters was for the purpose of eliminating the use of building formerly occupied by agent, thereby saving fuel and maintenance costs. The L. C. L. merchandise in this district handled in the agent's office had decreased to the extent that there was practically none handled, and as there was plenty of room in the yard office the agent's quarters were moved to that point to take advantage of the savings that could be made in fuel and maintenance expenses. The agent at Mayfair does not have anything to do with yard operations in the district. We have an assistant trainmaster to supervise operations in the Junction Local District of the Chicago Terminal Division, this Junction Local District includes Mayfair yards and he exercises general supervision of the train and yard operations at that point the same as was done during period yardmaster was assigned.

The question of whether yardmaster positions shall be established is one that must be determined on basis of the requirements of the service.

Rules for Reporting Information on Railroad Employes, 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."

The present arrangement of handling yard work at Mayfair without the services of a yardmaster is no different than that which has been in effect for years at many points on this railway where the limited amount of such yard work does not justify the employment of a yardmaster.

It is the position of the Railway Company that the employes' contention that employes under classification other than that of yardmaster are per-

forming service of a class that any schedule rules or agreements require must be handled only by employes classified as yardmasters is not supported by facts of evidence.

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: The employes premise this case by making the requirement that the yardmaster position at Mayfair Yard and Industrial Center be reestablished and the employes protest of rule violation and claim for compensation in full or any differential in wage loss be allowed until a final adjustment has been made.

In May, 1938, the carrier abolished the position of yardmaster at Mayfair Yard and Industrial Center and the claim is made by the employes that employes of another class not coming within the scope agreement covering yardmasters on the property are continuing to do the work of a yardmaster. The employes registered complaint of such rule violation to the proper officer and on June 20, 1939, the carrier was notified that compensation would be claimed until a final adjustment was made. This dispute has been handled in accordance with instructions contained in Section 3, First, paragraph (i), of the Railway Labor Act, 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 this dispute. This agreement has rule 10 (a) and (b), which the employes contend has been violated: "RATES ESTABLISHED POSITIONS: 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," and "NEW POSITIONS (b): When a new position is created the rate of pay will be established in conformity with positions of similar character and responsibility."

The carrier promulgated a book of rules governing certain duties of yardmasters, contained in their instructions to employes in the Operating Department:

"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."

As to the propriety of considering the foregoing rules, 890 to 894, inclusive, it must be understood that they are presented for the purpose of disclosing the manner by which the employe determines his duties and what duties the employer expects of him in connection with his employment. For this purpose this evidence is admissible.

Excerpts are 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 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 in 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 its action in abolishing the yard-master position violated scope rule 10 (a). In furtherance of this claim, they produce exhibits to show that one William Jordan, not a yardmaster, was included in certain directions emanating from the Superintendent of Freight Terminals, dated Chicago, June 29, 1939, with particular reference made to increased traffic conditions and to see that all concerned understood that many extra passenger trains and sections of the regular trains would be running daily from such period to the middle of the ensuing week and to see that all crews are properly equipped with flagging utensils and caution such individuals before leaving their respective district with respect to doing a good job of flagging each day and on each trick wherever the engine might start from so there would be no failure to give necessary protection. There was a further direction from this same source to the effect that there would be heavy traffic over the holidays and it would be necessary to furnish freight conductors and trainmen for extra passenger trains and before any

conductors or trainmen or switchtenders lay off to see that "you first handle with Kedzie Avenue if your yard board is exhausted to know whether you will be able to get extra men."

The claim is that the foregoing directions, in substance, were directions to an employe outside of the supervisory class of yardmasters.

Reference is also made to the number of switch engines assigned over a period as against the carrier's contention with respect thereto. This enumeration through the seven months set out employes' statement has been duly checked.

Several decisions are cited from the Third Division of the National Railroad Adjustment Board which have been carefully considered and which adopt a principle in substance as follows: That it is not the prerogative of a carrier to arbitrarily abolish positions coming within a class of employes covered within the scope of an agreement and reclassify the preponderant portion of the duties to another class outside of the agreement covering the class of employes involved.

The Mayfair industrial district is primarily composed of coal and oil firms. During the summer months the traffic in this district is reduced to such extent that only one yard engine is regularly assigned. During the period of greater activity in this district, two yard engines are assigned, one engine usually working 7:00 A. M. to 3:00 P. M. and one 8:00 A. M. to 4:00 P. M. The position of yardmaster assigned in this district was abolished during the slack season in 1938 and after a survey of the service requirements the position was discontinued entirely, effective May 17, 1939, and under the circumstances of this case the carrier contends that there is no violation of rule 10 (a) and 10 (b) for the reason there has been no reclassification of position coming within the scope of the supervisors' agreement referred to in rule 10 (a) and neither has a new position been created as referred to in rule 10 (b). The record discloses there has been no additional position established nor a reclassification of the position coming within the rule; that Yard Clerk Jordan, after checking the yard, contacts the various industries on the telephone to ascertain cars needed for placement, then makes up a list of such cars, answers the telephone, books cars and performs other routine work required of yard clerks; and that the question as to whether yardmasters shall be employed and positions established must be determined upon the basis of the requirements of the service.

Our attention is directed by the employes to Award No. 1209 of the Third Division of the National Railroad Adjustment Board and similar awards sustaining the view therein set out. No. 1209, *supra*, is, in substance, as follows: "Various opinions have been cited, however a reading of the opinions shows a marked dissimilarity in the facts. No doubt, there must be a reasonable flexibility in the assignment of work in the railroad industry and that such flexibility is essential to the welfare of both carrier and employes. However, it is also well established that work coming within the scope of the agreement may not be removed from the agreement and assigned to the employes not covered by the terms and that the carrier may not arbitrarily take work from the scope of the agreement, as this would be destructive of the agreement."

The foregoing citation by the employes is indicative of the fact that the application of the rule therein announced is made to each particular set of facts as the case arises. A careful review of the record in the instant case fails to establish sufficient evidence offered on the part of the employes to sustain their contention. There is nothing to disclose that Jordan, yard clerk, assumed any authority to take it upon himself to issue any orders. The work that he did do was work that is ordinarily connected with his position. The evidence further shows no encroachment upon his part of the duties of a yardmaster. It is further apparent from the record that the business in this particular yard does not warrant the reestablishing of the position of a yardmaster.

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 evidence fails to sustain the contention of the employes.

AWARD

Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: R. B. Parkhurst
Secretary

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