

**Award No. 102**

**Docket No. 103**

**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 yardmaster position be re-established at Tracy, Minnesota that was abolished in October 1939 in violation of Rule 10 (a) and (b) of effective agreement, and that employes affected be compensated for all wage loss resulting therefrom during the period that compensation was claimed.

**EMPLOYES' STATEMENT OF FACTS:** In October, 1939 the regularly assigned position of yardmaster at Tracy, Minnesota was arbitrarily abolished and the duties of the yardmaster assigned to the position and performed by the qualified yardmaster were assigned to other employes and a trainmaster, said other employes and the trainmaster not included within the scope of the agreement covering the assignment of yardmasters on the property.

The duties of the yardmaster and properly assignable to his class by the terms of the agreement remained to be performed after the position was abolished, therefore, the arbitrary abolition of the position in dispute, assignment and reclassification of the recognized duties to other than a yardmaster is held by employes to constitute their claim of violation of rules of agreement and for monetary loss sustained.

The claim herein presented arises out of and is based upon the provisions of Rule 10 (a) and (b) of agreement now in effect between the parties. Said agreement is dated and last amended effective January 1st, 1941, and covers rules as to compensation and working conditions relating to yardmasters, was and is now in effect between the parties involved herein. Exact wording of Rule 10 (a) and (b) of the agreement that it is contended by employes to have been violated follows for ready reference:

**RATES ESTABLISHED POSITIONS.**

Rule 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 POSITION.**

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

**POSITION OF EMPLOYES:** In the process of formulating the supervisory agreement between the parties on its effective date of August 1, 1936, the carrier did not grant the employes of the supervisory class (which includes yardmasters) a clearly defined rule relative to the properly assignable duties to each supervisor of a given class as is the general practice between a carrier and its employes in following out the terms set forth in Section (2),

First paragraph of The Railway Labor Act, therefore, the employes of the supervisory class covered within the scope of the agreement between the parties have the just right under the fair interpretation and intent of the act to take the position that on the effective date of agreement the duties assigned to the different classes of supervisors on their respective positions were made a part of the agreement, and any action that removes any part of those duties from a position of the same class is in violation of the agreement.

That positions of Yardmasters are required on railroads and there exists duties that are properly assignable to such a class is an established fact over a long period of years and in support of this we offer the following:

“EX PARTE NO. 72

Regulations designating the **classes of employes** that are to be included within the term “subordinate official” under Title III of the Transportation Act, 1920.

\* \* \* \* \*

Yardmasters: This class shall include yard masters and assistant masters, excepting general yard masters at large and important switching centers where of necessity such general yard masters are vested with responsibilities and authority that stamp them as officials.

\* \* \* \* \*

The above definitions include all of the **classes of employes** whose claims to recognition as “subordinate officials” were presented at the hearings. The list of subordinate officials above prescribed may be enlarged or restricted after due notice and hearing, if and when occasion warrants.

By the commission.

GEORGE B. McGINTY,  
Secretary.”

(SEAL)

In Dockets Nos. 85, 86, 87, 88, 89 and 100 presented to the Fourth Division of the National Railroad Adjustment Board, the claims contained in these enumerated docket numbers were disputes that involved the yardmaster class between the parties to this dispute, and Employes Exhibits “A” and “B” presented herein are identical relative to the subject matter as the Exhibits in those particular cases.

In presenting Employes Exhibit “A” in this dispute it is done for the purpose to establish the fact that the various duties connected with the assignment of a yardmaster are contained therein, and the carrier contended in the previously mentioned cases that the duties set forth in said Exhibit “A” only applied when a position of yardmaster was so assigned. It certainly could not be consistently argued and supported that such a position was the intent of the Act. Neither has the employes of the yard master class ever agreed that such practice is the prerogative of the carrier and that such practice was not in violation of the agreement. The duties as contained in the said Employes Exhibit “A” are a part of the agreement because such duties are performed by other yardmasters that are covered by the agreement.

It is a well established fact that other employes of carriers are protected as to their rights to perform the duties of their respective classes where same are covered by terms of agreement. Considering that the carrier did not permit supervisory employes to specifically define their duties as to class and position and incorporate same in the agreement and their unilateral position now in saying there are no supervisory duties covered by agreement requiring the carrier to assign such duties exclusively to a yardmaster, are purely discriminations on every position of a supervisor covered by the effective agreement.

The presentation of Employes Exhibit "B" was to further support the contention there were duties recognized as properly assignable to the yardmaster class, but the carrier seized on the word **preponderant** and elaborated at great lengths upon it. The question in this dispute is the same as in the other dockets herein previously mentioned as analogous, the employes position being the carrier does not have the right to arbitrarily abolish positions of the yardmasters covered by the scope of the agreement, reclassify and assign all or any part of said duties to employes and officials outside the scope of the agreement. Neither does the employes of the yardmaster class recognize or have any written agreement with the carrier whereby a yardmaster's duties would have to exist preponderantly in the maintenance of such positions—all yardmasters duties belong to that class and any action upon the part of the carrier whether of long standing or subsequent to terms of agreement that removes the yardmasters duties and assigns them to other than a yardmaster is in violation of agreement.

Employes Exhibits "C" and "C-1" offered in support of the claim that the yardmaster's duties remained to be performed after the date his position was abolished. There was no change in the assignment of switch engines and the various employes the yardmaster supervised when the position was on. Employes' Exhibit "D" supports their claim that another position was created in lieu of the yardmasters position to perform a portion of his former duties, this new position titled "Footboard Yardmaster" and compensated at the rate of 40 cents per day in addition to the regular rate of engine foreman, the 40 cents being paid for performing the yardmasters duties. Such procedure on the carrier's part could only be to **create a less favorable rate and condition of employment.**

Neither could the carrier offer any supporting facts of evidence whereby they are required to abolish yardmasters' positions and create another position to perform any part of the yardmasters' duties as was done in this dispute.

The duties of the yardmaster relative to the position contained in this claim have been reclassified and apportioned to other employes to be performed, hence the Rule 10 (a) and (b) have been violated in their entirety and the claim is valid and should be sustained.

This dispute has been handled in accordance with instructions set forth in Section 3, First, Paragraph (i) of the Railway Labor Act of 1934.

Oral presentation is desired.

**CARRIER'S STATEMENT OF FACTS:** In accordance with practice in effect at Tracy, Minnesota for many years the position of yardmaster at that point was abolished effective October 3, 1939 due to the fact that service requirements were such that supervision of employes engaged in yard switching service and related work had declined to the point where there was no longer any justification for continuation of the position.

**POSITION OF CARRIER:** Ordinarily we have two yard engine assignments at Tracy as follows:

7:00 A.M. to 3:00 P. M.  
9:00 P. M. to 5:00 A. M.

Prior to October 3, 1939, and since 1934 the position of yardmaster at Tracy has been established as follows:

Abolished	Reestablished
November 20, 1934	August 1, 1935
November 1, 1935	December 16, 1935
December 24, 1935	February 7, 1936
March 19, 1936	July 14, 1936
May 3, 1938	July 20, 1938
October 3, 1939	

Prior to January 28, 1941, on which date Mr. Wm. Y. Norris as Chairman of Operating Department, Supervisors' Association, wrote Mr. H. S. Smith, Superintendent of our Dakota Division, there had been no protest from the Association in regard to the practice of maintaining yardmaster position at Tracy only when the service requirements justified.

Rule 1 (a) of agreement with the Brotherhood of Railroad Trainmen governing rates of pay and rules applicable to employes in yard and switchtender service outside the Chicago Switching District, provides a rate for foremen (footboard yardmasters) of 40¢ per day in excess of rate provided for foremen. This differential applicable to footboard yardmasters, as provided in rule 1 (a), is based on Supplement 22, United States Railroad Administration General Order No. 27, reading:

“Effective January 1, 1919, where there is no existing agreement or practice more favorable to the employes, the wages for yard foremen who also act as yardmasters (designated in some schedules as ‘footboard’ yardmasters) will be not less than forty (40) cents per day in excess of the yard foremen’s rates. The same rules for the basic day and overtime shall apply to such employes as applies to other yardmen.”

During period the service requirements at Tracy do not warrant the assignment of a regular yardmaster, the foreman on the 7:00 A.M. to 3:00 P.M. yard engine is classified and compensated as a footboard yardmaster.

The employes in their request for reestablishment of yardmaster position at Tracy cite rules 10 (a) and 10 (b), supervisors' agreement, reading:

“(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.”

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

The provisions of these rules are not involved in this case. There was no reclassification of a position coming within scope of supervisors' agreement as referred to in rule 10 (a) when position of yardmaster at Tracy was discontinued, neither were new positions of a class coming within the scope of that agreement created as referred to in rule 10 (b).

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.” (Underscoring inserted.)

Since yardmaster position was discontinued at Tracy there is no other class of employes assigned at that point whose preponderant duties would justify classification as yardmaster.

It is the position of the railway company:

1. That the question of whether yardmaster position shall be established at Tracy must be determined on basis of the service requirements.

2. That the small amount of supervision required at that point would not warrant establishment of a supervisory position of yardmaster.

3. That the present arrangement of establishing position of footboard yardmaster under provisions of rule 1 (a) of agreement with the B. of R. T. governing rules of working conditions applicable to yardmen and switchtenders outside Chicago Switching District is not in conflict with the provisions of any schedule rule or agreement with supervisors' association but is the same as is now and has been in effect for 20 years and more at many other points on this railway under analogous conditions.

4. That there are no schedule rules or agreements with the supervisors' association that require the railway company to maintain positions of yardmasters solely for the purpose of providing employment for men holding seniority under provisions of supervisors' agreement.

5. That the request as presented by the employes, not being supported by the provisions of any rules or agreements, must necessarily be declined.

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

**OPINION OF BOARD:** This case is based upon the abolishment of the yardmaster position at Tracy, Minnesota, in October, 1939, and the assignment of his duties to employes not included in the scope agreement; the request that the position be reestablished and employes affected be compensated for all wage loss during the period compensation was claimed; that the action of the carrier in such respect is a violation of Rule 10 (a) and 10 (b) contained in an agreement in existence between the parties at the time of the dispute.

We have heretofore set out in Docket No. 100, Award No. 100, Rules 10 (a) and (b) to which we refer. In addition thereto, the carrier's rules for the government of the Operating Department 890 to 894, inclusive, are included in this record and we refer to Docket No. 100, Award No. 100 where these rules are set out in full. Likewise, excerpts from the Rules of Reporting Information on Railroad Employes, relative to classification, etc., issued by the United States Railroad Labor Board and approved by the Interstate Commerce Commission, Yardmaster Group Grade 1, Sym-11, and Grade 2, Sym-21, need not here be repeated. We refer to Docket No. 100, Award No. 100, where excerpts taken from these rules are set out. We need not discuss Ex Parte No. 72. It may well be concluded that yardmaster duties exist upon the carrier's line and duties are assignable as a class to yardmasters.

Employes contend their statement of facts show a violation of Rules 10 (a) and (b), *supra*, as copied in Docket No. 100, Award No. 100. When the yardmaster position at Tracy, Minnesota, was abolished, position of footboard yardmaster was established in lieu of such position, thus permitting officials and employes to perform yardmaster duties. The employes other than yardmasters, which it is claimed performed yardmaster duties, are footboard yardmasters, agents and employes of agents' office, operators and trainmaster. The yardmaster position worked from 7:00 A. M. until 5:00 P. M., with one hour off for lunch, daily except Sunday. The approximate cars handled in the yard is 500 cars a day from 7:00 A. M. until 3:00 P. M. The hours of 9:00 P. M. until 5:00 A. M. constitute the time of assignment of two regular switch engines the entire year, daily except Sunday. In August and September, due to extensive grain handling, each year, the number of cars handled reaches approximately 800 per day, necessitating additional switch engine assignments to the amount of four

in one week on occasions. All switch engine foremen are classified as foot-board yardmasters and required to perform the following duties recognized as coming within the class of yardmasters: leave a detailed check of the yard for one another; inform the operator, at request of the train dispatcher, where road trains are to be yarded; keep a record in office of time trains arrive with merchandise and time it is spotted; the agent issues orders direct to yard foremen as to switching to be done around station and for commercial spots and leaves a check of freight house daily and, in addition, leaves orders as to the amount of switching that is to be done; the agent signs and authorizes time slips of all yard engine and train yardmen for payment.

Carrier's contention: Yardmaster position in the instant case was discontinued due to the fact there was such a small amount of supervision necessary that the retention of the position was unwarranted. The further contention is that the engine foremen can adequately perform the work necessary, the switching, and, in addition, the small amount of supervision required, and denies the agent at Tracy in any manner supervises the yard or switching. The only instructions the agent ever issues to yardmen is on the placing of cars for industries, which is done by all agents. The trainmaster stated the only function he had performed in this yard was to bleed cars, talk to the yardmen in regard to tonnage that he wanted on trains and cars that he wanted placed on trains in preference. The carrier further contends that the work set out by the employes as constituting yardmaster work, that is making check of yard, keeping record of train arrivals and departures, checking freight house and approval of time slips submitted by yardmen, trainmen and enginemen, is not work of a class exclusively belonging to yardmasters but is work properly assignable to station employes, such as agents, telegraphers and clerks. The record discloses ten combined arrivals and departures of freight trains and five combined arrivals and departures of passenger trains approximately each 24 hours. The carrier sets forth the schedule of train arrivals and departures per day and number of cars handled per day for the months July to December, 1940, inclusive, reflected as follows:

July	360
August	416
September	500
October	408
November	448
December	446

Passenger train arrivals:

July	4.6
August	4.6
September	4.5
October	4.6
November	4.6
December	4.5

Passenger train departures the same.

Freight train arrivals:

July	4.9
August	4.9
September	4.8
October	4.9
November	4.9
December	4.5

Freight train departures approximately the same with a little variation.

Ordinarily at this yard there are two engine assignments from 7:00 A. M. to 3:00 P. M. and 9:00 P. M. to 5:00 A. M. The record contains a summary of the yardmaster's position at this point, to show the dates the

yardmaster's position was abolished and reestablished, the last date abolished October 3, 1939. Prior to January 28, 1941, there had been no protest from the Association in regard to the practice of maintaining yardmaster position at this point. Rule 1 (a) of the agreement with the Brotherhood of Railroad Trainmen governing the rates of pay and rules applicable to employes in yard and switchtender service outside the Chicago Switching District, provides a rate for foremen (footboard yardmasters) of 40¢ a day in excess of rate provided for foremen. This differential applicable to footboard yardmasters, as provided in Rule 1 (a), is based on Supplement 22, United States Railroad Administration General Order No. 27, reading:

“Effective January 1, 1919, where there is no existing agreement or practice more favorable to the employes, the wages for yard foremen who also act as yardmasters (designated in some schedules as ‘footboard’ yardmasters) will be not less than forty (40) cents per day in excess of the yard foremen's rates. The same rules for the basic day and overtime shall apply to such employes as applies to other yardmen.”

The employes in analyzing this rule state it does not mean the yardmasters' positions shall be abolished and call attention to the language as follows:

“where there is no existing agreement or practice more favorable to the employes.”

There is no particular interference with reference to the existing agreement by and between the carrier and the yardmasters and the agreement with reference to footboard yardmasters as disclosed by Supplement 22, *supra*. There have been for a number of years footboard yardmasters on numerous railroads throughout the country and they have their particular functions to perform within the scope of their agreement which, by necessity, is distinct and separate from the agreement that the carrier has with the yardmasters. We are confronted with the latter agreement and whether or not the facts and circumstances of the case disclose a violation of such scope agreement. The carrier contends that Rule 10 (a) and (b) are not involved in this dispute because there was no reclassification of the position coming within the scope of the supervisors' agreement as referred to in Rule 10 (a). (No new position was created of a class coming within the scope of that agreement as referred to in Rule 10 (b).) No other class of employes assigned to duties, Tracy, Minnesota, of the preponderant duties that would classify them as yardmasters within the concept of 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. The preponderant duties of yardmasters are to supervise or to assist in supervising the work of employes engaged in the making up, breaking 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. In this connection, it might again be stated that in previous awards rendered by this Board the carrier's rules promulgated by it and given to the yardmasters so that they may know the duties required of them, 890 to 894, inclusive, and as set out in Docket No. 100, Award No. 100, together with other rules set out therein, are pertinent for the consideration of this Board in determining the issue as to whether or not the scope agreement has been violated.

This brings us to the carrier's contention. Whether a yardmaster should be established at Tracy, Minnesota, must be determined on the basis of the service requirements and the need thereof. The employes take the position that the yard has been open after the yardmaster's position was abolished. Switch engines have continued working. Freight and passenger trains continue to come into the yard and the yardmaster's supervising duties existed to a preponderant degree at the time. It is well settled by many decisions of the Third Division of this Board and predecessor boards “that as an abstract principle the carrier may not let out to others the

performance of work of a type embraced within one of its 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 the 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 that there may be other exceptions, very definite proof of which, however, is necessary to establish their status as a limitation upon the agreement." (See Third Division Award 757.)

The scope and other rules of the agreement define both the character of the work that is to be rendered by the employes, the conditions under which the work is to be performed and that apply when a classification of work is changed and by which a less favorable rate of pay or condition of employment is established. Basically, the carrier by Rules 890 to 894, inclusive, *supra*, defines the duties of yardmasters. The scope rule does not define them. A specific line of demarcation as to limitation of such duties has never been adequately presented. If the rules of the carrier could not be considered in conjunction with the scope rule, the scope rule would be meaningless and fall of its own weight. Rules of the carrier affecting this supervisory position are applicable.

From an examination of the entire record, we conclude that supervisory duties of the yardmaster's position were still existent in a preponderant degree and employes other than those contained within the scope rule of the yardmasters' agreement were performing the supervisory duties of yardmasters. The establishment of the footboard yardmasters and the assistance given them by other employes in carrying out the supervisory duties of the yardmaster warrants the finding that the carrier has violated the scope agreement in the instant case. In consideration of the entire record and all of the evidence, we hold the claim is and should be sustained with the exception of the wage loss, the evidence is insufficiently clear on this issue to warrant a finding by this Board with reference thereto.

**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 claim is sustained with exception of wage loss, which is too indefinite to merit a finding thereon.

#### AWARD

The claim is sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST: R. B. Parkhurst  
Secretary

Dated at Chicago, Ill., this 30th day of June, 1941.