

Award No. 184

Docket No. 164

**NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION**

The Fourth Division consisted of the regular members and in addition Referee James H. Wolfe when award was rendered.

PARTIES TO DISPUTE:

**THE AMERICAN RAILWAY SUPERVISORS'
ASSOCIATION, INC.**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

(Charles M. Thomson, Trustee)

STATEMENT OF CLAIM: Claim of the System Appeals Committee and request that:

(1) The carrier has violated and continues to violate the Scope Rule of the effective agreement embracing yardmasters by arbitrarily refusing to comply with Fourth Division Award No. 106; and

(2) The carrier shall be required by appropriate award and order to assign the legally recognized yardmaster duties existent at Chicago Avenue, 40th Street yard, Chicago, Illinois, for period 6:00 A. M. until 6:00 P. M. daily while said duties remain in continuous existence, and same to be assigned within the scope and operation of the effective agreement governing yardmaster's work; and

(3) All employes adversely affected by the carrier's arbitrary refusal to comply with Award No. 106, be retroactively compensated all wage losses sustained subsequent to February 3, 1941.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement between parties bearing effective dates of August 1, 1936, January 1, 1939, January 1, 1941, and Mediation Agreement dated September 1, 1941.

The primary question before Board is: The carrier has arbitrarily refused to assign legal recognized yardmaster duties existent at point involved to an employe of yardmaster class within scope and operation of Agreement embracing all yardmaster work on property.

The preamble and controlling rules of the Agreement read as follows:

"PREAMBLE. The rules contained herein constitute in their entirety an agreement between the Chicago and North Western Railway Company and the American Railway Supervisors' Association, Incorporated, governing working conditions of storekeepers, mechanical department foremen or supervisors of mechanics, **YARDMASTERS**, telegraph and electrical engineers' department chief linemen and foremen, district special agents, special agents, and sergeants, hereinafter referred to as supervisors, and will supersede all previous agreements, rulings, or understandings thereon."

“SCOPE. 1. These rules, amended effective January 1, 1941, will govern working conditions of the following classes of supervisory employes on the Chicago and North Western Railway:

***** (d) Operating Department:

1. Yardmasters.
* * * * *

“SUPERVISORS’ DUTIES. 6. Supervisors will not be required to perform work of the craft or class supervised other than the recognized duties necessary in line with instructions and training of men under their supervision.”

“RATES ESTABLISHED POSITIONS. 10. (a) * * * * *

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.”

“AGREEMENT—CHANGES IN. 19. * * * * * The foregoing rules constitute in their entirety an agreement between the Chicago and North Western Railway Company and The American Railway Supervisors’ Association, Inc., and no portion thereof will be amended, revised, or annulled, except upon thirty days’ written notice by either party to the other, or by mutual agreement between the officer in charge of personnel for the railway company and the general committee for the association.”

Precedent previously established certifying duties properly and legally assignable exclusively to yardmaster class of employes coming within scope and operation of agreement rules, and one of the pertinent principles under consideration, substantially define said yardmaster duties as follows:

1. Direct supervision in the operating department over employes engaged in the making up, breaking up, and all switching movements of trains within a yard large or small, and assigned districts thereto, such as industrial districts in passenger or freight terminals where Yard Service Employes perform the switching, and all other employes performing work incidental with the operation of yards and terminals.
2. Yardmasters report to and receive their instructions from the superintendent or trainmaster, and general yardmaster, and will comply with instructions from the chief train dispatcher, and such other offices on this carrier’s property where information may be required incidental with the operation of yards and their assignable districts.
3. 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.
4. Keep a record of all trains and cars, note all irregularities, and see that reports of same are made to the proper office; 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 for repairs or sent to place where required repairs can be made.
5. When necessary to move cars in bad order condition, men doing repair work thereon to be notified in order that there will be no injury to employes or additional damage to equipment; secure disposi-

tion on all cars arriving without proper waybills or orders for movement thereon; make reports of freight received in damaged condition, or cars improperly loaded, in order that necessary corrections can be made to expedite the movement thereof.

With legally recognized duties of yardmaster class of employes continuously existent, daily, as stipulated in items 1 to 5, inclusive, and with such duties belonging within scope and operation of agreement herein considered, carrier has, and continues to require and permit said recognizable duties to be performed at point shown, and for period shown in claim, by persons not of yardmaster class as intended under terms of yardmaster's agreement.

The carrier is well acquainted with the fact that yardmaster supervision in this yard belongs to employes within scope of applicable agreement relative to yardmaster's work, as we progressed claims in dispute to your Board in Docket No. 109, contending upon behalf of employes that others were performing continuously duties of yardmaster that should be assigned within agreement, and your Board in making its Award No. 106, remanded back the cause of dispute now under issue to respective parties for adjustment by following language set forth in "Opinion of Board":

"* * *

"(3) This Board has jurisdiction to determine factual situation as to whether or not individuals holding the nine positions herein referred to are performing **YARDMASTER'S DUTIES IN VIOLATION OF THE SCOPE AGREEMENT** between the carrier and its yardmasters and all other decisions and rules pertaining to yardmasters on the carrier line."

"(4) This cause is remanded back on the property for the purpose of making a showing and presenting to this Board all the evidence in conformity with findings (No. 3) but in no event on the subject of reclassification of the nine positions." (Emphasis applied by us.)

Our understanding and interpretation of foregoing comprehensive language means: Specifically, that if the individuals holding the **NINE POSITIONS** under dispute in Docket No. 109 presented to the Board were performing **YARDMASTER'S DUTIES IN VIOLATION OF THE SCOPE AGREEMENT**, then, should respective parties **FAIL TO DISPOSE** of cause by legitimate negotiation, same could again be referred to Board.

We certify to the Board in Employes Exhibits "A" to "E" that on behalf of the employes we have made every attempt to this date to comply with our understanding of Board's recommendations, but to no avail. Therefore, dispute remains unadjusted and is properly presentable for final disposition.

We have cited Scope Rule, and other applicable rules, whereby legal recognized duties of yardmaster class of employes belong assigned to employes of that specific class for continued period that same remain to be performed, and as intended by applicable agreement now in force and effect between respective parties.

In order that the Board will be fully informed as to the physical characteristics of this yard and assignable districts, we certify the information as hereinafter directly set forth in explanation thereof:

DETAIL OF YARD AND ASSIGNABLE DISTRICT COMPRISING THE TERRITORY WHERE YARDMASTER SUPERVISION IS REQUIRED FOR 24 HOURS, DAILY, AND

IS ASSIGNED WITHOUT THE SCOPE RULE OF THE AGREEMENT AS CONTENDED IN THE TWO CLAIMS BEFORE THE BOARD, IDENTIFIED AS, CHICAGO AVENUE, 40TH STREET YARD, CHICAGO, ILLINOIS FOR PERIOD 6:00 A.M. UNTIL 6:00 P.M., and 6:00 P.M. UNTIL 6:00 A.M., RESPECTIVELY.

February 11, 1942—P.M. Track Classification

Track

- | | |
|----------|--|
| | 1. Clear, for train yards—clear for pickup |
| | 3. No. Aves. 65 cars |
| | 5. Piers, 50 cars |
| | 7. Cragin Drag, Rips E. E., Engine switching 1 cut thru No. 31 |
| | 9. Shop Drag, 20 cars, Rips E. End. |
| | 11. 19 Hoppers |
| | 13. 7 Belts—1 hot Durkee oil off rip (GATX 31588) |
| Known as | 15. 1 IHB—loads |
| breakup | 17. 3 IHB—empties |
| yard. | 19. 13 Pennas. |
| | 21. 10 B&OCT Loads— |
| | 23. 12 Provisos |
| | 25. 34—RIPS— |
| | 27. 14—Wisconsins— |
| | 29. 1—Empty Proviso Hse. cars— |
| | 31. —To be switched, Holds Dispo— |
| | 33. 6—Wood Streets— |
| | 35. 4—B&OCT—Empties— |
| | 37. —To be switched, Holds Dispo— |
| | 39. 10—RIPS— |
| | 41. —Clear— |
| | 43. —Clear— |
| | 45. Two cuts to switch off Mayfair— |
| Middle | 47. 0—IHB— |
| Yard | 49. 49—Park Ridge Cars— |
| | 51. 10—System Gons—7 Benld Hoppers E. End— |
| | 53. 17—B&OCT— |
| | 55. —Coaches— |
| | 57. 5—Penna. Direct— |
| | 59. 2— “ |
| | 61. 33—Junk— |
| | 63. 0—Hoppers— |
| No. Yard | 65. 8—Hyman Michaels— |

TRAIN YARD

BELT YARD

Tracks.

- | | |
|-----|--------------------------|
| 1. | 0—C.N.S.M.Ry.— |
| 3. | 0—Northfield— |
| 5. | 0—Blodgett— |
| 7. | 0—Norwood Park— |
| 9. | 0—Way Car 10730— |
| 11. | 1—Milw. R.R. Empty flat— |
| 13. | 0—Edison Park— |
| 15. | 1—Niles Center— |
| 17. | 0—Jeff. Park Fuel— |
| 19. | 0—Oak Park— |

Tracks.

- | | |
|-----|------------------------------|
| 28. | 5—cars— |
| 30. | —Cont. Corp. & Hoskins Coal— |
| 32. | 5—Empty Refgrs— |
| 34. | Clear |
| 36. | 3—Rips— |
| 38. | 27—Shops— |
| 40. | 8—Wood Streets— |
| 42. | To Switch—Anchors— |
| 44. | 10—Cragins— |
| 46. | Clear |

February 12—1942—A.M.—Track Classification

Tracks. (Breakup Yard)

1. 3—Gold Coast—
3. 4—Piers—
5. 5—Piers—
7. 6—Western Aves.—
9. 2—No. Aves.—
11. 25—Hoppers—
13. 15—Belts—
15. 18 cars off the Gold Coast
17. 0—IHB Empties—
19. 7—Pennas.—
21. 0—B&OCT 1s.—
23. 25—Provisos—
25. 15—Rips—
27. 14.—Wisconsins—
29. 1—Empty Proviso Hse.
Cars—
31. 25—Holds—
33. 5—Wood Sts.—
35. 9—B&OCT 2s.—
37. Holds to switch

Tracks. (Middle Yard)

39. 20—Rips old cars—
41. Weber to switch 67 cars—
4 more—
43. Mayfair to switch 65 cars
—5 more—
45. 2 cuts off Mayfair to switch
—3 more—
47. Head End Job—18 cars—
49. Park Ridge Job—20 cars—
51. 10—System gons—7 Benld
Hoppers, E. End
53. Clear
55. —Coaches—
57. Clear
59. 2 cars
61. 33—Junk—

Tracks. (North Yard)

63. Clear
65. 8—Hyman Michaels—

The foregoing record discloses 33 tracks in the combined yards, Breakup-Middle Yard-North Yard, some of which hold approximately 100 cars.

Train yard-Belt yard-Swamp yard—comprise a total of 55 tracks, and in the entire total of 88 tracks there is an approximate amount of classifications reaching 50 as taken from the records.

A conservative estimate of the firms and industries receiving cars through this large yard, likewise, shipping cars out the same way, would be 500.

We certify to the Board that on February 14, 1942, the usual method of computing cars handled through this system of yards adjacent to one another as hereinbefore shown, the sum total of 2,971 cars were handled for the twenty-four hour period, as compared with same date on previous year (1941), 2,306 cars were handled, an increase of 665 cars, or over the 20% figure.

We certify to the Board that on February 14, 1942, the carrier had the following yard switch engine crews and transfers assigned and working in these yards, such work regularly recognized as comprising the requirements for yardmaster supervision and work belonging to employes within the scope and operation of the agreement under consideration. The assignments for twenty-four hours were as follows:

TRAIN YARD

Tracks.

21. 0—Jeff. Parks—
 2. 0
 4. 17—IHB Cars to switch—
 6. Clear
 8. 0—Rosehills—
 10. 10—Deerings—
 12. 4—Wilson Aves.—
 14. 12—Western Aves.—
 16. 13—Alphabets—
 18. —Pier Holds—
 20. 14—State Streets—
 22. 4—No. Piers—Streets—
 24. 13—No. Piers—norths—
 26. 5—No. Piers—souths—

NORTH MAIN—50—North
 Aves.—
 (above August St. Caboose on)
 1—Ex.
 2—Ex. 14 oldest cars
 3—Ex.

BELT YARD

Tracks.

48. 9—Junk—
 50. 10—Deering Cars—

SWAMP YARD

Tracks.

52. 60—Belt drag cars—
 54. —IHB drag—
 56. 25—Proviso cars—
 58. Full—Maplewood—
 60. 18—Nebraskas—
 62. 14—Mayfairs—
 64. 2—No. Aves.—
 66. —Maplewoods—
 68. Clear
 70. 6—cars—
 72. 0—Grand Aves.—
 74. 18—Hollands—
 76. 17—Cars—
 78. 4—Empty Box over J.W.—
 80. 10—Cars—

ABOVE

Check made out at 4 P.M.

February 11, 1942—A.M.—Track Classification—
 TRAIN YARD BELT YARD

Tracks

1.
 3.
 5.
 7.
 9.
 11.
 13.
 15.
 17.
 19.
 21.
 2. Breakup No. 1 to switch
 4. I.C. drag to switch
 6. Clear
 8. —Rosehills—
 10. —Deerings—
 12. —Wilson Aves.—
 14. —Western Aves.—
 16. —Alphabets—
 18. —Holds—
 20. —State Streets—
 22. —No. Pier streets—
 24. —No. Pier norths—
 26. —No. Pier souths—

There are 47 North Shore
 Coal on the North Main.

On—1 Ext. 10 No. Aves.
 1 Ext. 2 cars
 3 Ext. 11 cars

Tracks

28. Clear
 30. 22—Cont. Corp. & Hoskins
 Coal—
 32. 8—Empty Refgrs.—
 34. Clear
 36. 20—Rips—
 38. —Shops—
 40. —Wood Streets—
 42. —Holds—
 44. —Cragins—
 46. Belt drag to switch
 48. Clear
 50. —Home Fuel—

SWAMP YARD

Tracks.

52. 1—IHB & 14 Rubbish, West
 End—
 54. Clear
 56. Proviso—1 cut to switch—
 58. 20—Maplewoods—
 60. —Webers—
 62. —Mayfairs—
 64. 24—Maplewoods—
 66. —North Aves.
 68.
 70.
 72. —Grand Aves.—
 74. —Holland—
 76.
 78.
 80.

ASSIGNMENT	ENGINE NUMBER	TIME WENT TO WORK	RELIEVED
Ex. Roustabout—	1712	7:00 A.M.	3:00 P.M.
Break Up—	2151	7:00 A.M.	3:00 P.M.
Swamp—	1485-2636	7:00 A.M.	3:00 P.M.
Roustabout—	1902	7:00 A.M.	3:00 P.M.
Cragin—	2609	7:00 A.M.	3:00 P.M.
Roustabout—	1771	8:00 A.M.	4:30 P.M.
Transfer—	2582	10:30 A.M.	9:37 P.M.

7 day assignments

Break Up—	2629	3:00 P.M.	11:00 P.M.
Swamp—	2636	3:00 P.M.	11:00 P.M.
Rip—	1712	3:00 P.M.	2:11 A.M.
Roustabout—	1902	3:00 P.M.	11:12 P.M.
Cragin—	2609	3:00 P.M.	3:38 A.M.
Roustabout—	1771	4:00 P.M.	12:38 A.M.

6 second shift assignments

Transfer—	1485	7:30 P.M.	6:45 A.M.
Transfer—	2349	10:30 P.M.	9:45 A.M.
Break Up—	2624	11:00 P.M.	7:00 A.M.
Swamp—	2636	11:00 P.M.	7:00 A.M.
Roustabout—	1885	11:00 P.M.	8:10 A.M.

5 last shift assignments

In addition to the previously shown assignment of operating department employes actually performing the switching and transfer of cars handled on the date shown, it must also be considered there would be an approximate arrival and departure of twenty other yard and transfer crews from other yards on the property, some of which are from other railroads.

There are also switchtenders and yard clerks assigned, as usually are assigned in a system of adjacent yards of this size and amount of business handled, during the twenty-four hour period involved.

The carrier may contend that for the dates as shown, it had a position assigned to furnish supervision of the yardmaster class involved. However, we state to the Board if there were any yardmaster positions assigned properly considered as coming within the purview of the scope rule, same were only extra assignments and not bulletined because they were not contemplated as being needed for a continuous thirty day period, and accordingly would be denied employes of the yardmaster class covered by the agreement requiring the bulletining of regular positions.

We state to the Board that the greater amount of yardmaster supervision required in the yards under issue, is continuously being performed by positions now assigned as two General Yardmasters, each of which works 12 hours. In a direct review of the Scope Rule governing yardmasters work on the carrier's property, it can be noted that General Yardmasters are not included within said scope rule, and in Fourth Division, Award No. 106, it was held that General Yardmasters if properly assigned by precedent and authority as theretofore established, and as shown in Opinion of Board therein, could not perform the work and duties of yardmasters covered by the Scope Rule of the Agreement.

The hours of assignment in a basic Day's work for yardmaster as set forth in the controlling agreement is as follows:

"DAY'S WORK. 5. * * * The assignment of yardmasters in the Chicago Switching District and Milwaukee will not exceed nine consecutive hours. * * *"

Therefore, that part of Rule 5 just shown, is continuously being violated, together with the scope rule, by the carrier's action in assigning the existent yardmaster's work to positions outside the Scope Rule. Such positions are assigned twelve consecutive hours each and if the work was assigned to an employe within the Scope Rule there would be two positions of nine consecutive hours each, and the remaining six hours of continuously existent work would be assigned to another position within the scope rule where it belongs.

POSITION OF EMPLOYES: We have shown the Scope Rule and other rules considered pertinent to the yardmaster's work being continuously existent and we have attempted to bring clear and understandable evidence whereby there is a continuous existence of that work which should be assigned to only employes covered by such scope rule. Therefore, it is only reasonable to assume that your Board will decide the issue in accordance with facts presented.

We fully recognize and understand your Board's language and Opinion as contained in Award No. 106, reading as follows:

"* * * (2) This Board is without jurisdiction to reclassify the nine positions constituting the subject matter of the controversy.
* * *"

With our recognition and understanding of such language as quoted and in order that the carrier may not again manifest the jurisdictional barrier, we are not making any request of RECLASSIFICATION, but are requesting that carrier assign yardmaster's work within the agreement and in accordance with your comprehensive recommendations clearly set forth in AWARD NO. 106.

We now make reference to Employes' Exhibit "B," and quote the carrier's statement therefrom, which reads as follows:

"Reclassify the following positions to yardmasters and include within the scope of supervisors' agreement:

Day General Yardmaster, 40th Street, Chicago
Night General Yardmaster, 40th Street, Chicago

We to make further investigation in respect to position at Council Bluffs now classified as assistant trainmaster."

The foregoing excerpts show to your Board in the carrier's own language that it recognized the two positions belonged within the scope of the agreement. Again in Employes' Exhibit "D," the following is shown:

"* * * As stated in our letter of September 8, 1941, we are agreeable to disposing of all questions at issue as indicated therein—that is, by reclassifying positions at 40th Street now designated as day general yardmaster and night general yardmaster to a class coming within the scope of supervisors' agreement. * * *"

It is very interesting to note from the carrier's above statements that it was agreeable to RECLASSIFY these two positions even though the carrier vigorously protested the RECLASSIFICATION of any of the positions in Docket No. 109. However, because this Association would not compromise to the carrier's liking, it refused to assign any of the recognized yardmaster's work within the scope and operation of the Agreement. Employe's Exhibits "A" to "E," fully support our contention of carrier's arbitrary disregard of your Board's equitable recommendations in Award No. 106.

Your Board has sustained the yardmaster employes in Awards Nos. 86, 100, 102, 103, in their right to the performance of all existent work of

the yardmaster class on the property. Therefore, we respectfully ask you to judge from the record in this issue, and sustain these claims in their entirety.

We particularly cite your Board's Award No. 157, the same which involves a dispute between the same parties herein involved, and with specific reference to the principle involved in said Award, where the carrier violated the Scope Rules just twenty days after applying Award No. 103. This same carrier has refused to apply and negotiate Award No. 106, and therefore, we call upon the Board again to require the carrier by appropriate award and order to comply with the written agreement as intended by the Railway Labor Act.

The continued violation of the scope rule has denied an employe work as yardmaster subsequent to February 3, 1941. Therefore, destruction of seniority and denial to perform existent work merits the payment of all wage losses resultant therefrom.

The persons required to work on these positions twelve hours in violation of the scope rules, and three hours every day worked over and beyond the basic day of nine consecutive hours are entitled to an additional day's pay, see Fourth Division Awards 123 to 155, inclusive. These persons have been required, through no fault of their own, to work in violation of the rules, and having their positions assigned in violation of the rules.

We certify that the dispute has been handled as consistently as possible in accordance with instructions as set forth and contained in Section 3, First, Paragraph (i) of the Railway Labor Act, Amended June 1934.

Oral presentation is desired.

POSITION OF CARRIER: It is the position of the railway company that this alleged dispute is not one properly coming within the jurisdiction of Fourth Division, National Railroad Adjustment Board, under provisions of the Railway Labor Act, for the following reasons:

1. The request involves the matter of reclassifying position now classified as General Yardmaster to that of yardmaster and including same within the scope of agreement between the railway company and the supervisors' association.
2. The class of General Yardmaster is of the official family and one not coming within the classification of subordinate official nor within the scope of supervisors' agreement.
3. At the time an agreement was first negotiated with the Supervisors' Association, August 1, 1936, the position of General Yardmaster, 40th Street, Chicago, was an established position with assigned duties substantially the same as at present. At that time the incumbent of the position was not taken into consideration in determining whether the supervisors' association had the authority of the majority of the class of yardmasters to represent them in contractual agreements.
4. It was specifically agreed and understood by the negotiators of supervisors' agreement that positions of General Yardmasters did not come within the scope of the agreement.
5. The provisions of supervisors' agreement applied specifically to those classes of positions classified as yardmasters as established August 1, 1936, and do not include the class of General Yardmaster; neither did the rules as negotiated specify what work shall constitute the work of a yardmaster nor what work would constitute the work of a general yardmaster for the purpose of inclusion of positions then established within the scope of the

agreement, and it was thoroughly understood by all concerned that positions of general yardmasters as then established did not come within the scope of supervisors' agreement.

OPINION OF BOARD: In Award 106 this docket was remanded back to the property for the purpose of making a showing and presenting to this Board evidence to determine the factual situation as to whether or not individuals holding this position (and eight others) were performing yardmasters' duties in violation of the Scope Agreement. Since we have before us dockets covering the nine cases brought up in former Docket 109, this opinion will contain general observations which will be of value in resolving the other cases.

Award 106 did not attempt to lay down any guides for determining the functional content of yardmasters' jobs. It held that this Board was without jurisdiction to reclassify positions but that it was within the jurisdiction of the Board to determine factually whether a position entitled to other than yardmaster or assistant yardmaster had a total or partial content of duties which belonged to yardmasters and, if so found, on proper showing to reassign them. At this point we pause a moment to consider actual and virtual reclassification. Reclassification usually involves a change of title. A position having a certain title may have a functional content which is that of a position belonging in another classification. If all the functions are picked up and carried over to another entitled position, the former position is in result reclassified because it will be abolished and its functions poured into another position. On the other hand, if the first position is still retained because some duties still adhere to it, but many of its former duties are transferred to another position, we have no reclassification either in name or effect. We understand that this Division has authority to require duties which it concludes belong to a position within the scope of an agreement to be transferred to such position even though the result may be a virtual reclassification. It has not power to require an actual reclassification as was done by the Interstate Commerce Commission in Ex Parte No. 72 (Sub No. 1) decided March 29, 1939.

Our task, under this and the other cases remanded by Award 106, is, therefore, twofold, i. e. to determine from the evidence submitted whether positions entitled other than yardmasters are performing duties which are **distinctly** and **typically** yardmasters' duties, and, further, if so, whether we should order such duties assigned to yardmaster positions. The first portion of the task is, therefore, to determine what are typically yardmasters' duties. The second portion of the task is to determine if positions other than yardmasters are performing yardmasters' duties whether they are performed in sufficient volume to justify a transfer of the duties to a yardmaster. In other words, not only the type, nature and quality of duties are involved but their quantum. We cannot decree an assignment of yardmasters' duties where the conditions do not justify it. It will be noted that this idea of substantial volume appears in various awards. In Award 106 this Board stated "* * * *when it appears that other employes are performing such supervisory duties to a **preponderant** degree," etc. (Emphasis added.) In Award 88 it was held "the question as to whether yardmasters shall be employed and positions established must be determined upon the basis of the requirements of the service." And in "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, hereinafter referred to as "Rules for Reporting Information," yardmasters were classified as those "in which the **preponderate** 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." (Emphasis supplied.)

We turn, therefore, to a consideration of the question of what are the distinctive and typical duties of a yardmaster. It is said that this carrier by its operating rules 890 to 894, inclusive—which we do not set out here because they are found in Awards 86, 88 and 100—itself gave content to a yardmaster's position; that the duties there set out are yardmasters' duties on this line. But yardmasters may be made responsible for certain acts, conditions or duties that are not distinctly and typically yardmasters' duties. Such rules may be changed so as to place some of the responsibility imposed by them on other individuals without being subjected to the charge that a yardmaster's duties have been taken away from him and placed with another. In other words, those duties which mark and characterize a position as one which brings it within the purview of a position covered by the Scope Rule of an agreement may not always be completely synonymous with the duties imposed on the position by the operating rules of the management.

In Award 1314, Third Division, it was said:

"The manifestations of a position are the functions which attend it. The biblical adage that 'by their works ye shall know them' applies to 'positions' as well as persons. Until it is filled by an incumbent who performs recognized functions it is an abstraction merely. One position becomes delineated from another by virtue of the functions which attend it. It is thus classified and given identity, and a position is not 'filled' until an incumbent is inducted into it for the purpose of performing those functions. Hence work is the very life and content of a position. And the title is only a name for the positions usually derived from the functions and duties which go with it. A mere change of title with substantially the same work leaves the position the same. And occupation and position are not identical, although the work embraced in an occupation may be what determines the position. Thus, clerks, stenographers and machinists are generic names of which the various defined positions—defined by more particularized functions—are the species and sub-species. Thus in the hierarchy we have clerks divided into clerical workers and machine operators. And these again are divided into sub-species depending on the functions which they exercise, such as the Chief Dispatcher's Clerk. A position becomes manifest by the functions which attend it, and those functions may attach either by direct expression, such as a new position with bulletined work, or by tradition, custom, or practice, or by functions which are endogenous to it (a train dispatcher for instance deals with work involving the very functions inherent in dispatching trains) or by the accumulation of functions gradually deposited with the position. The work becomes as 'recognized.' The sum total of this work then obtains a certain identity known as a position. It is not rigid but somewhat flexible. There may be given to it or taken away functions which do not change its identity, just as a finger or an ear taken from a human being does not change his identity."

The functional core by which most positions are classified and rated is definite and specific because they consist of acts and work which lead to definite, tangible results. Thus a rating clerk actually accomplishes the work of looking up a rate and applying it. An engineer actually works at the task of controlling the throttle in relation to the conditions under which he is running. He runs his engine. Those distinctive duties are obvious. But the very nature of a supervisor's position makes it difficult to carve out his duties with the same definiteness. The very word "supervisor" means literally "overseeing" and "overseeing" involves at times the function only of looking, seeing and judging whether a piece of work has or has not been done correctly. It involves the function of seeing that others perform rather than the function of performing on something tangible and obtaining a tangible show of accomplishment. By the same token the

function of overlooking may be performed by more than one. There may and generally is a hierarchy of overlookers, one supervising another and that one others under him on down the line. One of the objectives of supervision is to centralize and coordinate the responsibilities of several. The work of several switch engines is coordinated and made to work together because of supervision. Because the work and results of supervision are intangible and require a certain overlapping, it is at times difficult to allocate definite supervisory duties to one position and say it distinctly belongs to that position. It will be found that at times several positions appear to have, in different degree and volume, the same duties of supervision. But we think that if there are any supervisory functions which are distinctly and typically those of a yardmaster they are those of planning and supervising the movement of trains and cars in yards—which includes the matter of incoming trains, breaking them up, classifying their cars and reassembling such cars for outgoing movements. A yardmaster is master of the yard. He has charge of it, keeps it in order and sees that the movements therein are orderly made, sees that cars are spotted at the industries as needed or empties and loads taken away. In this connection there are duties of keeping records of what has been done or acquiring and assembling the information for the necessary programming or planning of the work. The actual communication with other officers or employes or shippers or consignees for the purpose of acquiring this knowledge and its recordation may be made by clerks. The checking of cars on the track may be made by clerks and the relaying of instructions may at times be done by others if they emanate from the yardmaster provided it is done in good faith and the yardmaster who gives the orders is not merely echoing back the planning done by another and is within such proximity that it can reasonably be said that he is actually supervising. Otherwise a yardmaster at a remote point could by telephone communication be given the reports of car arrivals, prompted with suggestions as to the tracks to be used for classification and then ostensibly issue back the order in response to the suggestion whereas the clerk or other employe who prompted or suggested would in effect be doing that part of supervision which we have called planning. Supervision by remote control may not be supervision at all. Much depends on the physical and economic conditions, in fact on the whole setup. But the master of the yard has the responsibility to see that it is done and it is part of the content of a yardmaster's position. If a yardmaster is not supervising the work, someone else is because a yard could not run without supervision and coordination of the different functions which must be performed to see that trains come in on the designated track, that they were broken up and classified; likewise as to making up trains, transferring cars to different yards and interchange tracks, etc. But because this planning, coordination and supervision must be done does not result in the conclusion that a yardmaster must always be appointed to do it. As before stated there must be sufficient of these duties to justify the creation of a yardmaster's position. Economy of operation requires that needless positions be not created.

It is largely within the prerogative of the management to determine the amount of necessary supervision which it requires. Work that is routine may require only instruction as to what must be done and a checking up of what has been done. When a switching crew is handed a list, if competent, it can be depended on to carry through. Given the "what" it knows the "how." In shop work, on the other hand, where work is much varied, much closer supervision may be required. But while the amount and manner of supervision is largely within the purview of the management, when such prerogative is exercised, it is not within its untrammelled discretion to place those supervisory duties where it chooses. If there is sufficient of the work to justify a yardmaster, they must be given to that position. It transpires, therefore, that each case must be determined largely on its own facts. The type and size of the yard, the conditions of operation,

the number of cars handled, and density and nature of traffic at certain hours, the ability to cover two shifts by one supervisor, are all factors which govern the amount of supervisory work which must be done and, therefore, the question of whether the supervision exercised by officials or others is of sufficient volume to justify a yardmaster. It is not claimed that this may be done with scientific precision. This Board must review the evidence presented and judge whether the carrier is farming out to other positions yardmaster supervisory duties in such amount that if concentrated in one person the supervisory and related duties would keep a yardmaster reasonably occupied during a nine hour tour of duty.

With these general principles enunciated, we turn to the claim of Dockets 164 and 165, which is that recognized yardmaster duties at Chicago Avenue 40th Street Yard, Chicago, are being performed by two general yardmasters, each of whom works 12 hours. Relief asked for is that the carrier be required to assign such duties to yardmasters. The Association also asks that all employes adversely affected by the carrier's refusal to comply with Award 106 be retroactively compensated for all wage losses sustained subsequent to February 3, 1941. The carrier answers (1) That the request of the Association involves the reclassifying of the position of general yardmaster to that of yardmaster, which this Board has not jurisdiction to do. From what was said in this and the opinion in Award 181, Docket 180, regarding reclassification, it is apparent that what is being sought is to transfer to a yardmaster the duties claimed properly to belong to a yardmaster. If such results in abolishing the position of general yardmaster and establishing that of yardmaster, while the result may be the same, the operation is not one of reclassification.

The carrier also contends that at the time the agreement was first negotiated on August 1, 1936, the position of general yardmaster was an established position with assigned duties substantially the same as at present; that the agreement applied specifically to those positions classified as yardmasters as of August 1, 1936; that it was intended to exclude the class of positions denominated as general yardmasters whether or not they were in reality positions of yardmaster and that such fact was recognized because the Association did not move in until February 3, 1941. This contention might have validity if it were not already decided for us. The necessary implication of Award 106 in remanding the nine cases back to the field "for the purpose of making a showing and presentation of all the evidence to determine whether or not individuals holding the nine positions herein referred to are performing yardmasters' duties" is that the agreement did not freeze the duties of those positions as belonging to such individuals. We are foreclosed from considering this defense.

The carrier also contends that the rules do not specify "what work shall constitute the work of a yardmaster nor what work would constitute the work of a General Yardmaster for the purpose of inclusion of positions then established within the scope of the agreement." Quite truly the agreement does not so specify and for that reason we prefaced this opinion with a discussion of the principles which must govern a determination of the question of what are recognized yardmasters' duties.

The statements of the Association as to yard content on February 11th and 12th, 1942, the number of engines employed in each shift, the number of cars handled in a day must be taken as correct because the carrier, given the opportunity by the remand to present evidence, has not seen fit to do so nor to join in a joint check as requested by the Association on October 15, 1941.

Condensing the evidence submitted by petitioner, it appears that the yards are quite comprehensive, there being 88 tracks in all the sub yards, some of which tracks were capable of holding 100 cars; that during a 24-hour period on February 14th 2,971 cars were handled; that on the combined

88 tracks there were on February 12th fifty classifications; that the yard serves as a receiving and classification yard and serves a large number of industries. The petitioner says 500 industries receive or ship cars through this yard. The fact that there were general yardmasters on duty around the clock who supervised the work of this yard, including the supervision of 18 switch engines—7 on the 1st shift, 6 on the 2nd, and 5 on the last—gives some idea of the amount of work requiring supervision. Moreover, there are numerous transfer crews from other yards and railroads coming and going.

It very definitely appears that the general yardmasters are preponderably, if not altogether, engaged in performing the duties of yardmasters.

The supervisory duties, as above defined, exercised by the two general yardmasters at 40th Street must be assigned to yardmasters. The carrier may constitute yardmasters for such periods as is necessary to encompass all the duties now performed by these two general yardmasters in Dockets 164 and 165. It is suggested, however, that the matter of the constitution of sufficient yardmaster positions to take over the yardmaster supervisory duties now performed by the two general yardmasters be arrived at by negotiation. Our power under this award can be no wider than the claim filed, that is, to require such duties to be assigned to yardmasters.

The Association has made no showing as to whether any of its members would have, by reason of being on furlough or because of seniority, filled the position of yardmaster at this yard if and when such position or positions should have been constituted. When the position or positions are so constituted in accordance with what has been above said, the matter should be treated so if the positions had been so constituted since February 3, 1941, and if the Association can show by satisfactory evidence a loss to any of its members who would have been entitled to take such position or positions, the carrier shall pay such loss. If the question of whether loss occurred and, if so, the amount suffered, cannot be settled in the field, the matter may be brought to this Board for the settlement of that issue.

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 two general yardmasters are exercising duties properly and distinctively belonging to yardmasters and that such duties shall be assigned to such number of yardmasters as may be necessary to take care of them. Reparations to abide that event.

AWARD

Claim 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 12th day of November, 1942.