Award No. 474
Docket No. 463

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

The Fourth Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

RAILROAD YARDMASTERS OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Railroad Yardmasters of America that:

1. Unassigned Yardmasters at Lincoln Yard, Detroit, Michigan, be paid the difference between what they actually earned and what they would have earned if they had been properly dealt with under the Agreement, for the period from November 26, 1944 to November 2, 1945, both dates inclusive, account Yardmaster duties being performed by employes outside the scope of the Yardmasters' Agreement, and failure and refusal of Management to maintain continuous Yardmaster supervision at that point.

2. Regularly assigned Yardmasters at Lincoln Yard, Detroit, Michigan, be paid what they would have earned in addition to their regular wages had they been called to perform additional service under overtime conditions, from November 26, 1944 to November 2, 1945, both dates inclusive, due to Yardmaster duties being performed by employes outside the scope of the Yardmasters' Agreement and failure and refusal of Management to maintain continuous Yardmaster supervision at that point.

EMPLOYES' STATEMENT OF FACTS: Prior to November 3, 1945, the Yard supervision at Lincoln Yard, Detroit, Michigan, was as follows:

First trick—One Yard Master
Second trick—One Clerk
Third trick—One Yard Master

Effective November 3, 1945, and as a result of Award No. 272 of the Fourth Division, the supervision was established as follows:

First trick—One Yard Master
Second trick—One Assistant Yard Master
Third trick—One Yard Master

POSITION OF EMPLOYES: The essence of Agreements is the right of employes to the work for which they have bargained and delegating of work of a nature covered by the Agreement to employes outside the Agreement constitutes violation thereof. This principle has been definitely established by various Awards of this as well as other Divisions.

Definite evidence of violation was established by Award No. 272 of this Division.

Rule 4-B-1(a) of the effective Agreement provided that—

"Where the requirements of the service necessitate continuous Yard Master service and assignments are established to successively relieve each other, the assignments shall provide for eight (8) consecutive hours, exclusive of the time required to make transfer. On other assignments every reasonable endeavor will be made to restrict the assignment to eight (8) hours per day."

Obviously, in order to meet the requirements of the service, definitely established by Award No. 272 as being continuous, the Carrier could only have done so by either establishing three consecutive eight (8) hour Yard Master positions or extending the two established assignments to cover a twelve hour period each.

Rule 4-G-1(f) of the Agreement provided that—

"Any adjustments growing out of claims covered by this Rule (4-G-1) shall not exceed in amount the difference between the amount actually earned by the Yard Master and the amount he would have earned from the Company, if he had been properly dealt with under the Agreement."

Rule 4-A-2 of the Agreement provided that—

"Yard Masters shall be paid on the actual minute basis at rate of time and one half for all time worked, continuous with and before or after their regular eight (8) hour work period, exclusive of time required to make transfer except that, a relief Yard Master working on 2 positions covered by his regular assignment, and an extra Yard Master working as such on two (2) positions, on any day, shall be paid at the straight time rate for the first eight (8) hours of service on each position."

Award No. 413 of this Division, involving claims of a similar nature on this same Carrier at another point, which, while denying the claims of the employes, contains the following—

"There is no evidence that the requirements of the service necessitate continuous Yard Master service."

This Award also contains this statement—

"It (the Organization) has failed to show by any evidence that the second trick Clerk exercised any supervision over Yard Crews or otherwise engaged in substantial performance of any duties recognized as those of a Yard Master."

In the instant case the employes established that the requirements of the service did necessitate continuous Yard Master service, and that the second trick Clerk did exercise supervision over Yard Crews and otherwise engaged in substantial performance of duties generally recognized as those of a Yard Master.

The claims therefore are payable under the definite provisions of the Agreement and by reason of the definitely established violation thereof.

All data submitted in support of Employes' position have been presented to the Carrier and made a part of the particular question in dispute.

Claim should therefore be allowed.

Oral hearing is requested.

CARRIER'S STATEMENT OF FACTS: A communication dated February 18, 1948, from the Secretary of the National Railroad Adjustment Board, Fourth Division, to the General Manager of the Central Region of the Pennsylvania Railroad, contains the information of receipt of notice, dated February

18, 1948, from the Railroad Yardmasters of America advising that they will, on or before March 18, 1948, file an ex parte submission with the Fourth Division in the claim outlined in their letter.

This letter indicates that certain unnamed Claimants claim an unadjusted dispute is pending between them and The Pennsylvania Railroad Company, referred to therein in the form quoted at the beginning of this submission.

The claim submitted by the Railroad Yardmasters of America in their letter of February 18, 1948, quoted above, has not been handled in the usual manner up to and including the Chief Operating Officer of the Carrier designated to handle such disputed, as required by the Railway Labor Act, as amended, and consequently, is not properly before your Honorable Board.

By filing this submission the Carrier does not waive its objections that the claim is not properly before the Board, since it was not handled in accordance with the requirements of the Railway Labor Act.

The Employes' letter of February 18, 1948, after setting forth the subject of the claim states: "This dispute is identified in Carrier's files as Toledo Division Case No. 19", and that it has been handled in accordance with Section 3, First subsection (i), of the Railway Labor Act, as amended.

The subject matter of Toledo Division Case No. 19, as progressed in the usual manner up to and including the General Manager, read as follows:

> "Claims of Yard Master W. A. Ray for an additional day's pay at the Yard Master's rate under the provisions of Regulation 4-A-1, July 20, 1942, and subsequent dates, account of programming work for crews on second trick. Similar claims for Yard Master V. W. Smith, for July 16, 1942, and subsequent dates."

Submitted as Exhibit "A" is a copy of the joint submission entered into on Toledo Division Case No. 19, dated November 12, 1943, between the General Chairman of the Railroad Yardmasters of America and the Carrier's General Superintendent, together with a copy of the General Chairman's letter of December 11, 1943, listing the subject for discussion with the General Manager.

Also submitted and marked Exhibit "B" is a copy of the General Manager's letter of January 29, 1944, following discussion of the subject on January 26, 1944, setting forth understanding wherein it had been agreed to hold the claim in abeyance, and the General Manager's letter of November 20, 1945, denying the claim.

As will be noted from the joint submission prepared by the General Chairman and General Superintendent, Toledo Division Case No. 19 involved a dispute as to the propriety of requiring the first trick Yard Master at Lincoln Yard, Detroit, to program work for crew on the second trick, where no Yard Master was then employed.

The claim now before your Honorable Board, and which is represented to have been handled on this Railroad as Toledo Division Case No. 19, is in behalf of unassigned and regular Yard Masters at Lincoln Yard, Detroit, on the basis that someone outside the scope of the Yardmasters' Agreement was performing the duties of a Yard Master. It is, therefore, an entirely separate and distinct claim.

The Organization also discussed with the Carrier a dispute identified in the records as Toledo Division Case No. 15. The subject of this case was as follows:

> "Request that position of Assistant Yard Master be restored on second trick at Lincoln Yard, Detroit, Michigan."

This request was progressed in the usual manner up to and including the Chief Operating Officer of the Carrier (General Manager) and denied. Thereafter the subject was submitted to your Honorable Board and is identified as Award No. 272.

Award No. 272 reads as follows:

"Claim sustained as of this date."

The facts in Award No. 272 were that there was no Yard Master or Assistant Yard Master employed on second trick at Lincoln Yard, Detroit, and an average of between one and two hours per day was spent by the Clerk in performing yard supervisory duties.

In listing the claim covered by Award No. 272 with the Carrier and your Honorable Board, no claim was made for any compensation for any Yard Master or Assistant Yard Master.

In compliance with Award No. 272, a position of Assistant Yard Master was established on second trick at Lincoln Yard, effective November 2, 1945.

In the period set forth in the Employes' Statement of Claim in the instant case, i.e., November 26, 1944, to November 2, 1945, the following yard force was employed at Lincoln Yard:

FIRST TRICK

1—Yard Master .....8:00 A. M. to 4:00 P. M.
1—Yard Clerk .....7:00 A. M. to 3:00 P. M.

SECOND TRICK

1—Yard Clerk .....4:00 P. M. to 12:00 Midnight

THIRD TRICK

1—Yard Master .....11:00 P. M. to 7:00 A. M.
1—Yard Clerk .....12:00 Mid. to 8:00 A. M.

In the period involved there were also two yard crew assignments employed at Lincoln Yard on second trick reporting at 3:00 P. M. and 3:30 P. M.

As a result of a joint survey made by the parties at Lincoln Yard about February, 1944, it was agreed that the Yard Clerk was performing supervisory duties on an average of 1 hour and 2 minutes per day. There were also 46 minutes per day in dispute, the Employes' representative claiming this time should be charged to yard supervision and the Carrier's representative contending it was Yard Clerk's work.

On January 8, 1945, W. A. Ray, employed at Lincoln Yard, as first trick Yard Master, presented claims to the Train Master of the Carrier's Toledo Division for November 27, 1944, and certain specified subsequent dates, for four hours on account of no Yard Master on second trick. These claims were denied by the Train Master in a memorandum dated January 12, 1945. Subsequently, the same Claimant made similar claims on the same account covering various periods up to and including November 2, 1945. These claims were not presented to the Superintendent as required by Rule 4-G-1 of the Agreement, nor were they handled with the General Superintendent or General Manager as required by Rule 6-B-1. (Rules 4-G-1 and 6-B-1 will be discussed hereinafter.)

The Carrier has no information or knowledge of any claims of the nature outlined in the Employes' Statement of Claim being filed by any unassigned Yard Master, or any claims of such nature having been filed by regularly assigned Yard Masters, except those by Yard Master Ray, referred to above.

Therefore, insofar as the Carrier is able to anticipate the basis of these claims, the question to be decided is whether or not the claims on behalf of the unnamed Claimants have been properly handled under the provisions of Rules 4-G-1 and 6-B-1 of the applicable Agreement and are valid.

POSITION OF CARRIER: A. The Pennsylvania Railroad Company asserts that the National Railroad Adjustment Board, Fourth Division, is without authority or jurisdiction to proceed in the matter above entitled and

referred to, and protests against and objects to any proceedings therein whereby such National Railroad Adjustment Board, Fourth Division, shall assume or undertake authority or jurisdiction therein for the reasons that:

(1) The Pennsylvania Railroad Company asserts that the claim made against it in the above entitled matter has not been "handled in the usual manner up to and including the Chief Operating Officer of the Carrier designated to handle such disputes", as provided in Section 3, First, subsection (i) of the Railway Labor Act, as amended, and is, therefore, not such a claim or dispute as may be referred to the National Railroad Adjustment Board; and

(2) The Pennsylvania Railroad Company asserts that it has not received due and proper notice of the claim made against it in the above entitled matter, in that it has not been informed of the grounds and nature of said claim with sufficient particularity to enable it to answer and defend itself therefrom, which notice and information are required by Section 3, First, subsection (j) of the Railway Labor Act, and by the Fifth Amendment to the Constitution of the United States, and protests against and objects to any proceedings therein by the National Railroad Adjustment Board, Fourth Division, unless and until the Carrier has been given full and specific information as to the claim made against it by the above named persons and adequate opportunity to answer and defend the same.

B. The Pennsylvania Railroad Company, having filed with said National Railroad Adjustment Board, Fourth Division, a request that it be served with a copy of Claimants' submission setting forth the grounds and nature of said claim in order to enable said Railroad Company adequately and properly to answer the same, and said request having been denied by said Board, and said Railroad Company having been put in a position by such denial where it must either undertake to file this answer without knowledge of the actual nature and grounds of said claim or else submit to having said claim decided against it by said Board by default, does hereby to the best of its knowledge and ability under the circumstances submit this answer to what it supposes by way of anticipation such claim to be, reserving all objections, or the right at any time to make the same, as to the above mentioned dispute, or any proceedings therein, and without waiving any objections that it has or may have to the validity of the Railway Labor Act or to the validity or regularity of any acts or proceedings of the National Railroad Adjustment Board, Fourth Division, in said matter.

C. The Pennsylvania Railroad Company specifically objects to the jurisdiction of said National Railroad Adjustment Board, Fourth Division, in said matter because so far as said Railroad Company has been able to determine or is able to anticipate the claim in the above entitled matter is not based upon the interpretation or application of the applicable Agreement covering rules, rates of pay, and working conditions, but, on the contrary, amounts to an attempt to secure, by means of an award from the National Railroad Adjustment Board, Fourth Division, a new and different agreement from the one which covered the rules, rates of pay and working conditions of the Claimants at the time the claim arose.

The Carrier will show that:

I. There is an Agreement between the parties to this dispute governing the rules, rates of pay and working conditions of Yard Masters and Assistant Yard Masters;

II. The Agreement provides the manner in which claims of employes must be presented to the Carrier; and the claims here involved were not properly presented to the Carrier in accordance with the Agreement;

III. Your Honorable Board has already decided this dispute in Award No. 272 and a position of Assistant Yard Master was established on second trick, Lincoln Yard, as provided therein;

IV. Under the Railway Labor Act, the National Railroad Adjustment Board, Fourth Division, is required to give effect to the said Agreement and to decide the present dispute in accordance therewith.

Each of the points of the Carrier's Position will be discussed in the order set forth above.

I. There is an Agreement Between the Parties to This Dispute Governing the Rules, Rates of Pay and Working Conditions of Yard Masters and Assistant Yard Masters.

The Pennsylvania Railroad Company has entered into an Agreement with its Yard Masters and Assistant Yard Masters through their duly designated and authorized representatives, which covers the rules, rates of pay and working conditions of the said class of employes. This Agreement is known as the "Agreement Governing Rates of Pay and Working Conditions of Yard Masters and Assistant Yard Masters", effective April 16, 1944. Copies of this Agreement are on file with the National Railroad Adjustment Board, Fourth Division.

II. The Agreement Provides the Manner in Which Claims of Employes Must be Presented to the Carrier; and the Claims Here Involved Were Not Properly Presented to the Carrier in Accordance with the Agreement.

The Agreement applicable to this case contains specific provisions setting forth the manner in which claims for compensation must be presented to the Carrier.

Rule 4-G-1 of the Agreement reads as follows:

"4-G-1. (a) Claims for money alleged to be due may be made only by a Yard Master or by a duly accredited representative on his behalf, and must be presented in writing, to the Superintendent within thirty (30) days from the date the Yard Master received his pay check for the pay period involved, except:

(1) Time off duty on account of furlough, sickness, disability or leave of absence, shall extend the time limit specified in section (a) of this rule (4-G-1) by the period of such time off duty.

(2) When a claim for money alleged to be due is based on an occurrence during a period when the Yard Master was out of active service on account of furlough, sickness, disability or leave of absence, the claim must be made, in writing, within thirty (30) days from the date the Yard Master resumes duty.

(b) A claim which is not made within the time limit specified in the foregoing section (a) of this rule (4-G-1), including Exceptions (1) and (2), shall not be entertained or allowed.

(c) When a claim has been presented in accordance with the foregoing section (a) of this rule (4-G-1) and is not allowed, the Yard Master shall be notified to that effect, in writing, within thirty (30) days from the date his claim was presented. When not so notified his claim will be allowed.

(d) When a claim is allowed the interested Yard Master and duly accredited representative shall be advised, in writing, the amount involved and the payroll on which the payment will be made.

(e) A claim denied in accordance with the foregoing section (c) of this rule (4-G-1) shall be considered invalid unless it is listed

for discussion by the Yard Master or duly accredited representative with the Superintendent within thirty (30) days after the date on which the claim was initially denied.

(f) Any adjustment growing out of claims covered by this rule (4-G-1) shall not exceed in amount the difference between the amount actually earned by the Yard Master and the amount he would have earned from the Company, if he had been properly dealt with under this Agreement."

Paragraph (a) of Rule 4-G-1, quoted above, provides that claims for money alleged to be due must be presented, in writing, by the Claimant or by a duly accredited representative on his behalf, to the Superintendent within thirty (30) days from the date the Yard Master received his pay check for the pay period involved, with certain exceptions not involved herein. Paragraph (b) provides that claims not made within the time limit provided shall not be entertained or allowed. Paragraph (c) requires the Carrier to deny such claim within thirty days from the date claim was presented; paragraph (e) provides that claims will be invalid unless listed for discussion by the Yard Master or by duly accredited representative within thirty days after the date the claim was initially denied.

As shown above in the Statement of Facts, Toledo Division Case No. 19, on which the present dispute is alleged to be based, involves claims by W. A. Ray, then first trick Yard Master at Lincoln Yard, and V. W. Smith, then relief Yard Master at Lincoln Yard, because they **were required to program work for crews on second trick.** The Carrier's files indicate that the first claims of this nature were presented by Yard Master Smith under date of August 31, 1942, covering claims of July 16, 17, 18, 26, 1942, and August 2, 23 and 30, 1942. Yard Master Ray first presented such claims on September 10, 1942, covering a number of specific dates between July 20 and September 9, 1942. Submitted as Exhibit "C" is a copy of the first claims made by these individuals, together with a copy of the Carrier's declinations.

These Claimants continued to present the claims and on June 18, 1943, the Train Master of the Carrier's Toledo Division, wrote the following memorandum to first trick Yard Master Ray:

"Confirming telephone conversation with you today, effective at once the Yard Master on first trick at Detroit will not issue instructions to the Clerk on second trick as to the supervision of crews and work on that trick."

The action of the Train Master in instructing the first trick Yard Master that he would not be required to issue instructions to the Clerk on the second trick did not result in the stoppage of the claims, since the Claimants contended that they were required to instruct second trick yard crews reporting for work on their trick. The Claimants continued to present claims of the nature set forth in Exhibit "C". On November 4, 1944, a discussion took place between the Vice Local Chairman, V. W. Smith, and the Superintendent of the Toledo Division.

Following this meeting the Superintendent advised the Vice Local Chairman in a letter dated November 16, 1944, that the first trick Yard Master at Lincoln Yard would issue instructions to second trick yard crews while the first trick Yard Master was on duty. Submitted as Exhibit "D" is a copy of the letter referred to.

As set forth in the Statement of Facts, the first claim for compensation presented by a Yard Master on the basis that persons not coming within the Scope of the Agreement were performing Yard Master's duties on second trick at Lincoln Yard was a letter from W. A. Ray, Yard Master, first trick, addressed to the Train Master and dated January 8, 1945, wherein it was stated that he was claiming four hours pay "account no Yard Master on second trick". A copy of this letter, together with the Carrier's memorandum denying the claims, are submitted as Exhibit "E".

Similar claims were presented by Yard Master Ray during subsequent months up to and including November, 1945.

It would appear, therefore, that the claim presented to your Honorable Board is based on the claims presented by Yard Master Ray covering the period between November, 1944 and November, 1945, and not upon the claims handled as Case No. 19.

If this assumption be correct, then it follows that these claims must be considered invalid since none of them were presented to the Superintendent as required by Rule 4-G-1 (e) of the applicable Agreement.

It is, therefore, respectfully submitted that since the claims of Yard Master Ray were not presented to the Superintendent as required by paragraph (e) of Rule 4-G-1, that in accordance with the rule they must now be considered "invalid". Furthermore, no other claims were presented by Yard Masters or by the Organization for compensation for the period in question, and accordingly the claims on behalf of the unnamed Yard Masters which the Organization is now attempting to present are also barred by Rule 4-G-1 (e).

The manner of presenting appeals from the decision of a Superintendent in connection with any controversial matter is set forth in Rule 6-B-1 of the Agreement, which rule reads as follows:

> "6-B-1. Controversial matters on which the duly accredited representative of the Organization signatory hereto and the Superintendent are unable to reach agreement, may be handled by the General Chairman of the Organization signatory hereto with the General Superintendent and the General Manager (Works Manager at Altoona Works).".

Since the instant claims have not been discussed with the Superintendent or with the Carrier's General Superintendent or General Manager they have not been handled with the Carrier as required by the Agreement and, consequently, are not properly before your Honorable Board.

The reference in the Deputy President's letter of February 18, 1948 to Toledo Division Case No. 19, would appear to be a device to have claims considered by your Honorable Board which have not been handled with the Carrier. As has been set forth above the only similarity between the instant claims and those covered by Toledo Division Case No. 19 is that they both involve Lincoln Yard.

In Case No. 19, the Claimants requested additional compensation because they were required to instruct and lay out work for second trick yard crews; the instant claim indicates that it is on account of "Yard Master duties being performed by employes outside the scope of the Yard Masters' Agreement, and failure to maintain continuous Yard Master supervision at that point".

Furthermore, it will be noted that the joint submission prepared by the General Chairman and the General Superintendent, in Toledo Division Case No. 19, is dated November 12, 1943, and the subject was discussed with the General Manager by the General Chairman, at meeting on January 26, 1944. Thus the joint submission in Case No. 19 and the meeting to discuss that dispute antedate by a year and by 10 months, respectively, the first date of claim set forth in the Organization's letter of February 18, 1948.

It must, therefore, be concluded that the instant claims were not handled with the Carrier in accordance with the express provisions of Rule 4-G-1 and are "invalid", and that the Carrier's position in this case is fully supported by the Agreement between the parties.

III. Your Honorable Board has Already Decided This Dispute in Award No. 272, and a Position of Assistant Yard Master Was Established on Second Trick, Lincoln Yard, as Provided Therein.

The claim now before your Honorable Board apparently is an attempt to now collect penalties in the dispute decided by Award No. 272, although such

claims have not been handled with the Carrier as required by the Agreement. No claim for compensation was made by the Organization in behalf of any Yard Master in the dispute handled under Award No. 272.

In the instant claim the contention is that because the Carrier did not establish a position of Assistant Yard Master prior to the date of Award No. 272, certain unnamed Claimants should be paid unspecified compensation.

Award No. 272 provided: "Claim sustained **as of this date.**" This language is so clear that it cannot be construed to mean anything other than the Carrier was directed to establish a position of Assistant Yard Master as of the date of the Award. A position of Assistant Yard Master was promptly established after receipt of the Award by the Carrier, in full compliance with the Award. The Employes are now endeavoring to obtain by means of another award by your Honorable Board compensation for Yard Masters because a position of Assistant Yard Master was not maintained at Lincoln Yard prior to November 2, 1945, despite the fact that the issue has already been settled by Award No. 272.

The Carrier, therefore, respectfully submits that since Award No. 272 decided that the Carrier should establish a position of Assistant Yard Master "as of this date", there is no basis for claim for compensation prior thereto, even if such claims had been properly handled as required by Rules 4-G-1 and 6-B-1 of the Agreement.

IV. Under the Railway Labor Act, the National Railroad Adjustment Board, Fourth Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Fourth Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that the claims involved have not been handled as required by the Agreement and are, therefore, invalid.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employes in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employes, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same. Oral hearing is desired.

All data contained herein have not been presented to the Employes involved or to their representatives, since the claims involved have not been discussed with the Carrier.

OPINION OF BOARD: The claim in this proceeding is made not only on behalf of "unassigned yardmasters" at Lincoln Yard, Detroit, but also, for the same alleged violation, on behalf of "regularly assigned yardmasters" at this

point. Even if the carrier were found to be liable to make compensation in the circumstances of this proceeding, it is difficult to see on what basis its liability would extend to both of these classes of employes, either one of which, but not both at the same time, could have performed the work alleged to have been performed by employes outside the scope of the Yardmasters' Agreement. In point of fact, however, the evidence of record discloses two controlling considerations for denying the claim altogether.

(1) It appears that no claim whatever was made on the property on behalf of "unassigned yardmasters," and that the claim on behalf of "regularly assigned yardmasters," which was initiated by the petitioner on January 8, 1945, was not handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes, as required by the Railway Labor Act, as amended, and as specified in Rules 4-G-1 and 6-B-1 of the governing agreement between the parties. The petitioner has sought to identify the instant case with Toledo Division Case No. 19, which had been progressed in the usual manner up to and including the chief operating officer of the carrier; but a mere reading of the claims in the two cases is sufficient to establish conclusively that the claim involved in the instant case is separate and distinct from that involved in Toledo Division Case No. 19. This failure to handle the claim on the property in the usual manner constitutes a major procedural defect.

(2) The substance of the dispute upon which the present claim to compensation is based was disposed of in Award No. 272 of this Division. The claim in that proceeding, identified as Toledo Division Case No. 15, involved a request of the organization "that position of Assistant Yardmaster be restored on second trick at Lincoln Yard, Detroit, Michigan." The finding of this Division was that "the yard clerk, second trick, Lincoln Yard, Detroit, Michigan, is performing the services of an assistant yardmaster and, accordingly, should be classified as such under the agreement between the parties effective the date hereof"; and the award rendered on October 12, 1945, pursuant to this finding, sustained the claim "as of this date." In compliance with this award, a position of Assistant Yardmaster was established on the second trick of Lincoln Yard, effective November 2, 1945. The violation having been decreed and remedial action having been secured through Award No. 272, the petitioner now seeks compensation for the period during which the yard clerk performed the services of an Assistant Yardmaster. The phrases "effective the date hereof" and "as of this date" used in the finding and award may themselves have been intended to foreclose any monetary claim for the period preceding the establishment of the position of Assistant Yardmaster; but entirely apart from this language, Award No. 272, in connection with which no monetary claim was made, must be held to have concluded the entire dispute. Such splitting up of controversies as is here involved is neither fair to the carrier nor conducive to the effective performance of the Board's work. In Award No. 1215, the Third Division said: "There is neither reason nor justice in a rule which would permit an employe to divide a question into as many parts as may suit his convenience, without regard to the inconvenience thereby occasioned his adversary"; and in Award No. 6334, the First Division said: "The question is whether the same controversy may be brought to this Division piecemeal, a practice which would seem not to be contemplated by the provision of Section 3 (m) of the Railway Labor Act, and which is neither fair to the parties nor proper practice if the Division is to function efficiently. . . . This Division hereby definitely adopts the rule that controversies are not divisible and may not be brought to it separately as protest and as claim for compensation." These pronouncements approve themselves to this Division and are clearly applicable to the instant proceeding.

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

The carrier and the 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 of record provides no valid basis for upholding the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: R. B. Parkhurst
Secretary

Dated at Chicago, Illinois, this 30th day of June, 1948.