

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**FOURTH DIVISION**

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**PARTIES TO DISPUTE:**

**NORTHERN PACIFIC TERMINAL COMPANY OF OREGON**

**BROTHERHOOD OF RAILROAD TRAINMEN**

**STATEMENT OF CLAIM:** (a) Claim of The Northern Pacific Terminal Company of Oregon that the use of unassigned Yardmaster T. J. Allen, Jr., having seniority date of January 3, 1945 as yardmaster, to fill vacancy on a yardmaster position having hours 7:00 A. M. to 3:00 P. M. on April 2, 3, and 4, 1945, caused by the incumbent of said position, B. F. Worden, being absent therefrom on those dates, was not in violation of, but in compliance with, the Yardmasters' Agreement in effect on April 2, 3, and 4, 1945; and

(b) Claim of The Northern Pacific Terminal Company of Oregon that Yardman George W. Sandy, who, although senior to Allen as yardman, did not have yardmaster's seniority under, nor a date as such established according to, the Yardmasters' Agreement in effect on April 2, 3, and 4, 1945, has neither a valid nor a proper claim for time as yardmaster as submitted by him based upon not being used instead of unassigned Yardmaster Allen, to fill Worden's vacancy as yardmaster on April 2, 3, and 4, 1945.

**CARRIER'S STATEMENT OF FACTS:** The Northern Pacific Terminal Company of Oregon, the petitioning carrier in this docket (hereinafter referred to as the Carrier), respectfully presents its initial *ex parte* submission in connection with the above claim:

1. Submitted is copy of Agreement between the Carrier and its Yardmasters represented by the Railroad Yardmasters of America, bearing effective date of December 1, 1944, which will be identified as Carrier's Exhibit No. 1. (See pages 26 to 30 this Award; Employees' Exhibit No. 7.) This Agreement was in effect on April 2, 3, and 4, 1945, the dates involved in the instant claim.

2. By virtue of Rule 2(e) of the Yardmasters' Agreement effective December 1, 1944, (Carrier's Exhibit No. 1) reading:

"The names and seniority dates of Yardmasters appearing on the current accepted seniority roster as of the effective date of this agreement, shall be regarded as confirmed by the acceptance of this agreement."

the following constituted the accepted seniority roster of yardmasters as of the effective date of said agreement:

Name	Date
1. Verdi Berg .....	July 1, 1909
2. John A. Humble .....	September 16, 1921
3. Thomas E. Furlong .....	September 9, 1922
4. Ben F. Worden .....	September 5, 1935
5. Sidney A. White .....	September 13, 1935
6. Ercill W. Reece .....	September 26, 1935
7. Charles E. Halbrook .....	October 1, 1935
8. Frank W. Long .....	October 1, 1935
9. Albert J. Jack .....	September 1, 1937
10. Elwood B. Estes .....	August 1, 1941
11. Charles R. Foss .....	August 1, 1941
12. Robert W. Proctor .....	August 1, 1941
13. Frank M. Rinker .....	May 20, 1942
14. Clossen J. Cudaback .....	May 25, 1942
15. William F. Lord .....	June 1, 1942
16. Jack H. Jones .....	June 6, 1942
17. Walter J. Bitz .....	June 6, 1942
18. Eugene B. Redfield .....	November 11, 1942
19. Leander D. Sackett .....	January 19, 1943
20. Oscar W. Soder .....	January 20, 1943

Subsequent to December 1, 1944, however, the name of Yardman T. J. Allen, Jr. was placed on this roster as Number 21 with a seniority date of January 3, 1945; such seniority date as yardmaster having been established in accordance with the provisions of Rule 2(b) of the Yardmasters' Agreement effective December 1, 1944, (Carrier's Exhibit No. 1) reading:

"To establish seniority rights or a seniority date under this agreement, the candidate selected must serve a test period of 60 shifts and if permitted to complete the test period, shall establish a seniority date as of the first shift worked. Where a candidate is disapproved during the test period, he will be so advised in writing. Where two or more men are selected on the same date, their relative standing on the roster will be determined by their length of continuous service with the carrier."

3. On April 2, 3, and 4, 1945, regularly assigned Yardmaster B. F. Worden was absent from his position as yardmaster (hours 7:00 A. M. to 3:00 P. M.) at the Carrier's Depot Yard. This vacancy was filled on those dates by Yardmaster T. J. Allen, Jr. who was the senior unassigned yardmaster available for this work.

4. Claims were made by Yardman G. W. Sandy (senior to Allen as a yardman and who worked as an engine foreman on April 2, 3, and 4, 1945) for time allegedly lost as yardmaster account not being used instead of unassigned Yardmaster Allen to fill Worden's vacancy as yardmaster on the dates involved. Due to the fact that Sandy's name was not on the yardmasters' seniority roster established according to the provisions of the Yardmasters' Agreement effective December 1, 1944, (Carrier's Exhibit No. 1), the claims thus made by him were declined by the General Yardmaster on April 8, 1945. By letter dated April 21, 1945, Carrier's Manager again declined the claims to Local Chairman Kerr, B of R. T.

5. In letter dated December 8, 1945, the General Chairman of the B. of R. T. appealed Sandy's claims to the Manager, for time as yardmaster covering numerous dates, including April 2, 3, and 4, 1945 involved in this Docket. This letter, together with the General Chairman's letter of May 23, 1945 mentioned therein are submitted as Carrier's Exhibit No. 2, which reads as follows:

## CARRIER'S EXHIBIT NO. 2

C. W. Stevens, General Chairman  
306 Park Building  
Portland 5, Oregon

General Grievance Committee

BROTHERHOOD OF RAILROAD TRAINMEN

Union Pacific Railroad (Northwestern District)

and

Northern Pacific Terminal Co. of Oregon

May 23, 1945

FILE: NPT-2928

" 2929  
" 2930  
" 2931  
" 2956

Mr. H. D. Mudgett, Manager  
N.P.T. Co. of Ore.,  
Union Station Bldg.,  
Portland, Ore.

Dear Sir:

Submitting claims of Yardman G. W. Sandy for a day's pay in various grades of yardmaster positions' period in February and March, 1945, as set forth below. Claims based on 3-way agreement of June 5, 1945.

On February 2, 1945 Mr. Sandy was working regularly as a yardman on the first shift; was fully rested and available for duty and qualified to act as yardmaster. The general yardmaster laid off, and Mr. White, the assistant general yardmaster filled the position, thus creating a vacancy that should have been filled by Mr. Sandy but instead was filled by Mr. White the assistant general yardmaster. Inasmuch as Mr. Sandy was not then called to fill the assistant general yardmaster's place, Claim is made for earnings equivalent to those paid to the man who filled the assistant general yardmaster's place.

From February 18 to February 22, 1945, both dates inclusive, a relief yardmaster was needed on a first shift and Mr. Tom Allen, Jr., regularly assigned yardman on the second shift was used in preference to Mr. Sandy who was the senior assigned available yardman on the shift competent to act as engine foreman, and claim is that Mr. Sandy should be paid an amount equal to what was paid to Mr. Allen on dates in question.

On March 3, 4, 6, 7 and 10, 1945, Mr. Sandy was a regularly assigned yardman on the first shift duly qualified to act as yardmaster at times when Mr. Tom Allen, Jr., a regular assigned yardman on the second shift was used as relief yardmaster and Mr. Sandy claims earnings equivalent to those paid to Allen on dates in question.

On February 27 and 28, and March 1, Mr. Sandy was the senior yardman on the first shift competent to act as yardmaster at a time when Mr. Tom Allen, Jr., a regular assigned yardman on the second shift was used as a relief yardmaster and Mr. Sandy claims earnings equivalent to those paid to Mr. Allen on dates in question.

These claims are based on the 3-way agreement of June 5, 1931.

POSITION OF COMMITTEE: Please refer to the agreement of June 5, 1931, between the management, the committee representing the yardmen and a committee representing the yardmasters, which agreement we will designate as Exhibit No. 1, in this case, therefore, by incorporation is made a part hereof. Please refer also to the agreement between the Management

and the Yardmasters of America, which was signed December 19, 1944 and made effective December 1, 1944, and we will designate it as our Exhibit No. 2 in this case.

It is noted that it is now the management's position that the yardmen's schedule signed March 16, 1943, supersedes and makes null and void the 3-way agreement of June 5, 1931. It is our contention that the re-issue or reprint of the yardmen's schedule in March, 1943, did not cancel the agreement between the yardmen, yardmasters and your company as made effective June 1, 1931, for many reasons, some of which are as follows:

(1) The yardmen's schedule is an exclusive agreement between the company and its yardmen, therefore, the "three way agreement" involving another organization with a separate jurisdiction would not go into the book, or become a part thereof, except by surrender of jurisdiction or at least by permission of such other organization.

(2) No revision of any rule in the yardmen's agreement that in any way turns on the agreement of June 5, 1931, was affected in the revision and reissue of the schedule.

(3) The carrier served no notice of a desire to abolish or terminate the 3-way agreement, in the manner as prescribed by federal law, nor did it even suggest it in the informal exchange of writings in the way of "proposed" changes as were adopted by our committee and you, the idea of both parties being that no notices be served, and that whatever changes that were agreed to would be mutual, and where agreement could not be had on any rule, there would be no change.

The record shows that the General Chairman on the property for the Yardmasters of America, on February 2, 1944,—ten and a half months after the effective date of the new B. of R. T. agreement—directed a letter jointly to the company manager and the chairman of the Yardmen's Committee, stating: "This is to advise you that the Railroad Yardmasters of America consider the so-called three-way agreement terminated and without force." The undersigned answered by a letter to General Chairman A. J. Jack, dated February 3, 1944, with a copy to you, disputing his contention in every respect. The carrier's answer was not furnished to us, but it is quite clear they did not agree with Mr. Jack, otherwise Mr. Jack would not have taken the case to the Adjustment Board. The record also shows that subsequent to Mr. Jack's notice and over a year after the effective date of the revised B. of R. T. agreement, the carrier's manager arranged a meeting in his office between himself and Mr. Burns of St. Paul, for the company and A. J. Jack and the undersigned for the employees, all for the purpose of arriving at a satisfactory substitute for the three-way agreement. At that meeting the carrier representatives certainly did not contend that the three-way agreement was abrogated by the yardmen's schedule revision. Upon the contrary, **THEY FRANKLY TOLD MR. JACK THAT IT IS EFFECTIVE.**

Then Mr. Jack took his case to the Adjustment Board and neither he nor the carrier considered it necessary, at least as a matter of courtesy, particularly that we were the people that were a party to the controversy—to even let us know about it, until the Board, after hearing, had dismissed the case. Mr. Jack in the last paragraph of his "statement of fact" said:

"Carrier refused to comply with Rule 10 (f) stating: 'We cannot issue such a roster, inasmuch as we consider the Three Way Agreement of June 5, 1931, still in effect, which agreement provides for one seniority roster for Yardmasters and Yardmen.' . . ."

Nevertheless, the Board dismissed the case.

Our conclusions are, that the carrier, in view of the record and practices since March 16, 1943, has now decided to repudiate the agreement without complying with the federal law that governs, and in spite of the difficulty in maintaining amicable relations during these trying war years.

The agreement in question was not available to us until it came from you January 3, 1945 and we regret that we were not permitted to make our

position clear to you on those sections of the agreement that clearly modify or abridge agreements between your Company and this Committee, before you signed it.

The following sections are clearly in violation of your agreement with the Brotherhood of Railroad Trainmen covering yardmen employees of the Company:

Rule 2, (b), violates the first provision of the agreement of June 5, 1931, which reads as follows:

"One seniority roster will be maintained governing Yardmen, Yardmasters, Assistant Yardmasters and Relief Yardmasters."

This section also violates the provisions of Article 16 (D) and (E) of the Yardmen's Agreement, which reads as follows:

"(D) The rights to preference of work and promotion will be governed by seniority in service, everything being equal, the yardman longest in service will be given preference."

"(E) In the appointment of Yardmasters and Assistant Yardmasters the oldest qualified yardman will be given consideration."

Also the second provision of the agreement of June 5, 1931, reading as follows:

"In the appointment of Yardmasters and Assistant Yardmasters, fitness and ability being sufficient the oldest qualified yardman will be given preference."

As to the effect of your agreement with the yardmasters effective December 1, 1944, we beg to advise as follows:

Except for the joint rule quoted just above, it is the contention of this Committee that rules governing the appointment of regular yardmasters lie exclusively in the agreement between the Yardmen's Committee and the Management; and also as yardmasters' seniority was established for all yardmen by the agreement of June 5, 1931, such rights cannot be destroyed by an agreement to the contrary with another organization to which the Brotherhood is not a party, nor can the carrier legally make another rule with an organization having no jurisdiction that adds more exacting conditions in the matter of promotion to yardmaster, than is provided for in the agreement with the organization that does have jurisdiction in those matters.

Sections (c), (d) and (e), Rule 2, Page 1, of the alleged agreement between the Company and Yardmasters of America, are also in opposition to the agreement of June 5, 1931, therefore, are of no force or effect. Sections (c) (d) and (e) taken together with Section (b), provide for a separate list of yardmasters with dates in accordance with the "60-day provision" for those appointed thereafter. This of course, would if legal and proper, take away all yardmaster rights of yardmen senior as yardmen over those so shown on the list, as conferred and provided for by the agreement of June 5, 1931, between the Company and the committees representing both the yardmasters and the yardmen, and such agreement was fully interpreted and was held as valid and effective by Division One, National Railroad Adjustment Board, in the Halbrook Case, Award No. 4150, decided September 15, 1939. To attempt to make agreements purporting to set aside acquired seniority rights does violence not only to the schedule agreement and the Railway Labor Act, but also to laws that have held seniority to be a property right.

Section (g), Rule 2, of the alleged agreement purports to assume jurisdiction over yardmen in the matter of retaining seniority as such, and describes conditions under which they may exercise seniority as yardmen, therefore, is outside the scope of any yardmaster agreement and a violation of the jurisdictional rights of the Yardmen's Committee. Accordingly, we submit, the carrier violated the Railroad Labor Act by making any such agreement prior to the time the Board of Mediation shall formally certify the Yardmasters of America as the bargaining agency for the Company's yardmen.

Section (h), Rule 2, of the purported agreement is in direct violation of the third provision of the three-way agreement of June 5, 1931, which reads as follows:

"For relief work the oldest qualified available man on each shift shall be used."

We now have copy of your letter of December 29, 1944, to W. F. Lord, General Yardmaster, instructing him to post a bulletin for assignment of three extra yardmasters to do all extra work regardless of the shift, and this too is in violation of the third provision of the agreement dated June 5, 1931, therefore, violates the established rights of yardmen without conference and agreement with this Committee. You were so notified by our letter of January 5, 1945.

Section (e), Rule 3, of the alleged agreement is intended to supersede the third paragraph of the agreement of June 5, 1931, and accordingly, violates the rights of yardmen.

Section (b) of Article 4, likewise violates Section 3 of the agreement of June 5, 1931, quoted above.

Rule 6, Adjustment Procedure, your agreement with the yardmasters, does not concern yardmen, except that it limits representation at investigations to a yardmaster, while the Yardmen's Agreement permits the accused to have a yardman of his choice as a representative. Now if only yardmasters' seniority is involved in an investigation, we have no objection to the rule, but please accept this as notice that if the yardmaster's rights as a yardman are involved, this Committee holds that the yardmen's investigation rule must be strictly complied with.

Finally, Rule 13, Change in Agreement, of the carrier's agreement with the yardmasters, that part which purports to set aside or supersede the agreement of June 5, 1931, without conference and agreement with this committee, is, we hold, illegal, improper and is in violation of the Railway Labor Act.

In addition to the foregoing, we wish to call your attention to our position as set forth in conference and previous letters to you, with respect to any agreement that affects the acquired rights of our yardmen, such as the following:

You addressed a letter dated November 18th, 1943, to the undersigned, your file E-14-7 to which you attached a copy of the agreement of December 18, 1937 of the Railroad Yardmasters of America and we replied under date of December 6th, 1943, setting forth our position which was briefly that those portions of the 1937 agreement that were inconsistent with the three-way agreement, were of no force or effect. Under date of February 2, 1944, Mr. A. J. Jack, Chairman of Railway Yardmasters of America, directed a joint letter to yourself and the undersigned in which he announced that his organization considered the so-called three-way agreement "terminated and without force". In that letter he also advised the Manager to comply with Rule 10, Paragraph (F) of the Yardmasters' Agreement which would require a separate seniority roster for yardmasters. The undersigned replied to Mr. Jack, by letter dated February 3, 1944, with a copy to you. In that letter the position of the Yardmen's Committee was clearly set forth, and it is our understanding that the Management concurred in that letter to the extent of advising Mr. Jack that they regarded the three-way agreement as still in effect. As a result of this matter, Mr. Jack took his case to the Fourth Division of the National Railroad Adjustment Board where it was docketed as No. 251. This claim was a request that the carrier comply with Rule 10, paragraph (f) of the agreement effective December 18, 1937. This case was heard at Chicago, Illinois, on the 20th of September, 1944, and was dismissed as a so-called "moot case". It is shown in the Board's records as Award No. 248. On October 21, 1944, the Manager of the Terminal Company directed a letter to the undersigned asking for our interpretation of Sections (D) and (E) of Article 16 of the current yardmen's Agreement inasmuch as they affected the seniority of yardmen appointed to yardmasters' positions and likewise setting forth our position with respect

to the three-way agreement and the Management never did send a reply in any way disputing our said interpretation.

Under date of October 25, 1944, you directed a letter to the Local Chairman of the Yardmen's Committee in answer to a submission of claims of Yardmen Carl J. Diorio and B. B. Smith, in which you stated as an opinion that the three-way agreement of 1931 is no longer in effect and would have no bearing on any claims based upon it. On October 30, 1944, the undersigned directed a letter to you taking issue with the opinion expressed to the Local Chairman and setting forth facts and arguments in support of our position. On November 2, 1944, Local Chairman Kerr and the undersigned met you in your office and discussed those very matters with you. At that meeting you handed the undersigned a so-called seniority list of yardmasters showing them as of the date they were appointed as such, in derogation of the three-way agreement and we called that to your attention. On November 3, 1944, we confirmed our position set forth in conference in another letter to you. You replied under date of November 30, 1944, and stated that "This matter is being given very careful consideration and you will be advised in due course the result thereof."

We, of course, certainly expected that we would be consulted before any kind of an agreement would be signed with the yardmaster that affected the rights of yardmen, all of which had been the subject of all this exchange of letters and conferences.

As was previously stated, we had no knowledge of the agreement signed on December 19, 1944, made effective December 1, 1944, therefore, we can only conclude, and we think the record thoroughly justifies that conclusion, that the entire purpose of proceeding in that manner was to gain a technical advantage for the purpose of voiding, if at all possible, any recourse for us under the provisions of the Railway Labor Act.

It is also our position that the Management's course in this matter is highly prejudicial to decent labor relations between it and its yardmen employees during these trying war times, particularly that the employees have and are abiding strictly by the war time regulations, while it seems definitely clear here the Management has resorted to tactics that not only violate the intents and purposes of the Railway Labor Act, but are also, we submit, liable to result in bringing about difficulties in the handling of yardmen personnel.

Please check into this matter and advise decision.

Yours truly,

(s) C. W. Stevens,  
General Chairman.

CWS/ms

C. W. Stevens, General Chairman  
306 Park Building  
Portland 5, Oregon

General Grievance Committee

BROTHERHOOD OF RAILROAD TRAINMEN  
Union Pacific Railroad (Northwestern District)

and

Northern Pacific Terminal Co. of Oregon

December 8, 1945  
FILE: NPT-3043

Mr. H. D. Mudgett, Manager  
N.P.T. Co. of Oregon  
Union Ry. Station Building  
Portland 9, Oregon

Dear Sir:

Submitting claim of Yardman-Yardmaster Geo. Sandy for time lost as Yardmaster on following dates when a Junior Yardman was used to protect

a yardmaster's vacancy under circumstances where claimant was Senior yardman and entitled to be used, pursuant to the 3-way agreement of June 5, 1931:

January 29, 1945.

February 2 to 12th, incl.; 16, 17—1945.

March 13 to 19, incl.; 31st—1945.

April 1 to 4th, incl.; 6 to 9th, incl.; 11, 13, 16, 17; 28 to 30, incl.—1945.

May 1, 2, 6, 11, 12, 27, 28, 30, 31—1945.

June 1 to 16th, incl.; 21 to 27, incl.—1945.

July 1st; 3 to 8th, incl.; 27 to 31st, incl.—1945.

August 1 to 4, incl.; 6 to 11th, incl.; 13 to 15th, incl.; 17 to 23rd, incl.; 26 to 30, incl.—1945.

September 1 to 5th, incl.; 12 to 14th, incl.; 17 to 24, incl.; 26 to 30th, incl.—1945.

October 1 to 20th, incl.; 22 to 31st, incl.—1945.

November 1 to 5th, incl.; 8 to 10th, incl.—1945.

POSITION OF COMMITTEE: These claims are analagous to the claims of Mr. Sandy, covering several dates in February and March, 1945, submitted to you May 23, 1945, and the position taken therein is the position upon which we support the instant claims.

Please check into the matter and advise decision.

Yours truly,

(s) C. W. Stevens,  
General Chairman.

CWS/hm

(Dictated but not reviewed.)

6. Sandy's claims referred to in paragraphs 4 and 5 were again declined by the Carrier's Manager by a letter dated January 4, 1946. This letter, together with the Manager's letter of March 27, 1945 mentioned therein, are submitted as Carrier's Exhibit No. 3, which reads as follows:

#### CARRIER'S EXHIBIT NO. 3

March 27, 1945  
File E-14-7

Mr. C. W. Stevens, General Chairman  
Brotherhood of Railroad Trainmen  
306 Park Building  
Portland, Oregon

Dear Sir:

This is in reply to your letters of October 30 and November 3, 1944, and of January 3, 1945. Very careful consideration has been given to the contents of all three, and particularly to the serious charges in that of January 3, 1945.

It is noted that you object to some of the Rules of the new Yardmasters' Agreement which was signed December 19, 1944, retroactive to December 1, 1944, and base your objections upon your opinion that the so-called 3-party Agreement of June 5, 1931 is still in effect. Having again carefully reconsidered this whole matter, we are satisfied that the three-party agreement is no longer in effect. Our main reasons for this conclusion are:

1. The three-party agreement was made prior to the enactment of the new Railway Labor Act of 1934, which expressly provided that the majority of any class or craft of employes shall have the right to determine who shall be the representative of such class or craft for collective bargaining purposes, and required the carriers to deal with the representatives so selected. These statutory provisions were expressly made "a part of the contract of employment between the carrier and each employe" and were declared to be "binding upon the parties regardless of any other express or implied agreements between them". Pursuant to the 1934 Act, the yardmasters were



certified to be a separate craft or class for collective bargaining purposes, and thereupon the Company became legally bound to deal with the accredited representatives of the yardmasters as a separate class.

2. On August 29, 1936, Mediator Eugene C. Thompson of the National Mediation Board officially designated the Railroad Yardmasters of America as the representatives of the Yardmasters employed by The Northern Pacific Terminal Company of Oregon for collective bargaining purposes under the terms of the Railway Labor Act. The National Mediation Board is the agency of the United States Government vested with the necessary authority to so designate, and we should all bear in mind that only eight men were certified by Mediator Thompson as Yardmasters eligible to vote on the question of representation.

3. As a result of this National Mediation Board certification, and therefore in conformity with the Railway Labor Act, an agreement was negotiated between the Northern Pacific Terminal Company and the Railroad Yardmasters of America effective December 18, 1937, which in my opinion superseded the Agreement of September 1, 1923 and the portions of the Agreement of June 5, 1931 governing Yardmasters.

4. On February 10, 1938, an election was held under the auspices of Mediator P. D. Harvey for the purpose of determining who might properly represent the Yardmasters employed by The Northern Pacific Terminal Company of Oregon, in accordance with Section 2, ninth, of the Railway Labor Act. This election resulted in a five to four decision in favor of the Railroad Yardmasters of America.

5. On September 22, 1938, I wrote to you as follows:

"The National Mediation Board certified that the Railway Yardmasters of America represents Yardmasters of the Northern Pacific Terminal Company of Oregon. Following that certification an agreement effective December 18, 1937, was entered into between The Northern Pacific Terminal Company of Oregon and the Railroad Yardmasters of America covering rates of pay and working conditions of Yardmasters of The Northern Pacific Terminal Company of Oregon, a copy of which is attached. In conformity with that agreement a seniority roster of Yardmasters was prepared.

"The agreement with the Railroad Yardmasters of America, which organization was designated by the National Mediation Board in conformity with the provisions of the Railway Labor Act as the representative of Yardmasters of The Northern Pacific Terminal Company of Oregon, supersedes the provisions of Mr. Palmer's letter of June 5, 1931, addressed to Messrs. Jack, Bell, and Kirkpatrick.

"After the effective date of the Yardmasters' Agreement above referred to, Yardmasters of this company are governed by the provisions of that agreement and yardmen of this company are governed by provisions of The Northern Pacific Terminal Company of Oregon Schedule for Yardmen which was effective March 1, 1928."

6. On February 28, 1941 the National Mediation Board reported that John F. Murray, Mediator, had conducted a secret ballot to determine the employees' choice as to who might represent Yardmasters employed by The Northern Pacific Terminal Company, and that the Brotherhood of Railroad Trainmen was designated as the representative of the Terminal Company Yardmasters by a ten to nothing vote. For the first time, the Brotherhood of Railroad Trainmen represented both the Yardmasters and Yardmen. However, the Yardmasters' Agreement of December 18, 1937 still remained in effect and was never superseded, until December 1, 1944.

7. On March 16, 1943 an Agreement between the Northern Pacific Terminal Company of Oregon and its Yardmen was signed and became effective. Article 1 of said Agreement reads as follows:

"Effective March 16, 1943, the following articles constitute in their entirety the agreement between the Northern Pacific Terminal Company of Oregon and its yardmen. **This agreement supersedes all previous schedules and rules governing rates of pay and working conditions of yardmen** and shall remain in effect until thirty (30) days' notice in writing shall have been given by either party to the other of a desire to change or terminate the same or any part thereof.

"It is understood and agreed that this agreement is superseded by and subordinate to any subsequent municipal, state or federal legislation." (Emphasis ours.)

8. Neither the agreement of December 18, 1937, with the yardmasters, nor the agreement of March 16, 1943, with the yardmen, made any provision for continuing the old three-party agreement in effect. On the contrary, each of these new separate agreements was complete in itself, and neither was consistent with the continued existence of the three-party agreement. Each of the new separate agreements was made in conformity with the present Railway Labor Act and necessarily superseded all prior agreements.

In several other respects the yardmen themselves have taken action which seems to me inconsistent with the continued existence of the three-party agreement.

On February 24, 1941, you signed the following document which appeared below the Yardmasters' seniority roster as of February 20, 1941, which contained 10 names:

**"THE NORTHERN PACIFIC TERMINAL COMPANY  
YARDMASTER'S SENIORITY ROSTER**

February 20, 1941

Verdi Berg .....	Yardmaster
F. S. Gollings .....	Yardmaster
J. A. Rannie .....	Yardmaster
T. E. Furlong .....	Asst. Yardmaster
B. F. Worden .....	Asst. Yardmaster
S. A. White .....	Asst. Yardmaster
E. W. Reece .....	Asst. General Yardmaster
F. W. Long .....	Asst. Yardmaster
C. E. Halbrook .....	Asst. Yardmaster
A. J. Jack .....	Asst. Yardmaster

Case No. R-734, Representation dispute among Assistant General Yardmasters, Yardmasters and Assistant Yardmasters, Employees of The Northern Pacific Terminal Company of Oregon.

Portland, Ore., February 24, 1941.

We the undersigned parties to representation dispute among yardmasters, employees of The Northern Pacific Terminal Company of Oregon have inspected the above list of eligible voters to be used in conducting an election by the National Mediation Board in its case, file R-734, and hereby agree to said list. It is agreed that changes in the eligible list of voters as referred to herein will be made only to correct error as provided in the rules governing the election.

For Railroad Yardmasters of  
America

For Brotherhood of Railroad  
Trainmen

Signed by F. W. DeKay

Signed by C. W. Stevens"

In addition to the above, we have the following signed by you:

"ATTEST:

We, the party observers, present at the counting and tabulation of the votes, hereby certify that the election reported by the

Mediator above was fairly conducted and the secrecy of the ballot was kept inviolate, and that the tabulation of the votes is accurate and complete.

Signed at Portland, Ore., this 25th day of Feb. 1941.

**F. W. DeKay**

Party Observer, R.Y. of A.

**C. W. Stevens**

Party Observer, B.R.T."

With every opportunity before you to insist upon all Yardmen being classed as Yardmasters at the first and succeeding elections, you chose to agree to the list of men actually working as Yardmasters as being those holding Yardmaster seniority and therefore eligible to vote. Please bear in mind that the Terminal Company expressed no opinions of any kind as to who was a Yardmaster when these elections took place. The National Mediation Board and the labor organizations involved, including your own, agreed to the names of those eligible to vote.

On Page 1 of your letter of January 3, 1945, you state that Rule 2, (b), of the new Yardmasters' Agreement violates the provisions of Article 16 (D) and (E) of the current Yardmen's Agreement. It is my opinion that there has been no such violation. Rule 2, (b), merely sets up a qualifying period for Yardmasters after one has been appointed under (E) of the Yardmen's Agreement. If a Yardman has qualified, as outlined in (E), he should have no fears of making good under 2, (b), of the Yardmasters' Agreement. On the other hand, if a Yardman appointed Yardmaster under (E) could not qualify as provided in 2, (b), then it is self-evident that he had not fulfilled the requirements of the word "qualified" in (E). At any rate, Rule 2, (b), applies to Yardmasters as such, and was drawn up, we believe, in conformity with the Railway Labor Act.

Rule 2, (g), of the new Yardmasters' Agreement was included only after a telephone conversation was held with you, and a letter written to you, on October 21, 1944, to which you replied on October 23, 1944, in part as follows:

"Referring to your inquiry of the 21st instant, wherein you ask for our understanding of Article 16, Sections (D) and (E) of the yardmen's agreement as it would apply in cases where yardmasters are reduced or a yardman gives up a yardmasters' job and in either event, goes back to a yardman's job.

"It is our understanding that Yardmen's rights acquired under Section (C) of Article 16, are not affected at all when appointed yardmaster under Section (E). Section (D) provides that avenue for promotion and all three sections show an intention to preserve acquired rights as yardmen during all the time a man is used as a company official or as a yardmaster."

These paragraphs deal solely and specifically with the current Yardmen's Agreement as preserving the seniority acquired "as Yardmen during all the time a man is used as a company official or as a Yardmaster". Said paragraphs make no mention of the June 5, 1931 Agreement, and are your own interpretation. It is true you added other paragraphs to your letter, dealing with the 3-party Agreement, but, to me, they in no way amend or revise the two paragraphs quoted above.

As to your reference in your January 3rd letter to the fact that "this Management never did send a reply in any way disputing our said interpretation", there was nothing to dispute in the two paragraphs quoted next above. However, you were told over the telephone, when you injected the 3-party Agreement into the conversation, that it was this Management's position that the Agreement of June 5, 1931 was no longer in effect. This was repeated to you in conference in my office November 2, 1944, as acknowledged in your letter to me of November 3, 1944. Inasmuch as you submitted the interpretation upon which Rule 2, (g), was founded, I see no reason why you should raise an objection now.

We regret that you have taken the attitude expressed in the next to the last paragraph of your January 3rd letter, for there has been no desire or intention on our part to violate the Railway Labor Act or decent labor relations. In fact, we do not feel that we have.

Yours truly,

Original Signed by H. D. Mudgett,  
Manager.

bc: FRB  
FNF  
ELK  
RFS  
RSM  
AAH

January 4, 1946  
File E-4-6

Mr. C. W. Stevens, General Chairman  
Brotherhood of Railroad Trainmen  
306 Park Building  
Portland 5, Oregon

Dear Sir:

This will acknowledge receipt of your letter of December 8th, your File NPT-3043, concerning the claim of Yardman G. W. Sandy for not being used as a yardmaster on the following dates, said claim being based upon the three-party agreement of June 5, 1931:

January 29, 1945.

February 2 to 12th, incl.; 16, 17—1945.

March 13 to 19, incl.; 31st—1945.

April 1 to 4th, incl.; 6 to 9th, incl.; 11, 13, 16, 17; 28 to 30, incl.—1945.

May 1, 2, 6, 11, 12, 27, 28, 30, 31—1945.

June 1 to 16th, incl.; 21 to 27, incl.—1945.

July 1st; 3 to 8th, incl.; 27 to 31st, incl.—1945.

August 1 to 4, incl.; 6 to 11th, incl.; 13 to 15th, incl.; 17 to 23rd, incl.; 26 to 30, incl.—1945.

September 1 to 5th, incl.; 12 to 14th, incl.; 17 to 24, incl.; 26 to 30th, incl.—1945.

October 1 to 20th, incl.; 22 to 31st, incl.—1945.

November 1 to 5th, incl.; 8 to 10th, incl.—1945.

It is noted that all of the instant claims have been submitted subsequent to the adoption of the Yardmasters' Agreement on the Terminal Company property on December 1, 1944. As we view the matter, Mr. Sandy has no yardmaster's seniority established in conformity with the current Yardmasters' Agreement, therefore, was not subject to call as a yardmaster on the dates in question. Mr. Sandy had an opportunity to bid in an extra yardmaster's assignment, but he preferred not to do so, continuing to submit his claims pursuant to the three-way agreement of June 5, 1931.

Our position relative to the three-party agreement was submitted to you in detail on March 27, 1945 in connection with a number of similar claims on other dates. Our position taken at that time remains unchanged, and the reasons set forth therein are the reasons we feel the instant claims are not well-founded.

Payment of these claims, therefore, is again declined.

Yours truly,

(Original Signed by) H. D. Mudgett,  
Manager.

Numerous conferences between the parties involved have been held at various times subsequent to January 4, 1946, the latest of which occurred on

August 3, 5, and 6, 1948. However, the parties involved were unable to dispose of the dispute in this Docket, hence its submission to this Division.

**POSITION OF CARRIER:** (a) Carrier maintains that the Yardmasters' Agreement of December 1, 1944, was controlling when Unassigned Yardmaster T. J. Allen, Jr., was used to fill the yardmaster vacancy created by the absence of B. F. Worden at Depot Yard, Portland, April 2, 3, and 4, 1945, and that the Carrier complied strictly with the terms of Rule 2(h) of said agreement by so using Mr. Allen on Worden's position from 7:00 A. M. to 3:00 P. M. on those dates.

Rule 2(h) of this Agreement reads as follows:

"The senior available unassigned Yardmaster will protect the extra yardmaster work. When a regular assignment as yardmaster is available, senior demoted Yardmaster will be required to take such regular assignment or forfeit his yardmaster's seniority rights."

Mr. Allen, whose name appears on Yardmasters' Seniority Roster as No. 21 with a date of January 3, 1945, was not regularly assigned as a yardmaster on April 2, 3, and 4, 1945. He was, however, the senior unassigned yardmaster available for the extra work of filling the 7:00 A. M. to 3:00 P. M. yardmaster vacancy involved on the dates in question, and was so used in conformity with the above-quoted applicable rule.

(b) On August 29, 1936, the National Mediation Board certified the Railroad Yardmasters of America as the authorized representative of the yardmasters employed by this Carrier for collective bargaining purposes under the amended Railway Labor Act. Pursuant thereto, the Carrier and its yardmasters represented by the Railroad Yardmasters of America negotiated an Agreement effective December 18, 1937, governing rates of pay and working conditions of Assistant General Yardmasters, Yardmasters, and Assistant Yardmasters, which is submitted and made a part hereof as Carrier's Exhibit No. 4, and which reads as follows:

#### (CARRIER'S EXHIBIT NO. 4)

#### AGREEMENT

between

THE NORTHERN PACIFIC TERMINAL COMPANY OF OREGON

and the

RAILROAD YARDMASTERS OF AMERICA

#### SCOPE

**RULE 1.** This agreement shall apply to the positions of Assistant General Yardmasters, Yardmasters, and Assistant Yardmasters in existence during the life of this agreement. It is mutually agreed that the positions of General Yardmaster does not come within the scope of this agreement and are in no way affected by the terms of this agreement.

#### HOURS OF SERVICE

**Rule 2.** Eight consecutive hours, exclusive time transferring in going on and off shifts, shall constitute a day's work for Assistant General Yardmasters, Yardmasters and Assistant Yardmasters.

#### RATES OF PAY

**Rule 3.** The monthly rates of pay for eight hours service per day for the calendar month shall be as follows:

Location	Title	Monthly Salary
Portland	Assistant General Yardmaster .....	\$313.20
"	Yardmaster .....	288.20
"	Assistant Yardmaster .....	258.20

#### CALCULATION OF RATES

**Rule 4.** Compensation for less than full month's service shall be determined by multiplying the regular monthly rate by twelve (12) and dividing the result by 341 to arrive at the daily rate.

## NEW POSITIONS

Rule 5. Salaries of new positions shall be in conformity with salaries for positions of similar kind or class at the point established.

## TEMPORARY VACANCIES

Rule 6. Assistant General Yardmasters, Yardmasters or Assistant Yardmasters taken from their assignments to perform temporary service in lower rated positions shall not have their rates reduced and when temporary or permanently assigned to higher rated positions they will receive the higher rates while occupying such positions.

## REST DAYS

Rule 7. Assistant General Yardmasters, Yardmasters, and Assistant Yardmasters who are regularly assigned will be granted two (2) rest days per month without loss of pay, to be arranged between them and their superior officers.

## VACATIONS

Rule 8. Assistant General Yardmasters, Yardmasters and Assistant Yardmasters who have been continuously in service one year or more in such positions will be allowed two (2) weeks vacation with pay per annum.

Rule 9. Assistant General Yardmasters, Yardmasters or Assistant Yardmasters will not be required to bleed cars or couple up air where car men are employed.

## SENIORITY

Rule 10. (a) Seniority of Assistant General Yardmasters, Yardmasters and Assistant Yardmasters shall date from date of regular assignment to such positions and will be restricted to the terminal at which employed.

(b) Promotions will be based on fitness, ability and seniority: The Management to be the judge.

(c) Fitness and ability being equal, the oldest yardmaster or assistant yardmaster in a point of seniority will be given preference as to assignments.

(d) Assistant General Yardmasters, Yardmasters or Assistant Yardmasters promoted to official positions with the Terminal Company, or granted leaves of absence in connection with committee work, will retain and accumulate seniority under this Agreement.

(e) Assistant General Yardmasters, Yardmasters or Assistant Yardmasters laid off in deduction in force will retain seniority and will be used for extra or relief work when available.

(f) A Correct seniority list shall be maintained in the General Yardmaster's or Manager's office, available to all employees covered by this Agreement.

## ADJUSTMENT PROCEDURE

Rule 11. Any Assistant General Yardmaster, Yardmaster or Assistant Yardmaster who feels he has been unjustly treated will, provided written request is presented to his immediate superior within five (5) days of the date of advice of such alleged unjust treatment, be accorded a hearing and the right of appeal to his superior officers up to and including the highest officer designated to hear such cases.

## DATE EFFECTIVE AND CHANGES

Rule 12. This Agreement shall be effective as of Dec. 18th, 1937, and shall continue in effect subject to thirty (30) days notice from either party of desire to revise or terminate the same or any part thereof.

FOR THE RAILROAD YARD-  
MASTERS OF AMERICA

By: Sidney A. White  
General Chairman  
Frank W. Long

FOR THE NORTHERN PACIFIC  
TERMINAL COMPANY OF OREGON

By: H. D. Mudgett  
Manager

APPROVED: E. L. King

Rule 10(a) of this Agreement sets forth the conditions under which a yardmaster seniority date could then be established:

"Seniority of Assistant General Yardmasters, Yardmasters, and Assistant Yardmasters shall date from date of regular assignment to such positions and will be restricted to the Terminal at which employed."

Yardman George W. Sandy, however, was never regularly assigned to a position of Assistant General Yardmaster, Yardmaster, or Assistant Yardmaster during the life of the December 18, 1937 Yardmasters' Agreement; therefore, had never established seniority as a yardmaster under that Agreement.

When the December 1, 1944 Yardmasters' Agreement superseded the December 18, 1937 Yardmasters' Agreement, Rule 2(b) of the new Agreement stipulated that a test period of 60 shifts as yardmaster must be completed before the candidate selected could establish seniority rights or a seniority date as a yardmaster. Mr. Sandy, among others (including Allen, Jr.), was selected as a yardmaster candidate, and began his 60-day test period on or about January 5, 1945, as required by the agreement rule. However, it soon became evident that he did not intend to take his turn in performing extra yardmaster work, by reason of the fact that he refused to be held off his regular assignment as engine foreman on the first shift for extra yardmaster work on later shifts. In other words, he refused extra yardmaster work except on the first shift. The Railroad Yardmasters of America and the Carrier, parties to the December 1, 1944 Yardmasters' Agreement, were in accord in deciding that Sandy was not complying with Rule 2(b) of said Agreement; therefore, Mr. Sandy was disapproved during his test period as a yardmaster candidate, by the General Yardmaster in letter dated February 3, 1945.

Inasmuch as he failed to establish seniority rights and a seniority date as a yardmaster under Rule 2(b) of the effective Agreement by reason of his own actions and conduct, and T. J. Allen, Jr. did establish yardmaster's seniority under Rule 2(b) and was an unassigned yardmaster when used on Worden's vacancy on April 2, 3, and 4, 1945, Mr. Sandy's claims for time allegedly lost as yardmaster, because of Allen's use as such on those dates, are not in order.

In Carrier's Exhibits Nos. 2 and 3 it will be noted frequent reference has been made by the Brotherhood of Railroad Trainmen and by the Carrier to a so-called Three-way Agreement dated June 5, 1931; therefore, Carrier here submits said Letter-Agreement into this submission as a part hereof as Carrier's Exhibit No. 5, which reads as follows:

(CARRIER'S EXHIBIT NO. 5)

THE NORTHERN PACIFIC TERMINAL COMPANY

Of Oregon

Portland, Oregon, June 5, 1931

File E-14-1

Mr. A. J. Jack, Chairman,  
Brotherhood of Railroad Trainmen  
Mr. J. B. Bell, Secretary  
Mr. J. A. Kirkpatrick, Associate

Gentlemen:

The committee representing the Brotherhood of Railway Trainmen on June 3, 1931, presented the following requests.

First. Yardmasters' seniority roster will be abolished.

Second. One seniority list will be in effect governing all yardmen, yardmasters, Assistant Yardmasters and Relief Yardmasters.

Third. In the appointment of Yardmasters or Assistant Yardmasters the oldest qualified yardman will be given preference.

Fourth. For relief work the oldest qualified available man on each shift shall be used.

Fifth. Men now working regular position as Yardmasters or Assistant Yardmasters will not be disturbed by this agreement.

The Northern Pacific Terminal Company is now in agreement with the Brotherhood of Railway Trainmen as to working conditions and rates of pay as applied to yard service. In that agreement the seniority rule reads:

1. The seniority rights of yardmen will date from the time they enter the service in the yard or Terminal where employed.
2. In the appointment of Yardmasters and Assistant Yardmasters the oldest qualified Yardman will be given consideration.
3. Yardmen's seniority lists will be kept in yard office open to inspection by yardmen.
4. Chairmen will be furnished copies of seniority list upon request.

Effective September 1, 1923, an agreement was made with the Yardmasters' Association covering working conditions and rates of pay of Yardmasters and Assistant Yardmasters of the Northern Pacific Terminal Company. The following clauses affect seniority and promotion under the Yardmasters' Agreement:

1st. **Scope.** The term Yardmaster shall apply to Assistant General Yardmaster, Yardmasters and Assistant Yardmasters but will not apply to General Yardmasters or so-called foot board Yardmasters.

2nd. **Promotion.** Assistant General Yardmasters, Yardmasters and Assistant Yardmasters are subordinate officials and in making promotion merit, fitness and ability will govern.

3rd. **Retaining Seniority.** Yardmasters when displaced as such on account of reduction of force or for other reasons, will be restored to the ranks from which promoted without loss of seniority where it does not conflict with existing agreements.

Under this agreement Yardmasters' seniority list has been compiled and posted. To comply with your request as to one seniority list will necessitate the joint agreement of the authorized representative of both the Brotherhood of Railway trainmen and the Yardmasters' Association. With this joint approval I am willing to approve the following rules somewhat modified from your submission and with the understanding that the approval and acceptance in no way changes the general terms or understanding of the separate agreements:

First. One seniority roster will be maintained governing yardmen, Yardmasters, Assistant Yardmasters and Relief Yardmasters.

Second. In the appointment of Yardmasters and Assistant Yardmasters, fitness and ability being sufficient the oldest qualified yardman will be given preference.

Third. For relief work the oldest qualified available man on each shift shall be used.

Fourth. Men now working regular positions as Yardmasters or Assistant Yardmaster will not be disturbed by this agreement.

Five. The Yardmens' seniority roster dated January 5, 1931, shall be considered permanent and not subject to question or change



hereafter and it is understood as permanently fixing the dates of all names thereon.

If the above items one to five are acceptable to the regularly authorized representatives of both the Brotherhood of Railway Trainmen and the Yardmasters' Association, they will be considered as an interpretation and application of the seniority rule and will not be considered as in any other way affecting the agreements above referred to.

An acceptance by the authorized representatives of this letter will be considered in full effect as of June 5, 1931.

Yours truly,

(Signed) B. E. Palmer.

Accepted:

(Signed) A. J. Jack

(Signed) J. A. Kirkpatrick

(Signed) J. B. Bell

(Signed) Verdi Berg for Yardmasters' Association

This Division's particular attention is drawn to the next to the last paragraph thereof reading as follows:

"If the above items one to five are acceptable to the regularly authorized representatives of both the Brotherhood of Railway Trainmen and the Yardmasters' Association, they will be considered an interpretation and application of the seniority rule and will not be considered as in any other way affecting the agreements referred to." (Emphasis added.)

Carrier contends that the Tri-party Letter-Agreement of June 5, 1931, relied on by the Brotherhood in conferences and in correspondence in the furtherance of Mr. Sandy's claims, could not possibly have been in effect on April 2, 3, and 4, 1945, dates of Sandy's claims involved herein, for the following reasons:

First. As stated previously, by certification of the National Mediation Board on August 29, 1936, the Railroad Yardmasters of America were designated as the authorized representative of the Carrier for collective bargaining purposes under the amended Railway Labor Act. By virtue of the exclusive representation thus vested in them, the Carrier's yardmasters represented by the R. Y. of A. negotiated an agreement with the Carrier effective December 18, 1937, covering rates of pay and working conditions, including the establishing of yardmaster seniority and the posting of a correct seniority list, of Assistant General Yardmasters, Yardmasters, and Assistant Yardmasters employed by the Carrier. (See Carrier's Exhibit No. 4 and also Award No. 248 of this Division.)

Carrier asks this Division to note that no mention is made in said December 18, 1937 Agreement of the Letter-Agreement of June 5, 1931; therefore, it is perfectly clear that the Railroad Yardmasters of America had, by due process of law, supplanted the former Yardmasters' Association as the legal bargaining agent for Carrier's yardmasters, and that the December 18, 1937 Agreement had properly and legally superseded its predecessor, the old Yardmasters' Agreement of September 1, 1923, which is referred to in the context of the Tri-party Letter-Agreement of June 5, 1931.

Carrier submits that the First Division of this Board, in Awards Nos. 4077 and 4078, has fully recognized the rights of the duly authorized representative of yardmasters to negotiate agreements with a carrier covering rates of pay and working conditions of yardmasters, when it said in part in its findings in Award 4077, viz.:

"(2) The Carrier's violation of its agreement of July 9, 1936, was terminated on February 1, 1938, the effective date of an agreement between the carrier and the Railroad Yardmasters of America,

an organization certified by the National Mediation Board on September 17, 1937, as duly authorized to represent yardmasters, because this agreement in Section (b) Article 10, specifically exempted the Day General Yardmaster at Eugene from the agreement, and thus exempted the carrier from restrictions of filling the position."

and in the findings in Award 4078, viz.:

"The record discloses that the basis for the claim in this case which dates from July 16, 1938, was eliminated on June 23, 1938, when the carrier negotiated an agreement with the Railroad Yardmasters of America, an organization certified by the National Mediation Board on September 17, 1937, as the proper organization to represent yardmasters, **permitting vacancies in the position of yardmaster to be filled as they were filled in this case.**" (Emphasis added.)

Similarly, this Division has adhered to that same principle in Awards Nos. 353, 373, 374, 380, 408, and 430. In addition, the Carrier refers to the Findings in Award No. 248, which involved this Carrier, where recognition was given to the December 18, 1937 Yardmasters' Agreement as "controlling between the parties,"—said parties in that alleged dispute having been the Railroad Yardmasters of America and this Carrier.

Second. On March 16, 1943, the Carrier entered into a new agreement with its yardmen represented by the Brotherhood of Railroad Trainmen, which superseded the Yardmen's Agreement of March 1, 1928, also mentioned in, and interpreted by, the Three-way Agreement of June 5, 1931. (Exhibit No. 5.) Article 1 of said March 16, 1943 Agreement reads as follows:

"Effective March 16, 1943, the following articles constitute **in their entirety the agreement** between the Northern Pacific Terminal Company of Oregon and its yardmen. **This agreement supersedes all previous schedules and rules governing rates of pay and working conditions of yardmen**, and shall remain in effect until thirty (30) days' notice in writing shall have been given by either party to the other of a desire to change or terminate the same or any part thereof." (Emphasis added.)

Here again a succeeding agreement had superseded its predecessor without any mention having been made by the parties thereto of a desire to perpetuate the Tri-party Letter-Agreement of June 5, 1931. (Exhibit No. 5.) Inasmuch as said June 5, 1931 Letter-Agreement was in itself only an interpretation of two other previous agreements, both of which had been superseded as outlined above, it is clearly evident that the Letter-Agreement of June 5, 1931, which was made as an interpretation of the agreement of September 1, 1923, covering yardmasters, and of the agreement of March 1, 1928, covering yardmen, **ceased to exist when those two working agreements likewise ceased to exist.** (See Awards 4077 and 4078 of the First Division of this Board.

### CONCLUSION

There is definitely no uncertainty as to the facts in this case,—they speak clearly and positively for themselves, showing beyond doubt that

1. The Railroad Yardmasters of America were in 1937 the certified bargaining agent for Carrier's yardmasters;

2. The agreement consummated between the Carrier and the R. Y. of A. on December 18, 1937, was entirely proper under the law, and, therefore, governing with respect to yardmasters;

3. General Chairman Stevens of the B. of R. T. was notified in letter dated September 22, 1938, (page 2 of Carrier's Exhibit No. 3), that the Yardmasters' Agreement of December 18, 1937, superseded the provisions

of the Letter-Agreement of June 5, 1931, more commonly known as the 3-Way Agreement;

4. T. J. Allen, Jr., established a seniority date as yardmaster in conformity with the Yardmasters' Agreement effective December 1, 1944 (Exhibit No. 1);

5. G. W. Sandy did not establish a seniority date as yardmaster in conformity with said December 1, 1944 Agreement;

6. Worden's vacancy in yardmaster position Depot Yard, 7:00 A. M. to 3:00 P. M. on April 2, 3, and 4, 1945, was correctly filled by T. J. Allen, Jr.;

7. The claims of G. W. Sandy for time allegedly lost as yardmaster on those dates are not in order

Accordingly, the Carrier is certain this Division should, and will, fully sustain claims (a) and (b) of this docket, and respectfully requests this be done.

All facts and information contained herein have been submitted to the Brotherhood of Railroad Trainmen both in conference and in correspondence.

Carrier waives oral hearing unless same is requested by the Brotherhood; but requests the opportunity to reply to the Brotherhood's submission.

#### EMPLOYEE'S STATEMENT OF FACT:

Mr. R. B. Parkhurst, Secretary  
Fourth Division  
National Railroad Adjustment Board  
Room 2010, Consumers Building  
220 South State Street  
Chicago 4, Illinois

Dear Sir:

We have your letter dated August 16, 1948 addressed to the undersigned in which you notify us that the Northern Pacific Terminal Company of Oregon had made written notice to the Fourth Division of the N.R.A.B. as prescribed by Circular No. 1, of intention of that Carrier to file within thirty (30) days an ex parte submission the following dispute and copy of letter dated August 13, 1948, File E-14-7, from Mr. H. D. Mudgett, Manager, NPT Company of Oregon, submitting written notice of claim made by Yardman George W. Sandy for April 2, 3, 4, inclusive, 1945; claims resulting due to Yardmaster T. J. Allen, Jr., being used on said dates in preference to Yardman George W. Sandy.

Claim was made by Yardman George W. Sandy for April 2, 3, and 4, inclusive, 1945, due to his not having been used on the first shift as relief yardmaster for vacancy on that shift, which the employees believe is supported by the Three-Way Agreement of June 5, 1931; the employees are making this written notice of their ex parte submission to your Board.

In order to clarify the facts contained in the claim of Yardman George W. Sandy, the employees desire to present certain rules, agreements, settlements and letters exchanged between the Management and the interested employees, as copied below and indicated as "Exhibits".

#### EMPLOYEES' EXHIBIT NO. 1.

##### YARDMEN'S AGREEMENT

#### ARTICLE 1—TERMS OF AGREEMENT AND TERMINATING CLAUSE

Effective March 1, 1928, the following articles constitute in their entirety the agreement between the Northern Pacific Terminal Company of Oregon and its yardmen. This agreement supersedes all previous schedules and rules governing rates of pay and working conditions of yardmen and

shall remain in effect until thirty (30) days' notice in writing shall have been given by either party of a desire to change or terminate the same or any part thereof.

It is understood and agreed that this agreement is superseded by and subordinate to any subsequent municipal, state or federal legislation.

#### ARTICLE 16—PROMOTION AND RIGHTS

(C) The seniority rights of yardmen will date from the time they enter the service in the yards or terminal where employed.

(D) The rights to preference of work and promotion will be governed by seniority in service, everything being equal the yardman longest in service will be given the preference.

(E) In the appointment of yardmasters and assistant yardmasters the oldest qualified yardman will be given consideration.

#### ARTICLE 17—SENIORITY LISTS

(A) Yardmen's seniority lists will be kept in yard office, open to inspection by yardmen.

#### EMPLOYES' EXHIBIT NO. 2.

The following letter constitutes a three-way agreement between the committees representing yardmen, a committee representing the yardmasters and the Management of the Northern Pacific Terminal Company of Oregon, which agreement never has been cancelled by agreement between the parties nor has the yardmen's committee ever been requested by the other parties to consider its cancellation:

Portland, Oregon, June 5, 1931  
File E-14-1

Mr. A. J. Jack, Chairman,  
Brotherhood of Railroad Trainmen  
Mr. J. B. Bell, Secretary  
Mr. J. A. Kirkpatrick, Associate

Gentlemen:

The committee representing the Brotherhood of Railway Trainmen on June 3, 1931, presented the following requests:

First. Yardmasters' seniority roster will be abolished.

Second. One seniority list will be in effect governing all yardmen, yardmasters, Assistant Yardmasters and Relief Yardmasters.

Third. In the appointment of Yardmasters or Assistant Yardmasters, the oldest qualified yardman will be given preference.

Fourth. For relief work the oldest qualified available man on each shift shall be used.

Fifth. Men now working regular position as Yardmasters or Assistant Yardmasters will not be disturbed by this agreement.

The Northern Pacific Terminal Company is now in agreement with the Brotherhood of Railway Trainmen as to working conditions and rates of pay as applied to yard service. In that agreement the seniority rule reads:

1. The seniority rights of yardmen will date from the time they enter the service in the yard or Terminal where employed.

2. In the appointment of Yardmasters and Assistant Yardmasters the oldest qualified Yardman will be given consideration.

3. Yardmen's seniority lists will be kept in yard office open to inspection by yardmen.

4. Chairmen will be furnished copies of seniority list upon request.

Effective September 1, 1923, an agreement was made with the Yardmasters' Association covering working conditions and rates of pay of Yardmasters and Assistant Yardmasters of The Northern Pacific Terminal Company. The following clauses affect seniority and promotion under the Yardmasters' Agreement:

1st. **Scope.** The term Yardmaster shall apply to Assistant General Yardmaster, Yardmasters and Assistant Yardmasters but will not apply to General Yardmasters or so-called footboard Yardmasters.

2nd. **Promotion.** Assistant General Yardmasters, Yardmasters and Assistant Yardmasters are subordinate officials and in making promotion merit, fitness and ability will govern.

3rd. **Retaining Seniority.** Yardmasters when displaced as such on account of reduction of force or for other reasons, will be restored to the ranks from which promoted without loss of seniority where it does not conflict with existing agreements.

Under this agreement Yardmasters' seniority list has been compiled and posted. To comply with your request as to one seniority list will necessitate the joint agreement of the authorized representative of both the Brotherhood of Railway Trainmen and the Yardmasters' Association. With this joint approval I am willing to approve the following rules somewhat modified from your submission and with the understanding that the approval and acceptance in no way changes the general terms or understanding of the separate agreements:

First. One seniority roster will be maintained governing yardmen, Yardmasters, Assistant Yardmasters and Relief Yardmasters.

Second. In the appointment of Yardmasters and Assistant Yardmasters, fitness and ability being sufficient, the oldest qualified yardman will be given preference.

Third. For relief work the oldest qualified available men on each shift shall be used.

Fourth. Men now working regular positions as Yardmasters or Assistant Yardmasters will not be disturbed by this agreement.

Five. The Yardmen's seniority roster dated January 5, 1931, shall be considered permanent and not subject to question or change hereafter and it is understood as permanently fixing the dates of all names thereon.

If the above items one to five are acceptable to the regularly authorized representatives of both the Brotherhood of Railway Trainmen and the Yardmasters' Association, they will be considered as an interpretation and application of the seniority rule and will not be considered as in any other way affecting the agreements above referred to.

An acceptance by the authorized representatives of this letter will be considered in full effect as of June 5, 1931.

Yours truly,

(Signed) B. E. Palmer.

Accepted:

(Signed) A. J. Jack

(Signed) J. A. Kirkpatrick

(Signed) J. B. Bell

(Signed) Verdi Berg for Yardmasters' Association.

The following men were working regularly as Yardmasters at the time the Three-Party Agreement of June 5, 1931 was made, namely:

- (1) F. S. Gollings
- (2) J. A. Rannie
- (3) J. A. Humble
- (4) V. Berg
- (5) T. E. Furlong
- (6) George Worden
- (7) Chas. Weston

The following two letters relate to the above rules and understandings as contained in "Employees' Exhibit No. 2", and same are fully explanatory:

#### EMPLOYEES' EXHIBIT NO. 3

Portland, Oregon, July 3rd, 1933.

Mr. B. E. Palmer  
General Manager, N. P. Terminal Co.  
Portland, Oregon

Dear Sir:

There seems to be some misunderstanding or rather a difference of opinion as to an interpretation of seniority rule for Yardmasters in the Yardmasters' Agreement.

Would like to have an interpretation on the following, for instance. "A vacancy occurs on some trick, and the man eligible for the position from a point of seniority and fitness, etc., and has a date as Yardmaster, wishes to decline the position, account of sickness or other reasons."

Would he lose his date as Yardmaster, or would he retain his date and be eligible for the next vacancy?

Yours truly,

(Signed) V. Berg  
Chairman Yardmasters Ass'n  
N. P. Terminal Co.

#### EMPLOYEES' EXHIBIT NO. 4

Portland, Oregon, July, 1933.

B. E. Palmer  
Manager  
Mr. Verdi Berg, Chairman  
Yardmasters' Association  
N. P. Terminal Company  
Portland, Oregon

Dear Sir:

Your letter of July 3rd, 1933.

The yardmaster is not compelled to bid in or accept a new job or promotion. If the job is awarded to him by bid or assignment, on his request, he must accept. There would be no change in his seniority date on the list. Yardmasters should accept and protect the service when the job is offered, otherwise the question of fitness and ability might be raised against them in future jobs.

Yours truly,

(Signed) B. E. Palmer.

The following was the agreement between the Yardmasters and the Company at the time the Three-Way Agreement between the yardmen, the yardmasters and the Management was entered into, June 5, 1931:

## EMPLOYES' EXHIBIT NO. 5

## AGREEMENT

(Effective Sept. 1, 1923)

THE NORTHERN PACIFIC TERMINAL COMPANY OF OREGON

and

THE YARDMASTERS' ASSOCIATION COMPRISED OF THE  
 ASSISTANT GENERAL YARDMASTERS, YARDMASTERS  
 AND ASSISTANT YARDMASTERS, EMPLOYES OF THE  
 NORTHERN PACIFIC TERMINAL COMPANY

## PREAMBLE

These principles are predicated upon the obligation of each Yardmaster to render honest, efficient and economical service to the railroads and to the public.

The spirit of cooperation between the management and the yardmasters being essential to efficient operation, both parties will so conduct themselves as to promote this spirit.

1. SCOPE: The term "yardmaster" shall apply to Assistant general yardmasters, yardmasters, and assistant yardmasters, but will not apply to General yardmasters or so called footboard yardmasters.

2. PROMOTION: Assistant general yardmasters, yardmasters and assistant yardmasters are subordinate officials, and in making promotions, merit, fitness and ability will govern.

3. VACATIONS: Yardmasters who have been acting in that capacity continuously one (1) year or more will be allowed two weeks vacation each year with pay.

4. REST DAYS: Yardmasters regularly assigned seven (7) days per week will be granted two (2) rest days per month without loss of pay, except for the month vacation is given; these two (2) rest days off shall be arranged between the yardmasters and their superior officers.

5. FILLING TEMPORARY VACANCIES: When a regularly assigned yardmaster is required to perform service other than regular duties, the rate of pay will not be less than his regular salary for days so used. When a yardmaster is required to substitute in a position paid a higher rate, he will assume the salary and the hours applicable to the position to which assigned.

6. RETAINING SENIORITY: Yardmasters, when displaced as such on account of reduction in force, or for other reasons, will be restored to the ranks from which promoted without loss of seniority, where it does not conflict with existing agreements.

7. ASSIGNMENTS: Assignments for yardmasters and assistant yardmasters exclusive of an agreed upon meal period normally will be for eight (8) hours. Where the operating conditions fairly warrant assignments for nine (9), ten (10), or eleven (11) hours such assignments may be made. Monthly salaries set forth in the following rule for assistant general yardmasters are established for unassigned hours, and for yardmasters and assistant yardmasters are for assignments of eight (8) hours. The salaries for nine (9), ten (10) and eleven (11) hour assignments will be computed pro rata for the hours assigned based on the salary provided herein applicable to the respective yard or point involved.

## 8. MONTHLY SALARIES:

Assistant General Yardmaster .....	\$310.00
Yardmasters .....	255.00
Asst. Yardmasters .....	230.00

9. **DATE EFFECTIVE AND CHANGES:** The foregoing in its entirety constitutes an agreement between the **NORTHERN PACIFIC TERMINAL COMPANY OF OREGON AND THE YARDMASTERS' ASSOCIATION**, of the Northern Pacific Terminal Company and will remain in effect one (1) year from effective date (September 1, 1923), and thereafter subject to thirty (30) days' written notice, by either party to the other of a desire to change or terminate the same or any part thereof.

FOR THE YARDMASTERS' AS-  
SOCIATION—THE NORTHERN  
PACIFIC TERMINAL COMPANY

FOR THE NORTHERN PACIFIC  
TERMINAL COMPANY OF  
OREGON

(Signed) V. Berg

(Signed) B. E. Palmer  
Manager

In this connection, the Yardmasters held the above contract until August 29, 1936 at which time the Railroad Yardmasters of America wrote a contract which remained in effect until September 28, 1941. The following agreement was entered into between the Yardmasters and the Management December 18, 1937:

#### EMPLOYES' EXHIBIT NO. 6

#### AGREEMENT

Between the

NORTHERN PACIFIC TERMINAL COMPANY OF OREGON

And the

RAILROAD YARDMASTERS OF AMERICA

#### SCOPE

Rule No. 1. This Agreement shall apply to the positions of Assistant General Yardmasters, Yardmasters, and Assistant Yardmasters in existence during the life of this Agreement. It is mutually agreed that the positions of General Yardmaster does not come within the scope of this Agreement, and are in no way affected by the terms of this Agreement.

#### HOURS OF SERVICE

Rule No. 2. Eight consecutive hours, exclusive time transferring in going in or off shift, shall constitute a day's work for Assistant General Yardmasters, Yardmasters, and Assistant Yardmasters.

#### RATES OF PAY

Rule No. 3. The monthly rates of pay for eight hours' service per day for the calendar month shall be as follows:

Location Title	Monthly Salary
Portland Assistant General Yardmaster .....	\$313.20
Portland Yardmaster .....	288.20 ..
Portland Assistant Yardmaster .....	258.20

#### CALCULATION OF RATES

Rule No. 4. Day's pay will be computed on basis of calendar month. Less two days.

#### NEW POSITIONS

Rule No. 5. Salaries of new positions shall be on conformity with salaries for positions of similar kind or class at the point established.

#### TEMPORARY VACANCIES

Rule No. 6. Assistant General Yardmasters, Yardmasters or Assistant Yardmasters taken from their assignments to perform temporary service in lower rated positions shall not have their rates reduced and when temporary



or permanently assigned to higher rated positions they will receive the higher rates while occupying such position.

### REST DAYS

Rule No. 7. Assistant General Yardmasters, Yardmasters and Assistant Yardmasters who are regularly assigned will be granted two (2) rest days per month without loss of pay, to be arranged between them and their superior officers.

### VACATIONS

Rule No. 8. Assistant General Yardmasters, Yardmasters and Assistant Yardmasters who have been continuously in service one year or more in such positions will be allowed two (2) weeks' vacation with pay per annum.

### LIMITATION OF WORK

Rule No. 9. Assistant General Yardmasters, Yardmasters, Assistant Yardmasters will not be required to bleed cars or couple up air where carmen are employed.

### SENIORITY

Rule No. 10. (a) Seniority of Assistant General Yardmasters, Yardmasters and Assistant Yardmasters shall date from date of regular assignment to such positions and will be restricted the terminal at which employed.

(b) Promotion will be based on fitness, ability and seniority. The Management to be the judge.

(c) Fitness and ability being equal, the oldest yardmaster or assistant yardmaster in a point of seniority will be given preference as to assignments.

(d) Assistant general yardmasters, yardmasters or assistant yardmasters promoted to official positions with the Terminal Company or granted leaves of absence in connection with committee work, will retain and accumulate seniority under this Agreement.

(e) Assistant general Yardmasters, yardmasters or assistant yardmasters laid off in reduction in force will retain seniority and will be used for extra or relief work when available.

(f) A correct seniority list shall be maintained in the general yardmaster's or manager's office, available to all employees covered by this Agreement.

### ADJUSTMENT PROCEDURE

Rule No. 11. Any assistant General Yardmaster, Yardmaster or Assistant Yardmaster who feels he has been unjustly treated will: Provided written request is presented to his immediate superior within five (5) days of the date of advice of such alleged unjust treatment be accorded a hearing and the right to appeal to his superior officers up to and including the highest officer designated to hear such cases.

### DATE EFFECTIVE AND CHANGES

Rule No. 12. This Agreement shall be effective as of December 18, 1937, and shall continue in effect subject to thirty (30) days' notice from either party of desire to revise or terminate the same or any part thereof.

FOR THE RAILROAD YARDMASTERS OF AMERICA

FOR THE NORTHERN PACIFIC  
TERMINAL COMPANY OF OREGON

By: (Signed) Sidney A. White General Chairman

By: (Signed) H. D. Mudgett, Manager

(Signed) Frank W. Long

Approved (Signed) E. L. King

From September 28, 1941 to September 24, 1943 the Brotherhood of Railroad Trainmen secured jurisdiction over the Yardmasters on the Northern Pacific Terminal Company property, of Oregon, by mediation vote and did not write a contract. On September 24, 1943, the Railroad Yardmasters of America secured jurisdiction by mediation vote and wrote a contract, effective December 1, 1944, as follows:

EMPLOYES' EXHIBIT NO. 7

AGREEMENT

between the

NORTHERN PACIFIC TERMINAL COMPANY

OF OREGON and its Yardmasters represented by the

RAILROAD YARDMASTERS OF AMERICA

**RULE 1: SCOPE**

This agreement shall apply to positions of Assistant General Yardmaster, Yardmaster, and Assistant Yardmaster and will not apply to positions of General Yardmaster or footboard Yardmaster. The term "yardmaster" as used in the following provisions will include the classes covered by this agreement.

**RULE 2: SENIORITY**

(a) In the reduction and increase of forces, seniority will govern.

(b) To establish seniority rights or a seniority date under this agreement, the candidate selected must serve a test period of 60 shifts and if permitted to complete the test period, shall establish a seniority date as of the first shift worked. Where a candidate is disapproved during the test period, he will be so advised in writing. Where two or more men are selected on the same date, their relative standing on the roster will be determined by their length of continuous service with the carrier.

(c) A seniority roster showing name, position, and seniority date of Yardmasters will be maintained and made available to the employees covered by this agreement. Seniority rosters will be brought up to date as of January 1 of each year, and a copy of each furnished the General Chairman.

(d) Seniority rosters will, prior to posting, be officially approved by the Manager and General Chairman. Seniority dates of Yardmasters, as shown on seniority rosters so approved, will be open for correction of possible typographical errors and omissions for a period of sixty (60) days from the date of issuance. No changes shall be made in names or dates shown on the roster subsequent to the 60-day period, except in cases pending with the Manager prior to the expiration of the sixty-day (60) period.

(e) The names and seniority dates of Yardmasters appearing on the current accepted seniority roster as of the effective date of this agreement, shall be regarded as confirmed by the acceptance of this agreement.

(f) Yardmasters accepting official positions with the Northern Pacific Terminal Company, or granted leave of absence in connection with committee work, will retain and accumulate seniority under this agreement.

(g) Yardmasters shall retain their seniority as Yardmen, and in the event of reduction in force, and there are no junior Yardmasters for them to displace, shall be privileged (or if on leave of absence account of sickness or other reasons, for five (5) days from date of return) to displace a junior Yardman. Yardmasters temporarily reduced shall retain their seniority dates as Yardmasters.

(h) The senior available unassigned Yardmaster will protect the extra Yardmaster work. When a regular assignment as Yardmaster is available,

senior demoted Yardmaster will be required to take such regular assignment or forfeit his Yardmaster's seniority rights.

(i) Yardmasters' seniority may be exercised only when new positions are created, vacancies occur, forces reduced, or when a Yardmaster is displaced by one his senior.

### **RULE 3:**

### **ASSIGNMENTS**

(a) Eight (8) consecutive hours shall constitute a day's work unless relieved at the Yardmaster's request, in which event, actual time worked will be paid for. Work performed in excess of eight (8) hours on instructions from proper authority shall be paid for as overtime at the rate of time and one-half on the minute basis. Time consumed in making transfer before going on or off shift will not constitute overtime.

(b) Regular assignments shall each have a fixed starting time, and the starting time will not be changed without at least twenty-four (24) hours' advance notice, and no shift shall have an assigned starting time between 12:01 A. M. and 6:00 A. M.

(c) Relief days: Each regularly assigned Yardmaster who performs six (6) days' service as such in any seven-day period will be allowed and required (\*) to take one day off as relief day. If required to work the designated relief day, rate of time and one-half will apply. When the seventh day is worked as the result of the exercise of seniority, time and one-half will not apply.

(d) Relief days for each position shall be established, and, when so established, will be changed only by agreement between the supervising officer and the General Chairman.

(e) Where relief requirements regularly provide a six days' work in seven, a regular assignment of relief Yardmaster will be established and paid at the daily rate of the positions relieved.

### **RULE 4:**

### **ADDITIONAL POSITIONS OR VACANCIES**

(a) Additional positions, or vacancies (not temporary) in established positions, will be bulletined for a period of twenty-four (24) hours, and the senior applicant submitting written request for such position or vacancy will be placed thereon as soon as practicable after the bulletin closes. If no applications are received, the carrier may fill the position by appointment.

(b) New positions and vacancies known to be of more than ten (10) days' duration shall be filled whenever possible by the senior qualified yardmaster making written request therefor.

(c) A yardmaster who has been displaced, or whose position has been abolished, shall exercise his seniority within five (5) days to displace any junior assigned yardmaster or to obtain any unassigned advertised vacancy or new position. If he is displaced, or his position is abolished, while he is on leave of absence account of illness or other reason, he shall exercise his seniority within five (5) days from date of return to duty.

### **RULE 5:**

### **VACATIONS**

Effective January 1, 1945, an annual vacation of two weeks (12 working days) with pay will be granted to each yardmaster covered by the scope of

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(\*) NOTE: Requirement paragraph (c), "required to take one day off as relief day" will not be effective until the end of the present war, but Manager will, on request of the General Chairman of the Railroad Yardmasters of America, grant relief days when conditions permit.

this agreement, who rendered compensated yardmaster service on not less than 160 days during the preceding calendar year, under the following conditions:

(NOTE: A shift which extends from one calendar day into another shall be counted as one day in computing the 160 days referred to above.)

(1) When vacations are afforded:

(a) A yardmaster having a regular assignment will be paid while on vacation the compensation of the assignment held at the time vacation is taken.

(b) A yardmaster not having a regular assignment will be paid while on vacation on basis of the average straight-time compensation earned as a yardmaster in the last payroll period during which he performed service preceding the vacation.

(2) When vacations are not afforded:

If a vacation is not afforded, payment in lieu thereof will be made not later than the first payroll period in January of the following year, computed on the following basis:

(a) A Yardmaster having a regular assignment will be paid in lieu of vacation, the compensation of the assignment held during the last payroll period in which he performed service preceding the close of the vacation year.

(b) A Yardmaster not having a regular assignment will be paid in lieu of vacation on basis of the average straight-time compensation earned as a yardmaster in the last payroll period during which he performed service preceding the close of the vacation year.

(3) Vacations, or allowances therefor, under two or more schedules held by different organizations, shall not be combined to create a vacation of more than the maximum number of days provided for in either of such schedules.

(4) No vacation with pay, or payment in lieu thereof, will be due a yardmaster whose employment relation has terminated prior to the taking of his vacation, except that employees retiring under the provisions of the Railroad Retirement Act shall receive payment for vacation due.

(5) Vacations shall not be accumulated or carried over from one vacation year to another.

**RULE 6: ADJUSTMENT PROCEDURE**

(a) Yardmasters will not be displaced or dismissed without a fair hearing by a designated officer of the carrier. Suspension pending hearing, which shall be prompt, will not constitute a violation of this rule.

(b) At a reasonable time prior to the hearing, the Yardmaster will be advised of the purpose for which the hearing is to be held. At the hearing, he shall have the right to be represented by the General Chairman of the R. Y. A. or other Yardmaster of his own choice. Reasonable opportunity shall be given to secure the presence of necessary witnesses.

(c) In cases where discipline is applied, the Yardmaster will be advised thereof in writing within ten (10) days from the date hearing is completed. Copy of transcript of testimony, if a formal investigation is conducted, will be furnished the Yardmaster or his representative upon request.

(d) If the final decision decrees that charges against the Yardmaster are not sustained, his record will be cleared of the charge, and he will be compensated for wage loss, if any, suffered by him.

(e) If the decision is against the Yardmaster, he shall have the right of appeal in regular order to the Manager, provided such appeal is filed in writing within fifteen (15) days from date of decision.

(f) The above provisions governing adjustment procedure will apply only to employees who have acquired seniority rights under this agreement.

#### **RULE 7: ATTENDING COURT—CORONER'S INQUEST**

If required to attend court or inquest or give statement to company attorney outside the hours of his assignment, a Yardmaster will be compensated at one-eighth (1/8) of the pro rata daily rate of the position to which he is assigned for each hour in attendance, computed from the time he is required to report until released, with a minimum of one (1) hour. The maximum allowance on any calendar day for court or inquest service will be eight (8) hours.

#### **RULE 8: AUTOMOBILES**

Yardmaster will not be required to use their automobiles in connection with their work except where mutually agreeable, and where requested to do so, an allowance of five cents per mile will be made.

#### **RULE 9: LEAVE OF ABSENCE**

(a) Yardmasters will be granted leave of absence when they can be spared without interference to the service, but not to exceed ninety (90) days within any calendar year (except in cases of sickness or committee work) unless approved by the Manager.

(b) Yardmasters on leave of absence who fail without reasonable excuse to report for duty at the expiration thereof, or who accept other employment without the approval of the Manager, will be considered out of service and forfeit seniority. Yardmasters desiring to return from leave of absence before expiration thereof, will give thirty-six (36) hours' advance notice.

(c) Yardmasters returning from leave of absence may return to former position or exercise seniority rights to any position bulletined during their absence. If former position has been abolished, or is filled by a senior Yardmaster in the exercise of seniority as a result of displacement, seniority rights may be exercised in accordance with seniority rules.

#### **RULE 10: NOTICE—ASSIGNMENT ABOLISHED**

When a regular assignment is to be abolished, the Yardmaster filling the assignment will be given not less than twenty-four hours' advance notice, with a copy to the General Chairman.

#### **RULE 11: EXTRA WORK**

Extra Yardmasters will not be paid time and one-half for work performed in excess of eight hours where the excess time is worked on more than one shift, but will receive time and one-half in excess of eight (8) hours worked on a single shift exclusive of time incident to transfers. Extra Yardmasters will not work more than one shift per calendar day when other extra Yardmasters are available.

#### **RULE 12: RATE STRUCTURE**

(a) The rates of pay shown below are for assignments of eight (8) hours constituting a day's work, and shall not be construed as an obligation to maintain the positions listed or as restricting the carrier's right to establish assignments or to discontinue established positions. Should assignments of Yardmasters be established which are not listed in the rate structure, the General Chairman will be promptly advised:

Assistant General Yardmaster.....	\$359.10 per mo.
Yardmaster .....	332.60 per mo.
Assistant Yardmaster .....	302.60 per mo.

(b) In computing overtime and compensation for less than a full month's service, the daily rate shall be determined by multiplying the monthly rate by twelve (12) and dividing the result by 313.

(c) Yardmasters temporarily assigned to lower rated positions shall not have their salaries reduced, and when temporarily or permanently assigned to higher rated positions, they will receive the higher rate while occupying such positions.

(d) The increase of \$12.00 per month, effective as of December 27, 1943, which is included in the rates set forth in section (a) of this Rule, granted in time of war, shall be paid as the equivalent of, or in lieu of, claims for time and one-half rate of pay for time worked in excess of forty (40) hours per week, and shall be paid until Proclamation by the President of the United States, or Declaration by the Congress, of the cessation of hostilities and thereafter, until changes in accordance with the Railway Labor Act, as amended.

### **RULE 13: CHANGE IN AGREEMENT**

This agreement supersedes agreement effective December 18, 1937, and all interpretations and rulings thereon, and is made subject to any Municipal, State or Federal legislation. These rules constitute in their entirety the agreement between the Northern Pacific Terminal Company of Oregon and the Yardmasters employed thereon represented by the Railroad Yardmasters of America, and this agreement takes effect December 1, 1944, and shall remain in full force and effect for one (1) year and thereafter until amended or cancelled by thirty (30) days' written notice given by either party hereto to the other.

Signed at Portland, Oregon, this 19th day of December, 1944.  
For the Railroad Yardmasters of America

(s) **A. J. JACK**  
General Chairman

For the Northern Pacific Terminal  
Company of Oregon

(s) **H. D. MUDGETT**  
Manager

The following Agreement effective March 16, 1943 and revised August 15, 1947, is quoted, in part, as follows:

### **EMPLOYES' EXHIBIT NO. 8**

#### **ARTICLE 16—PROMOTION AND RIGHTS:**

(D) The rights to preference of work and promotion will be governed by seniority in service, everything being equal, the yardman longest in service will be given the preference.

(E) In the appointment of Yardmasters and Assistant Yardmasters the oldest qualified yardman will be given consideration.

(F) Official Positions: Yardmen in the service of this Company one year or more accepting official position with this Company or serving the Brotherhood of Railroad Trainmen in an official capacity shall retain their seniority rights.

### **EMPLOYES' EXHIBIT NO. 9**

February 2, 1944  
Portland 3, Oregon

Mr. H. D. Mudgett, Manager  
N. P. T. Company  
Union Station, Portland, Oregon

Mr. C. W. Stevens, Chairman  
General Committee B. of R. T.  
Park Bldg., Portland, Oregon

Dear Sirs:

This is to advise you that The Railroad Yardmasters of America consider the so-called, Three-way agreement terminated and without force.

We further wish to advise you that we request the Manager of the Northern Pacific Terminal Co. to comply with rule 10, paragraph F of the Yardmasters agreement dated December 19th, 1937, which provides for a correct seniority roster for Yardmasters. On September 3, 1938 there was a roster posted, but it has never been kept up to date.

If it has been the opinion of you gentlemen that you should have received notice regarding the termination of the Three way agreement, then please consider this as notification.

Will you please acknowledge receipt of this letter stating your position?

Yours truly,

A. J. Jack, Chairman  
Railroad Yardmasters of America  
/s/ A. J. JACK

EMPLOYES' EXHIBIT NO. 10

February 3, 1944  
FILE: NPT-2659

Mr. A. J. Jack,  
Chairman, General Committee,  
Railroad Yardmasters of America,  
Employed by Northern Pacific Terminal Co.,  
7419 No. Washburne Ave.,  
Portland 3, Oregon

Dear Sir:

This acknowledges receipt of my copy of your joint letter of the 2nd inst., directed to Mr. H. D. Mudgett, Manager, Northern Pacific Terminal Co., and the undersigned, General Chairman of the Brotherhood of Railroad Trainmen, Northern Pacific Terminal Company.

It is noted that you advise in your letter that your organization considers the 3-Way Agreement between the yardmasters, the yardmen and the management, dated June 5, 1931, as "terminated and without force." You state further that your organization requests the Manager of the Company to comply with Rule 10, paragraph F of the Yardmasters' Agreement dated December 18, 1937, by posting a corrected list of yardmasters, and finally you state, that in the event the parties receiving your letter are of the opinion that notice regarding the termination of the 3-Way Agreement is necessary, then they will consider your letter as the required notice.

It is the position of the Brotherhood of Railroad Trainmen that the 3-Way Agreement of June 5th, 1931, conferred seniority rights as yardmasters upon all yardmen when employed, who prior to that date held no rights as yardmaster and that all men employed since that time as yardmen secured rights as yardmaster in accordance with their date as yardmen, and accordingly, the representatives of the Yardmasters of America cannot legally terminate such seniority rights by merely serving a notice that the agreement is terminated and is no longer without force or effect.

It is the further position of the Committee representing the Brotherhood of Railroad Trainmen, that if Rule 10, paragraph F of the Yardmasters' Agreement is construed to mean that a list of men working as yardmaster shall be posted and that such list will exclude those men who were given rights as yardmasters June 5, 1931, then the said rule is a nullity and without force and effect, because conference and agreement with representatives of the yardmen would be necessary to make a bona fide rule of that character.

A copy of this letter goes to Mr. H. D. Mudgett, Manager of the Company, and if he regards this as a notice, within the meaning of the Railway Labor Act, which will require conferences in the manner as set forth in that Act, then it is our desire, as an interested party that is affected by such

notice, to be present at any conferences that may be had concerning the matter.

CWS/ms

Yours truly,

(Signed) C. W. STEVENS  
General Chairman, B. R. T.

CC: Mr. H. D. Mudgett, Manager,  
Northern Pacific Terminal Co.

EMPLOYES' EXHIBIT NO. 11

THE NORTHERN PACIFIC TERMINAL COMPANY  
OF OREGON

OFFICE OF MANAGER

H. D. MUDGETT,  
Manager

PORTLAND, OREGON  
October 21, 1944

Mr. C. W. Stevens  
Park Building  
Portland, Oregon

Dear Mr. Stevens:

In order that Yardmasters and Yardmen may clearly understand the meaning of (D) and (E) of Article 16 of the current Yardmen's Agreement in effect on the Terminal Company property, we would appreciate it greatly if you will give us your interpretation in writing of the above mentioned two rules as they affect the seniority of Yardmen accepting promotion to Yardmasters, and Yardmasters promoted from Yardmen, in the event of a reduction in force.

Yours truly,

(Signed) H. D. MUDGETT  
Manager

EMPLOYES EXHIBIT NO. 12

October 23, 1944

Mr. H. D. Mudgett, Manager,  
Northern Pacific Terminal Co. of Oregon,  
Room 209, Union Station Building,  
Portland 9, Oregon.

Dear Sir:

Referring to your inquiry of the 21st instant, wherein you ask for our understanding of Article 16, Sections (D) and (E) of the Yardmen's Agreement as it would apply in cases where yardmasters are reduced or a yardman gives up a yardmaster's job and, in either event, goes back to a yardman's job.

It is our understanding that yardmen's rights acquired under Section (C) of Article 16, are not affected at all when appointed yardmaster under Section (E). Section (D) provides that avenue for promotion and all three sections show an intention to preserve acquired rights as yardmen during all the time a man is used as a company official or as a yardmaster.

The above rules are entirely consistent with "the three way agreement" between the yardmen and yardmasters and the company, dated June 5, 1931, providing for (1) one seniority roster for yardmen and yardmasters; (2) rule governing appointment of yardmasters from this list; (3) rule showing how yardmaster reliefs are furnished; (4) rule setting yardmasters then working apart from the joint roster, and (5) rule making the joint roster permanent. These rules themselves afford a clear interpretation of seniority rights and, as interpreted by the Board in the Halbrook case, contemplates



that yardmen may use their yardmaster right, or yardmasters their yardmen's rights, as the case may be, without impairment of their joint rights in both classes of service.

I wish also to call your attention to the fact that yardmen have been moving from yardmaster jobs to yardmen's jobs, resuming their original date as yardman, since June 5th, 1931, without any question being raised as to their right to do so.

Accordingly, it is the position of the Committee that yardmen exercising rights as yardmaster, retain yardmen's rights while working as yardmasters; that yardmasters working as yardmen retain yardmaster rights; and that yardmen leaving regular yardmaster jobs for any reason, may displace any junior yardman from a yardman's job, provided he does so before accepting other service.

Trusting this is the information desired, I am

Yours truly,

(Signed) C. W. STEVENS  
General Chairman

CC: Mr. H. C. Kerr, Loc. Chmn. BRT

EMPLOYES' EXHIBIT NO. 13

October 30, 1944

Mr. H. D. Mudgett, Manager  
Northern Pacific Terminal Co. of Oregon,  
Union Railway Station Building,  
Portland 9, Oregon.

Dear Sir:

It is the position of the Brotherhood of Railroad Trainmen that the re-issue of the yardmen's schedule March 16, 1943, did not cancel the agreement between the yardmen, yardmasters and your company as made effective June 5, 1931, for many reasons, some of which are as follows:

(1) The yardmen's schedule is an exclusive agreement between the company and its yardmen, therefore, the "three way agreement" involving another organization with a separate jurisdiction would not go into the book, or become a part thereof, except by surrender of jurisdiction or at least by permission of such other organization.

(2) No revision of any rule in the yardmen's agreement that in any way turns on the agreement of June 5, 1931, was affected in the revision and re-issue of the schedule.

(3) The carrier served no notice of a desire to abolish or terminate the 3-way agreement, in the manner as prescribed by federal law, nor did it even suggest it in the informal exchange of writings in the way of "proposed" changes as were adopted by our committee and you, the idea of both parties being that no notices be served, and that whatever changes that were agreed to would be mutual, and where agreement could not be had on any rule, there would be no change.

The record shows that the General Chairman on the property for the Yardmasters of America, on February 2, 1944—ten and a half months after the effective date of the new B. of R. T. agreement—directed a letter jointly to the company manager and the chairman of the Yardmen's Committee, stating: "This is to advise you that the Railroad Yardmasters of America consider the so-called three-way agreement terminated and without force." The undersigned answered by a letter to General Chairman A. J. Jack, dated February 3, 1944, with a copy to you, disputing his contention in every respect. The carrier's answer was not furnished to us, but it is quite clear they did not agree with Mr. Jack, otherwise, Mr. Jack would not have taken the case

to the Adjustment Board. The record also shows that subsequent to Mr. Jack's notice and over a year after the effective date of the revised B. of R. T. agreement, the carrier's manager arranged a meeting in his office between himself and Mr. Burns of St. Paul, for the company, and A. J. Jack, and the undersigned for the employees, all for the purpose of arriving at a satisfactory substitute for the three-way agreement. At that meeting the carrier representatives certainly did not contend that the three-way agreement was abrogated by the yardmen's schedule revision. Upon the contrary, THEY FRANKLY TOLD MR. JACK THAT IT IS EFFECTIVE.

Then Mr. Jack took his case to the Adjustment Board and neither he nor the Carrier considered it necessary, at least as a matter of courtesy, particularly that we were the people that were a party to the controversy—to even let us know about it, until the Board, after a hearing, had dismissed the case. Mr. Jack in the last paragraph of his "statement of fact" said:

"Carrier refused to comply with Rule 10 (f) stating: 'We cannot issue such a roster, inasmuch as we consider the Three Way Agreement of June 5, 1931 still in effect, which agreement provides for one seniority roster for Yardmasters and Yardmen.' . . ."

Nevertheless, the Board dismissed the case.

Our conclusions are, that the carrier, in view of the record and practices since March 16, 1943, has now decided to repudiate the agreement without complying with the federal law that governs, and in spite of the difficulty in maintaining amicable labor relations during these trying war years.

Accordingly, this is to advise you that the responsibility for what may transpire as a result of the company's arbitrary action in this matter, fairly lies with the company. Certainly, we shall take whatever steps that are necessary to maintain the rights of the yardmen.

Would like to discuss this with you not later than Wednesday, November 2, 1944.

Yours truly,

CWS/ms

(Signed) C. W. STEVENS  
General Chairman

EMPLOYES' EXHIBIT NO. 14.

Portland, Oregon  
December 29, 1944

Mr. W. F. Lord,  
General Yardmaster:

In order to comply with requirements of the Yardmaster's Agreement, we will ask for bids for three extra Yardmasters. They will be required to do extra Yardmasters work, regardless of the shift on which the vacancies occur. They will also be required to familiarize themselves with the duties of the different positions, so they can properly perform their duties.

You will therefore issue a bulletin for these three positions using the following form:

Bids will be accepted for three extra Yardmasters up to  
.....M., .....45.

The incumbents of these positions will, in seniority order, perform all extra Yardmasters work regardless of the shift on which vacancies occur. They will familiarize themselves with Yardmasters duties on all positions.

You should arrange to keep a copy of all bulletins and assignments and give a copy to my office and to the General Chairmen of the Yardmasters.

(Signed) H. S. MUDGETT, Manager

CC: Mr. J. A. Humble  
Mr. E. W. Reece  
Mr. A. J. Jack

## EMPLOYES' EXHIBIT NO. 15

## ADVERTISEMENT

Jan. 3, 1945

BIDS WILL BE ACCEPTED FOR THREE EXTRA  
YARDMASTERS UP TO 10:00 A. M., FRIDAY,  
JANUARY 5, 1945.

THE INCUMBENTS OF THESE POSITIONS WILL,  
IN SENIORITY ORDER, PERFORM ALL EXTRA  
YARDMASTERS WORK REGARDLESS OF THE SHIFT  
ON WHICH VACANCIES OCCUR. THEY WILL  
FAMILIARIZE THEMSELVES WITH YARDMASTERS  
DUTIES ON ALL POSITIONS.

W. F. LORD, GYM

Posted ..... Depot Yard

Posted ..... Lake Yard

cc: Time Bureau

## EMPLOYES' EXHIBIT NO. 16

January 3, 1945

Mr. H. D. Mudgett, Manager,  
Northern Pacific Terminal Co. of Oregon,  
Union Station Building, Room 209,  
Portland 9, Oregon

Dear Sir:

This acknowledges receipt of your note of January 2, 1945, with copy of an "agreement between the Northern Pacific Terminal Company of Oregon and its yardmasters represented by the Railroad Yardmasters of America" attached thereto, which agreement was signed December 19, 1944, and, by its terms, is given retroactive effect to December 1, 1944.

The agreement in question was not available to us until it came from you January 3, 1945, and we regret that we were not permitted to make our position clear to you on those sections of the agreement that clearly modify or abridge existing agreements between your Company and this Committee, before you signed it.

The following sections are clearly in violation of your agreement with the Brotherhood of Railroad Trainmen, covering yardmen employees of the Company:

Rule 2, (b), violates the first provision of the agreement of June 5, 1931, which reads as follows:

"One seniority roster will be maintained governing Yardmen, Yardmasters, Assistant Yardmasters and Relief Yardmasters."

This section also violates the provisions of Article 16 (D) and (E) of the Yardmen's Agreement, which reads as follows:

"(D) The rights to preference of work and promotion will be governed by seniority in service, everything being equal, the yardman longest in service will be given preference."

"(E) In the appointment of Yardmasters and Assistant Yardmasters the oldest qualified yardman will be given consideration."

Also, the second provision of the Agreement of June 5, 1931, reading as follows:

"In the appointment of Yardmasters and Assistant Yardmasters, fitness and ability being sufficient the oldest qualified yardman will be given preference."

Except for the joint rule quoted just above, it is the contention of this Committee that rules governing the appointment of regular yardmasters lie exclusively in the agreement between the Yardmen's Committee and the Management; and also as yardmasters' seniority was established for all yardmen by the Agreement of June 5, 1931, such rights cannot be destroyed by an agreement to the contrary with another organization to which the Brotherhood is not a party, nor can the carrier legally make another rule with an organization having no jurisdiction that adds more exacting conditions in the matter of promotion to yardmaster, than is provided for in the agreement with the organization that does have jurisdiction in those matters.

Sections (c), (d) and (e), Rule 2, page 1, of the alleged agreement between the Company and Yardmasters of America, are also in opposition to the agreement of June 5, 1931, therefore, are of no force or effect. Sections (c), (d) and (e) taken together with Section (b), provide for a separate list of yardmasters with dates in accordance with date of appointment as yardmaster, for those in service prior to December, 1944, and in accordance with the "60-day provision" for those appointed thereafter. This, of course, would, if legal and proper, take away all yardmaster rights of yardmen senior as yardmen over those so shown on the list, as conferred and provided for by the agreement of June 5, 1931, between the Company and the committees representing both the yardmasters and the yardmen, and such agreement was fully interpreted and was held as valid and effective by Division One, National Railroad Adjustment Board, in the Halbrook Case, Award No. 4150, decided September 15, 1939. To attempt to make agreements purporting to set aside acquired seniority rights does violence not only to the schedule agreement and the Railway Labor Act, but also to laws that have held seniority to be a property right.

Section (g), Rule 2, of the alleged agreement purports to assume jurisdiction over yardmen in the matter of retaining seniority as such, and describes conditions under which they may exercise seniority as yardmen, therefore, is outside the scope of any yardmaster agreement and a violation of the jurisdictional rights of the Yardmen's Committee. Accordingly, we submit, the carrier violated the Railroad Labor Act by making any such agreement prior to the time the Board of Mediation shall formally certify the Yardmasters of America as the bargaining agency for the Company's yardmen.

Section (h), Rule 2, of the purported agreement is in direct violation of the third provision of the three-way agreement of June 5, 1931, which reads as follows:

"For relief work the oldest qualified available man on each shift shall be used."

We now have copy of your letter of December 29, 1944, to W. F. Lord, General Yardmaster, instructing him to post a bulletin for assignment of three extra yardmasters to do all extra work regardless of the shift, and this, too, is in violation of the third provision of agreement dated June 5, 1931, therefore, violates the established rights of yardmen without conference and agreement with this Committee.

Section (e), Rule 3, of the alleged agreement is intended to supersede the third paragraph of the agreement of June 5, 1931, and accordingly, violates the rights of yardmen.

Section (b) of Article 4, likewise violates Section 3 of the agreement of June 5, 1931, quoted above.

Rule 6, Adjustment Procedure, your agreement with the yardmasters, does not concern yardmen, except that it limits representation at investigations to a yardmaster, while the Yardmen's Agreement permits the accused to have a yardman of his choice as a representative. Now if only yardmasters' seniority is involved in an investigation, we have no objection to the rule, but please accept this as notice that if the yardmaster's rights as

a yardman are involved, this Committee holds that the yardmen's investigation rule must be strictly complied with.

Finally, Rule 13, Change in Agreement, of the carrier's agreement with the yardmasters, that part which purports to set aside or supersede the agreement of June 5, 1931, without conference and agreement with this committee, is, we hold, illegal, improper and is in violation of the Railway Labor Act.

In addition to the foregoing, we wish to call your attention to our position as set forth in conferences and previous letters to you, with respect to any agreement that affects the acquired rights of our yardmen, such as the following:

You addressed a letter dated November 18th, 1943, to the undersigned, your file E-14-7, to which you attached a copy of the agreement of December 18, 1937, of the Railroad Yardmasters of America, and we replied under date of December 6th, 1943, setting forth our position which was briefly that those portions of the 1937 agreement that were inconsistent with the three-way agreement, were of no force or effect. Under date of February 2, 1944, Mr. A. J. Jack, Chairman of the Railway Yardmasters of America, directed a joint letter to yourself and the undersigned in which he announced that his organization considered the so-called three-way agreement "terminated and without force". In that letter he also advised the Manager to comply with Rule 10, Paragraph (F) of the Yardmasters' Agreement which would require a separate seniority roster for yardmasters. The undersigned replied to Mr. Jack by letter dated February 3, 1944, with a copy to you. In that letter the position of the Yardmen's Committee was clearly set forth, and it is our understanding that the Management concurred in that letter to the extent of advising Mr. Jack that they regarded the three-way agreement as still in effect. As a result of this matter, Mr. Jack took his case to the Fourth Division of the National Railroad Adjustment Board where it was docketed as No. 251. This claim was a request that the carrier comply with Rule 10, paragraph (F) of the agreement effective December 18, 1937. This case was heard at Chicago, Illinois, on the 20th of September, 1944 and was dismissed as a so-called "moot case". It is shown in the Board's records as Award No. 248. On October 21, 1944, the Manager of the Terminal Company directed a letter to the undersigned, asking for our interpretation of Sections (D) and (E) of Article 16 of the current Yardmen's Agreement inasmuch as they affected the seniority of yardmen appointed to yardmasters' position. We replied under date of October 23, 1944, setting forth our position and, likewise, setting forth our position with respect to the three-way agreement, and the Management never did send a reply in any way disputing our said interpretation.

Under date of October 25, 1944, you directed a letter to the Local Chairman of the Yardmen's Committee in answer to a submission of claims by Yardmen Carl J. Diorio and B. B. Smith, in which you stated as an opinion that the three-way agreement of 1931 is no longer in effect and would have no bearing on any claims based upon it. On October 30, 1944, the undersigned directed a letter to you taking issue with the opinion expressed to the Local Chairman and setting forth facts and arguments in support of our position. On November 2, 1944, Local Chairman Kerr and the undersigned met you in your office and discussed those very matters with you. At that meeting you handed the undersigned a so-called seniority list of yardmasters showing them as of the date they were appointed as such, in derogation of the three-way agreement, and we called that your attention. On November 3, 1944, we confirmed our position set forth in conference in another letter to you. You replied under date of November 30, 1944, and stated that "this matter is being given very careful consideration, and you will be advised in due course the result thereof."

We, of course, certainly expected that we would be consulted before any kind of an agreement would be signed with the yardmasters that affected the rights of yardmen, all of which had been the subject of all of this exchange of letters and conferences.

As was previously stated, we had no knowledge of the agreement signed on December 19, 1944, made effective December 1, 1944, therefore, we can only conclude, and we think the record thoroughly justifies that conclusion, that the entire purpose of proceeding in that manner was to gain a technical advantage for the purpose of voiding, if at all possible, any recourse for us under the provisions of the Railway Labor Act.

It is also our position that the Management's course in this matter is highly prejudicial to decent labor relations between it and its yardmen employees during these trying war times, particularly that the employees have and are abiding strictly by wartime regulations, while it seems definitely clear here the Management has resorted to tactics that not only violate the intents and purposes of the Railway Labor Act, but are also, we submit, liable to result in bringing about difficulties in the handling of yardmen personnel.

We have endeavored to set forth a brief review of the history of this particular controversy in order that we may not be accused of proceeding without acquainting the carrier with the facts upon which we predicate our case and our conclusions with respect to the same. This is also to notify you that we will proceed at once to take whatever action that may be legally taken and that is available to us in order to correct the matter complained of.

Yours truly,

(Signed) C. W. STEVENS  
General Chairman, B. R. T.

\* \* \* \*

In the light of subsequent analysis we are convinced that the General Chairman's position in the premises set forth in the above letter are correct.

#### EMPLOYES' EXHIBIT NO. 17

May 23, 1945  
FILE: NPT-2928  
" NPT-2929  
" NPT-2930  
" NPT-2931  
" NPT-2956

Mr. H. D. Mudgett, Manager  
N. P. T. Co. of Ore.,  
Union Station Bldg,  
Portland, Ore.

Dear Sir:

Submitting claims of Yardman G. W. Sandy for a day's pay in various grades of yardmaster positions—period in February and March, 1945, as set forth below. Claims based on 3-way agreement of June 5, 1931.

On February 2, 1945, Mr. Sandy was working regularly as a yardman on the first shift; was fully rested and available for duty and qualified to act as yardmaster. The general yardmaster laid off, and Mr. Sam White, the assistant general yardmaster, filled the position, thus creating a vacancy that should have been filled by Mr. Sandy but, instead, was filled by Mr. White, the assistant general yardmaster. Inasmuch as Mr. Sandy was not then called to fill the assistant general yardmaster's place, claim is made for earnings equivalent to those paid to the man who filled the assistant general yardmaster's place.

From February 18 to February 22, 1945, both dates inclusive, a relief yardmaster was needed on a first shift, and Mr. Tom Allen, Jr., regularly assigned yardman on the second shift was used in preference to Mr. Sandy who was the senior assigned available yardman on the shift, competent to act as yardmaster, and claim is that Mr. Sandy should be paid an amount equal to what was paid to Mr. Allen on dates in question.

On February 27 and 28, and March 1, Mr. Sandy was the senior yardman on the first shift, competent to act as yardmaster at a time when Mr. Tom Allen, Jr., a regular assigned yardman on the second shift was used as a relief yardmaster, and Mr. Sandy claims earnings equivalent to those paid to Mr. Allen on dates in question.

These claims are based on the 3-way agreement of June 5, 1931.

**POSITION OF COMMITTEE:** Please refer to the agreement of June 5, 1931, between the management, the committee representing the yardmen and a committee representing the yardmasters, which agreement we will designate as Exhibit No. 1, in this case, therefore, by incorporation is made a part hereof. Please refer also to the agreement between the Management and the Yardmasters of America, which was signed December 19, 1944 and made effective December 1, 1944, and we will designate it as our Exhibit No. 2 in this case.

It is noted that it is now the management's position that the yardmen's schedule signed March 16, 1943, supersedes and makes null and void the 3-way agreement of June 5, 1931. It is our contention that the re-issue or reprint of the yardmen's schedule in March, 1943, did not cancel the agreement between the yardmen, yardmasters and your company as made effective June 1, 1931, for many reasons, some of which are as follows:

(1) The yardmen's schedule is an exclusive agreement between the company and its yardmen, therefore, the "three-way agreement" involving another organization with a separate jurisdiction would not go into the book, or become a part thereof, except by surrender of jurisdiction or at least by permission of such other organization.

(2) No revision of any rule in the yardmen's agreement that in any way turns on the agreement of June 5, 1931, was affected in the revision and re-issue of the schedule.

(3) The carrier served no notice of a desire to abolish or terminate the 3-way agreement, in the manner as prescribed by federal law, nor did it even suggest it in the informal exchange of writings in the way of "proposed" changes as were adopted by the B.R.T. Committee and the Carrier, the idea of both parties being that no notices be served, and that whatever changes that were agreed to would be mutual, and where agreement could not be had on any rule, there would be no change.

The record shows that the General Chairman on the property for the Yardmasters of America, on February 2, 1944,—ten and a half months after the effective date of the new B. of R.T. agreement—directed a letter jointly to the company manager and the chairman of the Yardmen's Committee, stating: "This is to advise you that the Railroad Yardmasters of America consider the so-called three-way agreement terminated and without force." The undersigned answered by a letter to General Chairman A. J. Jack, dated February 3, 1944, with a copy to you, disputing his contention in every respect. The carrier's answer was not furnished to us, but it is quite clear they did not agree with Mr. Jack, otherwise, Mr. Jack would not have taken the case to the Adjustment Board. The record also shows that subsequent to Mr. Jack's notice and over a year after the effective date of the revised B. of R. T. agreement, the carrier's manager arranged a meeting in his office between himself and Mr. Burns of St. Paul, for the company, and A. J. Jack and the undersigned, for the employees, all for the purpose of arriving at a satisfactory substitute for the three-way agreement. At that meeting the carrier representatives certainly did not contend that the three-way agreement was abrogated by the yardmen's schedule revision. Upon the contrary, THEY FRANKLY TOLD MR. JACK THAT IT IS EFFECTIVE.

Then Mr. Jack took his case to the Adjustment Board and neither he nor the carrier considered it necessary, at least as a matter of courtesy, particularly that we were the people that were a party to the controversy . . . to even let us know about it, until the Board, after hearing,

had dismissed the case. Mr. Jack in the last paragraph of his "statement of fact" said:

"Carrier refused to comply with Rule 10 (f) stating: 'We cannot issue such a roster, inasmuch as we consider the Three Way Agreement of June 5, 1931, still in effect, which agreement provides for one seniority roster for Yardmasters and Yardmen.' . . ."

Nevertheless, the Board dismissed the case.

Our conclusions are, that the carrier, in view of the record and practices since March 16, 1943, has now decided to repudiate the agreement without complying with the federal law that governs, and in spite of the difficulty in maintaining amicable relations during these trying war years.

The agreement in question was not available to us until it came from you January 3, 1945, and we regret that we were not permitted to make our position clear to you on those sections of the agreement that clearly modify or abridge agreements between your Company and this Committee, before you signed it.

The following sections are clearly in violation of your agreement with the Brotherhood of Railroad Trainmen covering yardmen employees of the Company:

Rule 2, (b), violates the first provision of the agreement of June 5, 1931, which reads as follows:

"One seniority roster will be maintained governing Yardmen, Yardmasters, Assistant Yardmasters and Relief Yardmasters."

This section also violates the provisions of Article 16 (D) and (E) of the Yardmen's Agreement, which reads as follows:

"(D) The rights to preference of work and promotion will be governed by seniority in service, everything being equal, the yardman longest in service will be given preference."

"(E) In the appointment of Yardmasters and Assistant Yardmasters the oldest qualified yardman will be given consideration."

Also, the second provision of the agreement of June 5, 1931, reading as follows:

"In the appointment of Yardmasters and Assistant Yardmasters, fitness and ability being sufficient the oldest qualified yardman will be given preference."

As to the effect of your agreement with the yardmasters effective December 1, 1944, we beg to advise as follows:

Except for the joint rule quoted just above, it is the contention of this Committee that rules governing the appointment of regular yardmasters lie exclusively in the agreement between the Yardmen's Committee and the Management; and also as yardmasters' seniority was established for all yardmen by the agreement of June 5, 1931, such rights cannot be destroyed by an agreement to the contrary with another organization to which the Brotherhood is not a party, nor can the carrier legally make another rule with an organization having no jurisdiction that adds more exacting conditions in the matter of promotion to yardmaster, than is provided for in the agreement with the organization that does have jurisdiction in those matters.

Sections (c), (d) and (e), Rule 2, Page 1, of the alleged agreement between the Company and Yardmasters of America, are also in opposition to the agreement of June 5, 1931, therefore, are of no force or effect. Sections (c), (d) and (e) taken together with Section (b), provide for a separate list of yardmasters with dates in accordance with the "60-day provision" for those appointed thereafter. This, of course, would, if legal and proper, take away all yardmaster rights of yardmen senior as yardmen over those so shown on the list, as conferred and provided for by the agreement



of June 5, 1931, between the Company and the committees representing both the yardmasters and the yardmen, and such agreement was fully interpreted and was held as valid and effective by Division One, National Railroad Adjustment Board, in the Halbrook case, Award No. 4150, decided September 15, 1939. To attempt to make agreements purporting to set aside acquired seniority rights does violence not only to the schedule agreement and to the Railway Labor Act, but also to laws that have held seniority to be a property right.

Section (g), Rule 2, of the alleged agreement purports to assume jurisdiction over yardmen in the matter of retaining seniority as such, and describes conditions under which they may exercise seniority as yardmen, therefore, is outside the scope of any yardmaster agreement and a violation of the jurisdictional rights of the Yardmen's Committee. Accordingly, we submit, the carrier violated the Railroad Labor Act by making any such agreement prior to the time the Board of Mediation shall formally certify the Yardmasters of America as the bargaining agency for the Company's yardmen.

Section (h), Rule 2, of the purported agreement is in direct violation of the third provision of the three-way agreement of June 5, 1931, which reads as follows:

"For relief work the oldest qualified available man on each shift shall be used."

We now have a copy of your letter of December 29, 1944, to W. F. Lord, General Yardmaster, instructing him to post a bulletin for assignment of three extra yardmasters to do all extra work regardless of the shift, and this, too, is in violation of the third provision of the agreement dated June 5, 1931, therefore, violates the established rights of yardmen without conference and agreement with this Committee. You were so notified by our letter of January 3, 1945.

Section (e), Rule 3, of the alleged agreement is intended to supersede the third paragraph of the agreement of June 5, 1931, and accordingly, violates the rights of yardmen.

Section (b) of Article 4, likewise violates Section 3 of the agreement of June 5, 1931, quoted above.

Rule 6, Adjustment Procedure, your agreement with the yardmasters, does not concern yardmen, except that it limits representation at investigations to a yardmaster, while the Yardmen's Agreement permits the accused to have a yardman of his choice as a representative. Now if only yardmasters' seniority is involved in an investigation, we have no objection to the rule, but please accept this as notice that if the yardmaster's rights as a yardman are involved, this Committee holds that the yardmen's investigation rule must be strictly complied with.

Finally, Rule 13, Change in Agreement, of the carrier's agreement with the yardmasters, that part which purports to set aside or supersede the agreement of June 5, 1931, without conference and agreement with this committee, is, we hold, illegal, improper and is in violation of the Railway Labor Act.

In addition to the foregoing, we wish to call your attention to our position as set forth in conference and previous letters to you, with respect to any agreement that affects the acquired rights of our yardmen, such as the following:

You addressed a letter dated November 18th, 1943, to the undersigned, your file E-14-7, to which you attached a copy of the agreement of December 18, 1937, of the Railroad Yardmasters of America, and we replied under date of December 6th, 1943, setting forth our position which was briefly that those portions of the 1937 agreement that were inconsistent with the three-way agreement, were of no force or effect. Under date of February 2, 1944, Mr. A. J. Jack, Chairman of Railway Yardmasters of America, directed a joint letter to yourself and the undersigned in which he announced that his

organization considered the so-called three-way agreement "terminated and without force". In that letter he also advised the Manager to comply with Rule 10, Paragraph (F) of the Yardmaster's Agreement which would require a separate seniority roster for yardmasters. The undersigned replied to Mr. Jack by letter dated February 3, 1944, with a copy to you. In that letter the position of the Yardmen's Committee was clearly set forth, and it is our understanding that the Management concurred in that letter to the extent of advising Mr. Jack that they regarded the three-way agreement as still in effect. As a result of this matter, Mr. Jack took his case to the Fourth Division of the National Railroad Adjustment Board where it was docketed as No. 251. This claim was a request that the carrier comply with Rule 10, paragraph (f) of the agreement effective December 18, 1937. This case was heard at Chicago, Illinois, on the 20th of September, 1944, and was dismissed as a so-called "moot case". It is shown in the Board's records as Award No. 248. On October 21, 1944, the Manager of the Terminal Company directed a letter to the undersigned asking for our interpretation of Sections (D) and (E) of Article 16 of the current yardmen's Agreement inasmuch as they affected the seniority of yardmen appointed to yardmasters' positions and likewise setting forth our position with respect to the three-way agreement, and the Management never did send a reply in any way disputing our said interpretation.

Under date of October 25, 1944, you directed a letter to the Local Chairman of the Yardmen's Committee in answer to a submission on claims of Yardmen Carl J. Diorio and B. B. Smith, in which you stated as an opinion that the three-way agreement of 1931 is no longer in effect and would have no bearing on any claims based upon it. On October 30, 1944, the undersigned directed a letter to you taking issue with the opinion expressed to the Local Chairman and setting forth facts and arguments in support of our position. On November 2, 1944, Local Chairman Kerr and the undersigned met you in your office and discussed those very matters with you. At that meeting you handed the undersigned a so-called seniority list of yardmasters showing them as of the date they were appointed as such, in derogation of the three-way agreement, and we called that to your attention. On November 3, 1944, we confirmed our position set forth in conference in another letter to you. You replied under date of November 30, 1944, and stated that "This matter is being given very careful consideration and you will be advised in due course the result thereof."

We, of course, certainly expected that we would be consulted before any kind of an agreement would be signed with the yardmaster that affected the rights of yardmen, all of which had been the subject of all this exchange of letters and conferences.

As was previously stated, we had no knowledge of the agreement signed on December 19, 1944, made effective December 1, 1944, therefore, we can only conclude, and we think the record thoroughly justifies that conclusion, that the entire purpose of proceeding in that manner was to gain a technical advantage for the purpose of voiding, if at all possible, any recourse for us under the provisions of the Railway Labor Act.

It is also our position that the Management's course in this matter is highly prejudicial to decent labor relations between it and its yardmen employees during these trying war times, particularly that the employees have and are abiding strictly by the war time regulations, while it seems definitely clear here the Management has resorted to tactics that not only violate the intents and purposes of the Railway Labor Act, but are also, we submit, liable to result in bringing about difficulties in the handling of yardmen personnel.

Please check into this matter and advise decision.

Yours truly,

(Signed) C. W. STEVENS  
General Chairman

CWS/ms

## EMPLOYES' EXHIBIT NO. 18

December 8, 1945  
FILE: NPT-3043

Mr. H. D. Mudgett, Manager  
N.P.T. Co. of Oregon  
Union Ry. Station Building  
Portland 9, Oregon

Dear Sir:

Submitting claim of Yardman-Yardmaster Geo. Sandy for time lost as Yardmaster on following dates when a Junior Yardman was used to protect a yardmaster's vacancy under circumstances where claimant was Senior yardman and entitled to be used, pursuant to the 3-way agreement of June 5, 1931:

"April 2 to 4th, incl.; 6 to 9th, incl.; 11, 13, 16, 17; 28 to 30, incl.—1945."

POSITION OF COMMITTEE: These claims are analogous to the claims of Mr. Sandy, covering several dates in February and March, 1945, submitted to you May 23, 1945, and the position taken therein is the position upon which we support the instant claims.

Please check into the matter and advise decision.

Yours truly,

(Signed) C. W. STEVENS  
C. W. Stevens,  
General Chairman

CWS/hm

## EMPLOYES' EXHIBIT NO. 19

THE NORTHERN PACIFIC TERMINAL COMPANY  
of Oregon  
OFFICE OF MANAGER

H. D. MUDGETT,  
MANAGER

PORTLAND, OREGON, January 4, 1946  
File E-4-6

Mr. C. W. Stevens, General Chairman  
Brotherhood of Railroad Trainmen  
306 Park Building  
Portland 5, Oregon

Dear Sir:

This will acknowledge receipt of your letter of December 8th, your File NPT-3043, concerning the claim of Yardman G. W. Sandy for not being used as a yardmaster on the following dates, said claim being based upon the three-party agreement of June 5, 1931:

April 1 to 4th, incl.; 6 to 9th, incl.; 11, 13, 16, 17; 28 to 30, incl.—1945.

It is noted that all of the instant claims have been submitted subsequent to the adoption of the Yardmasters' Agreement on the Terminal Company property on December 1, 1944. As we view the matter, Mr. Sandy has no yardmaster's seniority established in conformity with the current Yardmasters' Agreement, therefore, was not subject to call as a yardmaster on the dates in question. Mr. Sandy had an opportunity to bid in an extra yardmaster's assignment, but he preferred not to do so, continuing to submit his claims pursuant to the three-way agreement of June 5, 1931.

Our position relative to the three-party agreement was submitted to you in detail on March 27, 1945, in connection with a number of similar claims

on other dates. Our position taken at that time remains unchanged, and the reasons set forth therein are the reasons we feel the instant claims are not well-founded.

Payment of these claims, therefore, is again declined.

Yours truly,

(Signed) H. D. MUDGETT,  
Manager

**POSITION OF EMPLOYES:** The Committee representing the Brotherhood of Railroad Trainmen contends that the submission made to the Management of the Northern Pacific Terminal Company of Oregon by former General Chairman C. W. Stevens for the G. W. Sandy claim is fully explanatory and explains the so-called 3-way Agreement, agreements covering the yardmasters' Association, the Yardmasters of America and, finally, the present Agreement of the Brotherhood of Railroad Trainmen, revised. The letters submitted for your consideration, which we have presented in support of the claim, plainly set out that Mr. Stevens rejected each time the Management attempted to restrict the rights of yardmen, established under the 3-way Agreement. They also set out that the Management themselves recognized that the 3-way Agreement was still in effect until they placed the bulletin for the three (3) extra yardmasters, January 3, 1945, even though the contracts had changed hands several times in the interim. This contention is supported by the fact that the General Chairman of the Yardmasters' Association presented to your Honorable Board the question which your Board designated as Award No. 248, dated September 20, 1944, which was rejected by your Board as a "moot" case.

The 3-way Agreement was accepted and signed by representatives of the Management, Yardmasters and Brotherhood of Railroad Trainmen, and it was never abrogated in any manner by conference and agreement, and the employees do not understand that the Management could change the provisions of the 3-way Agreement affecting the rights of yardmen gained under that Agreement without proper notice of any contemplated change, to proper Committee representatives of the yardmen, which the Management failed to do as required by the provisions of the Railroad Labor Act. Each schedule secured and revised by the Brotherhood of Railroad Trainmen has retained yardmen's rights to promotion to yardmaster, and the contention is made that the 3-way Agreement, duly executed and signed, provided a consolidated roster for yardmasters, which plainly established all yardmen's rights, cannot arbitrarily be set aside without conference and agreement between all parties, as provided for in the Railroad Labor Act.

The employees feel that the Halbrook Case, Award No. 4150, adjusted by Division One of the N.R.A.B., is analogous in many respects to this case and, inasmuch as this case was settled by Division One, the Employees' representatives respectfully submit that Division Four could not and should not take jurisdiction in this case. As you will note, these yardmen did not have a date as yardmasters but were, under the 3-way Agreement, which stated the oldest available qualified yardman on the shift where relief for yardmaster was needed would be used. The employees have presented all data in support of their position to the Management.

The employees wish to waive appearance for oral argument in this case.

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

The carrier and the employee involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

The question involved in this docket must be resolved under the agreement between the carrier and the Railroad Yardmasters of America. At least since the agreement between these parties, effective December 18, 1937, seniority as yardmaster could be obtained only from date of regular assignment as yardmaster. The so-called Three-Way Agreement of June 5, 1931 did not in any manner affect the seniority standing of a yardmaster, nor did it ipso facto give seniority as a yardmaster to a yardman who had not qualified as a yardmaster. It is the general rule of contract law that a written contract merges all prior and contemporaneous agreements on the subject. Furthermore, by not complying with Rule 2 (b) of the current Yardmasters' Agreement, claimant, George W. Sandy, failed to qualify as a yardmaster.

AWARD

Claim of carrier sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST: R. B. Parkhurst  
Secretary

Dated at Chicago, Illinois, this 27th day of October, 1948.