

Award No. 797

Docket No. 813

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISION**

The Fourth Division consisted of the regular members and in addition Referee Robert O. Boyd when award was rendered.

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**PARTIES TO DISPUTE:**

**RAILROAD YARDMASTERS OF AMERICA**

**ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim and protest of the Railroad Yardmasters of America that:

(1) Carrier unilaterally and without conference abolished the first trick (7:00 A. M. to 3:00 P. M.) Yardmaster position at Enid, Oklahoma and assigned the work, duties and responsibilities of the abolished Yardmaster position to clerks, dispatchers and other employes outside the purview of the controlling Yardmaster Agreement to the detriment of the Yardmaster class and in violation of that Agreement.

(2) Senior unassigned Yardmasters be paid the difference in other earnings and what they would have earned as yardmasters, including rest day and vacation allowances for November 6, 1951 and all subsequent dates until the condition complained of has been corrected.

**EMPLOYES' STATEMENT OF FACTS:** From September 28, 1945 to November 6, 1951, the Carrier maintained three Yardmaster positions at Enid, Oklahoma, in around-the-clock service, in recognition of the requirements of the Yardmasters' Agreement which became effective on September 16, 1945.

Effective November 6, 1951, the third trick Yardmaster position was abolished and the hours of the two remaining Yardmaster positions adjusted as follows (see Exhibit "A"):

First trick 7:00 A. M. to 3:00 P. M.

Second trick 4:00 P. M. to 12:00 Midnight

Effective November 10, 1951, the hours of the two remaining positions were further adjusted as follows (see Exhibit "B"):

Second trick 3:00 P. M. to 11:00 P. M.

Third trick 12:00 Mid. to 8:00 A. M.

**POSITION OF EMPLOYES:** Attached as Exhibits "C," "D," "E," "F," "G," "H," "I" and "J" are copies of various instructions issued by the Superintendent following abolishment of the Yardmaster position designed to aid

and abet in carrying out the violation of the Yardmasters' Agreement due to abolishment of the Yardmaster position.

Attached as Exhibits "K" and "L" and copies of switching orders issued by clerks direct to engine foremen.

Attached as Exhibit "M" is letter of November 19, 1951 from District Chairman Sturman to the Superintendent, protesting the action of the Carrier in abolishing the Yardmaster position and requesting its re-establishment together with pay for monetary loss sustained by the oldest unassigned Yardmaster, on the basis, not only of the violation of the agreement, but also because there was an actual increase in business, rather than a decrease. Denial of the Superintendent, dated November 21, 1951, attached as Exhibit "N," admits the actual increase in business but declines the claim and request—

"account not supported by agreement rules."

In support of our claim in this case, we refer to Third Division Award No. 615, in which we find in Opinion of Board—

"The right to exclusive performance in the absence of exception arises from the application of an elementary principle of law. The 'schedules' are not and do not purport to be the agreement of employment. The agreement of employment is almost universally unwritten. The 'schedules' are merely the subordinate rules and conditions of such employment. The actual contract of employment itself is implied. Since by the patent facts such a contract must exist, as an elemental principle of law it must have a determinable subject matter; stated differently, there can be in law no such thing as a contract but that its subject matter is susceptible of definite determination. It follows from this that in the absence of some definite exclusion, the contract must be deemed to embrace all of the field involved to be a valid contract at all. If it were purely optional with the Carrier to say how much or what of a definite kind of work was the subject matter of the contract, it could say none and the consequence would be in the absence of a subject matter that there would be no contract."

In Third Division Award No. 754 we find in Opinion of Board—

"It is shown that the position of clerk-stenographer and the work attaching thereto were within the scope of the current agreement when the position was abolished on July 1, 1938; that thereupon the work from that position was turned over and assigned to the assistant stationmaster, a position excepted from the scope of the agreement in evidence; that as a result thereof the former occupant of the position of clerk-stenographer is unassigned and unemployed, although retaining seniority rights to the work in question.

"This Board has repeatedly held that positions or work once within collective agreements cannot be removed therefrom arbitrarily, and the work assigned to those not within the purview of such agreements, or to employes occupying positions specifically 'excepted' from the scope of these agreements by understanding or agreement between the parties. Compare Awards Nos. 385, 458, 631, 637, 736 and 751. The principle contained in those Awards is found to be controlling in the instant case, and it is hereby reaffirmed."

In Third Division Award No. 1273 we find in Opinion of Board—

"It has been repeatedly held by this Board that work embraced by the scope rule of an agreement may not properly be removed from such agreement and assigned to employes not subject to its terms."

Further in support of our claim in this case, we refer to Fourth Division Awards which are natural sequels to the Third Division Awards above referred to—

Nos. 272, 357, 360, 405, 445, 448, 451 and 600.

Attached as Exhibits "O" and "P" are copies of correspondence covering the handling of this case by the General Chairman with Vice President- Personnel which include a self-serving unsigned question and answer statement of a former Yard Clerk which falls far short of the purpose for which it was designed when properly analyzed.

Rule 5 (j) of the current agreement provides—

"A yardmaster who has established seniority under this agreement must thereafter, if available and qualified, protect any and all positions for which he may stand or forfeit such seniority."

Obviously, the unassigned Yardmaster is required to protect the extra work which is available and it is the obligation of the Carrier to make such extra work available to him.

From the evidence at hand and the rules and decisions in evidence in this case, the violation is definitely established and the claim should be allowed.

All data used herein has been available to the Carrier.

Oral hearing is requested.

**CARRIER'S STATEMENT OF FACTS:** The current agreement in effect on this property between the Carrier and Railroad Yardmasters of America is one effective September 16, 1945, corrected to include agreed to changes up to and including September 5, 1946, copies of which have been filed with your Board, and the same is by reference made a part of this submission.

Enid, Oklahoma, is a terminal on Carrier's Western Division. Immediately prior to November 6, 1951, there were three yardmasters employed in this terminal, assigned to work 7:00 A. M.-3:00 P. M.; 3:00 P. M.-11:00 P. M.; and 11:00 P. M.-7:00 A. M. On November 2, 1951, following bulletin was issued by Carrier's Superintendent abolishing the 11:00 P. M.-7:00 A. M. yardmaster position effective at close of shift November 6, 1951:

"Enid, November 2, 1951  
837-3

"Yardmasters:

"Notify G. S. Hendrie that effective 7:00 A. M., November 6, 1951, close of his shift, the 3rd trick Yardmaster at Enid, working 11:00 P. M. to 7:00 A. M., is discontinued.

R. C. Canady . . . 11:55 A. M.

"cc—Mr. T. B. Hopper, Gen. Chairman,  
Railroad Yardmasters of America,  
1716 - 14th Ave., South,  
Birmingham, Ala.

Ted R. Sturman, Local Chairman,  
Railroad Yardmasters of America,  
2840 East 1st St.,  
Tulsa, Okla."

Also effective November 6, 1951, the hours of the 3:00 P. M.-11:00 P. M. yardmaster position were changed to 4:00 P. M.-12:00 midnight.

After a short trial period of operation with two yardmasters on duty in Enid Yard, it was decided to change the hours of the two remaining yardmaster positions because Carrier's officers felt better supervision of yard operations could be provided with assigned hours of 3:00 P.M.-11:00 P.M. and 11:59 P.M.-7:59 A.M. Accordingly bulletin was issued November 8, 1951, quoted below, abolishing the two remaining yardmaster positions and establishing two new yardmaster positions effective November 11, 1951:

"Enid, November 8, 1951  
837-3

"BULLETIN NO. 1

"ALL CONCERNED:—ALL YARDMASTERS:

"Effective 12:01 A.M., Sunday, November 11, 1951, yardmaster positions at Enid now working 7:00 A.M. to 3:00 P.M. and 4:00 P.M. to midnight, are discontinued.

"Bids will be accepted in this office up until 4:00 P.M., November 10, 1951, for,

"One yardmaster Enid, working 3:00 P.M. to 11:00 P.M., rest day Sunday, and,

"One Yardmaster Enid, working 11:59 P.M. to 7:59 A.M., rest day Friday.

"Assignment will be made 12:01 A.M., November 11, 1951, in order that yardmaster assigned can start work on these jobs November 11, 1951.

R. C. Canady,  
Superintendent . . . 2:10 P.M.

cc—Messrs. Fisher  
Freeze  
Davidson  
Hendrie  
Corn

Agent—Arkansas City, Kansas

• Mr. T. B. Hopper Gen. Chairman,  
Railroad Yardmasters of America,  
1716 - 14th Ave., South,  
Birmingham, Alabama

Mr. Ted R. Sturman, Local Chairman,  
Railroad Yardmasters of America,  
2840 East 1st St.,  
Tulsa, Oklahoma."

W. E. Davidson was assigned to the 3:00 P.M.-11:00 P.M. yardmaster position, which position was designated as first yardmaster at Enid. G. S. Hendrie was assigned to the 11:59 P.M.-7:59 A.M. yardmaster position.

Seniority roster for yardmasters at Enid, issued as of January 1, 1952, shows the following employes with yardmaster's seniority:

Name	Seniority Date
Davidson, W. E.	August 1, 1925
Hendrie, G. S.	December 15, 1925
Corn, J. B.	July 26, 1944
Boss, O. A.	January 3, 1947

Carrier has four yard engine assignments in Enid Yard, three shifts working around the clock, seven days per week, 8:00 A. M.-4:00 P. M., 4:00 P. M.-12:00 midnight, and 11:59 P. M.-7:59 A. M., and one shift assigned daily except Sunday, 3:00 P. M.-11:00 P. M.

Yard clerical force consists of four positions: Chief yard clerk, 7:00 A. M.-4:00 P. M., 1 hour for lunch; yard clerk, 4:00 P. M.-12:00 midnight; yard clerk, 12:00 midnight-8:00 A. M., all jobs assigned 7 days per week. Also one yard clerk, Monday through Friday, 10:00 A. M.-7:00 P. M., 1 hour for lunch. This is the same clerical force that existed prior to November 6, 1951.

On November 19, 1951, T. R. Sturman, District Chairman, RYofA, wrote Carrier's Superintendent at Enid protesting abolishment of yardmaster position and requesting that the position be restored. Superintendent Canady wrote District Chairman Sturman November 21, 1951 declining his request to restore this position. T. B. Hopper, General Chairman, RYofA, then wrote Carrier's Vice President-Personnel December 3, 1951, as per Carrier's Exhibit "A." Vice President King replied to the General Chairman December 31, 1951, per Carrier's Exhibit "A-1." January 10, 1952 the General Chairman advised Mr. King he was appealing this case to his grand lodge office for further handling. Carrier then received letter January 16, 1952 from Secretary Parkhurst advising that notice had been served by the RYofA of intention to file ex parte submission. No conference was requested by the Employes and none has been held on the property regarding this dispute.

**POSITION OF CARRIER:** For convenient reference, quoted below are certain rules of the current Yardmasters' Agreement applicable to the case here under consideration:

**"Scope. Rule 1.**

"(a) Except as otherwise provided in this agreement, the term 'yardmaster' as used in this agreement shall include positions of general yardmasters, assistant general yardmasters, yardmasters and assistant yardmasters.

"(b) One position of general yardmaster at each of the following terminals does not come under the scope of this agreement: St. Louis, Springfield, Monett, Tulsa, Oklahoma City, Kansas City, Memphis and Birmingham. The rules of this agreement do not apply to these positions. It is understood and agreed there shall be no restriction upon the company as to yardmaster or other duties which may be required of or performed by general yardmasters filling positions listed in this rule.

"(c) This agreement does not change present practice of officers of the railway, agent yardmasters or footboard yardmasters directing or supervising switching or yard service."

**"Grievances. Rule 12.**

"A yardmaster having a grievance arising out of the interpretation and application of these rules or who considers himself unjustly treated in matters other than discipline will or his representative may in his behalf present such grievance in writing to the supervising officer within 30 days after the date of the occurrence out of which such grievance arises. The supervising officer will render a decision within 15 days. Should such a yardmaster not be satisfied with a decision he or his representative may appeal the case up to and including the highest officer designated by the Management to handle such matters. Appeals shall be made within 30 days after decision is rendered by the officer from whom appeals are taken and decision will be made within 30 days after appeal is made.

"Money payments accruing under the terms of these rules resulting from grievances shall not be applied retroactively in excess of 30

days prior to the date of first presentation of said claim to the Company.

"No grievance shall be considered unless presented and appealed in conformity with the time limits specified herein, provided, however, that such time limits may be extended by agreement between the Company and the representative of the employees."

"Notice of Positions Discontinued. Rule 15.

"Yardmasters will be given 48 consecutive hours advance notice of reduction in force, with copy to General and Local Chairman."

"Rates of pay. Rule 16.

"(a) Yardmasters will be paid the following monthly rates of pay which shall cover the calendar days of the month, less rest days. Yardmasters working only a fractional part of the month will be paid pro rata of the monthly rate based on the calendar days of the month less rest days.

"Enid:	Monthly Rate	
	(1946)	(Current)
1st Yardmaster	\$349.20	\$418.00
Other Yardmaster	339.00	409.50

(Rates of pay for Enid only reproduced.)

"(b) It is agreed classification of positions covered by this agreement according to work assignment in effect on date of this agreement is correct.

"(c) Rates of pay for additional positions of yardmasters will be the same as for similar positions included in this agreement.

"(d) No change in the title of yardmaster of any grade shall be made for the purpose of reducing the rate of pay of a position, unless there is a change in the duties and responsibilities.

"(e) This agreement shall not be construed as an obligation to maintain or establish yardmasters' positions, nor as restricting the Company's right to discontinue yardmaster positions now or hereafter established."

An agreed to interpretation or understanding in connection with paragraph (c) of Rule 1 was entered into April 18, 1946, which reads as follows:

"Memorandum of Understanding

"Confirming verbal understanding reached in conference at St. Louis, Missouri today, it is understood paragraph (c) of Rule 1, agreement effective September 11, 1945, which reads:

"This agreement does not change present practice of officers of the Railway, agent-yardmasters or footboard yardmasters, directing or supervising switching or yard service.' applies to instances where officers of the Railway, agent-yardmasters or footboard yardmasters are required to perform certain yardmaster duties after the effective date of the agreement signed at St. Louis September 11, 1945 and effective September 16, 1945, as well as instances where this was being done at the time the agreement was signed.

"Signed at St. Louis, Mo., April 18, 1946."

**EMPLOYEES' STATEMENT OF CLAIM:** Part 1 of Employes claim alleges Carrier violated the Yardmasters' Agreement when it abolished the first trick yardmaster position at Enid "unilaterally and without conference." Rule 16 (e) plainly states Carrier is not obligated to maintain or establish yardmaster positions, and that Carrier's right to discontinue yardmaster position is not restricted by the Agreement. There is no ambiguity in the wording of this rule—See this Division's Award 482. This Division has also held it is not within the jurisdiction of the Board to alter or modify agreements between employes and carrier, and that the Board is limited to the contract as written between the parties and may not read therein the claimed intent of either party not clearly expressed by the terms of the agreement (Awards 217, 268 and 271). There is no rule requiring conference before Carrier may discontinue a yardmaster position, or the assent of the organization, and Carrier's right to discontinue such positions may not, as stated in opinions of this Division, be abridged by an Award in this respect.

Part 1 further alleges Carrier "assigned the work, duties and responsibilities of the abolished yardmaster position to clerks, dispatchers and other employes outside the purview of the controlling yardmaster agreement \* \* \*." This statement is nothing more or less than conjecture; it neither establishes a violation of any agreement nor a basis for a conclusion that it is a statement of fact. It will be noted the same statement is made in the General Chairman's letter December 3, 1951 (Exhibit "A"), but Employes have presented no evidence to Carrier that supports such an allegation. Carrier emphatically denies that it has assigned yardmaster duties to any employe at Enid as a result of abolishment of yardmaster position. It is fundamental that the burden is upon the claimant to show a violation of the controlling agreement—Awards 413 and 740 of this Division. Without proof, such claim is a nullity.

Part 2 of Employes' claim is indefinite and blanket in nature. Carrier called the General Chairman's attention to this fact (Exhibit A-1) and advised him general claims of this kind are not proper under the Yardmasters' Agreement. Rule 12 outlines procedure to be followed in handling of grievances. It specifically provides a yardmaster will present such grievance, or that his representative may present such grievance in his behalf. It further provides for certain time limits to be observed. The Employes have recognized that a blanket claim is not proper by submitting claims for individual dates, claiming a day at yardmaster's rate for alleged performance of yardmaster's work by others. In letter December 3, 1951, the General Chairman relied on certain incidents which occurred on specified dates. Specific violations alleged are necessarily limited to dates on which they occurred and any time claims presented must be handled in conformity with the provisions of Rule 12, or they are forever barred by the provisions of such rule. Award 734 of this Division, involving claim of the RYofA on this property, holds that an appeal is a nullity if not made in compliance with time limits of Rule 12. The General Chairman was advised that any specific claims he might have would have to be handled in accordance with Rule 12. He has appealed nine specific time claims to Carrier's Vice President-Personnel for November 13, 18, 19, 20, 22, 24, 26 and 29, 1951, in letters dated December 29 and 31, 1951, January 3, 8 and 9, 1952. By his appeal of specific time claims he has recognized and admitted that a blanket claim such as presented in this case is not proper.

Attached, as Carrier's Exhibit "B", is statement showing time claims presented by Employes holding seniority as yardmaster at Enid between November 6, 1951 and January 21, 1952. Some duplicate claims were presented due to employes handling claims both through the RYofA and through the BofRT who represent Yardmen on this property, and such duplicate claims are not included in this statement. The Board will note that so far only nine of these claims have been appealed, and that time limits specified in Rule 12 have expired on the large majority of such claims and they are therefore, barred from further consideration, either on the property or before this Board.

Part 2 of claim is in error in that it claims compensation for November 6, 1951 and subsequent dates "account first trick yardmaster position abol-

ished." Carrier's Statement of Facts show that first trick (7:00 A.M.-3:00 P.M.) yardmaster position was not abolished until November 11, 1951. If such claim is recognized by the Board, the claim may not antedate the actual occurrence November 11, 1951.

### DUTIES OF YARDMASTERS, YARD FOREMAN (CONDUCTOR)

Since our agreement covering yardmasters does not contain a rule designating what will be yardmaster's work, it is of interest to consider the occupational classification published by the United States Railway Labor Board in 1921 and recognized by the Interstate Commerce Commission in its rules governing classification of Steam Railway Employes and Reports of their Service and Compensation, defining how certain employes should be classified. The document shows following distinctive class of positions and description of class:

#### "GRADE 2—YARDMASTER GROUP SYMBOL (SYM-2)

"Distinctive Class of Positions:	Symbol
YARD MASTER	SYM-21

#### "Description of Class:

"The above class includes positions in which the preponderant duties of incumbents are to supervise the work of employes engaged in breaking up, making up and handling trains and general yard switching within a railroad yard or an assigned district of a large railroad yard; and to perform related work."

#### "YARD CONDUCTOR AND YARD FOREMAN GROUP SYMBOL (TYC)

"Distinctive Class of Positions:	Symbol
YARD CONDUCTOR OR YARD FOREMAN	TYC-11

#### "Description of Class:

"The above class includes positions in which the duties of incumbents are to supervise and assist the work of switchmen and helpers in yard switching and yard work train service, including supervision of the breaking up and making up of trains; and to perform related work."

### HANDLING OF YARD WORK—ENID YARD

Prior to December 1945 Carrier had one yardmaster position assigned at Enid. In December 1944 a second yardmaster position was put on and in September 1945 a third yardmaster position was assigned. Three yardmaster positions have been assigned since September 1945 until November 6, 1951.

It has been the considered opinion of Carrier's officers for some time that there was no need for continuous yardmaster supervision in this terminal for normal every day operations. Enid is in the heart of the grain belt and a large majority of the work is in the handling of grain. The major portion of switching service is in connection with grain elevators and making up and breaking up of trains. The heavy switching in Enid yard is concentrated between 3:00 P.M. and 12:00 midnight, as indicated by the fact there are two yard switch crews working during that period. The yard crew working 11:59 P.M.-7:59 A.M. finishes up the making up of early morning trains. There are 5 freight trains timecarded in and out of Enid, and four of these



trains have a scheduled departure time prior to 8:00 A.M. One through freight train is carded to leave at 6:20 P.M. It is sometimes necessary for the 8:00 A.M. yard crew to perform some switching in finishing up one of the morning locals when work cannot be completed by 11:59 P.M. crew. All freight trains into Enid are scheduled to arrive in the afternoon. There is one regular passenger train into and out of Enid scheduled to arrive at 11:59 A.M. and depart at 3:05 P.M. It is necessary to turn passenger equipment on this train on the wye track each day, and usually motor car is changed each day.

After carefully considering operations at Enid, Carrier's Superintendent discontinued the third trick (11:00 P.M.-7:00 A.M.) yardmaster position. However, after observing operations for several days following discontinuance of this position, it was decided the midnight yard crew needed some supervision because of work required of this crew in making up trains. The day yard crew (8:00 A.M.-4:00 P.M.) was manned by experienced yardmen, performed routine work day after day, and actually required no supervision to handle its work. Therefore, the Superintendent rearranged yardmaster positions to provide yardmaster supervision from 3:00 P.M. to 11:00 P.M. and 11:59 P.M. to 7:59 A.M., effective November 11, 1951.

On November 5, 1951 Carrier's Superintendent issued a letter to all concerned advising them of discontinuance of yardmaster position, copy attached as Carrier's Exhibit "C." Shown in parentheses are the occupations of employees addressed by name. This letter contained specific instructions on handling of work after yardmaster position was discontinued in order to prevent performance of yardmaster's work by other employees. It will be noted this letter states, "It must be understood that no one but the yardmaster can instruct Engine Foreman or yard crew about handling of the yard." This wording was used because other than officers of the Carrier were addressed and the Superintendent did not want any misunderstanding to arise among yard clerks and other employees addressed. These instructions were continued after change in yardmaster assignments November 11, 1951 with respect to the 8:00 A.M.-4:00 P.M. yard crew. There has been no violation of such instructions in the handling of work at Enid. While this letter provided that anyone could give the engine foreman a switch list, yard clerks in the yard office are the only employees who have done this.

Also on November 5, 1951 Superintendent Canady addressed letter to the yardmasters at Enid, copy attached as Carrier's Exhibit "C-1", instructing them to give yard crews line-up of work to be performed during any period there was no yardmaster on duty. These instructions were continued in effect after November 11, 1951, but were revised to cover period 8:00 A.M. to 3:00 P.M., and 11:00 P.M. to 11:59 P.M. Yardmasters have furnished yard crews all necessary instructions and line-ups since November 6, 1951.

November 12, 1951 Superintendent Canady addressed following letter to yardmasters and yard clerks:

"Enid, November 12, 1951

"Yardmasters  
Yard Clerks

"Yardmaster going off duty at 8:00 AM should instruct yard crew going on duty at 8:00 AM in writing, to take care of 609-604 change engines or motor cars if necessary and it might be well for the roundhouse to phone the yardmaster or clerk each day, tell them what engine or motor car going out on 604, and the yard clerk can give the engine foreman a switch list in order that yard foreman will understand what engine or motor car will protect 604 out of Enid, especially when you go to make any changes.

/s/ R. C. Canady

"cc—JE JLF

"If going to change engines on 609-604 tell yardmaster before 800 am so that he can lineup yard foreman before going off duty at 800 am."

The initials "JE" refer to John Eckley, Roundhouse Foreman, and "JLF" refer to J. L. Freeze, Chief Dispatcher at Enid. These instructions were issued to avoid any controversy about yard crew handling passenger trains 609-604 daily. Yard crew has turned equipment on these trains for many years and requires no instructions to handle this work. The Roundhouse foreman is responsible for the designation of power and it is his duty to advise the motor car or engine to be used on train 604. It has never been the duty of yardmaster to designate power for this train, or any other train. Quoted below is Bulletin issued by the first yardmaster November 22, 1951, instructing yard crews on handling of trains 609-604:

"Enid—November 22nd, 1951

"BULLETIN

"ALL YARDMEN

ALL CONCERNED . . . ENID

"Yard crew working 800 am to 400 pm will take care of trains 609-604 at Enid, turn eng and train, change coaches, change motor or engine if necessary daily until further notice.

/s/ W. E. Davidson  
Yardmaster."

#### CLAIM OF EMPLOYEES THAT OTHER THAN YARDMASTERS PERFORMED YARDMASTER'S WORK

A perusal of General Chairman's letter December 3, 1951 (Exhibit "A") will show the only basis advanced for his claim is that yard clerks performed yardmaster's work. He has referred to dispatchers and others performing yardmaster's work, but has submitted no evidence to support such allegation. In the nine specific time claims appealed by the General Chairman, eight of them were based upon allegation that yard clerk performed yardmaster's work in preparing switch list and delivered such list to the engine foreman; in the other, Employes contended roundhouse foreman performed yardmaster's work because he answered the question of one of the switchmen about motor car going out on Train 604. A typical claim appealed by the General Chairman is one in favor of J. B. Corn, November 26, 1951, and as information attached as Carrier's Exhibit "D" is copy of Mr. Hopper's letter January 3, 1952, appealing this claim, and as Carrier's Exhibit "D-1" copy of Mr. King's reply January 16, 1952.

It is an indisputable fact that yard clerks may properly perform work of checking yard, industrial and interchange tracks, and prepare yard checks and switch lists of such tracks; prepare switch lists of inbound trains, marking information thereon from waybills as to consignee; answer the telephone in the yard office, receive information from shippers and others, make a record of such information when necessary, and pass such information to other employes who need it in the performance of their work. That is all that yard clerks at Enid are doing. They are not issuing instructions of any kind to yard crews, and have no authority to do so. As will be seen from switch lists referred to in letter December 31, 1951 (Exhibit "A-1"), no instructions of any kind are contained in such lists. The issue, therefore, boils down to contention of Employes that the handling or delivery of switch lists by yard clerks to the engine foreman is yardmaster's work.

It is also noted in these specific claims submitted by or in behalf of yardmasters, the passing of information to engine foreman by yard clerks

takes only a very few minutes. Even if this passing of information should be held to be yardmaster's work, which we do not agree it is (being actually messenger work), it is certainly not of sufficient magnitude to justify employment of a yardmaster.

Attached, as Carrier's Exhibits, are statements from four clerical employes at Enid outlining the manner of handling switch lists at that point for the past twenty years:

Carrier's Exhibit—

"E"—Statement P. B. Slack, Assistant Cashier, Enid, who worked as chief yard clerk April 1938 to January 1950.

"E-1"—Statement G. E. Williams, relief chief yard clerk and yard clerk.

"E-2"—Statement Bud Harper, chief clerk to Agent, Enid, who worked as yard clerk from 1932 to 1942.

"E-3"—Statement W. R. Venable, yard clerk, Enid.

These statements definitely show it has been and is the practice for yard clerks to prepare all switch lists, and confirm the fact yard clerks have delivered switch lists to engine foremen for many years, before there was any agreement in effect covering yardmasters, and have continued to do so since there was an agreement with the RYofA. No change of any kind has been made in the duties assigned to yard clerks since yardmaster position was discontinued. There is no rule in the Yardmasters' Agreement spelling out the duties of a yardmaster, and the practice of yard clerks delivering switch lists is not a violation of that agreement. If for no other reason, past practice would govern in the absence of any rule to the contrary. This doctrine is well established by many awards of the Board, specifically see First Division Award 12907, Third Division Award 4349.

The definition of the class of yardmaster as published by the United States Railway Labor Board provided this class "includes positions in which the preponderant duties of incumbents are to supervise the work of employes engaged in breaking up, making up and handling trains and general yard switching \* \*." Is the "preponderant duty" of a yardmaster that of delivering switch lists to an engine foreman? The delivering of a switch list could require only a few minutes time, and the only requirement for such a task would be one's ability to get from one point to another within the yard. The engine foreman is in charge of his crew. He is promoted to engine foreman because of his experience and knowledge of switching operations and his ability to direct the work of the yard crew efficiently. It is the engine foreman's duty to perform yard switching which he knows must be done, and the differential or premium rate applicable to engine foreman is in recognition of his responsibility. In Award 184, this Division held—

"It is largely within the prerogative of the management to determine the amount of necessary supervision which it requires. Work that is routine may require only instructions as to what must be done and a checking up of what has been done. When a switching crew is handed a list, if competent, it can be depended on to carry through. Given the 'what' it knows the 'how'."

S. J. Radford, who is assigned as engine foreman on the 8:00 A. M.-4:00 P. M. yard crew has a seniority date as switchman at Enid of July 19, 1915. He has worked in Enid yard more than 35 years. He receives a lineup from the yardmaster assigned to work from 11:59 P. M. to 7:59 A. M., which contains all of the instructions necessary for the handling of his work until the 3:00 P. M. yardmaster comes on duty. The occasional switch list prepared and furnished by the yard clerk and delivered to this engine foreman contain no instructions and none are necessary.

In the handling of individual time claims, the Employes have contended that requirement of Carrier that yardmasters program or lay-out work for yard crews to perform after yardmaster went off duty was in violation of their Agreement. This question was directly ruled upon by this Division in Award 739, involving claim of the RYofA on this property at Tulsa, Oklahoma, denying contention of the organization that programming or laying out work was violative of the Yardmasters' Agreement. This Award is final and binding upon the parties and such issue may not again be presented to this Board for consideration (Awards 506 and 718 of this Division).

#### REINSTATEMENT OF YARDMASTER POSITION January 21, 1952

Carrier has a joint switching arrangement with the AT&SF Railway covering switching of certain grain elevators at Enid, each Carrier performing switching in alternate years. The AT&SF performed switching of these joint elevators during the year 1951, switching reverting to this Carrier effective January 1, 1952. However, one of the large elevators was not in full operation at the time this Carrier assumed the joint switching and did not resume full operation until January 15, 1952. When it did resume full operation, and because of the added switching required of yard crews under the joint switching arrangement, Carrier felt that conditions were such at this time as to justify additional supervision and the 7:00 A. M.-3:00 P. M. yardmaster position was reestablished effective January 21, 1952, without conference with or concurrence of the Employes.

\* \* \* \* \*

Claim of Employes should be denied in its entirety because there is no Agreement support and claim is entirely without merit.

Part 1 of Employes claim is a request for a new rule and such a claim is in contravention to this Division's oft repeated declaration that the Board cannot change, amend or modify agreement rules. Claim is indefinite and blanket in nature and not in compliance with rules of the Yardmasters' Agreement. The large majority of individual claims presented on the property have not been appealed in conformity with Rule 12 of the Agreement.

No evidence or proof has been submitted to Carrier to support allegations of Employes. Their claim is conjecture only; in the absence of proof it is a nullity.

There is no rule in the Yardmasters' Agreement designating or defining duties that are yardmaster's work, and Employes have not even advised Carrier what duties they contend are yardmaster's work, other than delivering of switch lists to engine foremen. No evidence has been presented to show that yardmaster's work has been assigned to other than yardmasters, or that any employe at Enid is engaged "preponderantly" in performance of yardmaster's work. Carrier emphatically denies that any yardmaster duties have been assigned to other employes.

Carrier respectfully requests that claim be denied.

Carrier affirms that all data submitted in support of its position have been presented to the Employes. The right to answer any data not previously presented by the Employes is reserved by the Carrier.

Oral hearing is requested.

(Exhibits not reproduced).

**OPINION OF BOARD:** Prior to November 6, 1951, there were three Yardmaster positions at Enid in around-the-clock service. Thereafter the first trick was abolished and the remaining position adjusted so that Yardmaster service was provided except for hours 8:00 A. M. to 3:00 P. M. and

11:00 P. M. to midnight. After the position was abolished, the Superintendent issued the instructions for the work during time not covered by Yardmaster, and the Yardmasters on duty were required to line up work at the end of their tours of duty for the Engine Foreman during the period no Yardmaster was on duty. The Yard Clerks were required to transmit these instructions and furnish to the Engine Foreman the switch lists.

This claim is premised on the theory that work belonging to Yardmasters has been assigned to employes outside of the scope of their Agreement. The Scope Rule does not purport to define the work of Yardmasters. By custom and usage it is well understood, however, that the principal duties of Yardmasters are to supervise the employes engaged in making up, breaking up and handling trains and switching in railroad yards. By reason of the Agreement with the Yardmasters, such work belongs exclusively to that craft or class and, subject to definite exclusions mentioned in the Agreement, may not arbitrarily be removed from Yardmasters and performed by persons of a different class or craft not covered by the Agreement. However, under Rule 16(e), the Carrier may abolish a Yardmaster position. It is for the Carrier to determine what, if any supervision it cares to have of the yard work during any particular period of time. But, having abolished a Yardmaster position, if any work remains, the Carrier may not then require others, outside of the Agreement and not excluded therefrom, to perform such work.

It is the contention of the Organization that, when the first trick Yardmaster position was abolished, Yard Clerks then performed the work, and it cites examples of Yard Clerks furnishing switch lists to Engine Foremen. To the assertion that this is Yardmasters' work, the Carrier shows that, for a long period of time before and continuing since the execution of the current Agreement, the Yard Clerks have furnished switch lists to the Engine Foreman. The burden is on the Organization to establish the facts supporting its contention, and we have concluded that it has not done so in this respect. There is no record of the Yard Clerks being authorized to instruct the engine crew how to handle the switch list. In fact, the Yard Clerks were directed not to assume any such authority. We have carefully examined the exhibits submitted by the Employes and have determined that none of such examples demonstrates that Yard Clerks performed any duties that were exclusively Yardmaster work.

The Employes further contend that, when the first trick was abolished, the Carrier violated the Scope Rule of the Agreement by requiring the second and third trick Yardmasters to lay out work to be performed after their tour of duty was ended, and for the time no Yardmaster was on duty. The programming of work by Yardmasters for execution beyond their respective tours of duty was before this Division in Awards 733 and 739, and the Employes' protest to such practice was there denied. We find no basis in this docket to depart from those precedents. We should add this reservation, however, that, when a Yardmaster programs work to be performed after his tour of duty, he may not also delegate to others the responsibility of supervising the work to be so performed. But, when an experienced Engine Foreman is given work to be performed, we may not then conclude, from the mere fact that thereafter he performs it competently but without supervision, that he has thereby assumed a responsibility belonging to the Yardmaster.

The Employes, in claim (1), also contend that the Yardmaster work was performed by Dispatchers. In the light of Rule 1(c) and the agreed to interpretation thereof, we have been unable to find any support in the Agreement for this contention.

The contention is made by the Employes, and admitted by the Carrier, that in general the work at the yard was about the same, if not somewhat greater, during the time the Yardmaster position was abolished. But, as distinguished from the situation in Award 360 (4th Division), there has been no showing here that the supervisory work was delegated to and performed in any appreciable degree by persons not under the contract.

From a review of the record and precedents cited, we have concluded that the facts set forth in the submission do not support the claim.

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

The carrier and the employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST: R. B. Parkhurst  
Secretary

Dated at Chicago, Illinois, this 30th day of June, 1952.

### DISSENT OF LABOR MEMBERS TO AWARD NO. 797, DOCKET NO. 813

We dissent because we believe the majority erroneously gives too much creditability to the evidence and arguments of the carrier and altogether too little to that of the employes. This appears all the more obvious in the light of the admitted fact that the experiment proved unsatisfactory and unworkable, the position having been restored on January 21, 1952.

We concur in the denial, inherent in this Award, of the contention that the matter is "moot" because "the condition complained of" was corrected before the case reached this Board.

We dissent also because we believe the majority errs in following what it is pleased to call "precedents" in Awards 733 and 739 of this Division in respect to the "programming of work by Yardmasters for execution beyond their respective tours of duty": What we said in our dissents to Awards 733 and 739 in respect to this matter applies with equal force and pertinence here and is made a part of this dissent.

R. A. WALTON

M. G. SCHOCH

W. J. RYAN