

Award No. 801

Docket No. 784

**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.

PARTIES TO DISPUTE:

RAILROAD YARDMASTERS OF AMERICA

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

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

- (1) On January 2, 1951, Carrier abolished the Yardmaster position known as "Third Trick Shed" at Union Station, St. Louis, Missouri, and delegated the yardmaster work, duties and authority of that position to car men, Power Directors, and other employes outside the purview of the controlling Yardmaster Agreement, and in violation thereof.
- (2) Carrier re-establish the aforesaid yardmaster position and reimburse the extra yardmaster first out on January 2, 1951, and all subsequent dates at the Yardmaster rate of pay until the condition complained of has been corrected.

EMPLOYES' STATEMENT OF FACTS: On January 2, 1951 Carrier abolished the third trick Yardmaster position at West Side Train Shed, Union Station, St. Louis, Missouri, and delegated the work, duties and authority of the Yardmaster class to Assistant Power Directors and Carmen, employes outside the purview of the effective Yardmaster Agreement, thereby depriving the Yardmaster class of work, duties and authority for which they had bargained.

POSITION OF EMPLOYES: The rules of the effective Yardmaster Agreement pertinent to the instant claim are quoted here:

RULE 1

Scope

"These rules shall govern the rates of pay, hours of service, and working conditions of yardmaster forces. The term 'yardmaster' as used herein means yardmasters of all grades, except general yardmasters who are vested with responsibilities and authority that stamp them as officials."

RULE 3**Seniority**

“(k) Unassigned or furloughed yardmasters must accept regular positions on basis of their seniority standing as yardmasters or forfeit their seniority rights.”

RULE 4**Time Allowances and Hours of Service**

“(b) Eight (8) consecutive hours or less shall constitute a day’s work.”

“(g) The assignments of yardmasters shall be six (6) days per week. The monthly rates of pay are based on six (6) days per week assignments.”

“(h) So far as consistent with requirements of the service, rest days will be arranged in accordance with the desire of each yardmaster, the senior to have preference.”

“(i) A yardmaster who works on his regular designated rest day will be paid therefor at one and one-half times the regular rate, in addition to the regular monthly rate.”

RULE 6**Vacations**

“Regularly assigned yardmasters, who have been in the service of the Company as such for a period of one year or more, will be allowed a vacation of twelve (12) working days per year with pay at the rate of the assignment held when vacation is allowed.”

Quoted chronologically is all correspondence between General Chairm and Carrier in connection with the claim:

“April 4, 1951

Mr. H. Miller, Jr.
Superintendent T.R.R.A.
Union Station
St. Louis 3, Mo.

Dear Sir:

You were having some trouble with Asst. yardmaster on third shift at west side train shed Union Station latter part of last year 1950 and pulled the job off January 2, 1951 with no change in work to be done. But allowed the yardmaster work to be done by men outside the scope of yardmasters Agreement.

When business is regular the yardmaster work is being done by a car man (who is a very capable man) from whom the Switchmen do not like to take instructions, but are forced to accept and obey this mans instructions.

“This violation having been presented to lodge and given to me for handling. I have made three trips to this job and watched the performance of duties, the last date March 25, 1951 for two and one-half hours during this time this carman received instructions seven times and gave instructions to the switching crews six times the

other time he gave signal to shove car the limit at one time the tower one blew whistle for this man to come to the phone for further instructions which he handled.

When business is heavy you have used the second shift yardmaster for as much as two hours overtime, which proves the work for a yardmaster is on this job.

The trainmen agreement does not allow yardmaster or anyone outside the agreement to throw one switch.

You are now and have been since January 2, 1951 violating the scope rule one of yardmasters agreement which reads These rules shall govern the rates of pay, hours of service, and working conditions of yard master forces. The term 'Yardmaster as used herein means yardmasters of all grades, except General yardmasters who are vested with responsibilities and authority that stamp them as officials. Also this violates our Rule (4b) Eight (8) hours consecutive or less shall constitute a day's work.

The Award of Division 4 of National Railroad Board of Adjustment Award 494 rendered in favor of the yardmasters on Second St.

We demand one day's pay for each Third Shift and Time and one-half for regular rest day, January 2, 1951, and each succeeding day until job is corrected.

Yours very truly,

/s/ E. D. Cox
Gen. Chr. R.Y.A."

"April 11, 1951
013-300

Mr. E. D. Cox
General Chairman, RYofA
6811 Smiley Avenue
St. Louis 9, Missouri

Dear Sir:

Referring to your letter of April 4, alleging that yardmasters' duties are being performed by other than yardmasters on third shift, west side, Union Station.

In the second paragraph of your letter you state that yardmaster work is being done by a carman, while in the third paragraph you state that from personal observation the carman merely relays instructions received from someone in authority to the proper parties. He does not originate the instructions and is in no wise held responsible for their execution. In other words, the carman merely acts as a messenger in delivering the instructions of the supervisor in charge.

You also mention the fact that at times when business is heavy the second-shift yardmaster is worked overtime as supporting your contention. Just to the contrary, that fact proves we are not violating the agreement because it shows that a yardmaster is used whenever there is yardmaster work to be performed.

Your organization has progressed many cases to the Fourth Division of the National Railroad Adjustment Board, making allegations similar to the one in the instant case and your position was invariably denied.

Your claim is without merit and it is denied.

Yours truly,

/s/ Henry Miller, Jr."

"April 23, 1951

Mr. John A. Wicks
Director Personnel
Union Station
St. Louis 3, Mo.

Dear Sir:

Appealing to you from decision of Superintendent Mr. Miller in case of yardmaster third shift West side of Station being pulled off January 2nd.

While the yardmaster who held this job and as claimed by the officials not doing the work Mr. Burns taught the car man to use the phones and transact the business while he was elsewhere, and Mr. Curtis the car man being young and industrious does this work very well and as long as he is allowed to do the yardmaster work which he was taught to do by Mr. Burns your work is being well done by the use of Mr. Curtis.

Just where does the forces in tower ONE get their information what cuts to make, when and where to put them. Tower men are not yardmaster forces and have no right to assign work to switchmen.

The forces in Tower ONE assisted by the car man Mr. Curtis are handling this yardmaster work throughout the entire third shift.

The fact you had a yardmaster on this job you did not want to punish does not allow you to pull the job off and do the work with other than yardmaster forces, as you have done in this case.

The agreement with your switchmen, from the ranks yardmaster is promoted ('does not allow the yardmaster to throw one switch') if it is done they collect a time slip.

This is no different than when the trainmaster on second St. done the yardmaster work for which the fourth division N.R.A.B. Award 594 Sustained us and claim was paid. This should be proof that yardmasters agreement must be respected.

This is a direct violation of Scope rule of yardmasters agreement in effect since June 16, 1945, which reads as follows,

These rules shall govern the rates of pay, hours of service, and working conditions of yardmasters forces. The term 'yardmaster' as used herein means yardmasters of all grades, except general yardmasters who are vested with responsibilities and authority that stamp them as officials.

This work also violates our rule (4b) Eight (8) consecutive hours or less shall constitute a day's work.

For this violation we claim one day's pay for each third shift and time and one-half for rest days January 2, 1951 and until job is corrected.

Yours truly,

/s/ E. D. Cox
Gen. Chr. R.Y.A."

"April 25, 1951
013-275-12

Mr. E. D. Cox, General Chairman
Railroad Yardmasters of America
6811 Smiley Avenue
St. Louis 9, Missouri

Dear Sir:

This will acknowledge your letter of April 23, complaining of the fact that the yardmaster position on the third shift at the west side of Union Station was abolished January 2 in the alleged violation of the provisions of the contract with your organization effective June 16, 1945.

Inasmuch as you know that there is nothing in the contract that prevents the abolishment of a job or that interferes with the right of the company to determine the number of yardmasters employed or the locations where they will be assigned, you are trying to bolster your position by unwarranted allegations. We are quoting them and adding our comment:

'Just where does the forces in Tower One get their information what cuts to make, when, and where to put them. Tower men are not yardmaster forces and have no right to assign work to switchmen.'

You have worked here long enough to know that the Assistant Power Directors stationed in Tower 1 and working under the jurisdiction of the Passenger Train Master have complete control over every movement into and out of Union Station tracks and that their instructions regarding such movements are telephoned to the two cabins located on the east and west sides of the trainshed. You also know that the arrangement was in effect for many years prior to execution of the contract with your organization. When conditions warrant close range supervision over the switchmen handling the trains and cuts, yardmasters are assigned but they have nothing to do with the origination of the instructions covering the movement to be made.

'While the yardmaster who held this job and as claimed by the officials not doing the work, Mr. Burns taught the carman to use the phones and transact the business while he was elsewhere, and Mr. Curtis, the carman, being young and industrious does this work very well and as long as he is allowed to do the yardmaster work, which he was taught to do by Mr. Burns, your work is being well done by the use of Mr. Curtis.'

This statement is ridiculous, considering the length of time you have been here and your familiarity with Union Station operations. You know that Airman Burns, referred to, is not the first airman that ever answered the telephone in the shanties referred to. You also know that airmen were being used in that manner when the contract with your organization was negotiated. As a matter of fact, I believe you were on the Committee when the Brotherhood of Railroad Trainmen made the protest in 1934 about airmen answering the telephones in the shanties and relaying instructions to switchmen, which they alleged was their work. You also probably know, that the Southwestern Regional Train Service Board of Adjustment denied the switchmen's claim in their Decision 772.

Superintendent Miller's action in abolishing the yardmaster's position is sustained.

Yours very truly,

/s/ John A. Wicks,
Dir. of Personnel."

"May 7, 1951

Mr. John A. Wicks
Director Personnel
Union Station
St. Louis, Mo.

Dear Sir:

Your letter of April 25th, read carefully. We are not trying to tell you to put on or pull off yardmasters, complaint from us is the fact you are using other than yardmaster forces to do your yardmaster work, this you have no right to do.

The Fourth paragraph of your letter you claim I should know the assistant power director authorizes the moves in and out of the train shed and has been done for years. Correct, that is one of the reasons the yardmasters organized was to protect their rights which had been abused by Trainmasters, assistant, trainmasters power directors and clerks, also bullring men at many points on this railroad.

Mr. Millers letter of April 11, 1951 answer to my letter of April 4, 1951, Third paragraph he said the second shift yard master was worked overtime when there was yardmaster work to be done, When this yardmaster was used it was at times when the car man would be to busy doing his own duties and would not have the time to perform the yardmasters duties.

The forces who operate "q" Tower handle all the moves in and out of the trainshed but they do not have the right to the direct supervision of the switching crews. neither does the train master, the direct supervision of the switching crews is the work of yardmaster forces, and must not be done by other forces.

Should you intend to continue to violate the yardmaster contract which was signed in good faith June 16, 1945, Will you join me in presentation to the fourth division National Railroad Adjustment Board?

Yours truly,

/s/ E. D. Cox
Gen. Chr. R.Y.A."

“May 14, 1951
013-275-12

Mr. E. D. Cox, General Chairman
Railroad Yardmasters of America
6811 Smiley Avenue
St. Louis 9, Missouri

Dear Sir:

Your letter May 7—abolishment of the yardmaster position on the third shift at the west side of the Union Station.

You admit that we have the right to abolish yardmaster positions at any time, but insist that we are using other than yardmaster forces to do yardmasters' work. You attempt to prove that assistant power directors are doing yardmasters' work and that the answering of telephones and transmission of messages is yardmasters' work.

As to the assistant power directors: The work of directing all train movements into and out of the Union Station that they do, unchanged over the years, is incident to their positions which are now and have been included in the agreement with the Telegraphers' organization since 1925, and is not yardmasters' work. The first and only agreement with the Yardmasters' organization was dated June 1, 1945 and you know that it was not designed to interfere or change the work of other classes of employes in service at the time. You made no complaint about the activities of the assistant power directors or any claim that the work being performed by them belonged to yardmasters, nor have you done so until now. A somewhat similar claim was made by your organization in Award 639, which was denied.

As to answering the telephone and relaying instructions received over the telephone: We do not think you are sincere in claiming this as yardmasters' work as there have been many awards from all Divisions of the National Railroad Adjustment Board denying such claims. Neither do we think you are sincere in alleging that a carman is exercising supervision over switching crews when he answers a telephone and transmits messages. Supervision carries with it the authority to see that instructions are carried out, which you will have to admit the carman lacks in the capacity of messenger.

Your organization has already submitted a number of similar cases to the Fourth Division of the National Railroad Adjustment Board which were denied, Award 639 previously mentioned being one, on the grounds that the organization had not carried the burden of proof, which is upon it, that yardmasters' work was being performed. In view of such lack of proof as outlined in the facts above, we do not understand what question you wish us to join you in a submission to the Fourth Division.

Yours very truly,

/s/ John A. Wicks
Director of Personnel.”

Attention is directed to Carrier's brazen admission in its April 25, 1951 letter that the Assistant Power Directors stationed in Tower A and working under the jurisdiction of the Passenger Trainmaster are issuing direct instructions by telephone to the yard crews, which action in itself is a violation of Scope Rule 1 of the effective Yardmaster Agreement since Assistant Power Directors are employes outside the scope of that Agreement; therefore, this claim should be allowed, particularly since the Yard-

master position which was abolished had been in existence for many years and there had been no change in the method of operation and no reduction in the volume of traffic.

All that is contained herein has been available to the Carrier.

Oral hearing is requested.

CARRIER'S STATEMENT OF FACTS: As a result of the decision of the management that direct yardmaster supervision on the third shift, west side, Union Station, was not needed, the assistant yardmaster position on that shift with assigned hours from 11 P.M. to 7 A.M. was abolished January 2, 1951.

The General Chairman, under date of April 4, 1951, Exhibit A, filed claim with the Superintendent for one day's pay starting with January 2, 1951, alleging that a carman was performing yardmasters' duties on the third shift.

The Superintendent denied the claim April 11, Exhibit B. The General Chairman appealed the Superintendent's decision to the Director of Personnel, April 23, Exhibit C. It will be noted that he expanded his allegations to include the Assistant Power Directors in Tower 1 as well as the carmen as doing yardmasters' work. The claim was denied by the Director of Personnel, April 25, Exhibit D. This was followed by an exchange of letters from the General Chairman, May 7, Exhibit E, and the Director of Personnel's reply of May 14, Exhibit F.

The claim as presented to the Board has been further expanded, it being alleged therein that "other employes" (occupations not enumerated) as well as carmen and power directors were doing yardmasters' work. This is the first reference to "other employes."

POSITION OF CARRIER: The amount of yardmaster supervision to be provided is a managerial function and the question of whether it is sufficient is of no concern to the organization. They are affected only when there is a question of others than members of their craft performing such duties and the burden of proof is on the organization when they so allege.

In the General Chairman's letter to the Superintendent, April 4, 1951, Exhibit A, he alleges, in the second paragraph, that a carman is doing yardmaster work which he identifies in the third paragraph from personal observations as receiving information by telephone to be relayed to switching crews. There have been many awards from all divisions of the National Railroad Adjustment Board denying such claims, holding that such work was not the exclusive right of any craft. Carmen were answering the telephone and relaying information received at the time the first and only yardmasters' agreement was executed, June 16, 1945; had been for many years prior to that time and still continue to do so. In 1934 the Brotherhood of Railroad Trainmen protested carmen doing such work, claiming it belonged to their craft. They progressed the claim to the Southwestern Regional Train Service Board and it was denied in Decision 772.

The General Chairman in the same letter, Exhibit A, mentions the fact that when business is heavy the second shift yardmaster is worked overtime to support his claim that there is some yardmaster work on the third shift. but it actually supports our contention that we are not violating the agreement because it proves that a yardmaster is used whenever there is yardmaster work to be performed.

The General Chairman in his letter to the Director of Personnel, April 23, Exhibit C, questions the propriety of the forces in Tower 1 (assistant power directors) giving information to switchmen as to work to be done on trains. The work of directing all train movements into and out of the

Union Station by Assistant Power Directors is incident to their positions which are now and have been included in the agreement with the Telegraphers' organization since 1925 and is not yardmasters' work. The work performed by them has not changed over the many years and no complaint was made of their activities by the Yardmasters' organization at the time the first and only agreement with that organization was made effective June 1, 1945, nor has any been made since, until the instant case. The organization made the same contention in a previous case before the Board and it was denied in Award 639.

Yardmasters are supervisory employes. Supervision carries with it the authority to issue instructions and to see that they are carried out. It is a well known fact that carmen and assistant power directors have no authority to see that the information they relay or give to switchmen is compiled with, their function ceases when the information is delivered so it cannot be successfully contended that they perform yardmasters' work.

The organization cited Award 594 as supporting their position. In that case they contended that an official exercised immediate supervision over switching crews, which is entirely different from the instant case and for that reason the Award has no probative value.

However, as previously stated, Award 639 covered a case in which the circumstances were very similar and the claim of the organization was denied.

In many awards it has been stated that in instances where the organization claims that individuals other than those of their craft or class are performing work within their agreement that the burden of proof is upon the organization. Yardmasters' duties are supervisory and responsible in nature, with which the organization agrees, and they have failed to prove that others are performing duties of that nature. Lacking such proof the claim is without merit.

The claim has not been progressed in accordance with the Board's regulations. It was expanded when it was appealed from the Superintendent to the Director of Personnel, to which action we did not take exception at the time because it was still being handled on the property, but it was again expanded when it was submitted to the Board as explained in the last paragraph of the Carrier's Statement of Facts.

The claim has not only been improperly submitted but is without merit and should be denied.

All data submitted in support of Carrier's position has been presented to the duly authorized representative of the Employees and made a part of the particular question in dispute.

We desire to be present at the oral hearing.

(Exhibits are not reproduced.)

OPINION OF BOARD: On January 2, 1951, the position of third trick Yardmaster at the Union Station was abolished, and the Organization has made a claim in behalf of the extra Yardmaster standing first out on that day, and subsequent days, on the grounds that the Yardmaster work on that trick has been assigned and performed by persons not covered by the Yardmasters' Agreement. The Scope Rule of the current Agreement reads as follows:

"These rules shall govern the rates of pay, hours of service, and working conditions of yardmaster forces. The term 'yardmaster' as used herein means yardmasters of all grades, except general yard-

masters who are vested with responsibilities and authority that stamp them as officials."

The only exception provided in the Scope Rule is for General Yardmasters when vested with responsibility and authority of officials. It is not contended that the work was performed by General Yardmasters.

The Carrier makes no contention that the Yardmaster work on the third trick had completely diminished, but asserts that such supervision as was required could be and was handled by the Assistant Power Director in Tower 1.

On this property, at the Union Station where this claim arose, the movement in and out of the station is controlled by the Power Director at Tower 1. When Yardmasters are on duty they supervise the work necessary to accomplish the required movements. After the third trick was abolished, the Carrier, when it required close supervision, used the second trick Yardmaster overtime. At all other times the instructions to switching crews were handled from the Assistant Power Director to a carman who relayed them to the crews. We find no provision of the Agreement limiting Yardmaster work to "close" supervision. Inferentially, it is thus admitted that some supervision was required to carry out the directions for the movement in and out of the station. The fact that supervision was handled indirectly by the Passenger Trainmaster through the Power Director and the carmen does not alter it from work characteristic of Yardmasters.

The amount of supervision to be provided is a prerogative of management. But it is not authorized under the current Agreement to remove work contracted for by Yardmasters by altering the type of supervision and requiring others to perform it.

From the fact of record, we have concluded that under the method followed by the Carrier it violated the Scope Rule of the current Yardmasters' Agreement. Claim (2) requests that the Carrier be required to reestablish the position. This we are not authorized to do. The Carrier may correct the violation in any manner consistent with the contract. The claim for the extra Yardmaster is valid from January 2, 1951, until the violation was or is corrected.

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 sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: R. B. Parkhurst
Secretary.

Dated at Chicago, Illinois, this 14th day of July, 1952.

**CONCURRING OPINION OF LABOR MEMBERS TO AWARD NO. 801,
DOCKET NO. 784**

We agree that the Carrier violated the agreement, but we are not in accord with the statement that this Board is not authorized to require the Carrier to restore the abolished position. Such a view is an imperfect and short sighted one. The suggestion that the Carrier may correct the violation in some other manner is not only vague and indefinite and therefore itself the breeder of further dispute, but it amounts to an invitation to indulge in sharp practice—although we do not believe that it was so intended.

Adequate relief must follow an affirmative conclusion against the Carrier in order to restore the situation as it existed prior to the violation of the agreement, and that calls for the restoration of the position improperly abolished.

Nor are we lacking in precedents supporting this contention—more than ten years ago this Division in Award 160 sustained a claim calling for the restoration of a position that had been abolished and the work turned over to others, much as was attempted by the Carrier in the instant case. And like awards have been made from time to time during the intervening years.

Accordingly, we believe it is obvious that the majority of the Division errs in failing to call for complete correction by sustaining the claim in full.

R. A. Walton

M. G. Schoch

W. J. Ryan