

Award No. 1151

Docket No. 1138

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**FOURTH DIVISION**

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

**PARTIES TO DISPUTE:**

**RAILROAD YARDMASTERS OF AMERICA**

**CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

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

Yardmaster J. T. Holleran be allowed an additional day's pay at yardmaster time and one-half rate for March 8, 1956, and each subsequent date until the condition complained of is corrected on account of yardmaster work, duties and authority being performed by employes outside of the yardmaster's agreement on third trick at Grand Avenue Yard, in Chicago Freight Terminal, Chicago, Illinois.

**EMPLOYES STATEMENT OF FACTS:** This dispute was originally handled before this Division by the former bargaining agency for yardmasters and was remanded for further handling on the property, Award 952.

Further handling on the property resulted only in further denial of the request for correction of the violation.

**POSITION OF EMPLOYES:** The further handling of this dispute following Award 952 is evidenced as follows—

Letterhead of

**RAILROAD YARDMASTERS OF AMERICA**

Chicago & North Western Local Lodge No. 32

"March 19, 1956.  
Chicago, Ill.

W. F. Johnson, Superintendent,  
Chicago Freight Terms.  
Chicago & Northwestern Ry.,  
400 West Madison Street,  
Chicago, Ill.

Dear Sir:

Please allow J. T. Holleran an additional days pay at yardmasters time and one half rate for March the 8th 1956, and each subsequent day until the condition complained of is corrected, on account of yardmasters work, duties and authority be assumed by

employes outside of the yardmasters agreement on the third trick at Grand Ave., Yard in the Chicago Freight Terms., Chicago, Ill.

Yours truly,

/s/ L. J. Stift,  
Gen. Chairman,  
C.&N.W. Lodge No. 32.  
R.Y.ofA."

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Letterhead of

Chicago and North Western Railway Company

"Proviso, Ill., April 17, 1956

31-YM

11-YM

Mr. L. J. Stift, Sr.,  
General Chairman RRY of A,  
547 North Pine Avenue,  
Chicago 44, Illinois.

Dear Sir:

Refer to your three (3) letters all dated March 19, 1956 claims of T. E. Hayes, Yardmaster for an additional days pay at yardmasters time and one half rate for March 8th, 1956 and each subsequent date, first trick Grand Avenue; Claim of J. T. Holleran yardmaster for an additional days pay at yardmasters time and one half rate for March 8th, 1956 and each subsequent, third trick Grand Avenue; and claim of J. Weiss yardmaster, for an additional days pay at yardmasters time and one half rate for March 9th, 1956 and each subsequent date, first trick at Weber Yard.

All claims based on allegation that yardmasters work, duties and authority being assumed by employes outside of the yardmasters agreement at said locations.

Please be advised that it is my opinion that no yardmaster duties are being performed by anyone at these points and no yardmaster duties in evidence at these points. Under the circumstances I must respectfully decline the claims.

Yours truly,

/s/ W. F. Johnson  
Superintendent."

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Letterhead of

RAILROAD YARDMASTERS OF AMERICA

Chicago & North Western Local Lodge No. 32

"Chicago, Ill.

April 23, 1956.

Mr. T. M. Van Patten,  
Director of Personnel,  
Chicago & North Western Ry.,  
400 West Madison Street,  
Chicago 6, Ill.

Dear Sir:

On March the 19th, 1956, I presented a claim in writing to Superintendent Mr. W. F. Johnson of the Chicago Freight Terminals

Chicago, Ill., claiming an additional days pay for Yardmaster J. T. Holleran at time and one half rate for March the 8th, 1956 and each subsequent date until the conditions complained of is corrected on account of yardmasters work duties and authority being assumed by employes outside of the yardmasters agreement on the last trick at Grand Avenue Yard in the Chicago Freight Terminals, Chicago, Ill.

On April 21st, 1956 I received a letter dated April the 17th, 1956, declining same.

Statement of facts were that the yard clerk at this point was giving all the instructions and orders to the crew on the 3rd shift at Grand Avenue Yard Chicago Freight Terminals Chicago, Ill.

I am now appealing this claim to you claiming an additional days pay at the rate of time and one half for March the 8th, 1956 and each subsequent day until conditions complained of are corrected on the 3rd trick at Grand Avenue Yard, Chicago Freight Terminals, Chicago, Ill.

Please advise date, time and place for a conference to discuss this claim.

Yours truly,

/s/ L. J. Stift  
General Chairman  
C. & N.W. Lodge No. 32.  
R.Y. of A.

cc: W. F. Johnson"

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Letterhead of

CHICAGO AND NORTH WESTERN RAILWAY SYSTEM

Chicago and North Western Railway Company

Chicago, Saint Paul, Minneapolis and Omaha Railway Company

400 West Madison Street

Chicago 6, Illinois

"June 15, 1956  
File 99-D-17-62

Mr. L. J. Stift,  
547 North Pine Avenue,  
Chicago 44, Illinois.

Dear Sir:

Referring to your letter of April 23, 1956 in respect to claim of J. T. Holleran, Yardmaster, Chicago Freight Terminal Division, for an additional day's pay at time and one-half rate March 8, 1956 and subsequent dates account yard clerk on third shift at Grand Avenue allegedly performing yardmasters work at that point.

Our investigation of this matter develops that the yard clerk on the last shift at Grand Avenue is not performing any yardmasters work. The clerk in no way instructs the yard crew as to the per-

formance of their duties. If a yardmaster's position were established on the last shift at Grand Avenue the functions of the yard clerk would be the same as he has been performing for the past 15 years.

As a matter of information the operation at Grand Avenue is under the supervision of the yardmaster at North Avenue. Our investigation further develops that there is no justification for a yardmaster's position to be established on the last shift at Grand Avenue and accordingly your claim is denied.

Yours truly,

/s/ T. M. Van Patten"

Letterhead of

RAILROAD YARDMASTERS OF AMERICA

CHICAGO & NORTH WESTERN LOCAL LODGE NO. 32

"Chicago, Ill.  
June 18, 1956.

Mr. T. M. Van Patten, Director of Personnel,  
Chicago & North Western Ry.,  
400 West Madison Street,  
Chicago 6, Ill.

Dear Sir:

Referring to your letter of June 15, 1956 File 99-D 17-62, relative to my claim for J. T. Holleran, Yardmaster, Chicago Freight Terminals, for an additional days pay at time and one half rate for March 8, 1956 and each subsequent day account of yardmasters work and duties and authorities being assumed by employes outside of the yardmasters agreement on the last trick at Grand Avenue Yard, Chicago Freight Terminals.

I have a signed statement from the yard clerk on the last trick at Grand Avenue that in the interest of the company they inform and instruct the crews at this point on the last shift and see that they perform the work that is most important, therefore I cannot accept your denial of this claim I am turning this claim over to the Grand Lodge for further handling.

Yours truly,

/s/ L. J. Stift  
Gen. Chairman  
C.&N.W. Lodge No. 32.  
R.Y.ofA.

cc: J. T. Holleran."

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The denial of the Superintendent is clear cut evidence of the utterly inexcusable and arbitrary attitude of the carrier in defense of its position. It is surprising to say the least, that a Superintendent should exhibit such a lack of knowledge of an operation in his territory by a statement that—

"it is my opinion that no yardmaster's duties are being performed by anyone at these points and no yardmaster duties in evidence at these points."

The Director of Personnel has exhibited a more practical approach to the dispute even though he denied the claim on two definitely incorrect contentions, namely—

1. That the clerk in no way instructs the yard crew as to the performance of their duties.
2. That the Operation at Grand Avenue is under the supervision of the Yardmaster at North Avenue.

In refutation of the Director of Personnel's first contention we submit the following —

"To Whom It May Concern—

We receive all our instructions and orders from the yard clerk on duty relative to the work to be done at Grand Avenue District Chicago Freight Terminal, Chicago, Ill.

/s/ George E. Lewis—Foreman"

\* \* \* \* \*

"To Whom It May Concern—

This is a report of the Night Yard Clerk, Grand Avenue Station, Chicago, Ill.

Hours of Assignment	—10:30 P. M. to 6:30 A. M.
Days of Assignment	—Monday thru Friday
Days of Rest	—Saturday and Sunday
Days position is relieved	—Sunday only.

It is the duty of the night yard clerk to check over the many orders which are on the spindle, which is located on the Yard Clerk's desk for instructions of handling of cars received and forwarded from this station.

Check the typed copy of the freight house chart (see attached) which is furnished by the clerical forces of the freight house for movement of cars from the house and those which are to be set at the house. Inform the Conductor of the 10:30 P. M. Engine as to where he will get the cars which are to be spotted at the freight house, furnish train crew with a switch list of the cars which have to be switched for the house, and industries located at Grand Avenue. The making of a switch list is done each time a train, whether it is one or fifty cars, comes into the yard.

Have conversation with the Conductor relative to the orders which are on the spindle with regard to which cars must move out-bound and also those which must be switched or placed at various industries. This is general operation which goes on all during the eight (8) hours of the clerk on duty.

Must answer the Wall Phone when the headman of one of the transfers calls in for a track to pull the train onto, and instruct this headman as to what track he will pull into. If the headman is not an experienced man then the yard clerk must also tell this man to which track he will double his train in the event the in bound train has more than a 28 car train. The yard clerk must also tell all headmen of inbound transfers as to where the yard engine is working in order to avoid any delay to the other engine. When the transfer does call in the yard clerk must also inform the Yard Crew of the arrival of the transfer in order that they will not block such inbound movement and to further avoid an accident or derailment.

Attention is called to the conductor of the yard engine as to any special orders which may be on the spindle or letters of instructions or new general orders relative to the placing of cars at some of the firms in the district. The conductor and yard clerk converse during the tour of our assignment about the type of car or cars that can or cannot be used in loading by the firms such as, whether or not a Northern line car should be used when said car is destined to St. Paul, Minnesota in preference to the using of a Southern, Eastern or Western line car.

Night yard clerk must call the Yardmaster at Wells Street and inform him of the number of cars that will be lined up for the Time freight, which consist of cars from the freighthouse and cars off the team track and from the industries. After the Switch engine has all the above cars lined up, the clerk must again call the Yardmaster at Wells Street to inform him the time freight cars are ready to be pulled.

On at least four of the six nights the Grand Avenue Engine is working the yard clerk is notified by the Wells Street Yardmaster that they, Wells Street, have cars out of the National C. loading for movement to the Penn. RR via Grand Ave. When this information is received it is then necessary for the clerk to put out a message and place same on the spindle which is located on the clerk's desk. The message is to inform the train crew that there are cars or there will be cars on No. 5-Outfreight track for them to get and line up on the Penn RR delivery track located in the Grand Avenue Yard.

During the hours of assignment the clerk receives phone calls from the Trainmaster (Located at 40th Street Pulaski Road and Kinzie Street) relative to how the train crew are doing and what the condition of the yard is.

When there is an inexperienced train crew working the 10:30 P. M. engine it has been the practice, following verbal instructions from either the Yardmaster at North Avenue or one of the Trainmasters to call the Yardmaster at North Avenue (Monday thru Friday) and so inform the Yardmaster at North Avenue that the train crew are not familiar with the duties of the train crew and that they will need assistance. In such cases that North Avenue Yardmaster will come to Grand Avenue and supervise the movements. On other occasions the Yardmaster at North Avenue will call via phone and inquire of the conditions of the yard and whom the Conductor may be. However if an extra crew is to work on Sunday night, then the clerk has no one to call as there is no Yardmaster at North Avenue and the only other Yardmaster on duty is located at 40th Street Yard. In such cases the clerk will instruct the new train crew as to the most important work which should be done.

When the Penn RR delivers cars to Grand Avenue they must be instructed by some one as to where they can track their train and there being no one other than the clerk, it has become the expected duty of the clerk to so inform the Penn RR crew as to where they may leave the inbound train.

FOR EXAMPLE: March 7, 1956 at 3:45 A. M.

'Penn RR Crew Conductor R. B. Smith Engine No. 9207 arrived with 5 cars of Bulk Cement, the track on which they pulled into had one car on same (Canal track). The other track and only other track to which they have access is Track No. 1 O.D. and that had cars on same for the Penn RR. This crew had to be instructed by some one and again the only one there was the Yard Clerk, who in

this case did so instruct them as to where to place their cars and what to do with the car which was on the track ahead of the engine.'

After these cars were received it was necessary for the clerk to leave a note on the spindle for the yard train crew to read telling them that the Penn RR had delivered cars and also furnish the yard crew with a switch list of the inbound train. There being 3 cars in this Penn Train which were for firms not located at Grand Ave., it was necessary for the clerk to call the trainmaster at 40th Street for disposition of cars, Trainmaster L. L. Bennett informed the clerk that he, the clerk, should not have accepted the 3 cars which were Erie 21132 for Weber, Ill., GTW 113827 and Pa. 255246 both for Edison Park, Ill., as Grand Avenue was the wrong delivery point for cars destined to the above mentioned stations. I do not believe that I as the yard clerk on duty or for that matter any yard clerk has the authority to tell the Penn RR crew that they must switch out these 3 cars and take them back to the Penn. RR. L. L. Bennet, Trainmaster informed the clerk that the 3 cars which were delivered to Grand Avenue in error must move on the Ginger Bread Transfer that A. M., for 40th Street. A notice of this effect was made out by the clerk and placed on the spindle for the yard crew to read.

If and when the Erie Street Wrecker is ordered out after the hours of 12:00 midnight and 6:00 A. M., and I now speak of a Sunday night—Monday morning operation the yard clerk is called by the Wisconsin Dispatcher via phone if the wrecker is ordered to move to the Road and told to instruct the Yard train crew to have the wrecker coupled up and placed on the lead for the Road Engine to pick up same. If the wrecker is to be ordered for a terminal move then the phone comes from the Trainmaster located at Proviso, Ill., and the same procedure is done as mentioned above.

There being no Yardmaster on any shift at Grand Ave., it is expected of the Yard clerks, that in the interest of the Company, they will inform and instruct the yard crews and see that they, the Yard crews, perform what work is most important.

P. S.: Since February 24, 1956 I have been working at Grand Ave., during the vacation period of the regular assigned clerk. My regular assignment is a relief position on which I work each Sunday at Grand Avenue Station, and I have been on this assignment for some 15 years now. Each year for the past 5 or 6 years I have been working the vacation assignment of the regular clerk and also fill in on the position when the regular clerk is off.

Yours truly,

/s/ T. E. Fitzpatrick  
Yard Clerk

Signed 3/10/56."

\* \* \* \* \*

"April 2nd, 1956.

Mr. L. J. Stiff,  
547 North Pine Ave.,  
Chicago 44, Ill.

Dear Sir:

Referring to our recent conversation relative to your dispute with the Railroad on account no yardmaster position on third track at Grand Ave. yard.

The bulletin issued covering third trick at North Ave. District, the position I now hold was issued for North Ave. yard only. Nothing was mentioned about Grand Ave. until about a year ago or so later when the yardmaster from Grand Ave. retired on a pension.

I was then told to go to Grand Ave. and supervise the work there, conditions at North Ave. are such that I just cannot go to Grand Ave. except in emergency situations such as when there are new and inexperienced men on the Grand Ave. crew and I do not go then until I can get away from North Ave. generally after 2:30 or 3:00 A. M.

I cannot even attempt to exercise supervision over Grand Ave. and must depend upon the clerk doing that and then advise me if any unusual emergency conditions arise.

Yours very truly,

/s/ John Weiss  
By John Weiss''

\* \* \* \* \*

The record then shows that the violation of the yardmasters' agreement is continuous and substantial notwithstanding the contentions of the Superintendent and Director of Personnel.

The claim should be allowed.

**CARRIER'S STATEMENT OF FACTS:** Prior to about April 14, 1952 this carrier had established at Grand Avenue Yard, Chicago, Illinois, two positions of yardmasters. Due to decrease in business, resulting in the decrease in the number of cars being handled by yard engine crews at Grand Avenue, and in order to eliminate unnecessary supervision, these two yardmaster positions were abolished effective as of April 14, 1952. On November 17, 1952, or approximately seven months subsequent to the abolishment of the aforementioned yardmaster positions at Grand Avenue, the General Chairman of the American Railway Supervisors' Association, Inc., who then represented yardmasters, requested that a joint check be made at Grand Avenue to determine whether the agreement was being violated account no yardmasters assigned. A joint check was not made, and the question not being disposed of on the property, the matter was submitted ex parte by the American Railway Supervisors' Association, Inc. to this Division of the National Railroad Adjustment Board. This Board rendered its decision in this case in Award No. 952, in which the Board said, in part:

"The Board is unable to find on the record a clear answer to this dispute. We see no reason why Carrier should object to a joint check with the Organization and we will remand this case for further handling on the property and urge the parties to see if they can agree on what the factual situation is.

"We will make final disposition of the monetary claims submitted by the Organization. They are filed on behalf of three employes. It is not necessary to consider more than the concise statements of the Organization in order to reach a decision. Specifically, the submission relates that:

'Yardmaster Underwood elected not to exercise his seniority. After displacement by Hayes, he resigned from carrier service preliminary to making application for annuity benefits under the provisions of the Railroad Retirement Act.'

'Dorsey's earnings as train conductor often were in excess of the daily rate paid Yardmasters, which explains



his decision to permit his Yardmaster seniority rating to be eliminated by default.'

'Yardmaster Hayes suffered no monetary loss in the exercise of his seniority, there being no difference in the daily rates on assignments he filled.'

"With the dispute remanded for further discussion by the parties, the Board could not, in any event, sustain the monetary claims. However, in view of the frank statements contained in the Organization's submission, they will be denied."

This Board therefore remanded the case for further handling by the parties on the property and denied the claims involved in the case.

Subsequent to the issuance of this Board's Award No. 952, General Chairman John Tonini of The American Railway Supervisors' Association, Inc., wrote the Director of Personnel of this company suggesting that it be agreed to establish one yardmaster position at Grand Avenue as final settlement of the case rather than hold a joint check as to yardmaster requirements. A copy of that letter is attached hereto as Carrier's Exhibit A. The carrier was not willing to establish a yardmaster position solely to dispose of the claim, in view of the fact there was no necessity for a yardmaster at Grand Avenue, and so advised Mr. Tonini. No further action was taken by Mr. Tonini on this matter and the joint check, which this Board had indicated should be made was by mutual understanding never made.

The work performed at Grand Avenue is and has been since 1952 performed in the same manner as it was performed when the case resulting in Award No. 952 was before this Board. Supervision of Grand Avenue Yard is under the jurisdiction of the Carrier's yardmasters at North Avenue Yard, as is was at the time of the decision in Award No. 952. Yard engine assignments at Grand Avenue and the cars handled through the yards at Grand Avenue are the same as they were at the time of the previous decision.

The claim in this case, as indicated in the employes' statement of claim above set forth, has been denied.

**POSITION OF CARRIER:** It is the position of the carrier that the claim here involved is substantially identical to the claim which was before this Board and was the subject of this Board's Award No. 952, and that that Award coupled with the subsequent disposition of the case on the property by the carrier and the organization then representing yardmasters on the property, fully disposed of the question of assignment of yardmasters at Grand Avenue so long as conditions at Grand Avenue remained the same. It is the position of the carrier that operations at Grand Avenue are, so far as it is able to determine, identical with operations at that point at the time of the time of the disposition of the question here presented. It is, therefore, the position of the carrier that this claim should be denied in its entirety.

For the information of this Board, subsequent to the presentation of the claim here involved, the carrier's Assistant Superintendent, Mr. E. L. De Vol, made a check of operations at Grand Avenue on April 19 and 20, 1956 to determine whether or not yard clerks at that location are performing the duties of yardmasters as contended by the employes. A copy of Mr. De Vol's report on his observations is attached hereto as Carrier's Exhibit B.

By reference to the attached Exhibit B, it will be noted that no employes at Grand Avenue were on the dates the check was made, performing any service or work which could be considered as work of yardmasters. The work performed by the yard clerk at Grand Avenue is substantially identical to the work referred to by this Board in its Award No. 88 where it is said, in part:

"The Mayfair industrial district is primarily composed of coal and oil firms. During the summer months the traffic in this district

is reduced to such extent that only one yard engine is regularly assigned. During the period of greater activity in this district, two yard engines are assigned, one engine usually working 7:00 A. M. to 3:00 P. M. and one 8:00 A. M. to 4:00 P. M. The position of yardmaster assigned in this district was abolished during the slack season in 1938 and after a survey of the service requirements the position was discontinued entirely, effective May 17, 1939, and under the circumstances of this case the carrier contends that there is no violation of rule 10(a) and 10(b) for the reason there has been no reclassification of position coming within the scope of the supervisors' agreement referred to in rule 10(a) and neither has a new position been created as referred to in rule 10(b). The record discloses there has been no additional position established nor a reclassification of the position coming within the rule; that Yard Clerk Jordan, after checking the yard, contacts the various industries on the telephone to ascertain cars needed for placement, then makes up a list of such cars, answers the telephone, books cars and performs other routine work required of yard clerks; and that the question as to whether yardmasters shall be employed and positions established must be determined upon the basis of the requirements of the service.

\* \* \* \* \*

"The foregoing citation by the employes is indicative of the fact that the application of the rule therein announced is made to each particular set of facts as the case arises. A careful review of the record in the instant case fails to establish sufficient evidence offered on the part of the employes to sustain their contention. There is nothing to disclose that Jordan, yard clerk, assumed any authority to take it upon himself to issue any orders. The work that he did do was work that is ordinarily connected with his position. The evidence further shows no encroachment upon his part of the duties of a yardmaster. It is further apparent from the record that the business in this particular yard does not warrant the reestablishing of the position of a yardmaster."

The case here presented to the Board thus constitutes a representation by a subsequently designated representative under the Railway Labor Act of the same case which has previously been presented by a prior representative under the Railway Labor Act to this same Board, which was remanded by the Board to the parties for handling on the property, and which was disposed of on the property after the General Chairman of the organization then representing the class indicated he did not desire to make the joint check suggested by the Board. It is therefore the position of the carrier that, as this Board said in its Award No. 188:

"Certainly the question as to the carrier being required to establish a yardmaster position at Mayfair Yard under the conditions as they existed when the claim in Docket 109 (in which Award 106 was rendered) was filed or under conditions substantially the same is laid at rest."

The claim here involved has previously been presented to this Board, been remanded to the parties for settlement on the property and has been settled on the property. Certainly the case should not now again be tried before this Board.

The carrier therefore submits that this claim should be denied in its entirety.

All information herein contained has previously been submitted to the employes during the course of the handling of this case on the property and is hereby made a part of the particular question here involved.

Oral hearing is requested and in the event this Board is unable to decide this case and it is ultimately submitted to a referee, oral hearing before the referee is also requested.

(Exhibits are not reproduced.)

**OPINION OF BOARD:** Prior to about April 14, 1952, Carrier maintained two positions of yardmaster at its Grand Avenue Yard, first and third tricks. Effective that date, the two positions were abolished and such supervision by yardmasters as was required at Grand Avenue Yard was assigned to the yardmasters at North Avenue Yard.

At that time the yardmasters on this Carrier were represented by The American Railway Supervisors Association and a claim was filed by that Organization for the restoration of the two positions at Grand Avenue on the ground that employes other than yardmasters were performing yardmaster functions there. The claim was eventually submitted to this Division in Docket No. 943 and was disposed of by Award No. 952. That Award denied the monetary claims involved, but failed to pass upon the merits of the controversy because, as stated in the Opinion:

"The Board is unable to find on the record a clear answer to this dispute. We see no reason why Carrier should object to a joint check with the Organization and we will remand this case for further handling on the property and urge the parties to see if they can agree on what the factual situation is."

The parties did handle the matter further on the property but did not conduct a joint check and apparently never reached an agreement on the matter. A change in bargaining representatives occurred and on March 19, 1956, the present claim was filed with the Carrier as to the third trick yardmaster position. A separate claim was filed with respect to the first trick yardmaster position on the same date and is now before us in a separate docket.

The issue may be simply stated. Claimant contends that the yard clerk at Grand Avenue is exercising yardmaster functions; Carrier contends that he is not. The principles governing such a dispute may also be simply stated. It is Carrier' prerogative to decide when and where the supervisory functions performed by yardmasters are required in its operations. If it decides that they are not required at a certain place, it may dispense with them and abolish an existing yardmaster position. However, it may not abolish such a position and then continue to have the yardmaster functions performed by a clerk or any other employe not a member of the yardmaster craft or covered by the yardmaster Agreement. Thus, if a yard clerk is actually performing yardmaster functions, the claim should be sustained; if he is not, the claim should be denied.

The so-called "checks" submitted by both parties are full of conclusions and interpretations which are diametrically opposed to one another; and some of the strictly factual statements included are also conflicting. However, there is a certain amount of agreement as to the facts, and in view of the history of this case, it appears that this is as near complete agreement as the parties are able to get; so that very little would be accomplished by again remanding the case with a direction that the parties conduct a joint check and submit an agreed-upon statement of facts.

We feel that despite the conflicting nature of the evidence, a reasonably accurate description of the situation can be drawn from the record as a whole. Without attempting to discuss or reconcile all of the evidence, we find that the Grand Avenue yard engines are engaged in servicing some fifteen industries in the Grand Avenue district and that the nature of the services rendered are routine and have not varied substantially over a long period of time. All of the tracks in the yard are classified track and the classifications are well known and familiar to the yard foremen and their crews. Essentially, the work of the yard clerk is the receiving of orders from the various industries as to when and where they want cars spotted or picked up, and the trans-

mission of these orders to the yard foremen and yard crews. The yard clerk does not tell the yard foreman how to accomplish the movement of these cars, and does not control his actions. The yard foreman accomplishes the movements in accordance with his own knowledge of the yard, the industries, the classification of the tracks and his own past experience in accomplishing similar movements. He is not "supervised" by the yard clerk.

One important fact which supports this conclusion was agreed upon by both parties in their submissions. That is, that ordinarily there is an experienced crew working the Grand Avenue yard engine. However, when there is an inexperienced crew, both parties agree that the yardmaster at North Avenue is to be informed of this and in such cases the North Avenue yardmaster will come to Grand Avenue and supervise the movement. Thus it can be seen that when supervision of the train crews is necessary, as distinguished from merely informing them of the work which they are to accomplish and allowing them to accomplish that work without supervision, the North Avenue yardmaster, not the Grand Avenue yard clerk, does the necessary supervising.

It is pointed out that certain contingencies may occur which will require the yard clerk to instruct the crews—for instance, the need for wrecker service on Sunday night when no yardmaster is on duty, in which case the yard clerk will have to instruct the yard crew to have the wrecker coupled up and placed on the lead for the road engine to pick it up. We do not think that the possibility of or the occasional performance of such a function by the yard clerk amounts to the performance of yardmaster duties so as to require the assignment of a yardmaster.

The scope rule does not contain a description of yardmaster's work, but it is well recognized that the essential nature of the yardmaster position is the exercise of supervision over other yard employes. In any particular case, the line between supervision as exercised by a yardmaster, and the passing on of directions and information, as done by a yard clerk, may be a narrow one. However, it is clear from decisions of this Division, that where it is claimed that particular work belongs to the members of a certain class or craft and is being performed by employes not members of that class or craft, the burden is on the petitioning organization to establish facts supporting its contention. See Awards 413, 797. We do not think that the record in this case is sufficient to sustain the contention of the Organization that the work performed by the yard clerk at the Grand Avenue Yard is supervisory in nature and therefore reserved to yardmasters.

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

The carrier and the employe 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  
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March, 1957.

Champlin-Shealy Co., Chicago, Ill.

Printed in U. S. A.