

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

The Fourth Division consisted of the regular members and in addition Referee William H. Coburn 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 D. F. Preadel be allowed one day's pay at yardmaster rate for January 1, 1957 and each subsequent date until the condition complained of is corrected on account of the abolishment of the yardmaster position at Wausau, Wisconsin.

EMPLOYEES' STATEMENT OF FACTS: For a period of 11 years prior to January 1, 1957, Claimant was regularly assigned as Yardmaster at Wausau, Wisconsin, a position which had been in existence for 50 years until abolished effective January 1, 1957.

The hours of service of that position were from 9 A.M. to 5 P.M. There is a very substantial operation at that point, with three switch crews regularly assigned starting tours of duty at 6:30 A.M., 8 A.M. and 2:30 P.M.

Claim is based on the contention that agents, clerks, operators and foot-board yardmasters, employes outside of the scope of Yardmasters' Agreement, are performing the yardmaster work.

POSITION OF THE EMPLOYEES: The handling of this dispute on the property is as follows:

"Antigo, Wis., Dec. 26, 1956.

Bulletin No. Y-1.
Yardmasters:

Effective on termination of assignment on Monday, Dec. 31, 1956
Yardmaster Position No. 1-105 at Wausau, Wisc. presently held by
D. F. Praedel is abolished.

M. C. Jacobs,
Superintendent.

Cy TMVP MCJ JCB CJM AWM PJm.
Mr. L. J. Stift, Gen. Chrm.
Railroad Yardmasters of America,
547 North Pine Avenue,
Chicago 44, Illinois."

Letterhead of

RAILROAD YARDMASTERS OF AMERICA
Chicago & North Western Local Lodge No. 32

R. D. Anderson,
President
386 Highview Avenue
Elmhurst, Illinois

L. J. Stiff,
Gen. Chairman
547 North Pine Avenue
Chicago 44, Illinois
Columbus 1-4108

J. H. Brazier,
Secy-Treasurer
1121 Cass Street
Green Bay, Wisconsin
HEmlock 5-6002

"Chicago, Ill.
January 11, 1957.

Mr. M. C. Jacobs, Superintendent
Chicago & North Western Ry.
Green Bay, Wisconsin.

Dear Sir:

I request compensation at the appropriate yardmasters rate for January 1, 1957 and each subsequent date, until conditions complained of are corrected in favor of D. F. Praedel of Wausau, Wisconsin.

Statement of Facts:

On January 1, 1957 the Yardmasters position was abolished at Wausau, Wisconsin on account officials and other employees of the carrier performing existing work covered by the Scope Rule of Agreement.

Please reply at your most earliest convenience.

Yours Very Truly,

/s/ L. J. Stiff, Gen. Chairman.
C.&N.W. Lodge #32, R.Y.of A."

cc Brazier
D. F. Praedel

Letterhead of

CHICAGO AND NORTH WESTERN RAILWAY COMPANY
Office of Superintendent

"Green Bay, Wisconsin
January 17, 1957
010.5

Mr. L. J. Stiff
General Chairman, R. Y. of A.
547 North Pine Avenue
Chicago 44, Illinois

Dear Sir:

This has reference to your letter of January 11, 1957, relative abolishment of yardmaster's position at Wausau, Wisconsin and claim filed for compensation in favor of D. F. Praedel, former incumbent.

Conditions at Wausau now are such that from the standpoint of efficient and economical operation yardmaster supervision of engine assignments is not necessary or required.

No officials or other employes of the Railway Company are assigned or required to perform duties classified exclusively as the work of a yardmaster, consequently there is no support of claim filed in favor of D. F. Praedel and same is declined.

Yours truly,

/s/ M. C. Jacobs
Superintendent"

Letterhead of

RAILROAD YARDMASTERS OF AMERICA
"C.&N.W. Local Lodge No. 32

Chicago, Ill.
February 12, 1957.

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

Dear Sir:

Please accept this as notice of our appeal from the decision of Superintendent M. C. Jacobs dated January 11, 1957, relative to abolishment of yardmasters position at Wausau, Wisconsin, and claim filed for compensation in favor of yardmaster D. F. Praedel, former incumbent.

Statement of Facts.

On Monday, December 31, 1956 Yardmasters Position No. I-105 at Wausau, Wisconsin presently held by D. F. Praedel, is abolished.

I have a list of 59 Industries at this point the spotting and pulling supervised by the yardmaster. There are three engine assignments at present one starting to work at 6:30 A.M. one at 8 A.M. and one at 2:30 P.M. any extra engines that are put on men laying off calling of the men is the yardmasters duty if anyone lays off the yardmaster has to call Antigo, Wisconsin for an extra man the yardmasters duties also are to see that cars received are switched and placed at certain plants also checked and see that all cars are placed on transfer and taken off same. Also advise the foreman of the right equipment is placed to the industries we switch. He checks with the yard clerk in the late afternoon about tonnage. The amount that

should go on Train #182 which leaves Wausau Junction at 5:30 P.M. Also as to move the 170 cars out of Wausau for the Manitowac Ferrys, Rothschilds calls by phone about 4:30 P.M. what their tonnage is going to be so train 182 can pick up there. This means that they can only put a certain amount of tonnage out of Wausau on #182.

These are only a few things for a yardmaster to watch and take care of. Also if any complaints from shippers regarding spotting of their cars or rough handling of same to call on them and see that there won't be anymore of it happening again and keep the men in line about the work they are required to do. Since the abolishing of the yardmaster at this point the following people are giving instructions to the crews and orders to the crews switching at Wausau, Wisconsin. The Agent and Clerk are giving instructions on some of the work. The Operator at Wausau Junction is now handling the greater part of the yardmasters duties going so far as using his car to drive down in the yard and deliver messages he has taken over the phone from industries and up town officer pertaining to the switching movements and cars to be delivered to certain plants in the Wausau district. The yardmaster had been making out form 40, approving time-slips and figuring the cost of cars handled per day. We have competition in this area with the Milwaukee Railroad and up to this time the switchman and the yardmaster have so operated in giving courteous service which has resulted in getting the most of the business for the Chicago & Northwestern Ry. which has amounted to over four million dollars a year. The Yardmasters position has been on at Wausau, Wisconsin for over 50 years and Mr. D. F. Praedel has been yardmaster at this point for the last eleven years.

I have written instructions from various people pertaining to the work to be performed at this point from day to day. I also have the following information from various switchmen which I am quoting.

Wausau, Wisconsin.
January 14, 1957.

Mr. D. F. Praedel.

This is to inform you that I am receiving instructions in regard to my work from the agent Operator and sometimes from one of the agents clerks.

W. C. Babcock
Engine foreman 6:30 A.M.
Switch Engine.

Wausau, Wisconsin.
January 13, 1957

To whom it may concern.

I am Footboard yardmaster at Wausau, Wisconsin yard which employ three switch engines 6:30 A.M. 8 A.M. & 2:30 P.M. Effective the first of January 1957 the yardmasters assignment was abolished. At the present time we do not know who to take orders from or who is supposed to give orders the Operator at Wausau Junction will bring orders down to the yard, the yard clerk will give you orders for differ-

ent shippers. It is very hard to try and do the right thing for the shippers when you do not receive all the information, such as car numbers and any specific place where they spot. The shippers are handicapped too, they have no place to leave any information where it can be transferred to the foreman of the different engines immediately, resulting in a 24 hour delay at times in switching service. I firmly believe that it is impossible to give the best service to the shippers at Wausau, Wisconsin without having a yardmaster at Wausau, Wisconsin.

Yours truly,

Ralph Schilling
A Footboard Yardmaster

January 12, 1957.

To Whom it may concern.

Since the abolishing of the yardmasters position in Wausau, it seems everyone working in positions other than yardmen are giving orders on what to do. The Agent, Yard Clerks, Demurrage Clerks and Telegraph Operator are persons giving orders.

Some orders are duplicated and others are not given that should be given. A yardmaster in these cases could straighten many delays that may occur, and give our shippers better service .

Yours truly,

/s/ F. J. Wigel
Switch Foreman

We request compensation at the appropriate yardmasters rate for January 1, 1957 and each subsequent date, until conditions complained of are corrected.

Please let me hear from you at your most earliest convenience.

Yours truly,

/s/ J. P. Stift, Gen. Chairman.
C.&N.W. Lodge #32 R.Y.ofA.

cc J. H. Brazier
D. F. Praedel

Mr. M. C. Jacobs, Superintendent
Chicago & North Western Ry.
Green Bay, Wisconsin

Dear Sir:

This will constitute notice of our appeal from your decision of January 17, 1957."

Letterhead of

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

400 West Madison Street

Chicago 6, Illinois

"April 3, 1957

File 99D-14-5

T. M. Van Patten
Director of Personnel

H. R. Beisel
Assistant Director of Personnel

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

Dear Sir:

Please refer to your letter of February 12, 1957 involving 'appeal from the decision of Superintendent M. C. Jacobs dated January 11, 1957 relative to abolishment of yardmasters position at Wausau, Wisconsin, and claim filed for compensation in favor of yardmaster D. F. Paedel, former incumbent.'

My investigation develops that conditions at Wausau are such that from the standpoint of economic and efficient operation yardmaster supervision of engine assignments at that point is neither necessary nor required. My investigation further develops that no railway company officials or other employes of the railway are assigned or required to perform any duties at Wausau which by agreement with your organization is given exclusively to yardmasters.

It has been decided by the Fourth Division, National Railroad Adjustment Board, that on this property the contacting of industries relative to their requirements as to cars and the furnishing to switch crews of the information thus received is not work belonging exclusively to yardmasters, but that on the contrary, such work is regularly performed by yard clerks. A careful review of your letter of February 12, 1957 clearly shows that the work involved is such work.

The claim in the instant case not being supported by schedule rules is necessarily denied.

Yours truly,

/s/ T. M. Van Patten"

Letterhead of

RAILROAD YARDMASTERS OF AMERICA
"C.&N.W. Local Lodge No. 32

Chicago, Ill.
April 8, 1957

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 dated April 3, 1957, referring to my letter dated February 12, 1957 involving appeal from the decision of Superintendent M. C. Jacobs of Green Bay, Wisconsin, dated January 11, 1957 relative to abolishment of yardmasters position at Wausau, Wisconsin and claim filed for compensation in favor of Yardmaster D. F. Praedel, former incumbent.

I cannot agree with what your investigation develops my investigation developed the facts that employes other than yardmasters are usurping the duties and responsibility formerly performed by yardmasters whose position has been established for over the past fifty years at Wausau, Wisconsin and also being a violation of our Scope Rule. Therefore I cannot accept your denial of this claim. Am turning same over to Grand Lodge for further handling.

Yours truly,

/s/ L. J. Stift, Gen. Chairman
C.&N.W. Lodge #32 R.Y. of A."

cc D. F. Praedel
M. G. Schoch

"Chicago, Ill., July 16, 1957

Mr. T. M. Van Patten, Director of Personnel,
Chicago and North Western Railway Co.,
400 West Madison St.,
Chicago (6), Ill.

Dear Sir:

Attached hereto are copies of statements of various parties, which we are going to use as data in our Ex Parte Submission, in connection with claim and request that—

Yardmaster D. F. Praedel be allowed one day's pay at yardmaster rate for Jan. 1, 1957, and each subsequent date until the con-

dition complained of is corrected on account of the abolishment of the yardmaster position at Wausau, Wisc.

Yours very truly,

/s/ M. G. Schoch,
President."

(COPIES REFERRED TO ABOVE FOLLOW)

"Wausau, Wisc.,
April 12, 1957.

TO WHOM IT MAY CONCERN:

The writer has been an engine foreman here at Wausau for 18 years and it has always been customary for we foremen to get our instructions from the yardmasters. Since the yardmaster position was abolished Jan. 1, 1957 we now get instructions from the agent, the operator and also from several of the freight house clerks. These instructions we now receive are sometimes verbal and sometimes in writing.

/s/ W. C. Babcock.

"March 15, 1957

To Whom this May Concern:

The abolishing of the yardmaster position in Wausau, Wisc., on the C.N.W. property about Jan. 1, 1957 has done our company no good.

Jobs have been changed around and much disgust among the men. Work that has to be done is pretty much the same as before the abolishment of the yardmaster position. Many of the smaller shippers get very poor service and due to this poor service we have lost some business. It seems that the work lined up for the different jobs are poorly lined up mostly because taking orders from a roundhouse man to an operator, agent or some clerk. There are times when we will get 3 different messages for switch service at some certain shipper and all 3 messages will be different. Due to the fact that this switching has to be done after midnight it is rather difficult to give super service. With a yardmaster knowledge of these conditions many of these difficulties could be straightened out.

/s/ F. J. Pingel
Switchman"

"April 15, 1957
Wausau, Wisc.

Dear Sir:

To whom this may concern.

The switching in the Wausau Yard now is just the same as it was when we had a yardmaster.

The only difference is that the Company has changed the starting time of the jobs. We have an 8:00 A.M., 4:00 P.M., and a 11:59 P.M., starting time for the three jobs.

The information I get when I start to work is from operator at Wausau Jct. Agent and from most all the clerks and the rest I have to get at the industries when I get there to do the switching.

The company is demanding that every switch foreman keeps a record of the cars spotted and taken out of each industry.

I think it would be better for the Company as well as for the switchman if we had a yardmaster to supervise the switching.

/s/ F. E. Felver
Yard foreman on the 4:00 P.M. job."

"4-16-57

To Whom this May Concern:

As for the work at Wausau it is about the same as other years, only that we are losing some of the shipping to the Milwaukee Road since the yardmaster job was taken off. The operator, agent, yard clerks, all want to tell us what we should do, but we don't have to listen to them if we don't want to.

/s/ W. O. Piehl
Switch Eng. Foreman
8 a.m. job"

"April 16, 1957

To Whom It May Concern:

I am a footboard yardmaster at Wausau Yard.

The work at Wausau yard has not changed very much since they have discontinued the yardmasters' assignment. The Company has changed the time of the assignment to 11:59 P.M. to 8 A.M. to 4 P.M., and 4 P.M. to 11:59 P.M.

At the present time and since the 1st of January 1957 we are requested to make a list of all the cars, and the time involved in switching same at all industries that we switch.

We still get our information when we go to work from the operator or the agent, if he is present.

I think for the benefit of the shippers and all the switchmen and the railroad itself, it would require a yardmaster to take care of the service at the Wausau Yard.

/s/ Ralph Schilling
F. B. Yardm."

"September 5, 1957

Mr. T. M. Van Patten, Director of Personnel
Chicago and North Western Railway Co.
400 West Madison St.
Chicago 6, Ill.

Dear Sir:

Reference is made to our claim reading as follows:

'Claim and request of the Railroad Yardmasters of America that:

'Yardmaster D. F. Praedel be allowed one day's pay at yardmaster rate for January 1, 1957 and each subsequent date until the condition complained of is corrected on account of the abolishment of the yardmaster position at Wausau, Wisconsin.'

You will recall that we had served notice of intent to file this matter ex parte with the Fourth Division of the N.R.A.B. and that we later withdrew it, without prejudice, and it is last referred to in Secretary Parkhurst's letter to me under date of July 17, 1957, with copy to you granting request for withdrawal.

We have secured additional evidence and data in connection with this matter and propose to again serve notice of intent to submit the claim to the Fourth Division, N.R.A.B. not later than October 1, 1957. However, we would like to discuss this additional matter with you before October 1, 1957. Will you kindly designate time and place for such discussion, and oblige?

Very truly yours,

/s/ M. G. Schoch
President

cc: Mr. L. J. Stift, General Chairman

(ADDITIONAL EVIDENCE FOLLOWS)

"Wausau, Wisconsin
March 19, 1957

ALL SWITCHMEN:

Effective immediately please arrange to weigh all empty Gondolas being spotted for loading by the Wausau Scrap Company.

/s/ P. J. Meredith
Agent C&NW Ry.

PJM/lm"

"Wausau, Wisconsin
March 29, 1957

**SWITCH ENGINE FOREMEN
WAUSAU, WIS.**

I have the following from the Minnesota Mining & Mfg. Co.,
dated March 29, 1957:

'We would like to again caution your switching crews to
take extreme care when pulling our No. 1-A Track.

'On March 28 your No. 2 Crew switched this track hit-
ting a bagged car quite roughly and severely damaging the
contents.'

Please do what you can to prevent damage to part loads.

/s/ P. J. Meredith
Agent C&NW Ry.

PJM/ljm"

"Wausau, Wisconsin.
April 16, 1957.

FOOTBOARD YARDMASTERS:

Car loads arriving for the Milwaukee Plywood Co. are usually
carded from which side they are to be unloaded.

Your observance and compliance with these markings will be
greatly appreciated, and will expedite the unloading of these cars.

If not observed cars will have to be returned to yard, turned, and
respotted.

/s/ P. J. Meredith
Agent, C&NW Ry.

PJM/ljm"

"Wausau, Wis., April 20, 1957

Foot Board Yardmasters:

Between the hours of 11 PM and 7 AM the Connor Lumber and
Land Co. do not have a watchman on duty.

If you use the gates at their plant during these hours please be
sure to close and lock the gates after you are through switching at
this location.

/s/ P. J. Meredith
Agent."

Green Bay July 4th

"Agent—Switchforemen

There is now a movement of cans from National Can Co. Green Bay to Stratford. These cars are to move out of North Green Bay in No. 171 the first time it operates after the arrival of these cars of cans. These cars are to move thru to Stratford. Daily and No. 171 will set them out at Stratford for the Way Freight to spot in the event the way freight has left Stratford. No. 171 will spot them.

Eland & Wausau will see that these cars are on the head end of No. 171 so they can be conveniently set out. North Green Bay will arrange to keep a close watch on the hold track and switch out such cars that are billed and see that they move on No. 171 the first time it operates after billing is received.

This is a very important movement and there must be no failure for these cars to move as outlined. Be governed accordingly.

J. C. Black, Assist. Supt.
7:45 AM July 5th"

"Green Bay July 5th"

Agent—Foot Board Yardmaster

See my wire of July 4th reference movement cans to Stratford and correct same to reach such cars for Straford will be placed behind Wausau cars out of Eland on No. 171 instead of head end as shown on wire of July 4th.

/s/ Mr. J. G. Black 755 AM July 5th
Assist. Supt."

Foot Board Yardmasters
Mr. Leo Lindermann
Yard Checker

Mr. R. J. MacCarthy GF&PA Green Bay, Wis., made the following arrangements with Mr. T. S. Peavey in regards to the ordering and placing of cars with the Mining Co.

1. They will make a standing order every day for 2 boxes suitable for bag loading to be brought in by the afternoon switch—these cars to be CNW.

2. They will make an order every day from us for ½ box cars for the East end. These are to be used for loading their by products and will be our bag cars.

3. Mr. Miller will give us his order for the next 24 hours in the morning, keep a record of his order and include same on your morning report to Green Bay. Adjustments may be necessary according to fluctuations in their loadings and will be made for each separate switch as necessary.

We are to be sure that we utilize cars OK for bag loading for the bag product and for the by product which will free OK bulk stone for bulk loading.

We are also to use cars graded OK paper of Bag for loading orders at Cherry Street Whse., East End, and the Mill Warehouse.

It is their instructions that these OK STONE cars are spotted at the Mining Co. for this loading, and not at some other industry.

/s/ D. P. Rasmussen"

"Wausau, Wis.
July 16, 1957

Footboard Yard Masters
Leo Lindemann

Mr. C. J. McPhail Train Master Green Bay called today in regards to the movement of carloads of empty cans to Merrill.

He advises that the Shipper claims these cars are taking too long with present routing and threatens to route via other routes, which means we will lose this business.

Every one please see that there is no delay to these cars at this point, and get them on the transfer as soon as possible, and let the Milwaukee Railroad know when they are on the transfer.

/s/ D. P. Rasmussen"

"Wausau, Wis.
July 20, 1957

Footboard Yard Masters
Leo. Lindemann
Wausau Jct., Wisc.

See instructions from Mr. M. G. Jacobs, Supt., that carloads of empty tin cans from National Can Corp. to the Canning Co. at Merrill, Wis., via the Milwaukee R.R., must be on the transfers by 6:00 PM.

Please see that these instructions are complied with, without fail.

/s/ D. P. Rasmussen
Agent

CY Mr. Art Schulz
Agent Milw. R.R.Y"

"Antigo, Wisc.
7-30-57

Yd. Master & Sw. Frmn. Wausau

No. 171 today should have car of rail laying machinery for Wausau today. This car must be spotted on Bembenster track opposite

the Wausau Scrap Co. so it can be unloaded the first thing Wed. morning for Extra Gang to start laying rail Thursday A.M. there must be no failure to get this car spotted.

/s/ H. L. Kirk"

Letterhead of

RAILROAD YARDMASTERS OF AMERICA
537 South Dearborn Street
Chicago 5, Illinois
Tel. WAbash 2-0954

M. G. Schoch
President

W. F. Meyer
Secy.-Treas.

"Chicago, Ill., Oct. 1, 1957.

Mr. T. M. VanPatten, Director of Personnel,
Chicago and North Western Ry. Co.,
400 West Madison St.,
Chicago (6), Ill.

Dear Sir:

Referring to my letter to you dated Sept. 5th, in connection with our claim reading as follows:

'Claim and request of the Railroad Yardmasters of America that:

'Yardmaster D. F. Praedel be allowed one day's pay at yardmaster rate for Jan. 1, 1957, and each subsequent date until the condition complained of is corrected on account of the abolishment of the yardmaster position at Wausau, Wisc.'

In our letter of Sept. 5th we advised you that we had secured additional evidence and data in this connection and would like to discuss this additional matter with you before Oct. 1, 1957, in order that we might again service 'Notice of Intent' to the Fourth Division, N.R.A.B., within the 6-month time limit.

Not having heard from you, we assume that you did not desire to discuss this matter before the case is submitted to the Fourth Division and we are proceeding accordingly.

With our Ex Parte submission we will present an excerpt, copy of which is attached hereto, from 'Statement of Kenneth C. Anderson,' taken by your Train Master Scivally in which Mr. Scivally defines the duties of a footboard yardmaster; along with the additional evidence and data which we wished to discuss with you.

Very truly yours,

/s/ M. G. Schoch,
President."

"An excerpt from:

'Statement of Kenneth C. Anderson, Yardman, Waukegan.

Subject of Investigation: Your responsibility as Footboard Yardmaster on the 5:30 A.M. switch assignment Sunday, June 16, 1957, at Waukegan, for your failure to do the Sunday work required on this assignment, such as switching the old line extra set out on #1 track the same as you have done every Sunday, and other chores you could have done. Your timeslip shows 5 hours overtime, however you chose to put your engine on spot rather than do the work. Also for claiming more time on your timeslip after your engine tied up.

Statement taken at: Waukegan, Ill., June 20, 1957, 9:00 A.M. CST.

Statement of: Kenneth C. Anderson, Yardman, age 23, years of service 5½, married, resides Waukegan.

Statement taken by: W. H. Scivally, Trainmaster, representing Mr. R. C. Conley, Supt.

Others present: S. L. Botsios, Yardman, representing K. C. Anderson; James McWhorter, Yardman, witness; George Johnson, Engineer, witness.

Investigation taken at 9:00 A.M., CST.

Mr. Scivally to Mr. Anderson:

Q. Would you care to have an interpretation of what the duties are of a Footboard Yardmaster?

Mr. Anderson:

A. Yes.

Mr. Scivally to Mr. Anderson:

It is my understanding that the duties of a footboard yardmaster are:

Performing the duties of a Yardmaster.'

The above is but a small portion of a 15 page statement signed by Kenneth C. Anderson at conclusion of investigation conducted to determine irregularities and failures to perform work under his direction when assigned as a footboard yardmaster."

The duties and responsibilities of the yardmaster at this point encompasses operations not only at Wausau Jct. yard, but also yard and freight house at Wausau proper, as well as the servicing of 61 industries in that area and required the use of three yard crews starting at 6:30 A.M., 8 A.M., and

2:30 P.M. Besides the break up and make up of one way freight train in and out each day, six (6) other trains set off and picked up cars each day.

It was the duty of the yardmaster to plan and supervise all of the work incident to this operation; contacting industries as to their needs; keeping in touch with the Train Dispatcher as to pick-ups and set-offs at Marshfield as well as at Wausau Jct.; provide necessary empty equipment for loading; prepare reports of cars handled and cost per car as well as figures to show overtime worked; prepare payroll and approve time slips, prepare switch lists for crews to work from and order men for switch crews. Now instructions are being issued direct, or relayed through others, by Assistant Superintendent, Train Master, Agent, Clerks or Operator, or Yardmasters' work performed by the Agent, Clerks, Operator or Footboard Yardmaster, as evidenced by copies of statements from individuals and written orders herein reproduced.

All data used in support of this claim has been presented to management and made a part of the particular question in dispute.

CARRIER'S STATEMENT OF FACTS: Since at least January 1, 1953 all yard foremen on switch engines operated at Wausau, Wisconsin, have been paid at the footboard yardmaster's rate. There is a telegrapher-operator employed at Wausau Junction who receives a list of all inbound traffic and notifies our customers of the arrival of their cars, either directly or through the agent. The major industries at Wausau when the yard engine arrives at their plant with their car, furnish the yard foreman in charge of the engine on his arrival at their plant, a list as to the switching to be done at the industry, which list is prepared by the industry.

For more than 40 years prior to January 1, 1947 two first shift yard engines had been worked at Wausau. From at least November 21, 1910 until December 31, 1956, a yardmaster was assigned at Wausau, whose primary duty was to coordinate the work as between the two first shift engines in order to see that the two engines operated efficiently and to reduce the overtime of such engines.

For the information of this Board the yard engine assignments at Wausau from January 1, 1953 through December 31, 1956, were as follows:

Jan. 1, 1953	6:30 AM	Daily Except Sunday
	8:00 AM	" " "
	2:30 PM	" " "
May 1, 1953	6:30 AM	Daily Except Sunday
	8:00 AM	" " "
	2:30 PM	" " "
	10:30 PM	" " Saturday
Oct. 14, 1953	6:30 AM	Daily Except Sunday
	8:00 AM	" " "
	2:30 PM	" " "
May 15, 1954	6:30 AM	Daily Except Sunday
	8:00 AM	" " "
	2:30 PM	" " "
	10:30 PM	" " "
Oct. 8, 1954	6:30 AM	Daily Except Sunday
	8:00 AM	" " "
	2:30 PM	" " Saturday and Sunday

May 1, 1955	6:30 AM	Daily Except Sunday
	8:00 AM	" " "
	2:30 PM	" " "
	10:30 PM	" " Saturday
May 12, 1955	6:30 AM	Daily Except Sunday
	8:00 AM	" " "
	2:30 PM	" " "
	10:30 PM	" " Saturday
Nov. 12, 1955	6:30 AM	Daily Except Sunday
	8:00 AM	" " "
	2:30 PM	" " "

A thorough study of the industrial switching at Wausau was made by the carrier's supervisory officers and it was determined that all of the switching could be done more efficiently and economically by establishing 24 hour switching service—three continuous shifts, six days per week, using only one locomotive. With the establishment of this 24 hour switching service, overtime was for all practical purposes eliminated, one yard engine crew relieving the preceding yard engine crew each eight hours. Under that arrangement there is only one yard engine working at a time and the work formerly performed by the yardmaster of coordinating work as between the two yard engines working on the first shift disappeared since there were no longer two yard engines working on that shift. The yardmaster position was therefore abolished.

Claim has been presented for a day's pay in favor of Yardmaster Praedel, incumbent of the yardmaster position at the time it was abolished account of the abolishment of the position.

Claim has been denied.

On May 17, 1957 Mr. M. G. Schoch, President, Railroad Yardmasters of America, filed "notice of intent" to submit this case to the Fourth Division, National Railroad Adjustment Board. On July 15, 1957 the carrier forwarded to the Executive Secretary of the Fourth Division eleven copies of the carrier's submission in the case. On September 16, 1957 the Fourth Division, National Railroad Adjustment Board issued its Award No. 1183 on the case, the Award reading:

"Request for withdrawal of case is granted and docket closed."

POSITION OF CARRIER: It is the position of the carrier that this case is not properly before this Board, the Board being without jurisdiction to hear and decide the case. This position is based upon the fact that the identical claim here before this Board had previously been before this Board and been the subject of this Board's Award 1183. Award No. 1183 of this Board did not contain a money award.

Section 3 of the Railway Labor Act under which the jurisdiction of the various divisions of this Board is established provides in part:

"First:

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and in-

cluding the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

* * * *

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: PROVIDED, HOWEVER, That final awards as to any such dispute must be made by the entire division as hereinafter provided.

* * * *

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award, the division of the Board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it."

The dispute in this case was previously referred to this Division in accordance with the provisions of Section 3 First (i) of the Railway Labor Act. An award of this Division was made, under this Division's Award No. 1183 on the specific claim here involved. That Award did not contain a money award. Under the specific provisions of Section 3 First (m) of the Railway Labor Act Award 1183 is made "final and binding upon both parties to the dispute".

In Section 1(a) of the Railway Labor Act it is specifically provided that:

"The purposes of the chapter are: * * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Section 3 First (m), in order to accomplish the avowed provisions of the act as set forth in Section 1(a) (4) and (5) above explicitly makes awards of the Division final and binding upon both parties except insofar as they contain a money award. Since this Board has already previously issued its award in the identical dispute as has now been attempted to be submitted to it the previous award of this Board is by statute binding upon both parties and likewise binding upon this Board. The previous award of this Board specifically granted withdrawal of the case and closed the docket on the case. To permit the Board now to again hear and decide the case constitutes a clear violation and usurpation of authority in contravention of

the specific provisions of the statutes of the United States under which the Board itself was created and empowered to act. The carrier therefore submits that this Board has no jurisdiction whatsoever to hear this case and should not further proceed in the matter.

If, however, the Board notwithstanding its clear lack of authority in the case elects to consider this case on the merits the carrier submits the following argument as to why the claim cannot be sustained.

As indicated in the Carrier's Statement of Facts in this case, for a period in excess of 40 years prior to December 31, 1956 there were two yard engines working on the first shift at Wausau, one of the engines starting at 6:30 a.m. and the other starting at 8:00 a.m. For this same period of time a yardmaster was employed at Wausau whose primary assignment was the coordination of work between these two first shift switch engines.

The coordination of work between these two engines and the supervision of such coordinated work comprised the total work of the yardmasters. With the placing of a 24-hour yard engine operation in effect at Wausau comprising three eight-hour shifts, the work of coordination performed by the yardmaster disappeared in its entirety, and with the disappearance of this work the yardmaster position was abolished. It is the position of the carrier that since the establishment of 24 hour switch engine operations at Wausau, Wisconsin, there does not remain at that point any duties to be performed by a yardmaster if one is assigned. It is further the position of the carrier that neither the carrier's officers nor any employees of the carrier are performing any work at Wausau which by agreement with the Railroad Yardmasters of America constitutes work assigned exclusively to yardmasters. It is further the position of the carrier that the yardmaster work at Wausau formerly performed by the yardmaster at that point had disappeared in its entirety.

The claim in this case was originally appealed to the carrier's Director of Personnel by the General Chairman of the organization here involved by letter dated February 12, 1957, a copy of which is attached as Carrier's Exhibit "A". Since it is assumed by the carrier that it will be the position of the organization that there is adequate information contained in that letter to justify the claim, and since that letter constitutes the only basis on which the organization has ever contended on the property that the claim was justified, the carrier wishes to call attention of the Board to the basis indicated in the letter for the support of the claim.

In his letter of February 12, 1957 to Mr. Van Patten, Mr. Stiff states that he had a list of 59 industries at this point the spotting and pulling of which was supervised by the yardmaster. Mr. Stiff further stated in his letter:

"Also if any complaints from shippers regarding spotting of their cars or rough handling of same to call on them and see that there won't be any more of it happening again—and keep the men in line about the work they are required to do. Since the abolishing of the yard master at this point the following people are giving instructions to the crews and orders to the crews switching at Wausau, Wisconsin. The Agent and Clerks are giving instructions on some of the work. The Operator at Wausau Junction is now handling the greater part of the yardmaster's duties going so far as using his car to drive down in the yard and deliver messages he has taken over the phone from industries and uptown office pertaining to the switch-

ing movements and cars to be delivered to certain plants in the Wausau district."

It is apparent from the above quoted portions of Mr. Stiff's letter that he is again taking the position that the contacting of industries relative to the work to be performed at those firms is yardmasters' work. The question of whether or not other classes of employees were usurping the work of yardmasters when they contacted industrial firms located in the territory for the purpose of determining the needs of those industries was before this Board in the case which was the subject of this Board's Award No. 88, involving claim of the predecessor organization on this property. In denying the claim in that case this Board said, in part:

"The record discloses there has been no additional positions 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 employees 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 employees 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."

It is therefore apparent that this Board has correctly held that on this property the ascertainment of the requirements of an industry, and the furnishing of information to the yard crew which will serve that industry as to the requirements of an industry, is not work belonging to yardmasters, but on the contrary is work that is and has been performed regularly by yard clerks. Even were a yardmaster assigned and on duty this work would still be performed by a clerk, since it is the regular function of a clerk. It is therefore apparent that the above quoted paragraphs from Mr. Stiff's letter does not show any violation of the yardmaster's agreement, or any necessity for a yardmaster's position being reestablished.

Mr. Stiff further states in his letter that there are three yard engine assignments and that when any extra engines are put on or men laid off it is the yardmaster's duty to call Antigo for an extra man. On this property the calling of men is not work belonging to yardmasters, but on the contrary, crew calling is work belonging to employees coming under the scope of the clerks' agreement. Neither are yardmasters by agreement given the right exclusively to permit men to lay off from their assignments, nor are yardmasters exclusively responsible for the filling of regular or extra assign-

ments. Yard assignments are operated at many points where there are not now nor have there been yardmasters assigned and at such points it is and has been the practice for yardmen desiring to lay off to arrange to secure permission to lay off from the train dispatcher or supervisor in charge of the territory in which working.

Mr. Stiff then stated in his letter that the yardmaster advises:

"* * * the foreman of the right equipment is placed to the industries we switch."

Just what is meant by this statement escapes the carrier. The placing of cars at industries is accomplished by the yard crew from the yard check list prepared by the yard clerk. The carrier cannot conceive why it is necessary for a yardmaster to advise the foreman that the right equipment is placed at the industries switched by the foreman, since it must be assumed that the foreman of the yard assignment working would not place other than the right cars at the industry, and if he did not have the right car to place at an industry, would not place it. There is certainly no reason to employ a yardmaster to tell a yard foreman that the yard foreman has properly performed the work he has already performed.

Mr. Stiff then states that the yardmaster checks with the yard clerk in the late afternoon about tonnage, the amount that should go on Train 182 and as to the movement of 170 cars out of Wausau for Monitowac Ferry. There is no indication in Mr. Stiff's letter as to what is accomplished by the check with the clerk as to tonnage, nor is there any indication in that letter that there is any necessity for the yardmaster to take any action in relation to tonnage after it is determined the amount of tonnage which can be handled out of Wausau on either No. 170 or No. 182. On this property the yard clerk figures the tonnage and gives it to the engine foreman.

Mr. Stiff then states that the yardmaster has been making out Form 40, approving time slips and figuring the cost of cars handled per day. This is clerical work rather than yardmasters' work, and is seldom if ever performed by yardmasters on this property. When the yardmasters' work disappeared there was no necessity for retaining yardmasters for the sole purpose of performing purely clerical work.

Mr. Stiff then refers to the competition with the Milwaukee Road for traffic at Wausau, and the fact that a yardmaster had been assigned at Wausau for a number of years. It is assumed by the carrier that employees all cooperate in providing the best possible service to its customers, and that yardmen at Wausau will continue to give the best possible service. The carrier submits, however, that the organization must support its claim in this case under the provisions of the controlling agreement between the carrier and the organization, and cannot base its claim as it is here attempting to do on any contention of "competition" at the point without showing that the controlling agreement has in some way been violated. In this case the organization has completely failed to show any violation of the controlling agreement, and has completely failed to point to or indicate to this Board any provisions of the agreement which have been violated.

The remaining portion of Mr. Stiff's letter contains merely generalized statements, apparently solicited in support of the claim by the organization, to the effect that various employees other than yardmasters have been issuing instructions or giving orders. This portion of Mr. Stiff's letter contains no

actual information to show that any of the classes or employees referred to have usurped the authority of yardmasters, nor has the General Chairman in handling the matter with the carrier's Director of Personnel referred to any specific instance that it would be possible to investigate to determine whether or not there was any merit to the contentions made. The carrier submits that a claim submitted on the basis such as this, without relating any specific violations of the agreement, any specific instances which could be checked, any specific facts which would sustain the contention of the organization that their agreement was violated, and simply based on generalized statements that "everyone working in positions other than yardmasters are giving orders on what to do. The Agent, Yard Clerks, Demurrage Clerks and Telegraph Operator are persons giving orders.", is certainly too vague to be capable of supporting a sustaining award.

This Board has on numerous occasions denied claims in behalf of yardmasters where the employees have failed to support their contention that employees outside the scope of the yardmasters' agreement were performing yardmasters' work. Typical of such cases were this Board's Awards 644, 651, 655, 656, 609, 639, 717, 534 and 253. The evidence in this case is even less than the evidence presented in the cases above referred to, for here the organization has not pointed out a single violation of the agreement, nor have they shown that any other employees usurped their work. True, they have made the generalized statement that employees outside their agreement are giving orders to crews. It certainly is not sufficient to establish the validity of the claims here presented to make such an unsupported statement.

While the carrier believes that there is no basis whatsoever for the claim as presented, if for any reason this Board should hold the claim is supportable under schedule rules, the carrier wishes to point out that the claimant in this case was not deprived of employment when the position he held as yardmaster was abolished. Claimant held seniority as yardman, and on his position as yardmaster being abolished presumably exercised his seniority as yardman, and has worked in accordance with his seniority since the time the position was abolished. If for any reason the claim is supportable, claimant should be allowed only the difference between what he made as yardman and what he would have made as yardmaster.

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

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

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

(Exhibits not reproduced.)

OPINION OF BOARD: On December 26, 1956, the Carrier bulletined the following notice:

"Antigo, Wis., Dec. 26, 1956.

Bulletin No. Y-1.

Yardmasters:

Effective on termination of assignment on Monday, Dec. 31, 1956

Yardmaster Position No. 1-105 at Wausau, Wisc., presently held by D. F. Praedel is abolished.

M. C. Jacobs,
Superintendent.

Cy TMVP MCJ JCB CJM AWM PJm.
Mr. L. J. Stift, Genl. Chrm.
Railroad Yardmasters of America,
547 North Pine Avenue,
Chicago 44, Illinois."

Claimant had held the yardmaster position at Wausau for the preceding 11 years. He now claims one day's pay at yardmaster rate for January 1, 1957, and each subsequent date until the condition complained of at Wausau has been corrected.

Claim is based upon the contention that since the abolishment of the yardmaster position at Wausau, employees not within the scope of the agreement are performing yardmaster work.

Carrier contends that the position was abolished after a change in the switching operation removed the need for the services of a yardmaster, and denies that others are performing yardmaster duties.

Before proceeding to a consideration of the substantive merits of the dispute, it is necessary to dispose of a procedural question posed by the Carrier. It asserts that the Board is without jurisdiction to hear and decide this case because the identical claim was previously presented and made the subject of an award by this Division—No. 1183. We have examined the docket and the award to which reference is made and find that there the petitioner Organization requested cancellation of its "Notice of Intent", without prejudice, and withdrawal of the claim. This Division granted the request, no hearing was held on the merits, and the docket was closed as of September 16, 1957.

Under the foregoing circumstances, we agree with the position of the Organization that dismissal of a case without prejudice does not bar its resubmission at a later date, provided, of course, that filing was timely and the other statutory and contractual requirements were met. We so rule, and cite with approval the ruling on this question in Third Division Award No. 3130 (Referee Youngdahl) as authoritative and controlling.

An agreement, effective September 1, 1955, between the Organization and the Carrier, contains the following provisions applicable to the facts of this case:

"SCOPE. 1. The term 'yardmasters' as used herein shall be understood to mean yardmasters and assistant yardmasters."

"ESTABLISHED RATES AND POSITIONS. 11. Established rates of pay, or positions, shall not be discontinued or abolished and new ones created covering relatively the same class of work, which will have the effect of reducing rates of pay or evading the application of these rules."

The Scope Rule does not define the duties and responsibilities of yardmasters but the effective operating rules of the Carrier are a part of the record and do contain a description of these duties. The pertinent rules are:

"RULE 895.

Yardmasters report to and receive their instructions from the superintendent, assistant superintendent or trainmaster and will comply with instructions from the chief train dispatcher."

"RULE 896.

Yardmasters must be familiar with the rules of the government of employes in yard service, and require the safe, prompt and efficient discharge of duties by all employes subject to their direction."

"RULE 897.

Yardmasters when assigned, will have charge of the yard located in their territory and, of men employed in yard operation; also the movement of trains and engines and distribution of cars therein. They will be responsible for trains being made up in the order designated and departure at the designated time."

"RULE 898.

Yardmasters, when assigned, will be responsible for yards being kept in good order; will see that opportunity is given for proper inspection of cars and that such inspections are made, and that cars requiring repairs are promptly placed on repair track. When necessary to move bad order cars, yardmen handling the work shall be notified so that proper care may be exercised."

The Organization contends that yardmaster work of the kind described in the foregoing operating rules has been "farmed out" to others not within the scope of the agreement—more specifically, "agents, clerks, operators and footboard yardmasters"—and that this is a violation of Rule 11 of the agreement.

The awards of the Board consistently hold that work of a class included either expressly or by implication, within the terms of the contract may not ordinarily be assigned to others outside the scope of the agreement. (Award 102, 436, 445, 697 Fourth Division.) It is also a recognized and accepted rule that a carrier in the exercise of its managerial discretion may abolish a position (as it did here) where in its judgment the needs of the service require such action, provided, of course, that there is no contract bar. (See Award 482, Fourth Division.)

Here the facts of record are determinative of the issue. The Organization has the burden of proof to show that a substantial volume of yardmaster supervisory duties is being performed by others. If the facts clearly and conclusively support the Organization's contention, then we must allow the claim; if they lack specificity and are inconclusive, we must deny it.

The record discloses that the yardmaster position at Wausau had been in existence for some fifty years prior to its abolishment on January 1, 1957. For more than forty years prior to that date two shift yard engines had been worked in the yard. The yardmaster's primary duty was to coordinate and supervise the work and operation of the two engines and their crews during his assigned hours of service, which were from 9 A.M. to 5 P.M.

The Carrier states that after a study had been made of the industrial switching at the Wausau Yard, it was decided that the switching operation could be handled more efficiently by establishing a 24-hour switching service—three continuous shifts, six days a week, using only one locomotive. Under this arrangement there is but one engine working at a time and, according to the Carrier, there is no longer any need for a yardmaster to coordinate the work of the two yard engines formerly in use.

The Organization contends that there is a need for yardmaster supervision and coordination of the work and maintains that because footboard yardmasters are employed on the property this is an admission of the necessity for a yardmaster.

The facts of record disclose that all yard foremen employed on switch engines at Wausau have been paid at the footboard yardmaster rate for many years prior to the time the yardmaster's position was abolished. Thus it is a non sequitur to argue that because footboard yardmasters continue to be employed in the absence of a yardmaster there is need for the reestablishment of the position.

The Organization relies on evidence consisting of a series of written statements from yard employes at Wausau as proof of the assertion that others are performing the supervisory duties of a yardmaster at Wausau. An analysis of these statements leads to a far different conclusion. They seem to indicate a belief not that the yardmaster's duties are being performed but that there is a lack of adequate supervision and direction. Thus consider the statement of W. O. Piehl, switch engine foreman, at page 8 of Organization's Submission: "The operator, agent, yard clerks, all want to tell us what we should do, but we don't have to listen to them if we don't want to." We agree with the Carrier's statement that "Clearly supervision which lacks the authority to require that instructions be complied with is not supervision at all." (p. 3, Carrier's Oral Argument.)

The other statements relied on by the Organization fail to substantiate the allegation that supervision of the kind usually exercised by a yardmaster is being performed by others. For example this excerpt from the statement of Yard Foreman Felver, appearing on page 8 of Organization's Submission, is significant: "The information I get when I start to work is from operator at Wausau Jct., Agent and from most all the clerks and the rest I have to get at the industries when I gwt (sic) there to the switching." We say this is significant because it shows that what the engine foreman or footboard yardmasters are getting from those alleged to be performing the duties of yardmaster is information and not supervision or coordination of the actual work.

The Organization also relies for its proof on a series of copies of written instructions signed by the Carrier's Agents, the Assistant Superintendent, and one H. L. Kirk (whose title is not designated), to yard employes at Wausau. Obviously, the issuance of these instructions constitutes at most an insignificant part of the duties of these supervisory employes of the Carrier, and certainly cannot be held to be incompatible with their regularly assigned duties and responsibilities. The assertion that these actions constitute usurpation of the duties of a yardmaster is insupportable.

On page 14 of Employees' Submission, there appears an excerpt from an investigation of a footboard yardmaster at Waukegan in which the Trainmaster is quoted as having stated that the duties of a footboard yardmaster are "Performing the duties of a Yardmaster." It is not entirely clear why

this was offered in support of Organization's position here. The facts and circumstances of the Waukegan case have no probative value insofar as the dispute before us is concerned.

After a review of the entire record, we find that the evidence submitted by the Organization in behalf of the claim is not of sufficient substance to sustain the burden of proof required to justify an affirmative award.

The claim must, therefore, be denied.

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 is denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION**

**ATTEST: Patrick V. Pope
Secretary**

Dated at Chicago, Illinois, this 1st day of April, 1958.

DISSENT OF LABOR MEMBERS TO AWARD 1208, DOCKET 1261.

On account of the failure of the majority members to take into consideration the material facts submitted, the minority dissents. The majority accepts the statements of the carrier and disregarded the undisputed facts as brought out by the organization, and in effect wrote out Rule 11 of the agreement which reads as follows:

"ESTABLISHED RATES AND POSITIONS.

"11. Established rates of pay, or positions, shall not be discontinued or abolished and new ones created covering relatively the same class of work, which will have the effect of reducing rates of pay or evading the application of these rules."

The majority accepted the erroneous contention of the carrier that the yardmaster's work disappeared when the engine switching assignments were changed, despite the fact that the uncontroverted record indicates that the yardmaster position at Wausau, which had been in existence for fifty years prior to its abolishment, was abolished before any change was made in the engine assignments. Further, the engine assignments were still the same when claims were originally instituted, as shown by the record.

The majority chose to ignore all the facts and testimony that pointed out the necessity for supervision, planning and assimilation of material and

decisions necessary in the work performances, which is now being done by the footboard yardmaster and for which compensation is so rendered.

It was brought out specifically and clearly that the reason for "footboard yardmaster" compensation since 1953, was because of the fact that during some portion of each tour of duty of engine crews no yardmaster was available and therefore, the engine foreman assumed the duties and responsibilities of a yardmaster, which is a definite violation of Rule 11 quoted above—a deliberate action to reduce rates and evade the application of the rules by "farming out" the work contracted and heretofore performed by the yardmaster.

The majority refused to accept the proof and evidence presented which showed what the duties of a "footboard yardmaster" are and what is expected of the self-indicative classification. There certainly can be no doubt that a "footboard yardmaster" as such performs the work of and assumed the responsibility of a yardmaster and it is not "a nonsequitur to argue that because footboard yardmasters continue to be employed in the absence of a yardmaster there is need for the establishment of the position". In support of this position we quote from Fourth Division Award 1158, Referee H. Raymond Cluster:

"In any case, as we have stated above, it is the necessity of supervision rather than the volume of the operation, which is the true test. As to this point, it is also significant that in this case, as in none of the others presently before the Division between these two parties in which yardmaster positions have been abolished, the Carrier felt it necessary to reclassify the yard foremen to footboard yardmasters with the clear implication that some duties formerly performed by the yardmasters would have to be assumed by them."

Since the above facts were disregarded the award is in error.

LABOR MEMBERS

Ralph H. Wachowiak

J. P. Tahney

W. J. Ryan