

Award No. 1305

Docket No. 1335

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

PARTIES TO DISPUTE:

EDWARD W. HORNSBY

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim and request of Yardmaster Edward W. Hornsby that agreement negotiated between alleged representatives of the Illinois Central System Yardmasters' Association and the Illinois Central Railroad Company, under date of January 1, 1944, and amended November 1, 1945, which Amendment should have placed Yardmaster Hornsby's name No. 6 or 5.1 immediately following the name of Yardmaster T. M. Littleton on the Illinois Central Railroad Company's New Orleans Terminal's Yardmasters' Seniority Roster, and further said Amendment should have placed Yardmaster Hornsby's name in position No. 2 on the Illinois Central Railroad Company's Stationmaster's Seniority Roster at New Orleans.

EMPLOYEES' STATEMENT OF FACTS: In the latter connection, my Exhibit No. 3 is a letter from the Illinois Central Railroad Company's Superintendent at New Orleans, admitting that the Illinois Central Railroad Company failed to compile a stationmasters' Seniority Roster at New Orleans, but concludes the letter stating "our failure to issue the roster did not, of course, detract from the fact that, under the governing agreement, you actually had a seniority date of June 20, 1942, and were No. 2 in point of seniority." Letter, under the date of March 28, 1958, to Mr. Earl Oliver, Manager of Personnel for the Illinois Central Railroad Company, in part of this letter states "the rosters were prepared and approved. The agreement was signed and became effective November 1, 1945." At that time, you were considered as having established seniority as a stationmaster at New Orleans, and you were given rank No. 2 and a seniority date of June 20, 1942 on the New Orleans Terminal's Stationmasters' Seniority Roster.

In spite of the above, on May 20, 1958, Mr. Earl Oliver, Manager of Personnel, in answer to my request to him of May 9, 1958, states, "We are not in a position to furnish you with a copy of the stationmasters' seniority roster for the New Orleans Terminal, as requested." In other words, in my mind, it adds up to the fact that the Superintendent at New Orleans, states in his letter "that it didn't make any difference whether a roster had been compiled or not." Later Mr. Oliver writes "that my name was given No. 2 position on said roster, but still refuses to supply me with a copy of said roster." It is my belief, that there is one common seniority roster at New Orleans to cover all positions, as outlined in Article (1), "Scope", Paragraph (a) and (b) in my Exhibit No. 16. It is evident that the assistant general yardmasters', yardmasters', assistant yardmasters' outlined in paragraph (a), and that the

general yardmasters' outlined in paragraph (b) are on a common roster, as evident by my Exhibit No. 13, and there should not be any limitations to a common roster. This is probably why the Illinois Central Railroad Company will not issue me a copy of the stationmasters' seniority roster at New Orleans.

As pointed out in my certified letter dated January 8, 1958, addressed to Mr. W. R. Bevans, Trainmaster at New Orleans, the yardmasters' seniority roster at New Orleans have never been published on the various bulletin boards at New Orleans, and I have never received a copy of it. The seniority of all positions, as outlined in Article (1) "Scope" my Exhibit No. 16 have always been a sort of a hush-hush affair.

On April 16, 1954, the New Orleans Union Passenger Terminal of which the Illinois Central Railroad Company is a user line, began its operations. After securing a leave of absence from the Illinois Central Railroad Company, in order to protect my flow-back rights to my home road, which is added protection over and above the rights afforded me by the Washington Job Protective Agreement of May 21, 1936, I went to the New Orleans Union Passenger Terminal as a Yardmaster, and I am presently employed there as such. On the New Orleans Union Passenger Terminal's Yardmasters' Roster, I was stripped of my rightful Yardmasters' Seniority, whereas, an excuse was used that my seniority was set by agreement between the New Orleans Union Passenger Terminal and the Railroad Yardmasters' of America's Labor Organization. This, of course, was in conflict with the various United States Supreme Court Rulings which your Honorable Board will read when reading my submission presently before your Board, concerning my claim and dispute with the Illinois Central Railroad Company.

Since I have been stripped of my seniority on the New Orleans Union Passenger Terminal, as a yardmaster, I commenced continuous researches. As a result of said researches, on December 5, 1957, I found out that I had been hurt by the Illinois Central Railroad Company, to the extent, that my name was omitted from the Illinois Central Railroad Company's Yardmasters' Seniority Roster at New Orleans. It was on this date, under certified mail, that this dispute was commenced by me with the Illinois Central Railroad Company at New Orleans.

I would like to call your Honorable Board's attention to my certified letter dated January 13, 1958, addressed to Mr. E. E. Schlottman, Superintendent of Illinois Central Railroad Company at New Orleans, whereas, I point out that he has prejudged my case on the local level. I would like to call your Honorable Board's attention to the fact that at this time my claim is not of a monetary measure, and I hope that it will never be, because as long as I have a position as a yardmaster on the New Orleans Union Passenger Terminal, I will not penalize my home road with this claim. I am only asking what others would ask, if they were in my position. I believe that I am entitled to the recognition and security, which I have earned, by giving Illinois Central thirty-eight years of my life in faithful service to them. Surely, I am entitled to a seniority date of June 20, 1948, as a yardmaster.

The following letters and documents are submitted accordingly:

- (1) Copy of my letter, under certified mail No. 4729829, dated December 5, 1957, addressed to Mr. W. R. Bevans, Illinois Central Trainmaster at New Orleans.

(2) Copy of my letter, under certified mail No. 4729830, dated December 30, 1957, addressed to Mr. W. R. Bevans, Illinois Central Trainmaster at New Orleans.

(3) Copy of Mr. Bevans' letter dated December 31, 1957 in reply to my letter of December 5 and 30, 1957.

(4) Copy of my letter, under certified mail No. 4729831, dated January 6, 1958, addressed to Mr. E. E. Schlottman, Superintendent of the Illinois Central Railroad Company at New Orleans.

(5) Copy of Mr. E. E. Schlottman's letter, dated January 9, 1958, addressed to me, in reply to my letter of January 6, 1958.

(6) Copy of my letter, under certified mail No. 4729833, dated January 13, 1958, addressed to Mr. E. E. Schlottman, Superintendent of the Illinois Central Railroad Company at New Orleans, with reference to my letter of January 6, 1958, in reply to his letter addressed to me, dated January 9, 1958.

(7) Copy of my letter, under certified mail No. 4729834, addressed to Mr. E. E. Schlottman, Superintendent of the Illinois Central Railroad Company at New Orleans, dated January 13, 1958.

Accompanying this letter were my exhibits one to twelve inclusive which copies are enclosed.

(8) Copy of my letter, under certified mail No. 4729837, dated January 27, 1958, addressed to Mr. E. E. Schlottman, Superintendent of the Illinois Central Railroad Company at New Orleans.

Accompanying this letter were my exhibits thirteen to twenty inclusive which copies are enclosed.

(9) Copy of my letter dated January 29, 1958, under certified mail No. 4729838, addressed to Mr. E. E. Schlottman, Superintendent of the Illinois Central Railroad Company at New Orleans, in reply to his letter dated January 22, 1958, whereas, Mr. Schlottman states "that I didn't attach a copy of Mr. Bevans' letter of January 15, 1958, as stated in my letter to Mr. Schlottman, dated January 20, 1958." Attached are these three letters.

(10) Copy of my letter, under certified mail No. 4729839, dated January 29, 1958, addressed to Mr. Roy Funderburk, General Chairman, Illinois Central System Yardmasters' Association, of which I am a member.

(11) Copy of my letter dated January 30, 1958, under certified mail No. 4729840, addressed to Mr. Roy Funderburk, General Chairman, Illinois Central System Yardmasters' Association.

(12) Copy of my letter, under certified mail No. 4729849, dated February 3, 1958, addressed to Mr. Roy Funderburk, General Chairman, Illinois Central System Yardmasters' Association.

Accompanying this letter were my exhibits twenty-one to twenty-four inclusive which are enclosed.

(13) Copy of letter addressed to me from Mr. Roy Funderburk, dated February 12, 1958.

(14) Copy of my letter, under certified mail No. 882385, dated February 23, 1958, addressed to Mr. Roy Funderburk, in reply to his letter, dated February 12, 1958.

(15) Copy of my letter, under certified mail No. 882388, dated March 10, 1958, addressed to Mr. Roy Funderburk, General Chairman, Illinois Central System Yardmasters' Association.

(16) Copy of my letter, under certified mail No. 882389, dated March 15, 1958, addressed to Mr. Earl Oliver, Manager of Personnel, Illinois Central Railroad Company, Chicago, Illinois. This letter is an appeal of my claim and dispute to Mr. Earl Oliver.

Accompanying this letter was my exhibits one to twenty-four inclusive and all of the letters exchanged between myself, the Illinois Central officials at New Orleans and Mr. Roy Funderburk, General Chairman for the Illinois Central System Yardmasters' Association, thus far.

(17) Copy of my letter, addressed to Mr. Earl Oliver, Manager of Personnel, Illinois Central Railroad Company, under certified mail No. 882390, and my Exhibit No. 25 which accompanies this letter.

(18) Copy of three page letter addressed to me from Mr. Earl Oliver, Manager of Personnel, Illinois Central Railroad Company, dated March 28, 1958, and accompanying this letter is a two page copy of the agreement of January 1, 1944 as amended November 1, 1945. This was in answer to my claim and dispute. It will be noted that this copy of agreement which was attached to Mr. Oliver's letter is different from my Exhibit No. 17 which is the published agreement, which makes no mentioning of trainmasters, and no mentioning of separate seniority roster for yardmasters and stationmasters. It shall also be noted on page three of Mr. Oliver's letter, he states that there is no disagreement between the company and the authorized representative of the Association, and that no dispute exists to be referred to your Honorable Board. I would like to mention the fact that in my last conversation with Mr. Roy Funderburk, my General Chairman, Mr. Funderburk agreed that I had a good case, and that my name belongs on the Illinois Central Yardmasters' Seniority Roster at New Orleans, because New Orleans, like elsewhere, had a common roster for all of the positions as outlined in Article (1) "Scope", Paragraph (a) and (b) of the agreement between the Illinois Central Railroad Company and the Illinois Central System Yardmasters' Association, effective January 1, 1944, which is my Exhibit No. 16, and the amending of said agreement dated November 1, 1945. This is the two page copy of the agreement which is attached to Mr. Earl Oliver's letter to me dated March 28, 1958. Mr. Funderburk instructed me to handle my case locally, and if necessary, to appeal to the Manager of Personnel and later to your Honorable Board and that he acting through our association would do so for me. He went so far as to state that the stationmasters in Chicago were recently placed on the rosters with the Yardmasters of the Illinois Central Chicago Terminal. He promised to mark off the names of the men on a copy of a Chicago Terminal Roster, and send it to me to further support my case that there is a common

roster. Since this time, Mr. Roy Funderburk, my General Chairman, has refused or failed to progress my case as promised. He simply will not answer my registered letters. Mr. Funderburk's letter to me dated February 12, 1958 which is enclosed in my file, was his last letter to me. Writing of this letter didn't relieve Mr. Funderburk from his responsibility, as pointed out by my Exhibit No. 1, which is the November 18, 1957 ruling by the United States Supreme Court with reference to discrimination.

(19) Copy of my letter, under certified mail No. 882391, dated April 8, 1958, addressed to Mr. Roy Funderburk of which he did not answer.

(20) Copy of my letter addressed to Mr. Earl Oliver, Manager of Personnel, Illinois Central Railroad Company, dated May 9, 1958, under certified mail No. 882392.

(21) Copy of letter addressed to me, dated May 20, 1958, from Mr. Earl Oliver, which was in answer to my letter dated May 9, 1958, under certified mail No. 882392, which was addressed to him.

Accompanying Mr. Oliver's letter was a further amendment of our agreement with response to general yardmasters. This agreement limits the seniority of the general yardmasters. As stated by me, in my opinion, an individual name could not be placed on a common roster with limitations. Surely the seniority of a general yardmaster whose name has been placed on a common roster with the yardmasters and assistant general yardmasters, etc., on November 1, 1945, could not at this late date be disturbed.

(22) Copy of my letter dated January 8, 1958, under certified mail No. 4729832, addressed to Mr. W. R. Bevans, Trainmaster, Illinois Central Railroad Company at New Orleans. This letter is written to protect my interest in a 1958 issue of the Illinois Central Yardmasters' Seniority Roster at New Orleans.

(23) Copy of letter dated January 15, 1958, addressed to me from Mr. W. R. Bevans, in answer to my letter of January 8, 1958.

(24) Copy of my letter addressed to Mr. E. E. Schlottman, Superintendent, Illinois Central Railroad Company at New Orleans, under certified mail No. 4729835, which was written in an appeal for Mr. W. R. Bevans, whereas, I wrote Mr. Bevans to protect my interest to have my name placed on the Illinois Central Railroad Company's Seniority Roster at New Orleans.

(25) Copy of a letter dated January 22, 1958, addressed to me, from Mr. E. E. Schlottman, Superintendent, Illinois Central Railroad Company at New Orleans, which was in the nature of a declination to my letter dated January 20, 1958.

(26) My letter dated May 20, 1958, under certified mail No. 882393, addressed to Mr. Patrick E. Pope, Executive Secretary, Fourth Division, National Railroad Adjustment Board, 220 South State Street, Chicago 4, Illinois. This letter is a request for the National Railroad Adjustment Board to allow me to file my claim and dispute with their Honorable Board for handling.

(27) Copy of letter dated June 5, 1958, addressed to me from Mr. Patrick V. Pope, Executive Secretary, Fourth Division, National Railroad Adjustment Board, 220 South State Street, Chicago 4, Illinois.

An oral hearing is not requested.

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

Claimant respectfully submits the foregoing data without being hostile or prejudice and prays that this Honorable Board will also share his right and just contention that he had been mistreated as regards to his seniority status, and that they honor his claim in full by awarding their decision in his favor.

CARRIER'S STATEMENT OF FACTS: Edward W. Hornsby, presently on a leave of absence from the carrier and employed by the New Orleans Union Passenger Terminal, held, prior to the establishment of that facility in 1954, the position of stationmaster with this carrier and ranked second on the New Orleans Terminal stationmasters' seniority roster, consisting of two men. He was not at any time appointed by the Illinois Central to the position of yardmaster; he never worked in that capacity nor in that of an assistant general yardmaster or general yardmaster while in the services of the carrier, and he never established seniority on the Illinois Central as a yardmaster.

POSITION OF CARRIER: 1. If the petitioner in actuality held seniority rights as a yardmaster on the Illinois Central—he claims he does, a position the carrier disputes—the petitioner has not complied with the procedural requirements of the agreement between the carrier and the Illinois Central System Yardmasters' Association, and the claim is abandoned and barred. Article 9 of the Schedule of Wages and Rules for Yardmasters reads in part:

“(a) Any yardmaster who considers the provisions of this agreement have been violated may present his case in writing to his immediate superior within ten (10) days from date of occurrence. Should the decision of his immediate superior be unsatisfactory, he has the right to appeal within ten (10) days to the Superintendent, and having so appealed will be given a decision.

“(b) Should the Superintendent's decision be unsatisfactory, the yardmaster or his duly accredited representative may, if he so desires, appeal his case to the Manager of Personnel, provided he does so in writing within sixty (60) days from the date his request is denied below, and if not appealed within the limit designated it will not be entertained or allowed.”

It is the petitioner's position that the amendment of November 1, 1945, to the agreement of January 1, 1944, “should have placed Yardmaster Hornsby's name No. 6 or 5.1 immediately following the name of Yardmaster T. M. Littleton on the Illinois Central Railroad Company's New Orleans Terminal's Yardmasters' Seniority Roster.” By his own statement, the incident which the petitioner now seeks to remedy occurred November 1, 1945. He presented

his case in writing to the trainmaster on December 5, 1957.¹ He failed by almost thirteen years to meet the requirements of the rule.²

2. The petitioner has not met the requirements of Section 2 Second and Section 3 First (i) of the Railway Labor Act in that he made no extensive effort at settling the dispute on the property with and had no conference with the manager of personnel. Thus, the conditions precedent to bringing the dispute before the Board were not met.

The Fourth Division, both with and without referee, in numerous cases has refused to accept jurisdiction and has dismissed cases as the instant one. Some Fourth Division awards in point are 178, 382, 404, 410, 535, 689, 706, 734, 743, 791, 863, 1019, 1073, 1074 and 1098.

3. Even disregarding the procedural defects pointed out above, the petition has no merit.

In handling the dispute on the property, the petitioner alleged that his name belongs on the New Orleans Terminal yardmasters' seniority roster. He failed, however, to present conclusive evidence in support of his allegation. He merely stated, "It is my thought that the Stationmasters and Yardmasters Roster at New Orleans should have been consolidated . . ."³ (Emphasis added.) The only schedule basis he does furnish in support of his contention is the agreement between the Illinois Central Yardmasters' Association and the carrier, dated January 1, 1944, and the amendment thereto dated November 1, 1945.⁴ Neither the agreement of January 1, 1944, nor the amendment of November 1, 1945, conferred upon the petitioner, nor were they intended so to do, seniority as a yardmaster. The 1944 agreement contained no seniority provisions at all. The 1945 agreement does provide for the establishment of yardmasters' seniority. The pertinent parts of that agreement read:

"This agreement shall become effective November 1, 1945, and to the extent hereinafter indicated shall supersede the schedule agreement effective January 1, 1944.

"It is agreed that:

"1. Article 1—'Scope', paragraph (b) shall be revised as follows:

"This agreement shall also apply to specific position of General Yardmasters, General Stationmasters, Stationmasters and Assistant Stationmasters, excepting that these positions shall not be subject to the provisions of Articles 4, 6 (a) (b) (c), 7 and 9."

¹A copy of Mr. Hornsby's letter to Trainmaster Bevan, dated December 5, 1957, is attached as carrier's Exhibit "A".

²The Division denied in Award 1145 Mr. Hornsby's petition for a higher seniority ranking as a yardmaster on the New Orleans Union Passenger Terminal (an entity entirely separate from the Illinois Central). The carrier believes that the denial award motivated Mr. Hornsby's petition for the establishment of yardmaster's seniority on the Illinois Central at this time, which, if granted, he may well want to use in an attempt at overthrowing Award 1145.

³See Exhibit "A".

⁴Copies of the agreement of January 1, 1944 and November 1, 1945, respectively, are on file with the Division.

Article 4 is the rule under which yardmasters established seniority. It reads in part:

"4. The following shall serve to establish and govern the seniority rights of yardmasters as such:

"(a) Seniority rights are restricted to yardmasters covered by this agreement and to the terminal at which employed. They will retain and accumulate such seniority in accordance with the provisions of this agreement."⁵ (Emphasis added.)

From the language of Article 4 it is plain that that article did not confer upon stationmasters seniority rights as yardmasters. It limited yardmasters' seniority to yardmasters as such. As a matter of fact, Article 4 is not even applicable to stationmasters by the express provisions of Article 1, the scope rule.

Although the schedule agreement did not and does not give stationmasters seniority rights, the parties did, by a side understanding, agree that seniority lists or rosters for stationmasters should be drawn up for the parties' information. By letter dated October 18, 1945, addressed to the general chairman and the two assistant general chairmen of the association, the carrier confirmed what had been orally agreed upon during conference in addition to the agreement proper, i.e., the establishment of separate stationmaster's seniority rosters.⁶

For reasons unknown to the carrier at this time a stationmasters' seniority roster for the New Orleans Terminal was not issued. Failure to do so did, however, not take away from the fact that the two stationmasters at New Orleans were considered as having established seniority rank as stationmasters. The petitioner was given rank No. 2 and a seniority date as stationmaster of June 20, 1942. The only reason the carrier is now able to advance for its failure to prepare a stationmasters' seniority roster at New Orleans is possibly the fact that there were only two men at New Orleans in that capacity, and everybody concerned knew who they were and what their seniority standing was.

The letter of October 18, 1945, referred to above, also set forth the method of preparing yardmasters' seniority rosters. It said:

"All yardmasters, or those who are considered as having established seniority as such, should be listed in rank number according to their seniority date. The present occupation of those listed on the roster need not be shown, but, where other than yardmasters or assistant general yardmasters are included thereon, they should be identified by one or more asterisks, such as *General Yardmaster, **Station Master, ***Train Master, etc." (Emphasis added.)

While the letter called for including some specific stationmasters in the yardmasters' seniority rosters, it certainly did not state that all stationmasters

⁵The agreement with the yardmasters has since been revised. The seniority rule appears as Article 12 in the edition of January 1, 1957, on file with the Division.

⁶A copy of the carrier's letter dated October 18, 1945, is attached as carrier's Exhibit "B".

were to be given yardmasters' seniority. Those stationmasters whose names were shown on yardmasters' seniority rosters were those who had established yardmasters' seniority by appointment to a yardmaster's position or by the performance of extra yardmaster's work and who later were promoted or transferred to stationmaster positions. The facts are that the petitioner never established yardmaster's seniority; he was never appointed to the position of yardmaster; he never worked such a position; he did not even work in the capacity of an extra yardmaster at any time.

If the petitioner's position had merit, there then would be no necessity for separate seniority rosters for yardmasters and stationmasters, and the provision in the carrier's letter of October 18, 1945, calling for the separate establishment of seniority rosters for yardmasters and stationmasters would be meaningless. Also, conversely, all yardmasters would have stationmaster's seniority. The petitioner's position is fallacious.

That the petitioner's present claim has no merit is further borne out by the handling it was given by former General Chairman Berry prior to the time the petitioner handled it with division officers in its present form. Mr. Berry dropped the matter, agreeing, in fact, with the carrier's position that the petitioner did not at any time establish yardmaster's seniority.

Likewise, the present general chairman, while handling the issue informally, concurred in the carrier's position. General Chairman Funderburk said in his letter of February 12, 1958, to the petitioner:

"In regards to the letters you sent me and the exhibits of your case, I have read them all very carefully and also read the correspondence you had with Mr. Berry and have also had two different talks with the Personnel and as much as I can find you have never held any seniority as a yardmaster on the N. O. Terminal. As you know the station masters are not on the yardmasters rosters and are only partially covered by the yardmasters' agreement. As much as I can find out in the records there was never a station master roster on the N. O. Terminal.

"I have not been able to come up with anything in the yardmasters' agreement that will cover your rights to be put on the roster. If you had at some time been a switchman or an extra yardmaster you would have established your rights as a yardmaster then it would be a difference.

"I am sorry but as it is now I don't see any way open that I can give you any help. Hoping that you are not too discouraged with the outcome I remain as yours." (Emphasis added.)

In short, the parties to the governing agreement are in accord that the petitioner holds no seniority as yardmaster on the Illinois Central.

4. As to the second part of the issue, there is no issue. The carrier does not dispute the fact that by the terms of the letter of October 18, 1945—not by the terms of the agreement of November 1, 1945, however—the petitioner

¹A copy of Mr. Funderburk's letter dated February 12, 1958, to Mr. Hornsby is attached as carrier's Exhibit "C". The claimant himself furnished the carrier with a copy of this letter.

established a seniority date as a stationmaster on the New Orleans Terminal. Upon inquiry of the superintendent in 1955, the petitioner was advised by the superintendent as follows:

"This is in response to your inquiry relative to your seniority date and ranking as a stationmaster on the Illinois Central prior to your going to the NOUPT.

"As a result of a revision, effective November 1, 1945, of the Yardmasters' schedule, instructions were issued by the Personnel Department on October 18, 1945, to compile yardmasters' and stationmasters' seniority rosters as of November 1, 1945, showing seniority date and ranking of stationmasters. The revised schedule provided for the re-issuance of the rosters annually. For some reason, however, possibly because we had only two stationmasters at New Orleans and it was well known what their rank was, we failed to comply with the October 18, 1945, instructions, and a stationmasters' roster for New Orleans was never issued.

"Had we complied with the instructions, you would have been shown on the roster as No. 2, and your seniority date would have been shown as June 20, 1942. Our failure to issue the rosters did not, of course, detract from the fact that, under the governing agreement, you actually had a seniority date of June 20, 1942, and were No. 2 in point of seniority."

The two stationmaster positions on the New Orleans Terminal of the Illinois Central were abolished with the establishment of the New Orleans Union Passenger Terminal.

Even if there were a valid dispute in regard to the second part of the claim, the carrier would point out, just as it did in regard to the first part of the claim, that the claim is improperly before the Board because it was never handled as a grievance on the property.

CONCLUSION

The carrier has shown (1) that the petition is improperly before the Division because the petitioner did not comply with the requirements of the applicable agreement and of the Railway Labor Act and (2) that, even if the petition had no procedural defects, it would still have no merit because there is no contractual or equitable basis for it. The governing agreement did not accord the petitioner seniority as yardmaster on the Illinois Central, and the parties thereto so agree.

Accordingly, the carrier requests that the Division dismiss the case.

Inasmuch as the petitioner acted prematurely by referring the dispute to the Division, the carrier has not pointed out to the petitioner the procedural defects of the case. All other data in support of the carrier's position have been presented to the petitioner.

Oral hearing is waived.

(Exhibits not reproduced.)

¹A copy of Superintendent Carter's letter dated August 16, 1955, to the petitioner is attached as carrier's Exhibit "D".

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 waived right of appearance at hearing thereon.

The evidence of record does not warrant an affirmative Award.

AWARD

Claim denied.

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

ATTEST: Patrick V. Pope
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1958.