

**Award No. 1319**

**Docket No. 1228**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**FOURTH DIVISION**

**The Fourth Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.**

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**PARTIES TO DISPUTE:**

**RAILROAD YARDMASTERS OF AMERICA**

**TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS**

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

Claim for a day's pay at Assistant General Yardmaster rate for the oldest unassigned extra man on August 2, 1956 on account violation of current Rules and Working Conditions Agreement by Assistant Trainmaster Meng directly exercising supervision and instructing other persons employed in the yard.

**EMPLOYEE'S STATEMENT OF FACTS:** Claim being made on behalf of the oldest unassigned extra man on August 2, 1956.

On August 2, 1956, Assistant Train Master Meng, in five separate instances took active part by directly exercising supervision and instructing other persons in the yard.

**POSITION OF EMPLOYEES:** The position of the employees and the record of handling of this dispute on the property, as follows:

"September 12, 1956

Mr. F. D. Block  
Train Master  
Central District  
East St. Louis, Illinois

Dear Sir:

At 8:30 P. M. 8/2/56, assistant Train Master Meng instructed Hatfields rear man to go to South Hump over speaker system. Time claim days pay for violation of Scope Rule 753 operating instructions.

Yours truly,

/s/ O. J. Cross  
Local Chairman, RYA"

"Terminal R R Assn.  
C. D. District,  
E. St. Louis, Ill.  
September 26, 1956

Mr. O. J. Cross, L. C.  
Railroad Yardmasters of America,  
C. D. District.

Dear Sir:

Referring to your letter of September 12, making claim for a day's pay account alleged violation of Scope Rule No. 753, Operating Instructions, involving incident of August 2, 1956, wherein Asst. Trainmaster Meng issued instructions to the rear man of Bridge Crew, Condr. Hatfield's Crew.

Mr. Meng was merely transmitting instructions for the AGY-Master in this case.

There is no violation or basis for time claims. Claim for time is herewith denied.

Yours truly,

/s/ Fred D. Block  
Trainmaster"

"September 12 , 1956

Mr. F. D. Block  
Train Master  
Central District  
East St. Louis, Illinois

Dear Sir:

At 8:45 P. M. 8/2/56, assistant Train Master Meng instructed Q. Tower to let conductor Mueller train come down track 18 and then instructed Switch Tenders to put train on track 13, Engine 597. Time claim days pay for violation of Scope Rule 753 operating instructions.

Yours truly,

/s/ O. J. Cross  
Local Chairman, RYA"

"Terminal R R Assn.  
C. D. District,  
E. St. Louis, Ill.  
September 26, 1956

Mr. O. J. Cross, L. C.  
Railroad Yardmasters of America,  
C. D. District.

Dear Sir:

Yours of September 12th, claiming a day's pay account alleged violation of Scope Rule No. 753 Operating Instructions, involving

incident of August 2nd, 1956, wherein Asst. Trainmaster Meng issued instructions to Q. Tower and Switchtender.

Mr. Meng was merely transmitting instructions for the AGY-Master at Cabin 1 in this case.

There is no violation or basis for time claimed. Claim for time is herewith denied.

Yours truly,

/s/ Fred D. Block  
Trainmaster"

"September 12, 1956

Mr. F. D. Block  
Train Master  
East St. Louis, Illinois  
Central District

Dear Sir:

At 9:05 P. M. 8/2/56, assistant General Yard Master Powers put C. J. Leonard and crew into track 17 for supper at 8:30 P. M. Engine 556.. At 9:05 P. M. Assistant Train Master Meng came into Board Room and instructed foreman Leonard to pick up cabs off tracks 1, 3, 15, 16 and place in caboose track in Westbound, then go to Eastbound and get stock for National Yards. Time claim days pay for violation of Scope Rule 753 operating instructions.

Yours truly,

/s/ O. J. Cross  
Local Chairman, RYA"

"Terminal R R Assn.  
C. D. District,  
E. St. Louis, Ill.  
September 26, 1956

Mr. O. J. Cross, L. C.  
Railroad Y ardmasters of America,  
C. D. District.

Dear Sir:

Referring to your letter of September 12, making claim for a day's pay account alleged violation of Scope Rule No. 753, Operating Instructions involving incident of August 2, 1956, wherein Asst. Trainmaster Meng issued instructions to Foreman C. J. Leonard.

Mr. Meng was merely transmitting instructions for the AGY-Master in this case.

There is no violation or basis for time claimed. Claim for time is herewith denied.

Yours truly,

/s/ Fred D. Block,  
Trainmaster"

"September 12, 1956

Mr. F. D. Block  
Train Master  
Central District  
East St. Louis, Illinois  
Dear Sir:

At 9:10 P. M. 8/2/56, assistant Train Master Meng called me, assistant Yard Master B. K. Cross, and gave me a check of a train out of the ice house. Also, told me that he was going to shove 15 cars into track 16 that had train on it. Also, I was to call him at cabin 1 when I started to pull track 16. Time claim days pay for violation of Scope Rule 753 operating instructions.

Yours truly,

/s/ O. J. Cross  
Local Chairman, RYA"

"Terminal R R Assn.  
C. D. District,  
E. St. Louis, Ill.  
September 26, 1956

Mr. O. J. Cross, L. C.  
Railroad Yardmasters of America,  
C. D. District.

Dear Sir:

Referring to your letter of September 12, claiming a day's pay for alleged violation of Scope Rule No. 753, Operating Instructions, involving incident of August 2, 1956, wherein Asst. Trainmaster Meng issued instructions to AYM B. K. Cross in the Eastbound.

Mr. Meng was merely transmitting instructions for the AGY-Master in this case to Mr. Cross.

There is no violation or basis for time claimed. Claim for time is herewith denied.

Yours truly,

/s/ Fred D. Block,  
Trainmaster"

"September 12, 1956

Mr. F. D. Block  
Train Master  
Central District  
East St. Louis, Illinois

Dear Sir:

At 10:05 P. M. 8/2/56, assistant Train Master Meng instructed C. D. Switch Tender to put Van cut of 38 cars into track 5 West-

bound over loud speaker system. Time claim days pay for violation of Scope Rule 753 operating instructions.

Yours truly,

O. J. Cross,  
Local Chairman, RYA"

"Terminal R R Assn.  
C. D. District,  
E. St. Louis, Ill.  
September 26, 1956

Mr. O. J. Cross, L. C.  
Railroad Yardmasters of America  
C. D. District.

Dear Sir:

Referring to your letter of September 12, claiming a day's pay for alleged violation of Scope No. 753, operating instructions, involving incident of August 2nd, wherein Asst. Trainmaster Meng issued instructions to C. D. Switchtender.

Mr. Meng was merely transmitting instructions for the AGY-Master in this case.

There is no violation or basis for time claimed. Claim for time is herewith denied.

Yours truly,

/s/ Fred B. Block  
Trainmaster"

Letterhead of  
RAILROAD YARD MASTERS OF AMERICA  
T. R. R. A. LODGE NO. 90  
Saint Louis, Missouri

"October 16, 1956

Mr. F. D. Block  
Trainmaster  
'CD' Yard  
E. St. Louis  
Illinois.

Dear Sir:

Your decision in letter of September Twenty-six (26) 1956, to Local Chairman O. J. Cross, Five letters on five cases where H. L. Meng on August 2, 1956 did violate the yardmasters current agreement five times during second shift.

Your decision is respectfully declined and appeal taken up with Superintendent Mr. G. C. Siebert letter of October 3, 1956.

Yours truly

/s/ E. D. Cox  
Gen. Chr."

Letterhead of  
RAILROAD YARDMASTERS OF AMERICA

T. R. R. A. LODGE NO. 90

Saint Louis, Missouri

"October 3, 1956

Mr. G. C. Siebert  
Superintendent  
Terminal Railroad Association of St. Louis  
Union Station  
St. Louis 3, Mo.

Dear Sir:

Complying with Labor Law as Amended, I am appealing to you in a series of decisions of Trainmaster Mr. F. D. Block in answers to complaints filed by local chairman O. J. Cross, where assistant train master Mr. H. L. Meng performed yard master duties in direct supervision of switchman and crews August 2, 1956.

8:30 P. M. instructed foreman Hatfields rear man after yarding his train to go to south hump.

8:45 P. M. instructed 'Q' Tower forces to let foreman Mueller's train come down track 18, and instructed switchtender to put this train on track 13.

9:05 P. M. assistant General yardmaster H. Powers instructed foreman C. J. Leonard with engine 556 to put engine on track 17 and go to supper. Mr. Meng went into crew room instructed foreman C. J. Leonard to get cabs off tracks 13, 15 and 16 put them on cab track in west bound, then go to east bound get national yard stock and take to stock yards.

9:10 P. M. called yardmaster in east bound gave him racket of cut of cars out of ice house to be switched and he would shove cut in 16 behind a train and for him to call when he started to pull 16.

10:05 P. M. instructed 'cd' switchtender to put van cut of 38 cars in track 5 west bound.

We all know that since the groundmasters were pulled off the work was assigned to the assistant general at cabin one and the assistant yardmaster when working on the ground started the crews

marked the board supervised the switching and watched the time and action of crews coupling cars in a track to get air and seen the air man got on the cut as soon as coupled and pulled to clear.

The yardmasters in east bound pulled off it is now necessary for assistant general yardmaster at cabin one to take racket on all trains get check back from clerks at CD office then get in touch of foreman in east bound have him come into office and give him the racket this takes time.

You know the assistant general yardmaster is upstairs and at his desk he can not see much of the yard and communication phones when engines and cars are moving close by are no good, this makes for slow moves, the trainmaster comes into the yardmasters office see's the phones blinking he does the work of yardmaster to try and move things faster and fills in where the for the yardmaster that has been pulled off.

These moves are a direct violation of yardmasters current agreement Scope Rule (1) backed up by definition set out in rule 753 & 754 current book of operating rules.

For these violations you will pay the oldest extra yardmaster a day's pay. Assistant General Yardmaster rate not working on this shift, and notify me when it will be paid.

Yours truly

//s/ E. D. Cox, Gen. Chr."

G. C. Siebert, Supt.  
203 Union Station  
St. Louis 3, Mo.

O. R. Moss, Asst's Supt.  
(Wiggins Division)  
601 N. Front St.,  
E. St. Louis, Ill.

Letterhead of

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

J. A. Mathewson, Jr., Asst. Supt.

(Merchants Division)

29 E. Bremen Ave., St. Louis 7, Mo.

"October 8, 1956.

013-300

Mr. E. D. Cox, Gen'l Chairman,  
Railroad Yardmasters of America,  
T. R. R. A. Lodge No. 90,  
6811 Smiley Avenue,  
Saint Louis, Missouri.

Dear Sir:

Your letter of October 3, 1956 was an appeal from the decision of Trainmaster Block, his letters of September 26, 1956 to Local

Chairman O. J. Cross, declining a claim for a day's pay at the Assistant General Yardmaster's rate for the oldest extra yardmaster for August 2, 1956, because allegedly Assistant Trainmaster Meng, on five occasions, exercised supervision over persons employed in the yard in violation of Scope Rule 753 of the Operating Rules.

The duties of a Trainmaster are outlined in Rule 753 of our Operating Rules, and provide that a Trainmaster will exercise supervision over persons employed in the yard, among other duties. This rule was in effect and governed the actions of our Trainmasters, etc., on the effective date of your Agreement. They are doing nothing different now than they did before your Agreement was negotiated, and you and your committee made no exception to their activities. Further, an Assistant General Yardmaster was on duty and at Cabin One during the entire second shift of August 2, 1956, and not replaced in his assignment.

The relaying of information, answering of telephones, routing of trains or giving instructions to a yardmaster are not the exclusive work of an Assistant General Yardmaster.

There is no merit to this claim and it is not allowed.

Yours truly,

/s/ Geo. C. Seibert"

Letterhead of

RAILROAD YARD MASTERS OF AMERICA

T. R. R. A. LODGE NO. 90

Saint Louis, Missouri

"October 16, 1956

Mr. G. C. Siebert  
Superintendent  
Union Station  
St. Louis 3, Mo.

Dear Sir:

Your decision in letter of October 8, 1956, where trainmaster Mr. H. L. Meng did exercise direct supervision five different times on second shift August 2, 1956, In one case after the A. G. Y. M. put crew to lunch he ordered crew out and gave the crew two jobs of work, this kind of interference is very demoralizing it belittles the yardmaster in the eyes of the men he has to supervise and causes disrespect.

Your decision is respectfully declined, and appeal will be taken to higher officer.

Yours truly

/s/ E. D. Cox"



Letterhead of  
RAILROAD YARD MASTERS OF AMERICA

T. R. R. A. LODGE NO. 90

Saint Louis, Missouri

"November 5, 1956

Mr. H. Miller, Jr.  
Manager Labor Relation  
T. R. R. A. of St. L.  
Union Station  
St. Louis 3, Mo.

Dear Sir:

Complying with Labor Law as Amended, I am appealing to from decision of Superintendent Mr. G. C. Siebert in his letter of October 8, 1956, Assistant Trainmaster Mr. H. L. Meng performing yardmaster service on four (4) different counts or more August 2, 1956.

Mr. Siebert's letter leads one to believe assistant trainmaster or trainmaster may perform as much yardmaster's duties as he wants to do regardless of Yardmasters agreement Terminal Book of operating rules effective August 1, 1953 the rule 752 in part will exercise supervision over persons employed in the yards and on trains. This gives him the sole right to general supervision over all employees in his jurisdiction.

Rules 753 and 754 gives the yardmaster forces sole right to all direct supervision spelled out as such over all yard employees while on duty in his jurisdiction.

When yardmaster gives instructions to a crew, and the trainmaster gives the crew other instructions, that move demoralizes the right of yardmaster and causes the men to disrespect him as a yardmaster.

These conditions have only come up since so many yardmasters have been pulled off and the duties heaped on the assistant general yardmaster, who is placed upstairs where he can not see what is going on in the yard and this results in delay to answering telephone and issuing instructions that is when the trainmaster assumes the duty performed by the ground yardmaster who has been removed. The direct supervision was contracted for in good faith and was given to yardmaster forces by the company and signed for May 15, 1956.

You will please allow day assistant general yardmaster rate for extra man unassigned on this date and let me know when it will be paid.

Yours truly

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

Letterhead of

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

Henry Miller, Jr.

Manager, Labor Relation

J. Walter Hammers, Jr.

Asst. Manager, Labor Relations

H. B. Andrew

Asst. to Manager, Labor Relations

Union Station

St. Louis 3, Mo.

"November 14, 1956

013-275-12

Mr. E. D. Cox, General Chairman

Railroad Yardmasters of America

6811 Smiley Avenue

St. Louis 9, Missouri

Dear Sir:

Your letter of November 5, 1956 was an appeal from the decision of Superintendent Siebert, his letter of October 8, 1956 declining a claim for a day's pay at Assistant General Yardmaster rate for the oldest unassigned extra man on August 2, 1956 because Assistant Trainmaster Meng allegedly performed yardmaster service on five occasions on that date.

I cannot agree that a Trainmaster or Assistant Trainmaster is barred from direct dealing with crews, the tower or any employees except through the medium of a yardmaster. Such positions are clearly invested with supervision over persons employed in yards and on trains by the Operating Rule Book which was used as the source of language to define yardmaster work as incorporated in your agreement.

On August 2 between 8:30 P. M. and 10:05 P. M. it is alleged that Meng instructed the rear man of a Bridge crew to go to the South Hump; told 'Q' Tower to release a train down No. 18 and told the switchtender where to put it; gave a check of a train to the East bound yardmaster along with other information; told the C. D. switchtender to put a Van cut on No. 5 in the Westbound and instructed Foreman Leonard what to do when he came out from dinner.

This recital of Meng's alleged activities is quite similar to allegations made in connection with the Assistant Trainmasters at Compton Avenue during December 1951 wherein your contention that yardmaster work was performed was rejected by the Board in Award 836. Awards 1089 and 1090 reach the same conclusion.

I cannot agree that any exclusively yardmaster work was performed by Meng and must decline to allow this claim.

While there may be merit to your contention that the Assistant General Yardmaster at Cabin 1 is not too advantageously situated to oversee all the activity in his jurisdiction, he is certainly right on the spot, and whatever the Trainmaster does is not done in the absence of the yardmaster. You say that the condition complained of has developed only since the yardmaster assistants have been pulled off, but I am sure that the Trainmasters are not functioning in any different manner than they ever did.

I must call your attention to the fact that you have named no claimant specifically in this case as required by the provisions of the Time Limit on Claims Rule of the agreement.

Yours very truly,

/s/ Henry Miller, Jr.  
Manager, Labor Relations"

Letterhead of  
RAILROAD YARD MASTERS OF AMERICA

T. R. R. A. LODGE NO. 90

Saint Louis, Missouri

"November 26, 1956

Mr. H. Miller, Jr.  
Manager Labor Relation  
T. R. R. A. of St. L.  
Union Station  
St. Louis 3, Mo.

Dear Sir:

Your letter of November 14, 1956 answering mine of November 5, 1956.

Fourth paragraph 'This recital of Mengs alleged activities is quite similar to allegations made in connection with the assistant Trainmasters at Compton Avenue during December 1951 wherein your contention that yardmaster work was performed was rejected by the board in Award 836.'

You are so correct you also done the same in December 1952, 1953, 1954, and 1955 but in conference in your office you and Mr. Wicks agreed you were wrong and agreed to remove assistant trainmasters and put assistant yardmasters on the job, that is just what you did and promised the same at 17th St. soon as conditions would permit as you were at that time short of men. You also stated it would not be worked with trainmasters or assistants in future years.

Prior to May 15, 1956 yardmasters had no agreement identifying them and their work as such, in the agreement you gave the yardmasters and signed for May 15, 1956 you gave as definition of yardmasters as part of our scope rule (rules 753 and 754 current book of operating rules). The work is spelled out in rule 753, 'He has direct supervision over enginemen, firemen, assistant yardmasters, foremen, switchmen, switchtenders and all other yard employes while on duty in the area of his jurisdiction.'

This claim is for the oldest extra yardmaster unassigned on this date, August 2, 1956.

Yours truly

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

Letterhead of

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

Henry Miller, Jr.  
Manager Labor Relations  
J. Walter Hammers, Jr.  
Asst. Manager, Labor Relations  
H. B. Andrew  
Asst. to Manager, Labor Relations

Union Station  
St. Louis 3, Mo.

"December 4, 1956  
013-275-12

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

Dear Sir:

Your letter of November 26, 1956 in which you refer to the claim involving alleged violations of your agreement by Assistant Trainmaster Meng, which claim was denied in my letter to you of November 14, 1956.

You refer again to the Compton situation and state that we admitted the error of what was being done at Compton in agreeing to place assistant yardmasters at that point. I think Award 836 speaks for itself. Our agreement to put yardmasters at Compton was not inspired by any thought that the award was in error but rather by peculiar circumstances of which you have full knowledge.

I have no further comment to make on this case other than to again call your attention to the fact that the Time Limit on Claims Rule of the agreement provides that claimants must be specifically named.

Yours very truly,

/s/ Henry Miller, Jr.  
Manager, Labor Relations"

It is the position of the employees that awards too numerous to require specific designation have established the right of employees to the work for which they have bargained and that the record clearly establishes that the Assistant Trainmaster usurped the duties and assumed the responsibility of yardmaster in violation of the Agreement to the detriment and disadvantage of the claimant.

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:** This claim is based on an alleged violation of the Yardmasters' Agreement resulting from the activities of Asst. Trainmaster H. L. Meng on August 2, 1956. H. L. Meng was the Asst. Trainmaster in charge of the Carrier's C. D. Yard at the time of the alleged violation. C. D. Yard, through which most of the Carrier's perishable freight

is handled, is located in East St. Louis, Illinois. The Asst. General Yardmasters' and Trainmasters' office is at the south end of that yard in a building called Cabin One. There is an Asst. General Yardmaster on each shift. Formerly in addition to the Asst. General Yardmaster, an Asst. Yardmaster or ground man was assigned on each shift who worked in conjunction with the Asst. General Yardmaster in the immediate area of Cabin One. These latter three jobs were abolished effective February 8, 1955. On February 10, 1955 an Asst. Yardmaster position was established with assigned hours from 6:00 P. M. to 2:00 A. M. This position was abolished effective May 15, 1956.

Five occurrences, originally filed by the Local Chairman as individual time claims for a day's pay, were subsequently combined and together constitute the claim filed with this division for a "day's pay at the Asst. General Yardmaster rate for the oldest unassigned extra man on August 2, 1956." The five individual claims as originally filed on September 12, 1956, followed in each instance by Trainmaster Block's separate replies of September 26, 1956, are quoted below:

#### Item 1

##### Claim:

"At 8:30 P. M., August 2, 1956, Asst. Trainmaster Meng instructed Hatfield's rear man to go to South Hump over speaker system. Time claim day's pay for violation of Scope Rule 753, Operating Instructions."

##### Trainmaster's denial of claim:

"Referring to your letter of September 12, making claim for a day's pay account alleged violation of Scope Rule No. 753, Operating Instructions, involving incident of August 2, 1956, wherein Asst. Trainmaster Meng issued instructions to the rear man of Bridge crew, Condr. Hatfield's crew.

"Mr. Meng was merely transmitting instructions for the AGY-Master in this case.

"There is no violation or basis for time claimed. Claim for time is herewith denied."

#### Item 2

##### Claim:

"At 8:45 P. M., August 2, 1956, Asst. Trainmaster Meng instructed 'Q' Tower to let Conductor Mueller train come down track 18 and then instructed switchtender to put train on track 13, engine 597. Time claim day's pay for violation of Scope Rule 753, Operating Instructions."

##### Trainmaster's denial of claim:

"Yours of September 12, claiming a day's pay account alleged violation of Scope Rule No. 753, Operating Instructions, involving incident of August 2nd, 1956, wherein Asst. Trainmaster Meng issued instructions to 'Q' Tower and switchtender.

"Mr. Meng was merely transmitting instructions for the AGY-Master at Cabin 1 in this case.

"There is no violation or basis for time claimed. Claim for time is herewith denied."

### Item 3

#### Claim:

"At 9:05 P. M., August 2, 1956, Asst. General Yardmaster Powers put C. J. Leonard and crew into track 17 for supper at 8:30 P. M., engine 556. At 9:05 P. M. Asst. Trainmaster Meng came into board room and instructed Foreman Leonard to pick up cabs off tracks 13, 15, 16 and place in caboose track in Westbound, then go to Eastbound and get stock for National Yards. Time claim day's pay for violation of Scope Rule 753, Operating Instructions."

#### Trainmaster's denial of claim:

"Referring to your letter of September 12, making claim for a day's pay account alleged violation of Scope Rule No. 753, Operating Instructions involving incident of August 2, 1956, wherein Asst. Trainmaster Meng issued instructions to Foreman C. J. Leonard.

"Mr. Meng was merely transmitting instructions for the AGY-Master in this case.

"There is no violation or basis for time claimed. Claim for time is herewith denied."

### Item 4

#### Claim:

"At 9:10 P. M., August 2, 1956, Asst. Trainmaster Meng called me, Asst. Yardmaster B. K. Cross, and gave me a check of a train out of the ice house. Also told me that he was going to shove 15 cars into track 16 that had train on it. Also, I was to call him at Cabin 1 when I started to pull track 16. Time claim day's pay for violation of Scope Rule 753, Operating Instructions."

#### Trainmaster's denial of claim:

"Referring to your letter of September 12, claiming a day's pay for alleged violation of Scope Rule No. 753, Operating Instructions, involving incident of August 2, 1956, wherein Asst. Trainmaster Meng issued instructions to AYM B. K. Cross in the Eastbound.

"Mr. Meng was merely transmitting instructions for the AGY-Master in this case to Mr. Cross.

"There is no violation or basis for time claimed. Claim for time is herewith denied."

### Item 5

#### Claim:

"At 10:05 P. M., August 2, 1956, Asst. Trainmaster Meng instructed C. D. switchtender to put Van cut of 38 cars into track 5,

Westbound, over loudspeaker system. Time claim day's pay for violation of Scope Rule 753, Operating Instructions."

**Trainmaster's denial of claim:**

"Referring to your letter of September 12, claiming a day's pay for alleged violation of Scope Rule No. 753, Operating Instructions, involving incident of August 2nd, wherein Asst. Trainmaster Meng issued instructions to C. D. switchtender.

"Mr. Meng was merely transmitting instructions for the AGY-Master in this case.

"There is no violation or basis for time claimed. Claim for time is herewith denied."

Under date of October 3, 1956 General Chairman Cox appealed Trainmaster Block's decisions above quoted, to Superintendent Siebert as follows:

"Complying with Labor Law as Amended, I am appealing to you in a series of decisions of Trainmaster Mr. F. D. Block in answers to complaints filed by local chairman O. J. Cross where assistant trainmaster Mr. H. L. Meng performed yardmaster duties in direct supervision of switchmen and crews August 2, 1956, 8:30 P. M., instructed foreman Hatfield's rear man after yarding his train to go to south hump.

"8:45 P. M. instructed 'Q' Tower forces to let foreman Mueller's train come down track 18, and instructed switchtender to put this train on track 13.

"9:05 P. M. assistant General yardmaster H. Powers instructed foreman C. J. Leonard with engine 556 to put engine on track 17 and go to supper. Mr. Meng went into crew room instructed foreman C. J. Leonard to get cabs off tracks 13, 15 and 16 put them on cab track in westbound, then go to eastbound get national yard stock and take to stock yards.

"9:10 P. M. called yardmaster in eastbound gave him racket of cut of cars out of ice house to be switched and he would shove cut in 16 behind a train and for him to call when he started to pull 16.

"10:05 P. M. instructed 'CD' switchtender to put van cut of 38 cars in track 5 westbound.

"We all know that since the ground yardmasters were pulled off the work was assigned to the assistant general at Cabin One and the assistant yardmaster when working on the ground started the crews, marked the board, supervised the switching and watched the time and action of crews coupling cars in a track to get air and seen the air man got on the cut as soon as coupled and pulled to clear.

"The yardmasters in eastbound pulled off it is now necessary for assistant general yardmaster at Cabin One to take racket on all trains, get check back from clerks at CD office then get in touch of foreman in eastbound, have him come into office and give him the racket. This takes time.

"You know the assistant general yardmaster is upstairs and at his desk. He cannot see much of the yard and communication phones when engines and cars are moving close by are no good. This makes for slow moves. The trainmaster comes into the yardmasters office, sees the phones blinking. He does the work of yardmaster to try and move things faster and fills in for the yardmaster that has been pulled off.

"These moves are a direct violation of yardmasters curren agreement, Scope Rule (1), backed up by definition set out in Rules 753 and 754, current Book of Operating Rules.

"For these violations you will pay the oldest extra yardmaster a day's pay Asst. General Yardmaster rate not working on this shift, and notify me when it will be paid."

On Otcober 8, 1956 Superintendent Siebert replied to General Chairman Cox, denying the claims, as follows:

"Your letter of October 3, 1956 was an appeal from the decision of Trainmaster Block, his letters of September 26, 1956 to Local Chairman O. J. Cross, declining a claim for a day's pay at the Assistant General Yardmaster's rate for the oldest extra yardmaster for August 2, 1956, because allegedly Assistant Trainmaster Meng, on five occasions, exercised supervision over persons employed in the yard in violation of Scope Rule 753 of the Operating Rules.

"The duties of a Trainmaster are outlined in Rule 753 of our Operating Rules, and provide that a Trainmaster will exercise supervision over person employed in the yard, among other duties. This rule was in effect and governed the actions of our Trainmasters, etc., on the effective date of your agreement. They are doing nothing different now than they did before your agreement was negotiated, and you and your committee made no exception to their activities. Further, an Assistant General Yardmaster was on duty and at Cabin One during the entire second shift of August 2, 1956, and not replaced in his assignment.

"The relaying of information, answering of telephones, routing of trains or giving instructions to a yardmaster are not the exclusive work of an Assistant General Yardmaster.

"There is no merit to this claim and it is not allowed."

General Chairman Cox appealed the Superintendent's decision to Manager Labor Relations Henry Miller, Jr., on November 5, 1956 as follows:

"Complying with Labor Law as amended, I am appealing from decision of Superintendent Mr. G. C. Siebert, in his letter of October 8, 1956, Assistant Trainmaster Mr. H. L. Meng performing yardmaster service on four (4) different counts or more August 2, 1956.

"Mr. Siebert's letter leads one to believe assistant trainmaster or trainmaster may perform as much yardmaster's duties as he wants to do regardless of Yardmasters agreement, Terminal Book of Operating Rules effective August 1, 1953, Rule 752 in part, 'will exercise supervision over persons employed in the yards and on trains.' This gives



him the sole right to general supervision over all employes in his jurisdiction.

"Rules 753 and 754 gives the yardmaster forces sole right to all direct supervision spelled out as such over all yard employes while on duty in his jurisdiction.

"When yardmaster gives instructions to a crew, and the trainmaster gives the crew other instructions, that move demoralizes the right of yardmaster and causes the men to disrespect him as a yardmaster.

"These conditions have only come up since so many yardmasters have been pulled off and the duties heaped on the assistant general yardmaster, who is placed upstairs where he cannot see what is going on in the yard and this results in delay to answering telephone and issuing instructions, that is when the trainmaster assumes the duty performed by the ground yardmaster who has been removed. The direct supervision was contracted for in good faith and was given to yardmaster forces by the company and signed for May 15, 1956.

"You will please allow day assistant general yardmaster rate for extra man unassigned on this date and let me know when it will be paid."

The Manager Labor Relations affirmed the decision of the Superintendent in letter dated November 14, 1956 which is quoted below:

"Your letter of November 5, 1956 was an appeal from the decision of Superintendent Siebert, his letter of October 8, 1956 declining a claim for a day's pay at Assistant General Yardmaster rate for the oldest unassigned extra man on August 2, 1956 because Assistant Trainmaster Meng allegedly performed yardmaster service on five occasions on that date.

"I cannot agree that a Trainmaster or Assistant Trainmaster is barred from direct dealing with crews, the tower or any employes except through the medium of a yardmaster. Such positions are clearly invested with supervision over persons employed in yards and on trains by the Operating Rule Book which was used as the source of language to define yardmaster work as incorporated in your agreement.

"On August 2 between 8:30 P. M. and 10:05 P. M. it is alleged that Meng instructed the rear man of a Bridge crew to go to the South Hump; told 'Q' Tower to release a train down No. 18 and told the switchtender where to put it; gave a check of a train to the Eastbound yardmaster along with other information; told the C. D. switchtender to put a Van cut on No. 5 in the Westbound and instructed Foreman Leonard what to do when he came out from dinner.

"This recital of Meng's alleged activities is quite similar to allegations made in connection with the Assistant Trainmasters at Compton Avenue during December 1951 wherein your contention that yardmanter work was performed was rejected by the Board in Award 836. Awards 1089 and 1090 reach the same conclusion.

"I cannot agree that any exclusively yardmaster work was performed by Meng and must decline to allow this claim.

"While there may be merit to your contention that the Assistant General Yardmaster at Cabin 1 is not too advantageously situated to oversee all the activity in his jurisdiction, he is certainly right on the spot, and whatever the Trainmaster does is not done in the absence of the yardmaster. You say that the condition complained of has developed only since the yardmaster assistants have been pulled off, but I am sure that the Trainmasters are not functioning in any different manner than they ever did.

"I must call your attention to the fact that you have named no claimant specifically in this case as required by the provisions of the Time Limit on Claims Rule of the agreement."

The General Chairman replied to the Manager Labor Relations on November 26, 1956 as follows:

"Your letter of November 14, 1956 answering mine of November 5, 1956.

"Fourth paragraph 'This recital of Meng's alleged activities is quite similar to allegations made in connection with the assistant trainmasters at Compton Avenue during December 1951 wherein your contention that yardmaster work was performed was rejected by the board in Award 836.'

"You are so correct you also done the same in December 1952, 1953, 1954, and 1955 but in conference in your office you and Mr. Wicks agreed you were wrong and agreed to remove assistant trainmasters and put assistant yardmasters on the job. That is just what you did and promised the same at 17th Street soon as conditions would permit as you were at that time short of men. You also stated it would not be worked with trainmasters or assistants in future years.

"Prior to May 15, 1956 yardmasters had no agreement identifying them and their work as such. In the agreement you gave the yardmasters and signed for May 15, 1956 you gave as definition of yardmasters as part of our scope rule (Rules 753 and 754, current Book of Operating Rules). The work is spelled out in Rule 753, 'He has direct supervision over enginemen, firemen, assistant yardmasters, foremen, switchmen, switchtenders and all other yard employees while on duty in the area of his jurisdiction.'

"This claim is for the oldest extra yardmaster unassigned on this date, August 2, 1956."

On December 4, 1956, the Manager Labor Relations replied as follows:

"Your letter of November 26, 1956 in which you refer to the claim involving alleged violations of your agreement by Assistant Trainmaster Meng, which claim was denied in my letter to you of November 14, 1956.

"You refer again to the Compton situation and state that we admitted the error of what was being done at Compton in agreeing to place assistant yardmasters at that point. I think Award 836 speaks for itself. Our agreement to put yardmasters at Compton was

not inspired by any thought that the award was in error but rather by peculiar circumstances of which you have full knowledge.

"I have no further comment to make on this case other than to again call your attention to the fact that the Time Limit on Claims Rule of the agreement provides that claimants must be specifically named."

It will be noted from the Manager Labor Relations' letters of November 14 and December 4, 1956 quoted above that exception was taken to the fact that no claimant was specified as required by the provisions of the Time Limit on Claims Rule of the agreement, the first sentence of which reads as follows:

"All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the carrier authorized to receive same, within 60 calendar days from the date of the occurrence on which the claim or grievance is based."

Similar language appearing in the Time Limit on Claims Rule contained in Memorandum of Agreement between this Carrier and the Brotherhood of Railroad Trainmen, dated May 27, 1949, applicable to switch foremen, helpers and switchtenders, has been interpreted to require that "the employe involved" must be named. The first sentence of the Brotherhood of Railroad Trainmen's Rule (copy of the entire Memorandum of Agreement is included as Carrier's Exhibit A), is quoted for ready reference:

"All claims for time will be filed in writing by the employe involved or his authorized representative with the officer of the company designated to receive same, within sixty (60) days from the date of the occurrence on which the claim is based."

A claim filed in behalf of "unassigned men" (switchmen) for August 8, 1954, based on the allegation that foreign line crews made delivery on other than a recognized interchange track, was progressed on the property and became the subject of Award No. 42 of Special Board of Adjustment No. 118, Chairman Thomas C. Begley. The following paragraph is quoted from the Findings of that award:

"This claim made on behalf of unnamed claimants does not fulfill the requirements of the rule on Time Limit on Claims set forth in Memorandum Agreement dated May 27, 1949 in which it is stated in part (a), 'All claims for time will be filed in writing by the employe involved or his authorized representative \* \* \*.' Due to the fact that the employe involved is not named in this claim, the claim will be dismissed."

A copy of the award is attached as Carrier's Exhibit B.

#### **POSITION OF CARRIER:**

**With respect to procedural matters concerning the claim made by the Employees:**

As observed in the Carrier's Statement of Facts, neither the Local Chairman in filing the claim—which, curiously enough, he did not do until September 12, 1956, some forty days after the alleged occurrences giving rise to the claim—nor the General Chairman specified the individual employe in whose behalf the claim was made. The requirement that employes must be named

has been established on this property by award of Special Board of Adjustment No. 118 as explained in the Carrier's Statement of Facts. Because the Employes' Statement of Claim is deficient in this important respect, the claim should be forthwith denied.

**With respect to the merits of claim:**

It is the position of the Carrier that Asst. Trainmaster Meng did not violate the Yardmasters' Agreement when, in the course of his supervisory duties on the evening of August 2, 1956, he functioned in the manner made the subject of claim.

It will be noted from the General Chairman's letter of November 5, 1956 that the organization relies chiefly on Rule 1, Scope, of the schedule agreement, which in turn provides that the duties of yardmaster forces will be as outlined in Rules 753 and 754 of the Book of Operating Rules effective August 1, 1953. Rules 753 and 754 read as follows:

"753. The Assistant General Yardmaster receives instructions from and reports to the Assistant Superintendent, Trainmaster or Assistant Trainmaster as the case may be. He has direct supervision over enginemen, firemen, assistant yardmasters, foremen, switchmen, switchtenders and all other yard employes while on duty in the area of his jurisdiction, and will require the prompt and efficient performance of duty such employes.

"754. The Assistant Yardmaster receives instructions from and reports to the Assistant General Yardmaster, Assistant Trainmaster or Trainmaster as the case may be, and has immediate control over enginemen, firemen, yardmen and all other yard employes in the yard area assigned to him."

Rule 752 of the same Book of Operating Rules provides that Trainmasters and Asst. Trainmasters will also exercise supervision over persons employed in the yards and on trains. It reads as follows:

"The Trainmaster receives instructions from and reports to the Superintendent or Assistant Superintendent as the case may be. He has charge of the movement of traffic generally; will exercise supervision over persons employed in the yards and on trains, and see that they understand and obey the rules and special instructions. In the detention of trains by accident or obstruction, go to the scene if necessary, take general charge of clearing the railway and have proper precautions taken to insure the safety of persons, trains and property. Local matters pertaining to discipline and the physical condition of the property under his jurisdiction will be administered by him.

"The Assistant Trainmaster receives instructions from and reports to the Trainmaster or Assistant Superintendent. His duties are similar to the Trainmaster's and he has the same authority."

Thus it is apparent that the employes are attempting to support their claim on the language of two rules of the Book of Operating Rules without reference to another rule of the same document which clearly contemplates that Trainmasters and Asst. Trainmasters may also exercise supervision over persons employed in the yards and on trains and, as will be noted hereinafter in a quotation from Award 836, the Trainmaster, in addition to Yardmaster

authority, has charge of the movement of traffic generally. The Employees' claim, therefore, is not supported by Rules 753 and 754 of the Book of Operating Rules as the Trainmaster was not performing work accruing solely to yardmasters.

In the first place, the amount of supervision desired at any particular location is a managerial prerogative because it is the management that is charged with efficiently and economically operating its property. In this connection, the following is quoted from the opinion of Board in Award 836 involving the Railroad Yardmasters of America and this Carrier, in which case the Employees similarly argued that the work performed by an Assistant Trainmaster amounted to "additional yardmaster supervision":

"Being charged with the efficient operation of its property, the amount of supervision needed and where it was needed were matters the Carrier had the right to determine. It appears that while the Yardmaster has control only 'over enginemen, firemen, trainmen, yardmen and all other employees **in the yard district assigned him,**' the Trainmaster (in addition to Yardmaster authority) 'has charge of the movement of traffic \* \* \* general charge of clearing the railway,' etc."

In the second place, the Assistant Trainmaster is not functioning in any different manner than he ever did, however, since the Asst. Yardmaster positions were abolished the supervisory activities of the Trainmaster, previously welcomed by the individual yardmasters on duty, have come to be viewed as a direct and definite trespass on the rights of yardmasters. The instructions issued by the Trainmaster, as cited in the Carrier's Statement of Facts, supplement the efforts of the Asst. General Yardmaster. It will be noted that in the General Chairman's letter of October 3, 1956 to the Superintendent, it is alleged that "Asst. Trainmaster Mr. H. L. Meng performed yardmaster duties in direct supervision of switchmen and crews \* \* \*." However, the specific allegations forming the basis of the claim in this docket do not reflect the exercise of supervision solely and are largely of an "informational nature." Appropriately, in this connection, the following is quoted from the opinion of Board in Award 1156 of the Fourth Division, Referee H. Raymond Cluster:

"The so-called 'orders' and 'instructions' given to the yard crews by the yard clerk and agent were not of a supervisory nature but of an informational nature. Thus, as in Awards 1151 and 1155 (Dockets 1138 and 1142), the yard crews are not told how to do their jobs; **they are merely told what job is to be done.**" (Emphasis supplied.)

It is noted that General Chairman Cox, in appealing the Local Chairman's claim for a day's pay, defined the claim as a day's pay at the Asst. General Yardmaster rate, which is not at all understood as an Asst. General Yardmaster was on duty at the time of the alleged violations and, in fact, an Asst. General Yardmaster is on duty continuously at Cabin One.

Many awards of this division have denied claims based on the theory that Trainmasters and others outside the purview of the agreement were performing yardmaster's work and have recognized on numerous occasions that the activities forming the basis of yardmasters' claims were simply incidental to the performance of duties attaching to other job classifications. (Among others see Fourth Division Awards 88, 188, 396, 406, 413, 484, 797, 806, 807, 808, 810, 811, 813, 814, 815, 816, 828, 933, 1127; also 1151, 1155 and 1156 previously referred to.)

In Award 806 it was alleged by the Employees that a General Yardmaster was assuming yardmaster's duties and authority on the date of claim when he gave instructions to three different engine crews. In denying the claim the Board ruled:

" \* \* \* We have carefully examined the record and from the facts submitted, have concluded that the work complained of was performed under circumstances supporting our conclusion that it was but incidental to the General Yardmaster's duties and was not of a volume or character sufficient to constitute a failure to establish a Yardmaster position. \* \* \*"

Similar claims were denied for the same reasons in Awards 807, 808 and 810.

In Award 811 the Employees contended that a General Yardmaster performed yardmaster's duties similar to those cited in Award 806 at a location at which there were formerly regularly assigned yardmasters however, the claim was denied on the same basis as Award 806.

In Award 813 the Employees alleged that a Trainmaster was performing yardmaster's work, also similar to that involved in Award 806. In denying the claim the Board rendered the following opinion:

"\* \* \* The issue here presented is identical with that in Docket 792. The fact the work complained of was performed by a Trainmaster who had supervision over the entire yard does not alter the principle involved. Here the Trainmaster gave instructions to an Engine Foreman, who was working under a regularly assigned Yardmaster. At the time the Yardmaster, who was unacquainted with the work at that point in the yard, was not immediately available. There is no evidence that the Trainmaster supervised the crew throughout the period of time as charged by the Organization. The Trainmaster also conferred with other Yardmasters respecting the work to be done. No Yardmaster was displaced, nor did the Trainmaster fill any position then vacant. The instructions described were but incidents in the fulfillment of the general supervisory duties of the Trainmaster. The facts of record does not establish the contrary. \* \* \*"

Award 814 involved similar circumstances, the following pertinent findings of which are quoted from the opinion of the Board:

"\* \* \* What we have said in Docket 792, Award 806 and Docket 799, Award 813, is applicable here.

"The instructions given by the Trainmaster to Yardmasters and, in exceptional instances to Engine Foremen, were incidental to the performance of his duties. The record does not show that he supplanted any Yardmaster in supervising engine crews. On the other hand, the record shows that at all times the engine crews were under the supervision of Yardmasters.

"There is no rule of record requiring the Trainmaster to speak only to Yardmasters. Efficient and smooth operation technique would require such procedure in all but exceptional cases, but the circumstances of any situation would determine the proper procedure. Certainly in the absence of a rule, this would be so.

"The rules and facts of record do not support the claim."

In Award 1127 claim was filed in behalf of a specified extra yardmaster because a Trainmaster, after the regular yardmaster had gone off duty, instructed that a rush car of butter be lined up for the desired train. In denying the claim the following statement was included in the opinion of Board:

"The Trainmaster has general supervisory duties to perform and when it came to his attention that car PRR 61775 was a rush car he should have authority under the circumstances related to issue instructions for the movement of the car on the first train to leave the yard."

As previously noted, an Asst. General Yardmaster was on duty at Cabin One at the time the alleged violations occurred. The activities of the Trainmaster were incident to his general supervisory functions and did not constitute work reserved solely for performance by the Yardmasters' craft.

The Employees' claim lacks the support of agreement rules and the majority of holdings by this division in similar circumstances, and should be denied.

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

We desire to be present at the oral hearing.

(Exhibits not reproduced.)

**OPINION OF BOARD:** A claim brought on behalf of "the senior unplaced extra yardmaster" on certain specified shifts and dates, being of sufficient clarity to reasonably enable the Carrier to ascertain the identity of the person seeking redress, is adequate compliance with the requirements of Rule 9 (a). When the complainant is thus identified, the failure to include the actual name of the employe involved is not a fatal defect. We find no procedural flaw on this score, and, therefore, we now turn to a consideration of the merits.

By the recital that a Trainmaster has charge of the movement of traffic generally, and will exercise supervision over persons employed in the yards and on trains, Operating Rule 752 shows on its face that the right to directly supervise yard forces is not an exclusive work prerogative of the Yardmasters subject to the Terminal Railroad Association of St. Louis-RYA Agreement.

Certainly, isolated instances of a Trainmaster's transmitting pertinent information to switch crews does not constitute a violation of the Yardmaster's scope rule. To hold that any and all direct communication of work orders between a Trainmaster and yard forces (during periods when a Yardmaster is on duty), no matter how trivial the details or how infrequent the occurrence, to be an intrusion upon the Yardmaster's job area, would serve to deter a Trainmaster from even speaking to a yardman. The countenancing of that sort of situation would go far towards making railroad operation well nigh intolerable.

It suffices to say that the several items of purported usurpation of Yardmaster's functions, on which the Organization premises its cause of action in this docket, do not establish the existence of a sufficient volume of distinctive Yardmaster work at C. D. Yard, East St. Louis, Illinois, to reasonably warrant the assignment of an additional full time yardmaster on the second shift.

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

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

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

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

# AWARD

Claim and request denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of FOURTH DIVISION

ATTEST: Patrick V. Pope  
Secretary

Dated at Chicago, Illinois, this 2nd day of February, 1959.

## DISSENT OF LABOR MEMBERS TO:

AWARD 1319 (DOCKET 1228)	AWARD 1323 (DOCKET 1274)
AWARD 1320 (DOCKET 1227)	AWARD 1324 (DOCKET 1275)
AWARD 1321 (DOCKET 1272)	AWARD 1325 (DOCKET 1276)
AWARD 1322 (DOCKET 1273)	AWARD 1326 (DOCKET 1277)
AWARD 1327 (DOCKET 1278)	

While we concur in that part of the Award which denies the contention of the carrier that the claim should be dismissed because it is allegedly not sufficiently specific as to the claimants, we dissent with respect to that part of the Award which denies the claim on its merits.

The Scope Rule in the Agreement here involved does three things: (a) It specifies that yardmaster forces must be employed under the rates of pay, hours of service and working conditions specified in the Agreement; (b) it defines "yardmaster" and (c) it specifies the duties of yardmaster forces by reference to Rules 753 and 754 of the Book of Operating Rules effective August 1, 1953.

Here we have a Scope Rule which specifically defines yardmaster's work and unquestionably reserves all of such work to the yardmaster class or craft. To say that even a small portion of such work may be performed by others outside the scope of the agreement is tantamount to contending that all of such work may be so performed and therefore none of it is reserved to those to whom it was contracted. Such contention would render the Scope Rule meaningless, ineffective and purposeless.

Furthermore, the majority reads into the Scope Rule the carrier's Operating Rule 752 which is not there and the majority errs in not recognizing that yardmaster work is here distinctly identified as different from that of train-



masters or assistant trainmasters. The responsibility for immediate contact with the yard crews is vested in the assistant yardmaster, or in the absence of an assistant yardmaster, in the assistant general yardmaster, who, in any event, has the responsibility for the **direct** supervision of yard employes under his jurisdiction. The trainmaster and the assistant trainmaster are people to whom the assistant general yardmaster reports and under whose general supervision he performs his duties. Such supervision as is vested in the trainmaster or assistant trainmaster is properly performed through the assistant general yardmaster. These claims were denied on the property on the ground that the trainmasters and the assistant trainmasters were merely conveying instructions from the assistant general yardmaster, which is exactly the function of the assistant yardmaster whose position had been abolished. Whatever the scope of the trainmaster or assistant trainmaster supervisory authority may be, it is certainly no part of his function to convey instructions for the assistant general yardmaster. His job is to give orders to the assistant general yardmaster, not convey instructions for him.

Furthermore, the frequency and repetitive nature of the violations involved are significant. It is obvious that the assistant general yardmaster required assistance. That which had formerly been supplied by an assistant yardmaster was no longer available. It was supplied instead throughout the entire shifts involved by an official's presence and readiness to supply it to the extent that the assistant general yardmaster was unable to absorb this work in addition to his own. Realistically, the official must be viewed as having displaced the assistant yardmaster for the entire shift involved. Even while the assistant general yardmaster was absorbing the assistant yardmaster work the official was standing by ready to take on this work whatever moment the assistant general yardmaster ceased to be able to absorb it. The official is thus performing a function the dimensions of which cannot be measured by regarding individual instructions in isolation.

In any event the Scope Rule in this Agreement places **all** work of yardmaster forces under the Agreement and by its reference to the Book of Operating Rules defines that work with precision. The performance of any such work by officials not subject to the Agreement is a pure violation giving rise to legitimate claim on behalf of the employe who was entitled to perform the work in accordance with the Agreement.

For the above reasons we dissent.

**LABOR MEMBERS**

**R. H. Wachowiak**

**J. P. Tahney**

**W. J. Ryan**

Special Concurrence of Carrier Members in Award No. 1319, Docket No. 1228, RYA v. TRRA of St. L.

We concur in the denial of the claim in this docket and in Dockets Nos. 1227, 1274, 1275, 1276, 1277 and 1278. We disagree, however, with the statement in the "Opinion of Board" reading:

"A claim brought on behalf of the 'senior unplaced extra yardmaster' on certain specified shifts and dates, being of sufficient clarity to reasonably enable the Carrier to ascertain the identity of

the person seeking redress, is adequate compliance with the requirements of Rule 9 (a). \* \* \*

for the reason that such statement is unnecessary in view of the denial of the claim on its merits and for the further reason that it is contrary to the clear and unambiguous provisions of Rule 9 (a) and the decisions of this Division, other Divisions of the Board, and Special Boards of Adjustment, construing identical provisions of similar rules. The above quoted statement does not apply to Dockets Nos. 1272 and 1273, as the claimants in those dockets were **named** as provided in Rule 9 (a).

Rule 9 (a) of the Yardmasters' Agreement with the Terminal Association, effective May 16, 1956, is identical to Section 17 (a) of the August 11, 1948 National Agreement covering the Terminal's engineers and firemen; to paragraph (a) of the Memorandum of Agreement of May 27, 1949, covering its switchmen, and Article V, Section 1 (a) of the National Agreement of August 21, 1954, covering its non-operating employees. The identical rule in the National Agreement, from which Rule 9 (a) was taken, and other identical rules have been construed as requiring that all claims must be presented **by or on behalf of the employee involved**. If presented "by" the employee, himself, obviously he would be named. If presented "on behalf of the employee involved" the claim must be under circumstances where the injured party is known. It is a claim made by the representative for a **named employee**. "By or on behalf of the employee involved" clearly requires that a **specific employee be named as claimant**. See, among others, Award No. 1214 of this Division; Award No. 42, Special Board of Adjustment No. 118, involving the identical rule in the agreement between the Brotherhood of Railroad Trainmen and the Terminal Association; Docket S-15, Special Board of Adjustment No. 74; Award 40, Special Board of Adjustment No. 170; Award 2883, Second Division; Awards 6179, 7922 and 8330 Third Division; and Awards 15772, 17306 and 18849, and numerous similar awards of the First Division. Obviously, a construction of identical rules established by a series of soundly reasoned awards of this Board and Boards of coordinate jurisdiction should not be overruled without good cause. Here no compelling reason has been given for the deviation from such soundly reasoned awards and obviously none could be given. We should follow the established construction of the rule. See First Division Awards Nos. 6588, 11751, 18196; Third Division Awards 2517 and 6833; Fourth Division Awards 1041 and 1052.

C. A. Conway

P. C. Carter

H. C. Hagerman

Carrier Members