

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****MISSOURI PACIFIC RAILROAD COMPANY**

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

Yardmaster J. A. Stanley be allowed one day's pay, at the appropriate Yardmaster rate, for July 1, 1957 and all subsequent days until the condition is corrected.

EMPLOYES' STATEMENT OF FACTS: Claimant holds seniority as Yardmaster having been regularly assigned as such prior to September 1, 1954, when the position was abolished and the work thereafter was performed by the General Yardmaster, whose position also was abolished effective July 1, 1957. Since that date the Yardmaster duties have been performed by officers other than a General Yardmaster, also by footboard yardmasters and clerks.

POSITION OF EMPLOYES: The record of handling of this dispute and the position of the employes is evidenced by the following:

Letterhead of

"Missouri Pacific LOCAL LODGE NO. 7

Saint Louis, Missouri
August 28, 1957

Mr. J. G. Sheppard Superintendent
Missouri Pacific Railroad
Popular Bluff, Missouri

SUBJECT
Yardmaster work
Popular Bluff Mo.

Dear Sir:

It has come to my attention that since June 30, 1957, following the abolishment of the General Yardmaster position at that point,

that employes other than Yardmasters, are performing work that has long been established to be Yardmaster work.

I refer to such work as the instructions issued to Train, Engine, and Yard Service employes, the operation of track indicators for the purpose of yarding Trains, and the supervision of Train and Yard crews at this location.

For a long period of years this work was performed by Yardmasters and General Yardmasters. On Sept. 1st 1954 the Yardmaster position was abolished at this point, and the General Yardmaster was required to perform this work. At the time this Yardmaster position was abolished we protested this action and Superintendent Courtway declined our complaint saying that our scope rule imposed no restrictions on the Management as to the duties required of or performed by the General Yardmaster. We of course do not agree with this decision, and it now appears that the Management feels that the scope of our agreement imposes no restrictions whatsoever in so far as the assignment of Yardmaster work to employes who are not Yardmasters.

In view of this I am entering claim for one days pay in favor of Yardmaster J. A. Stanley Poplar Bluff Mo. for each day beginning with July 1, 1957, and all subsequent days until this condition is corrected.

Your prompt correction of this condition and payment of this claim will be appreciated.

Sincerely yours

Daniel J. Burke
General Chairman
Railroad Yardmasters of America
245 Grampian Rd.
Saint Louis 15, Mo."

Letterhead of

MISSOURI PACIFIC RAILROAD COMPANY

J. G. Sheppard
Superintendent
J. C. Love
Assistant Superintendent

"Poplar Bluff, Missouri,
September 4, 1957
File 656

Mr. Daniel J. Burke, General Chairman,
Railroad Yardmasters of America,
245 Grampian Road,
St. Louis 15, Missouri

Dear Sir:—

Reference to your letter dated August 28, 1957, in connection with abolishment of General Yardmaster's position at Poplar Bluff, Mo., June 30, 1957, stating it has come to your attention that employes other than yardmasters are performing work that has long been

established to be yardmaster's work. You state further that you refer to such work as instructions issued to train, engine and yard service employes; the operation of track indicators for the purpose of yarding trains, and the supervision of train and yard crews at this location; further stating that for a long period of years this work was performed by yardmasters and General Yardmasters; and on September 1, 1954 yardmaster position was abolished at this point and General Yardmaster was required to perform this work.

As a matter of information: I was Trainmaster on the Missouri Division for some 18 months prior to September 1, 1954, which is during the period you state the yardmaster performed the work in question, and on numerous occasions while I was Trainmaster on the Missouri Division I personally performed the duties which you now state were performed by the yardmaster. On other occasions to my certain knowledge the Superintendent performed these duties and the third trick dispatcher at Poplar Bluff has for a period of several years been charged with this responsibility.

We now have in Poplar Bluff Yard footboard yardmasters around the clock to perform the duties of footboard yardmaster; in addition to that, we have other division supervisors who perform some duties in the yard as well as on the road.

It is true that the General Yardmaster's position has been abolished at Poplar Bluff, however the work is being performed in Poplar Bluff Yard at the present time as for a number of years — being performed by various officers and clerks and other classes of employes.

I do not see how it can be said or how you can contend that the work has been taken away from the yardmaster and assigned to other employes.

There is no basis for claim for payment in favor of J. A. Stanley beginning July 1, 1957, therefore your claim is respectfully declined.

Yours truly,

/s/ J. G. Sheppard
Superintendent"

Letterhead of

"Missouri Pacific LOCAL LODGE NO. 7

October 7, 1957
Saint Louis, Mo.

Mr. L. M. Elledge
Assistant General Manager
Missouri Pacific Railroad
Room 204 Union Station
Little Rock, Arkansas

Dear Sir:

I am appealing to you from the decision of Superintendent J. G. Sheppard of Poplar Bluff Mo. in connection with the claim for one

days pay at Yardmaster rate beginning with July 1, 1957 and all subsequent dates until the condition is corrected, due to employees other than Yardmasters performing work that has long been established to be yardmaster work.

Mr. Sheppard in declining this claim states that he was Trainmaster at that point for eighteen months prior to Sept. 1, 1954 and during this period he, and the Superintendent at that time, performed this work on numerous occasions. The fact is and the records indicate that during this time, other than the occasion that Mr. Sheppard refers to, a Yardmaster and a General Yardmaster were employed regularly and performed this work, this same work that is now being performed by employees other than Yardmasters due to the fact that all Yardmaster positions have been abolished.

I request that you correct this condition and place this claim in line for payment.

Sincerely yours

Daniel J. Burke
General Chairman R.Y.ofA."

Letterhead of

MISSOURI PACIFIC RAILROAD COMPANY

L. M. ELLEDGE
Assistant General Manager

Little Rock, Arkansas
A-58544

"October 30, 1957

Mr. D. J. Burke, General Chairman, R.Y.A.,
245 Grampian Road,
St. Louis 15, Missouri.

Dear Sir:

Please refer to your letter of October 7, appealing from decision of Superintendent Sheppard in connection with claim for one day's pay at yardmaster's rate beginning July 1, 1957 and all subsequent dates until the condition is corrected at Poplar Bluff where employees other than yardmasters are performing work that has long been established to be yardmasters' work.

At the present time and since September 1, 1954 footboard yardmasters have been assigned on all shifts at Poplar Bluff. As a matter of fact, there has been no yardmaster at Poplar Bluff covered by the Agreement with the Railroad Yardmasters of America since September 1, 1954, therefore, we are at a loss to understand the basis for claim as presented beginning July 1, 1957.

Mr. Sheppard, the present Superintendent at Poplar Bluff, was a Trainmaster at Poplar Bluff for a period of 18 months prior to September 1, 1954, the date yardmaster position was discontinued, and he has first hand information that he as well as Superintendent and Division Trainmaster functioned in supervision of the yard.

Footboard yardmasters or other employes engaged in the handling of cars through this terminal have also functioned in supervising the yard. It is true the General Yardmaster position at Poplar Bluff has been discontinued, however, the work is being performed in this yard at the present time the same as it has been for a number of years, that is, the work is being performed by various officers, clerks and other classes of employes.

We are unable to arrive at a conclusion that any work has been taken away from the Yardmasters and find no basis for the claims submitted in favor of J. A. Stanley beginning July 1, 1957.

Yours very truly,

/s/ L. M. Elledge"

Letterhead of

RAILROAD YARDMASTERS OF AMERICA

"Missouri Pacific LOCAL LODGE NO. 7

Saint Louis, Missouri
December 14, 1957

Mr. B. W. Smith
Chief Personnel Officer
Missouri Pacific Railroad
Missouri Pacific Building
Saint Louis, Missouri

Dear Sir:

I am appealing to you from the decision of Asst. General Manager L. M. Elledge in connection with the claim for one days pay at Yardmasters rate, in favor of Yardmaster J. A. Stanley, Poplar Bluff Mo. beginning July 1, 1957 and all subsequent dates until the condition is corrected at Poplar Bluff Mo. where employes other than Yardmasters are performing what has long been established to be Yardmaster work.

Mr. Elledge states that at present and since Sept. 1, 1954 there has been no Yardmaster covered by Our Agreement. Sept. 1, 1954 is the date that the Yardmaster position at this location was abolished and the work of this Yardmaster was absorbed by the General Yardmaster and other employes who are not Yardmasters, this action was protested by this Organization, at that time, and the Carrier Officers took the position that Rule I (c) of our Agreement provided that the General Yardmaster was not to be restricted from performing this Yardmaster work, the General Yardmaster continued to perform this Yardmaster work until July 1, 1957 when this position was also abolished and the Yardmaster work of this position, (which incorporated the work of the Yardmaster position abolished Sept. 1, 1954.) is now being performed by employes other than General Yardmasters or other than Yardmasters at all.

I feel sure that you can see the merit of this claim and the concerted effort that has been applied over a period of years, to distribute the work of Yardmasters to employes who are not Yardmasters and who are not covered by our Agreement.

I request that you place this claim in line for payment and correct this condition by re establishing the abolished position of Yardmaster at Poplar Bluff, Missouri.

Sincerely yours

/s/ Daniel J. Burke
General Chairman
R.Y.ofA."

Letterhead of

MISSOURI PACIFIC RAILROAD COMPANY

J. A. Austin	B. W. Smith	J. W. White
R. P. Love	Chief Personnel Officer	G. W. Johnson
Assistant Chief Personnel Officers		Personnel Officers

"St. Louis 3, Missouri
December 24, 1957
V-S 245-126

Mr. Daniel J. Burke
General Chairman — RYofA
245 Grampian Road,
St. Louis 15, Missouri.

Dear Sir:

This will acknowledge your letter of December 14, 1957, appealing from the decision of Assistant General Manager Elledge in connection with claim for one day's pay at Yardmaster's rate, in favor of Yardmaster J. A. Stanley, Poplar Bluff, Missouri, beginning July 1, 1957, and all subsequent dates until the condition is corrected at Poplar Bluff, Missouri, where employes other than Yardmasters are performing what has long been established to be Yardmaster work.

As soon as we have had an opportunity to study the facts connected with this claim we will write you again.

Yours truly,

/s/ B. W. Smith"

Letterhead of
MISSOURI PACIFIC RAILROAD COMPANY

J. A. Austin	B. W. Smith	J. W. White
R. P. Love	Chief Personnel Officer	G. W. Johnson
Assistant Chief Personnel Officers		Personnel Officers

"St. Louis 3, Missouri
December 31, 1957
VG-S 245-126

Mr. Daniel J. Burke — General Chairman — RYofA
245 Grampian Road
S. Louis 15, Missouri

Dear Sir:

This will supplement our letter of December 24, 1957, in reply to yours of December 14, 1957, appealing from the decision of Assistant General Manager Elledge in connection with claim for one day's pay at Yardmaster's rate, in favor of Yardmaster J. A. Stanley, Poplar Bluff, Missouri, beginning July 1, 1957, and all subsequent dates until the condition is corrected at Poplar Bluff, Missouri, where employes other than Yardmasters are performing what has long been established to be Yardmaster work.

In view of the facts in this situation as stated to you by Superintendent Sheppard and Assistant General Manager Elledge we can find no evidence of yardmaster work being removed from Yardmasters at Poplar Bluff in violation of the Agreement as claimed by you.

Decision of Mr. Elledge is sustained and the claim is respectfully declined.

Yours truly,

/s/ B. W. Smith"

Letterhead of
"Missouri Pacific LOCAL LODGE NO. 7

March 10, 1958
Saint Louis, Missouri

Mr. B. W. Smith — Chief Personnel Officer
Missouri Pacific Railroad Co.
Missouri Pacific Building
Saint Louis, Missouri

Dear Sir:

Conference is requested with you at a time that is convenient to you for the purpose of discussing the following cases under dispute:

- 1) The claim of yardmaster Stanley, Poplar Bluff, Missouri, for one days pay at yardmaster rate beginning July 1, 1957 and all subsequent dates until the condition is corrected at Poplar Bluff, where employes other than yardmasters are performing yardmaster work.
- 2) Claims of the yardmasters at Dupo, Illinois, St. Louis Terminal, various dates, due to the 4 P. M. yardmaster position being abolished at Dupo and a new position of trainmaster created and performing the work of the abolished yardmaster position.

If convenient, I suggest Monday, March 17, 1958 at 10:00 A. M. for this conference.

Sincerely yours,

/s/ D. J. Burke
General Chairman
R.R.Y.ofA."

Letterhead of

MISSOURI PACIFIC RAILROAD COMPANY

J. A. Austin	B. W. Smith	J. W. White
R. P. Love	Chief Personnel Officer	G. W. Johnson
Assistant Chief Personnel Officers		Personnel Officers

"St. Louis 3, Missouri
March 19, 1958
VG-S 245-126
cc: 245-127

Mr. A. V. Dixon
General Chairman — Yardmasters
8656 Argyle Avenue
St. Louis 14, Missouri

Dear Sir:

We discussed with you in conference March 17, 1958, your claim for one day's pay at Yardmaster's rate, in favor of Yardmaster J. A. Stanley, Poplar Bluff, Missouri, beginning July 1, 1957, and all subsequent dates until the condition is corrected at Poplar Bluff, Missouri, where employes other than Yardmasters are performing what has long been established to be Yardmaster work.

In this discussion we went into detail as to the performance prior to September 1, 1954, of the work on which you base this claim and pointed out that others than yardmasters had engaged in it at Poplar Bluff and stated our position that it was therefore not work under the Yardmaster's Agreement exclusively and therefore Mr. Stanley had no exclusive right to such work.

We also explained to you that when the Yardmaster position was taken off there was no change in the operation and the footboard yardmasters at that time, as at present, handled the majority of the detail duties.

When the General Yardmaster was taken off there was no reassignment of duties and it is difficult to understand your contention that abolishment of the General Yardmaster position resulted in yardmaster work being taken from yardmasters and given to non-covered employes in violation of the Agreement, particularly in view of the fact that there had been no Yardmaster position for nearly three years and no reassignment of duties was made when the position was abolished July 1, 1957.

We indicated our disagreement with your contention that the abolishment of the General Yardmaster position made it necessary to re-establish a Yardmaster position under the Agreement.

The claim is again respectfully declined.

Yours truly,

/s/ B. W. Smith"

As established by Adjustment Board Awards too numerous to need specific reference, the employes are entitled to the work for which they have bargained. Since it is admitted the transfer of the work to others as indicated in the foregoing, it should not be necessary to produce any additional specific proof that by its action the Carrier violates the current Agreement.

All data used in support of this claim has been presented to the Management and made a part of the particular question in dispute. Claim should be allowed.

CARRIER'S STATEMENT OF FACTS: 1. The contract involved in dispute is "Agreement Between the Missouri Pacific Railroad Company and Employes thereon represented by the Railroad Yardmasters of America," effective February 1, 1945, except as otherwise indicated, reprinted January 1, 1948. Copy of this Agreement is on file with Your Honorable Board and is by reference made a part of this submission.

2. This dispute originated with a letter dated August 28, 1957, from the Organization's General Chairman Daniel J. Burke to the Carrier's Superintendent J. G. Sheppard reading as follows:

"RAILROAD YARDMASTERS OF AMERICA

Missouri Pacific Local Lodge No. 7

Saint Louis, Missouri
August 28, 1957
SUBJECT Yardmaster work
Poplar Bluff Mo.

Mr. J. G. Sheppard Superintendent
Missouri Pacific Railroad
Poplar Bluff, Missouri

Dear Sir:

It has come to my attention that since June 30, 1957, following the abolishment of the General Yardmaster position at that point,

that employes other than Yardmasters, are performing work that has long been established to be Yardmaster work.

I refer to such work as the instructions issued to Train, Engine, and Yard Service employes, the operation of track indicators for the purpose of yarding Trains, and the supervision of Train and Yard crews at this location.

For a long period of years this work was performed by Yardmasters and General Yardmasters. On Sept. 1st 1954 the Yardmaster position was abolished at this point, and the General Yardmaster was required to perform this work. At the time this Yardmaster position was abolished we protested this action and Superintendent Courtway declined our complaint saying that our scope rule imposed no restrictions on the Management as to the duties required of or performed by the General Yardmaster. We of course do not agree with this decision, and it now appears that the Management feels that the scope of our agreement imposes no restrictions whatsoever in so far as the assignment of Yardmaster work to employes who are not Yardmasters.

In view of this I am entering claim for one days pay in favor of Yardmaster J. A. Stanley Poplar Bluff Mo. for each day beginning with July 1, 1957, and all subsequent days until this condition is corrected.

Your prompt correction of this condition and payment of this claim will be appreciated.

Sincerely yours

(s) DANIEL J. BURKE
General Chairman
Railroad Yardmasters of America
245 Grampian Rd.
Saint Louis 15, Mo."

3. Superintendent Sheppard made reply to General Chairman Burke September 4, 1957, as follows:

"Poplar Bluff, Missouri, September 4, 1957
File 656

Mr. Daniel J. Burke, General Chairman,
Railroad Yardmasters of America,
245 Grampian Road,
St. Louis 15, Missouri

Dear Sir:—

Reference to your letter dated August 28, 1957, in connection with abolishment of General Yardmaster's position at Poplar Bluff, Mo., June 30, 1957, stating it has come to your attention that employes other than yardmasters are performing work that has long been established to be yardmaster's work. You state further that you refer to such work as instructions issued to train, engine and yard service employes; the operation of track indicators for the purpose

of yarding trains, and the supervision of train and yard crews at this location; further stating that for a long period of years this work was performed by yardmasters and General Yardmasters; and on September 1, 1954 yardmaster position was abolished at this point and General Yardmaster was required to perform this work.

As a matter of information: I was Trainmaster on the Missouri Division for some 18 months prior to September 1, 1954, which is during the period you state the yardmaster performed the work in question, and on numerous occasions while I was Trainmaster on the Missouri Division I personally performed the duties which you now state were performed by the yardmaster. On other occasions to my certain knowledge the Superintendent performed these duties and the third trick dispatcher at Poplar Bluff has for a period of several years been charged with this responsibility.

We now have in Poplar Bluff Yard footboard yardmasters around the clock to perform the duties of footboard yardmaster; in addition to that, we have other division supervisors who perform some duties in the yard as well as on the road.

It is true that the General Yardmaster's position has been abolished at Poplar Bluff, however the work is being performed in Poplar Bluff Yard at the present time as for a number of years — being performed by various officers and clerks and other classes of employees.

I do not see how it can be said or how you can contend that the work has been taken away from the yardmaster and assigned to other employees.

There is no basis for claim for payment in favor of J. A. Stanley beginning July 1, 1957, therefore your claim is respectfully declined.

Yours truly,

(s) J. G. SHEPPARD
Superintendent"

4. The Scope rule, which is Rule 1 of the Agreement identified in Item 1 of this Statement of Facts, is quoted below:

"SCOPE: Rule 1 (a) The rules of this Agreement are limited in application to positions of Yardmasters, which term shall be understood to mean and shall include Assistant General Yardmasters, Yardmasters and Assistant Yardmasters, unless otherwise specifically defined.

(b) The rules of this Agreement shall not interfere in any manner with the right of Management at its discretion to establish or abolish (subject to the provisions of Rule 6(g-2) positions of Assistant General Yardmasters, Yardmasters and Assistant Yardmasters.

(c) The rules of this Agreement shall not apply to General Yardmasters in the positions established as of the effective date of this Agreement as follows:

six (6) St. Louis Terminal, including Dupo.
three (3) Kansas City Terminal
two (2) Little Rock Terminal
two (2) Alexandria
one (1) Omaha
one (1) Poplar Bluff
one (1) McGehee
one (1) Monroe
one (1) Osawatomie
one (1) Nevada
one (1) Coffeyville
one (1) Van Buren
one (1) Wichita
one (1) Atchison

The rules of this Agreement shall impose no restrictions upon Management as to the duties which may be required of or performed by General Yardmasters named above.

(d) The rules of this Agreement shall not apply to Agents-Yardmasters or to Footboard-Yardmasters."

It is noted that the Agreement imposes no restrictions upon Management as to duties assignable to the General Yardmaster at Poplar Bluff and the rules of the Agreement are not applicable to General Yardmasters, Agent-Yardmasters of Footboard Yardmasters.

5. Further handling of the claim is shown in appeal letters from the Organization and replies from the Carrier, copies of which are attached as Carrier's Exhibits "A" to "D," inclusive. These Exhibits are briefed below for ready reference:

Exhibit

Brief

- A Letter of October 7, 1957, from General Chairman Burke to Assistant General Manager L. M. Elledge appealing from decision of Superintendent Sheppard on the theory that because yardmasters had at one time performed some work of the nature here involved the Yardmaster Craft has exclusive right to such work.
- B Letter of October 30, 1957, from Mr. Elledge to Mr. Burke declining the claim on the premise that yardmasters had never had exclusive right to the work and since there had been no yard-

master at Poplar Bluff for namely three years there could be no basis for a theory that the work belonged to yardmasters when the General Yardmaster position was abolished.

- C Letter of December 14, 1957, from General Chairman Burke to Chief Personnel Officer B. W. Smith appealing from decision of Assistant General Manager Elledge on the same basis of his appeal to Mr. Elledge.
- D Letter of December 31, 1957, from Mr. Smith to Mr. Burke declining the claim on the premise that there was no evidence in the record of yardmaster work having been removed from yardmasters at Poplar Bluff in violation of the Yardmaster's Agreement.

6. The claim was discussed in conference March 17, 1958, with Mr. A. V. Dixon who had succeeded Mr. Burke as General Chairman of the Yardmasters. No agreement was reached as to disposition of the dispute because of the position of the Employees that the yardmasters had exclusive right to the work and the position of the Carrier that the yardmasters had never had such right. Quoted below is letter written by Mr. Smith to Mr. Dixon March 19, 1958, reviewing the conference and again declining the claim.

"St. Louis 3, Missouri
March 19, 1958
VG-S 245-126
cc: 245-127

Mr. A. V. Dixon
General Chairman — Yardmasters
8656 Argyle Avenue
St. Louis 14, Missouri

Dear Sir:

We discussed with you in conference March 17, 1958, your claim for one day's pay at Yardmaster's rate, in favor of Yardmaster J. A. Stanley, Poplar Bluff, Missouri, beginning July 1, 1957, and all subsequent dates until the condition is corrected at Poplar Bluff, Missouri, where employees other than Yardmasters are performing what has long been established to be Yardmaster work.

In this discussion we went into detail as to the performance prior to September 1, 1954, of the work on which you base this claim and pointed out that others than yardmasters had engaged in it at Poplar Bluff and stated our position that it was therefore not work under the Yardmaster's Agreement exclusively and therefore Mr. Stanley had no exclusive right to such work.

We also explained to you that when the Yardmaster position was taken off there was no change in the operation and the footboard yardmasters at that time, as at present, handled the majority of the detail duties.

When the General Yardmaster was taken off there was no reassignment of duties and it is difficult to understand your con-

tention that abolishment of the General Yardmaster position resulted in yardmaster work being taken from yardmasters and given to non-covered employees in violation of the Agreement, particularly in view of the fact that there had been no Yardmaster position for nearly three years and no reassignment of duties was made when the position was abolished July 1, 1957.

We indicated our disagreement with your contention that the abolishment of the General Yardmaster position made it necessary to re-establish a Yardmaster position under the Agreement.

The claim is again respectfully declined.

Yours truly,

(s) B. W. SMITH"

POSITION OF CARRIER: At no point in the handling of this case has the Organization cited any Agreement rule basis for the claim. The nature of the argument presented, however, implies a reliance on Rule 1 which is the Scope rule. Since it is the opinion of the Carrier that this is the only rule of the Agreement that can be involved, the provisions thereof have been quoted in Item 4 of the foregoing Statement of Facts, and the Carrier will state its position with respect to the application of the rule to the situation here involved.

It is difficult to understand how there could be a clearer showing that there is no basis for the claim than in the provisions of Rule 1 itself. This rule does not define the duties of yardmasters and the mere listing of classifications in the scope rule does not allocate the work specified as the basis for this claim exclusively to the Yardmaster Craft. The record shows that duties of this nature have been performed by others for many years. The record also shows there had been no yardmaster position at Poplar Bluff for nearly three years prior to the abolishment of the General Yardmaster position July 1, 1957. Where there are no yardmasters, the Yardmaster Agreement has no application.

Awards 1088 and 1089 of the Fourth Division, resting on the conclusion that the Agreement does not define the work of yardmasters, declined claims based on yardmaster work being performed by employees not covered by the Yardmasters' Agreement. These Awards adhere to the principle that the work actually covered by the Agreement is determined by the work which is traditionally and customarily performed by the occupants of the positions described therein. This principle is well established in many Third Division Awards such as 5404, 5790, 7076, 7093, 7387, 7424, 7790, 8083 and prior ones. These Awards make it clear that exclusive right to work is not to be found in the Scope rule of an Agreement. In the situation here involved, there is ample evidence that employees not covered by the Agreement were performing work of the nature designated in this claim for a long time even before the Yardmaster position was abolished. It is obvious the Yardmasters do not have exclusive right to work of issuing instructions to train, engine and yard crews, operation of track indicators and the supervision of train and yard crews at Poplar Bluff.

Thus it is seen that Section (a) of Rule 1, even if it were considered alone would not support this claim. As will be seen from the entire rule as quoted in Item 4 of Carrier's Statement of Facts, there are other pro-

visions that modify Section (a) to the extent that even if the yardmasters had ever exclusively performed the work described, right to indefinitely continue to so perform the work could not be sustained.

Section (b) fully establishes the right of the Carrier to abolish unnecessary positions.

Section (c) bars all restrictions upon the assignment of duties to the General Yardmaster position at Poplar Bluff. When the Yardmaster position at that location was abolished September 1, 1954, and there remained no position under the Yardmasters' Agreement, the Railroad Yardmasters of America ceased to have any jurisdiction over or coverage, exclusive or otherwise, of the work involved in this claim. All work that could be considered to have been subject to the Yardmasters' Agreement in any manner was properly assigned to the General Yardmaster under full authority of Rule 1(c). Since that time yardmasters have had no rights to any work in Poplar Bluff Yard.

The situation in which the General Yardmaster performed yardmaster duties under Rule 1(c) prevailed until July 1, 1957, a period of two years and ten months. Since no claim or grievance was progressed to a conclusion that this constituted a violation of the Agreement, it follows that the Railroad Yardmasters of America relinquished, through the operation of Rule 1(c), all rights to yardmaster work being performed at Poplar Bluff. When the General Yardmaster position was abolished no change was made in the manner of performing the work that had prevailed for a number of years. It was a case of decrease in requirements to the extent that positions that had been previously required were no longer necessary and others who had been engaged in such work, along with the overall supervision available, were able to protect the required service. It is not understood how the abolishment of the General Yardmaster position nearly three years after all yardmaster work had been relinquished by Agreement authority, could possibly return such work to yardmasters, even if they had at any time had exclusive right to it, which they did not.

The following is quoted from Fourth Division Award 955:

"The Organization contended before the Board that the 'creation of the new supervisory position outside the scope of the Agreement should have had the title of General Yardmaster.'

We are not impressed that the title of the position has any particular bearing when it comes to weighing the evidence in this case. The important issue of the dispute is clear. Briefly, it is:

Did Transportation Inspector French take over the work and duties which had been performed by the two Assistant General Yardmasters whose positions at the West Yard of Carrier's East Youngstown General Yard District were abolished?

The Organization does not question the right of Carrier to create or to fill vacant supervisory positions outside the scope of the Agreement. It is, therefore, unimportant to labor the question of whether Carrier filled a vacant position—that of an Assistant Trainmaster—or created a new supervisory position and titled it Transportation Inspector.

We look at the evidence and determine as best we can if Transportation Inspector French is performing Assistant General Yardmaster work in violation of the Agreement."

This Award went on to decline claims of yardmasters based on alleged performance of yardmaster work by the Transportation Inspector and there is no indication in the Award that there was even involved a rule similar to our 1(c). That the Carrier did not cite such a rule is an indication that the Agreement did not contain one and it is clear the Award was rendered on an unqualified application of a Scope rule. In such circumstances it is apparent that if claims are not substantiated on a straight scope coverage argument, there would be less basis here for a sustaining award when the Agreement itself authorizes unrestricted assignment of yardmaster duties to a supervisory employe not subject to the Agreement.

Fourth Division Award 923 covers a situation similar to the one here involved and the Agreement contained a rule somewhat similar to our 1(c). The claim was denied even though there was no showing of others than yardmasters having participated in the performance of the work through the years such as the Carrier has made in the instant case.

Fourth Division Award 967 denied a claim of this nature under rules similar in meaning to our Scope rule.

Fourth Division Award 819 declined a claim of this kind in a situation where the work involved was considered to be that of a General Yardmaster although being performed by a Terminal Trainmaster which supports the Carrier position in the instant case that having assigned work to a General Yardmaster under authority of the Agreement there can be no violation of the Agreement in subsequently transferring the same work to another supervisory position not covered by the Agreement.

It is also brought out by the record that even when the yardmaster position was taken off there was no change in the operation and footboard yardmasters at that time, as at present, handled the majority of the detail duties. It is noted that Section (d) of Rule 1 provides that the rules of the Yardmasters' Agreement do not apply to footboard yardmasters. It is obvious that a position with yardmaster as a portion of its title would have yardmaster duties.

The situation here involved is simply one in which a decrease in required supervision made retention of a yardmaster position unnecessary and when it was abolished the General Yardmaster absorbed such work as remained in accordance with the rules and performed such duties along with other employes not covered by the Agreement who were performing work of the same nature. Then the overall supervision needs further decreased so that there was no longer any need for the General Yardmaster. This certainly does not constitute removal of yardmaster duties from yardmasters in violation of the Yardmasters' Agreement.

There is no Agreement requirement or authority for the payment of this claim.

It is noted that the claim is for one day's pay for July 1, 1957, and all subsequent days until the condition is corrected. Without prejudice to the Carrier's position as outlined above to the effect that there was no violation of the Agreement and therefore no payment at all due the claimant,

it is the further position of the Carrier that there is no Agreement authority for the payment claimed even if there might be a holding of rule violation.

There is not in the Agreement any specification of penalty payment for a violation and the Carrier holds that in any eventuality a payment ordered could not exceed actual loss as mitigated by other earnings.

All data here submitted in support of Carrier's position has been handled with the Organization and made a part of the particular question in dispute.

The Carrier requests privilege of representation at oral hearing of this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant holds seniority as a Yardmaster, having been regularly assigned as such prior to September 1, 1954, when the position was abolished and the work thereafter performed by the General Yardmaster whose position was also abolished on or about July 1, 1957.

Claim is based on the allegation that since July 1, 1957, yardmaster work is being performed by officials and employees not subject to the Agreement between this Carrier and the petitioning Organization.

The relevant rule alleged to have been violated is the Scope Rule, which reads as follows:

"Rule 1 (a) The rules of this Agreement are limited in their application to positions of Yardmaster, which term shall be understood to mean and shall include Assistant General Yardmasters, Yardmasters and Assistant Yardmasters, unless otherwise specifically defined.

"(b) The rules of this Agreement shall not interfere in any manner with the right of Management at its discretion to establish or abolish (subject to the provisions of Rule 6(g-2) positions of Assistant General Yardmasters, Yardmasters and Assistant Yardmasters.

"(c) The rules of this Agreement shall not apply to General Yardmasters in the positions established as of the effective date of this Agreement as follows: * * * one (1) Poplar Bluff * * *.

The rules of this Agreement shall impose no restrictions upon Management as to the duties which may be required of or performed by General Yardmasters named above.

"(d) The rules of this Agreement shall not apply to Agents-Yardmasters or to Footboard-Yardmasters."

When the Yardmaster position was abolished on September 1, 1954, and the work assigned the General Yardmaster, the Organization filed a protest but did not appeal from the final decision on the property which denied the claim on the ground that the action was permissible under Rule 1 (c) quoted above.

The Organization's position is based upon the premise that duties of a yardmaster remain to be performed at Poplar Bluff; that others not covered by the Scope Rule are performing work reserved by the Agreement to yardmasters and that this is a violation.

Carrier answers that the Scope Rule of the Agreement does not define the duties of yardmasters and thus does not confer an exclusive right to perform yardmaster work; that others not covered by the Agreement have performed yardmaster work; that there had been no yardmaster position at Poplar Bluff for nearly three years prior to July 1, 1957; and that where there are no yardmasters employed, the Agreement has no application. It also cites Sections (b) and (c) of the Scope Rule in support of its contention that since the yardmaster position was abolished in 1954 and the duties assigned to the General Yardmaster, "yardmasters have had no rights to any work in Poplar Bluff Yard".

Under the Agreement it is clear that the Carrier had the right to abolish the yardmaster position and assign the duties thereof to the General Yardmaster, under Rule 1 (c). Nor is there any doubt that it had authority to abolish the latter position on July 1, 1957. The sole question is whether or not since that time yardmaster duties are being performed at Poplar Bluff by other employees, as alleged by Petitioner. This obviously is a question of fact and we must look to the evidence of record to find an answer.

The Carrier admits that yardmaster work was performed by "various officers and clerks and other classes of employees" (ltr. Sept. 4, 1957. Supt. to Gen'l Chrmn.). And in its Submission to this Board, Carrier says, "The record shows that duties of this nature have been performed by others for many years". Apparently these statements purport to show that yardmasters do not enjoy an exclusive right to yardmaster work because the custom and practice on this property was to permit others to perform that work.

We do not agree with this theory. Here there is a contract between the Carrier and the representative of the yardmasters. It contains a Scope Rule which does not define the duties to be performed by yardmasters but must be construed to cover work belonging to that craft. To hold otherwise would render the whole agreement nugatory. As was said in Award No. 757 of the Third Division:

"It is well settled by many decisions of this and the First Division of this Board and predecessor Boards, that as an abstract principle a carrier may not let out to others the performance of work of a type embraced within one of its collective agreements with its employees. See awards of this Division, 180, 323, 521 and 615, of the First Division, 351 and 1237. This conclusion is reached not because of anything stated in the schedule but as a basic legal principle that the contract with the employees covers all the work of the kind involved, except such as may be specifically excepted; ordinarily such exception appears in the Scope Rule, but the decisions likewise recognize that there may be other exceptions, very definite proof of which, however, is necessary to establish their status as a limitation upon the agreement. Mere practice alone is not sufficient, for as often held, repeated violations of a contract do not modify it."

(See also Fourth Division Award 445).

Here the Agreement specifically permits the assignment of yardmaster duties to the General Yardmaster under Rule 1 (c). That and section 1 (d) are the only exceptions to the rule, and under elementary principles of contract construction no other or further exceptions may be implied. Consequently, Petitioner's cause of action did not arise until the position of General Yardmaster was abolished on July 1, 1957. Its allegation that since that time others are performing yardmaster duties is supported by Carrier's admissions of record. In the face of such admissions, no further proof need be adduced.

We find and hold that the Scope Rule of the Agreement in evidence has been violated by Carrier's action in assigning work covered by that Agreement to others not subject to the rule.

Accordingly, the claim should be sustained, but to the extent only that the requested payment shall not exceed Claimant's actual loss as mitigated by other earnings.

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

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

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

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

AWARD

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION

ATTEST: Patrick V. Pope
Secretary

Dated at Chicago, Illinois, this 8th day of April, 1959.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 1343, DOCKET NO. 1324, RYA v. MP.

There is no basis in the record for the sustaining award adopted by the majority in this docket.

The Organization contended that yardmaster work was being performed by officers "other than a General Yardmaster, also by footboard yardmasters and clerks" but offered no evidence of any kind in support of this vague allegation. There is nothing in the record from which it can be determined what yardmaster work was allegedly performed, who performed it, when they did so, or the amount of such work allegedly performed. The allegation in the General Chairman's letter of August 28, 1957, that "such work as the instructions issued to Train, Engine, and Yard Service employes, the operation of track indicators for the purpose of yarding Trains, and the supervision of

Train and yard crews at this location" obviously is not proof that any distinctly yardmaster work was being performed in violation of the agreement by officers or other employes, Superintendents, Assistant Superintendents, Trainmasters, Dispatchers and other officials not only have the right but necessarily must issue instructions to and supervise, train, engine and yard service employes. Switchtenders, towermen, and other employes have always operated switches and track indicators for the purpose of yarding trains. Where the Organization contends, as it does here, that other employes or supervisory officials are performing yardmaster work, it must show that work reserved under the agreement exclusively to yardmasters is being performed in substantial volume by such other employes or supervisory officials. Awards 253, 413, 639, 797, 816, 846, 1151, 1208, 1228, 1299.

The record shows that on September 1, 1954, the Carrier abolished the yardmaster position at Poplar Bluffs because, due to the decline in traffic through that point, there was not sufficient yardmaster work to justify the continuance of that position. The Organization does not deny this fact. What little supervisory work remained was performed by the General Yardmaster as specifically provided in the Agreement. After September 1, 1954, the Carrier's traffic through Poplar Bluffs continued to diminish until there was no necessity for even the little supervision provided by the General Yardmaster, and that position was abolished on July 1, 1957. We have consistently held where the Organization contends yardmaster duties are being performed by other employes it must show by conclusive evidence that a substantial amount of exclusively yardmaster work is being performed by such officers or other employes. Awards 1208, 1228. And this is particularly true where, as here, the Scope Rule does not define what is yardmaster work. All we have in this record is an unsupported allegation that some undescribed tasks are being performed by other employes or supervisory officials. The Carrier states, and it is not denied by the Organization, that other employes and supervisory officials at Poplar Bluffs are performing exactly the same tasks now that they performed for many years prior to the abolishment of the yardmaster position on September 1, 1954. There is no showing in this record that a "significant amount of supervisory duties uniquely associated with the Yardmaster's craft" has ever been or is now being performed by any other employe or supervisory officer and the "asserted intrusion upon the Yardmaster's work sphere is not discernible." Award 1299. The Organization completely failed to sustain the burden of proving a violation of the agreement. The award is erroneous.

C. A. Conway

P. C. Carter

H. K. Hagerman

Carrier Members.