

**Award No. 1380**

**Docket No. 1314**

**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.

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**PARTIES TO DISPUTE:**

**RAILROAD YARDMASTERS OF AMERICA**

**CHICAGO AND NORTHWESTERN RAILWAY COMPANY**

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

Yardmaster W. J. Bohn be compensated a day's pay at the appropriate yardmaster's rate for November 3, 1957, and each subsequent date until conditions complained of are corrected, on account of abolishment and change of yardmaster positions at Itasca, Wisconsin.

**EMPLOYEES' STATEMENT OF FACTS:** Prior to the abolishment of the Yardmaster positions at Itasca, Wisconsin, effective November 3, 1957, claimant was regularly assigned as yardmaster at that point with hours of service 4 P. M. to 12 M.

Claim is based on the contention that footboard yardmasters and other employes outside of the scope of the Yardmaster's agreement, are performing the Yardmaster work.

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

Letterhead of

**RAILROAD YARDMASTERS OF AMERICA**

Chicago & North Western Local Lodge No. 32

R. D. Anderson, President

L. J. Stift, Gen. Chairman

J. H. Braizier, Secy.-Treas.

"Chicago, Ill.  
November 21, 1957.

Mr. J. W. Alsop,  
Division Superintendent  
Chicago & Northwestern Railway,  
St. Paul, Minn.

Dear Sir:

We request that Yardmaster W. J. Bohn be compensated a day's pay at the appropriate yardmaster's rate for November 3, 1957, and each subsequent date until conditions complained of are corrected.

**Statement of Facts.**

Account of employes outside the Scope of the Yardmasters Agreement performing yardmasters service on the second trick at Itasca Yard, Itasca, Wisconsin, following the abolishment of the regular assigned yardmasters position on second trick.

Yours very truly,

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

cc. W. J. Bohn  
J. L. Ebert  
J. H. Brazier

**"CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

Office of Division Superintendent

275 East 4th Street

Saint Paul 1, Minnesota.

November 27, 1957

Mr. L. J. Stift  
General Chairman, RYA  
C&NW Local Lodge No. 32  
547 North Pine Ave.,  
Chicago 44, Ill.

This will acknowledge receipt of your letter November 21, 1957, requesting that Yardmaster W. J. Bohn be compensated a day's pay at the appropriate yardmaster's rate for November 1, 1957, and each subsequent date until conditions complained of are corrected.

I do not feel that there is a violation of your schedule account abolishment of the yardmaster position concerned; therefore, your claim as stated above is hereby declined.

/s/ J. W. Alsop  
Division Superintendent."

Letterhead of  
RAILROAD YARDMASTERS OF AMERICA

Chicago &amp; North Western Local Lodge No. 32

R. D. Anderson, President  
J. H. Braizier, Secy.-Treas.

**"Chicago, Ill.  
January 20, 1958**

Mr. J. W. Alsop  
Division Supt.,  
Chicago and Northwestern Ry.  
Twin Cities Division,  
St. Paul, Minn.

Dear Sir:

Referring to your letter date November 27, 1957, denying my claim in favor of yardmaster W. J. Bohn for a day's pay at the appropriate yardmaster's rate for November 3, 1957 and each subsequent date until conditions complained of were corrected.

The position of yardmasters at Itasca, Wisconsin are those which have been in existence since the year of 1947, and the abolishment of these positions effective November 3, 1957 with subsequent transfer of the work to others outside the Scope of the yardmasters class of craft, is a direct violation of the agreement.

Am turning over to Mr. Van Patten, Director of Personnel,  
Chicago and Northwestern Ry.

Yours truly,

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

cc: Mr. T. M. Van Patten  
Director of Personnel

Letterhead of  
RAILROAD YARDMASTERS OF AMERICA

Chicago &amp; North Western Local Lodge No. 32

**"Chicago, January 20, 1958**

Mr. T. M. Van Patten  
Director of Personnel  
Chicago & Northwestern Ry.  
400 West Madison St.,  
Chicago 6, Ill.

Dear Sir:

We are appealing J. W. Alsops Superintendent Twin Cities Division declining of my claim made to him on November 21, 1957, which read as follows:

Mr. J. W. Alsop  
Division Superintendent  
Chicago & Northwestern Ry.  
St. Paul, Minn.

Dear Sir:

We request that yardmaster W. F. Bohn be compensated a day's pay at the appropriate yardmaster's rate for November 3, 1957 and each subsequent date until condition complained of is corrected.

**Statement of Facts.**

Account of employes outside of the Scope of the Yardmasters agreement performing yardmasters service on the second trick at Itasca Yard Itasca, Wisconsin.

Yours very truly,

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

cc: W. J. Bohn  
J. L. Ebert  
J. H. Brazier

In addition to the above, the following are the statement of facts:

Herein are contained my findings of a check made by Mr. J. L. Eberts, Local Chairman., C. & N. W. Lodge #32, R. Y. of A., regarding the abolishment of all yardmasters positions at North Itasca Yard, Itasca, Wisconsin. On October 30, 1957 North Itasca yard consists of Twenty tracks, longest holding 60 cars. Four repair tracks, Round House lead.

Three switching leads.

Five day switch assignments consist of Four day assignments.

Four afternoon assignments.

One Midnight assignment.

Three yardmaster assignments were employed around the clock prior to November 3, 1957, these three being abolished effective November 3, 1957, and one new yardmaster's position being established from 7 pm. to 3 am.

The three yardmasters at North Itasca prior to November 3, 1957, in addition to supervising North Itasca yard also were responsible and supervised, gave instructions to the crews and anyone requiring same. Furnished lists to the crew to switch off of, and listed preference work to be done to engine foreman to complete at the following yards:

South Itasca yard, which consists of three tracks holding 34 cars apiece.

One dump track which holds 14 cars.

Superior yard, which consists of Fourteen tracks holding 34 cars each.

Two house tracks.

Five tracks on each side of Globe Elevator.

One Scale truck holding several cars.

One track called Crooked holding several cars.

Rice point yard, which consists of—Eight tracks.

Duluth yard, which consists of Four tracks holding 18 cars each.

Five coach yard tracks.

Five house tracks.

One team track.

Three Operators on duty at North Itasca Yard around the clock starting at 7:55 am. to 3:55 pm., 3:55 pm. to 11:55 pm., 11:55 pm. to 7:55 am. Except Sundays when the afternoon assignment from 3:55 to 11:55 pm. is off. Also outside and inside clerks.

All this work was done by the three yardmasters at North Itasca under his Supervision, plus it was his responsibility for the marking of the Board and to see that the crews were called properly, also his duty to work with the dispatcher regarding ordering of trains figuring tonnage and cars to be used.

There were yardmasters positions at North Itasca since 1947, no Footboard Yardmasters up until the date the three yardmasters positions were abolished, then the carrier assigned three new Footboard yardmasters positions to take of the yardmasters' positions that were abolished November 3, 1957.

On January 7, 8, 9, 1958, while attending an investigation, I found various duties formerly performed by the yardmaster being taken care of by both Clerks and Operators. The lead switch engines on all three shifts after November 2, 1957, were in charge of 'Footboard Yardmasters', a position not authorized by and outside the Scope of the Yardmasters Agreement. I am also quoting Special Order #24 with the signature of J. W. Alsop, Superintendent.

Chicago & Northwestern Railway Co.,  
Office of the Division Superintendent.  
Twin Cities Division,  
Head of Lakes territory.

Superior, Wisconsin  
October 31, 1957.

Special Order #24.

All Concerned:

Effective Sunday November 3, 1957, one Yardmasters position will be established at Itasca with hours of 7:00 pm to 3:00 am, daily, regular man being assigned Saturdays off and relief will be provided. During the time there is no yardmaster on duty at Itasca Yard engine foreman on three around the clock assignments at Itasca will have charge of the entire operation in Itasca yard, and will be compensated Footboard Yardmasters rate of pay for so doing.

Please be governed accordingly.

J. W. Alsop, Superintendent.

cc: All Bulletin Boards

Itasca—Duluth—Spooner—Altoona.

Yardmasters—Itasca.

L. J. Stift, General Chairman.

D. R. Freyer Eau Claire & Spooner.

R. L. Tollard—Duluth

H. A. Enger, Superior.

C. Lelonek, Itasca.

S. Swanson, Itasca.

I am also attaching hereto, to prove that the Chicago & Northwestern Ry. expects of a Footboard Yardmaster a copy of excerpt (Exhibit "D") from statement of one Kenneth C. Anderson, Yardman, Waukegan, who was brought to task for failures when he was assigned as a 'Footboard Yardmaster'.

Last but not least, also enclosed herewith is a copy of statement (showing the yardmaster positions abolished on the C. & N. W. Ry. We think it is clearly evident that your people have embarked on a campaign to channel the work contracted to the yardmaster craft to others outside of the Scope of the agreement. The abolishment of the yardmasters position at Itasca, Wisconsin, was in direct violation of rule II of the current Agreement and we insist that it be restored and Yardmaster W. J. Bohn paid for time lost as covered by claim.

Very truly yours,

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

An excerpt from:

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

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

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

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

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

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

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

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Mr. Scivally to Mr. Anderson:

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

Mr. Anderson:

A. Yes.

Mr. Scivally to Mr. Anderson:

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

Performing the duties of a Yardmaster."

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

Exhibit "D"

Attached to Letter of January 20, 1958

## Statement showing Yardmaster positions abolished on C&amp;NW Ry. Co.

Date	Assignment	Location	Remarks
May 11, 1956	1st trick	West Chicago, Ill.	} Re-established } April 3, 1957.
May 12, 1956	2nd "	" " "	
April, 1956	3rd "	" " "	
July 14, 1956	Relief #4	Proviso, Ill.	} Subsequently re-established and } abolished several times
" 30, 1956	7-105	" "	
Sept. 6, 1956	9-105	" "	
" 6, 1956	23-105	" "	
July 16, 1956	{ W. E. Yd. #8—	" "	
"	{ 1st, 2nd and	" "	
"	{ 3rd shifts	" "	
"	{ W. E. Yd #7	" "	
"	{ 1st, 2nd and	" "	
"	{ 3rd shifts.	" "	
"	W. E. Yd #6-4 PM to 12 M	" "	Re-established. " 5 days per wk.
"	Relief 3 PM to 11 PM	" "	
"	" 11 PM to 7 AM	" "	
Nov. 30, 1956	4-105	" "	
"	17-105	" "	
"	15-105	" "	
Dec. 23, 1956	3rd trick	Manitowoc, Wisc.	Re-established.
Feb. 21, 1957	" "	Wells Dist., Chicago., Ill.	
Mar. 23, 1957	1-105	N. Fondulac, Wisc.	
"	2-105	" " "	
June 19, 1957	3rd trick	Adams, Wisc.	
April 28, 1957	6-105	Wood St., Chgo., Ill.	
Nov. 3, 1957	.001	Itasca, Wisc.	
"	.002	" "	
"	.006	" "	
Nov. 1, 1957	3rd trick	Spooner, Wisc.	
"	1st "	Altoona, Wisc.	
"	2nd "	" "	
"	1st "	W. Minneapolis, Minn.	



## Statement showing Yardmaster positions abolished on C&amp;NW Ry. Co.

Date	Assignment	Location	Remarks
Nov. 1, 1957	2nd trick	W. Minneapolis, Minn.	
"	3rd "	" " "	
"	Relief	W. and E. Minnpls., Minn.	
"	1st trick	Western Ave., St. Paul, Minn.	
"	1st "	Escanaba, Mich.	
"	2nd "	" "	
"	3rd "	" "	
"	1st "	Stambaugh, Mich.	
"	1st "	Ironwood, Mich.	
Nov. 2, 1957	3rd "	California Ave. Coach Yd., Chicago, Ill.	
Nov. 30, 1957	3rd "	West end Yds. #1-2-3-4-Main and Freight House, Proviso, Ill.	

Attached to letter of January 20, 1958

## #2. Statement showing positions abolished.

Nov. 16, 1957	003	Milwaukee, Wisc.	} 6 positions re-established in lieu of the twelve.
"	006	" "	
"	007	" "	
"	008	" "	
"	009	" "	
"	010	" "	
"	011	" "	
"	013	" "	
"	015	" "	
"	017	" "	
"	019	" "	
"	021	" "	
"	Relief #1	Milwaukee, Wisc.	} 1 position re-established in lieu of the two.
"	" #2	" "	

Attached to letter of January 20, 1958

Letterhead of  
CHICAGO AND NORTHWESTERN RAILWAY CO.

400 W. Madison St.,

Chicago 6, Ill.

"March 11, 1958.  
File 99D-22-4

Mr. L. J. Stift  
547 N. Pine Ave.,  
Chicago 44, Ill.

Dear Sir:

Please refer to your letter of January 20, 1958, involving 'that Yardmaster W. J. Bohn be compensated a day's pay at the appropriate yardmasters' rate for November 3, 1957 and each subsequent date until conditions complained of are corrected.'

It is my understanding that prior to November 4, 1957, there were yardmasters assigned at Itasca, 8:00 a.m. to 4:00 p.m., 4:00 p.m. to 12:00 p.m., and 12:00 p.m. to 8:00 a.m. Effective November 4, 1957, these positions were abolished and one yardmaster position established 7:00 p.m. to 3:00 a.m.

It is my understanding since change of November 4, 1957, as a general rule no trains arrive or depart during the time yardmasters are not assigned. There are two inbound time freights, No. 71 and 73, and two outbound time freights, No. 72 and No. 74. No. 71's scheduled arriving time is 6:35 p.m., but this train usually arrives between 10:00 p.m. and midnight; No. 73's scheduled arrival time is 7:30 p.m. but this train usually arrives between 11:00 p.m. and 12:30 a.m. No. 74's scheduled departure time is 11:00 p.m., but this train usually is ordered between 2:00 and 3:30 a.m. No. 72's scheduled departure time is 1:00 a.m., but this train is usually ordered between 12:30 and 1:30 a.m. All roadtrains either originate or terminate at Itasca as that is as far as freight trains may operate on the line.

It is my understanding that the yard assignment at Itasca are as follows:

6:00 A.M.—Itasca-Duluth Transfer—takes transfer to Duluth, comes back to Superior and does some switching.

7:30 A.M.—3:30 P.M. and 11:30 P.M.—(Around the clock assignments performing switching and making and breaking up of trains in Itasca Yard on lead.

7:00 A.M.—Cargill Elevator engine takes care of elevator and may perhaps do some transfer work.

2:00 P.M.—Superior transfer—brings transfer to Superior and does switching in Superior Yard and returns to Itasca to tie up.

3:00 P.M.—Assignment usually goes to Duluth with a transfer but occasionally is used at the Itasca Elevator first when there is unfinished work from the 7:00 A. M. engine.

8:00 A.M.—Duluth assignment switches at Duluth and takes care of passenger equipment on Train 511.

4:00 P.M.—Duluth assignment switches at Duluth.

The above designation shows generally the yard assignments which were operated both prior and subsequent to November 4, 1957.

My investigation further reveals that very little, if any, supervision is necessary at Itasca as most of the work performed by these engines is routine and repetitious. For example, the 7:30 a.m., 3:30 p.m. and 11:30 p.m. assignments work on the lead and, of course, merely do switching in accordance with lists furnished by yard clerks. Three other assignments are transfer jobs that primarily haul cars from Itasca to Superior or Duluth and return, doing some switching at Superior or Duluth from lists furnished by the yard clerks as has always been done. There is a small yard in Superior in which there are yard clerks to make up and furnish lists for engine foremen, which practice is the same now as it was prior to November 4, 1957. The two engines assigned at Duluth were never directly supervised by the yardmaster; in fact, they had little or no supervision at all and merely performed routine switching and transfer work in accordance with lists furnished by the clerks. The 7:00 a.m. Itasca Elevator engine takes carloads of grain to Itasca Elevator and usually is required to stay there all day long switching trains and empties. The switching at the elevator is under the direction of the elevator employees in accordance with their requirements and is done without any switch list or supervision, the personnel of the plant formerly and still do tell the engine foreman how they want their cars spotted.

There is a book located in the yard office at Itasca in which orders for empty equipment are quoted and any other special instructions inserted. The yard foremen read the book and comply with the instructions.

From the information I have been able to develop there is no justification whatsoever for maintenance of more than the one yardmaster position now assigned 7:00 p.m. to 3:00 a.m. In the circumstances, the claim appealed with your letter of January 20, 1958 is denied in its entirety.

I have previously written you setting conference to discuss certain cases on which you requested conference at 3:30 Friday, April 4, 1958. If it is your desire that this case be discussed in conference I can arrange to do so at the same time.

Yours truly,

/s/ T. M. Van Patten."

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

"Chicago, Ill., March 25, 1958.

Mr. T. M. Van Patten,  
Director of Personnel.

Dear Sir:

Referring to your letter March 11th, file 99D-22-4, which was in reply to mine of Jan. 20, 1958, involving 'that Yardmaster W. J. Bohn be compensated a day's pay at the appropriate yardmasters rate for Nov. 3, 1957, and each subsequent date until conditions complained of are corrected.'

I will discuss this case with you further at conference scheduled for 3:30 P. M., Friday, April 4th.

Your truly,

/s/ L. J. Stift,  
General Chairman.

Letterhead of  
CHICAGO AND NORTHWESTERN RAILWAY CO.

400 W. Madison St.,  
Chicago 6, Ill.

"May 9, 1958

File: 99D-22-4  
99D-22-5

Mr. L. J. Stift  
547 No. Pine Ave.,  
Chicago 44, Ill.

Dear Sir:

Please refer to your files involving claims:

'\* \* \* that Yardmaster W. J. Bohn be compensated a day's pay at the appropriate yardmasters rate for Nov. 3, 1957 and each subsequent date until conditions complained of are corrected.'

'\* \* \* that Yardmaster Charles Fredrick Phipps be compensated a day's pay at the appropriate yardmasters rate for

Nov. 3, 1957 and each subsequent date until conditions complained of are corrected.'

When these cases were discussed in conference on Friday, April 4, 1958, it was indicated that the claims in these cases were identical, except that Yardmaster Bohn was formerly employed on a second trick yardmaster position and Yardmaster Phipps was formerly employed on a first trick yardmaster position. You indicated that the claim in each of the cases was otherwise identical and that your contention that the claims were good was supported upon the same factual situation in each case. For that reason this letter will cover both claims.

In checking your letter of January 20, 1958 appealing this case to me I find that there were certain inaccuracies in that letter. Itasca Yard consists of 22 yard tracks instead of 20; there are 4 rip tracks as you indicate. However, there is only one lead in the yard that is normally used for switching and that is the south lead. There is another industry lead parallel to the south lead but switching cannot be done on both leads simultaneously. The lead at the north end of the yard is occasionally used for a small amount of switching but due to the physical layout of tracks and the up-hill grade is not conducive to continued use for switching.

Yardmasters were employed at Itasca until 1932, at which time these yardmaster positions were abolished and in lieu thereof, assistant agents were appointed, a day assistant and a night assistant agent. This condition existed until 1948, at which time three yardmaster positions were established.

At page 2 of your letter you referred to the fact that while yardmasters were assigned they '\* \* \* furnished lists to the crews to switch off of, \* \* \*'. If you mean by this that when the yardmasters were assigned they received a list from a clerk and handed it to the engine foreman you are correct. However, if you meant to infer that it was the practice for the yardmasters actually make out the lists you are incorrect, as this work was both prior and subsequent to the original date of this claim performed by clerks.

The South Itasca Yard referred to by you in your letter of January 20, 1958, is actually not a yard but is merely an interchange with the DM&IR Railroad. There are three tracks located at South Itasca and they lead off of the south switching lead to the Itasca Yard and are used only for interchanging cars. The dump track you speak of is a short runaround track off of the south lead and is used for storing condemned cars.

Superior Yard, Rice Point Yard and Duluth Yard, referred to in your letter of January 20, 1958, as well as the tracks at the Globe Elevator, have been served by the transfers and the elevator assignments and Duluth switch engines referred to in my letter of March 11, 1958 to you. As indicated in that letter, the two switch engines at Duluth were never directly assigned by the yardmaster. The Itasca Elevator engine normally spends its whole day at the elevator serving the elevator and the transfer assignments primarily haul cars from Itasca to Superior or Duluth and return and do some switching at Superior and Duluth to fulfill the requirements of the industries. As was indicated in that letter, the yardmasters even when employed at Itasca exercised very little, if any, supervision over those assignments.

For your information, there are no longer three operators on duty at Itasca for since December 16, 1957, there has been only one five-day operator position with hours 11:30 p.m. to 8:30 a.m.

In the sentence appearing at the bottom of page 2 of your letter of January 20, 1958, you indicated that the lead switch engines on all three shifts after November 2, 1957 were in charge of footboard yardmasters. The yard foremen on these assignments were in fact paid footboard yardmasters' rates, but these engine one on each shift, are the only engines actually spending their assignment switching in Itasca Yard, and the yard foremen in charge of these assignments merely take charge of the assignments and perform the switching necessary.

At the second page of your letter of January 20, 1958 you refer to 'outside and inside clerks'. I understand there was only one combination desk clerk and yard clerk around the clock at Itasca. There is another clerk on duty during the day in the agent's office, who performs work of the agent, but who was never connected with or supervised by the yardmaster. The one yardmaster position remaining has hours 7:00 p.m. to 3:00 a.m. Whether the yardmaster or the yard clerk actually marks the board and calls the crew, I do not at this time know, however, in any event, the marking of the board in itself is not work belonging exclusively to yardmasters.

After investigating completely the factual situation at Itasca and taking into consideration that there are only two inbound and two outbound trains from Itasca, both of which normally arrive and depart during the time the one yardmaster at Itasca is on duty, and the fact that the transfer crews, the Duluth switch engines and the elevator job have for years performed their work without supervision. I am convinced there is no justification whatsoever for the claim as presented in these cases and accordingly the denial decision previously furnished you on each case is reiterated.

Yours truly,

/s/ T. M. Van Patten"

It was the duty and responsibility of the yardmaster to plan and supervise, also to perform numerous detail assignments, incident to the entire operation at North and South Itasca, Wisconsin, as well as at Superior and other outlying yards.

Effective as of the same date that the yardmaster positions were abolished, the engine foremen were reclassified and delegated to assume complete authority over the entire operations, and have since, in conjunction with others, absorbed the duties formerly performed by the yardmaster, as evidenced herein, thereby transferring to others work contracted to the yardmaster craft.

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 sustained.

**CARRIER'S STATEMENT OF FACTS:** The carrier's Itasca Yard is its arrival and departure yard for trains operating into and out of the Head-of-

the-Lakes territory. Trains into and out of Itasca Yard consist of two inbound time freights, No. 1 and No. 73, and two outbound time freights, No. 72 & No. 74. No. 71's scheduled arrival time is 6:35 p.m., but this train usually arrives between 10:00 p.m. and midnight. No. 73's scheduled arrival time is 7:30 p.m., but this train usually arrives between 11:00 p.m. and 12:30 a.m. No. 74's scheduled departure time is 11:00 p.m., but this train usually is ordered between 2:00 and 3:30 p.m. No. 72's scheduled departure time is 1:00 a.m., but this train is usually ordered between 12:30 and 1:30 a.m. All road freight trains either originate or terminate at Itasca which is as far as freight trains may operate on the line.

Yardmasters were employed at Itasca prior to 1932, at which time those yardmaster positions were abolished and in lieu thereof assistant agents were appointed, a day assistant and a night assistant. That condition existed until 1948, at which time three yardmaster positions were established around-the-clock. These yardmaster positions continued in existence until November 4, 1957, the yardmaster assignments being 8:00 a.m. to 4:00 p.m. to 12:00 p.m., and 12:00 p.m. to 8:00 a.m. Effective November 4, 1957 these three positions were abolished and one yardmaster established 7:00 p.m. to 3:00 a.m.

Yard assignments taking up or completing service at Itasca Yard are as follows:

7:30 a.m.— 3:30 p.m.  
3:30 p.m.—11:30 p.m.  
11:30 p.m.— 7:30 a.m.

around the clock assignments performing switching and making and breaking up of trains in Itasca Yard on the lead.

6:00 a.m.—Itasca-Duluth Transfer—this transfer operates to Duluth and returns to Superior where it does some switching.

7:00 a.m.—Cargill Elevator engine takes care of the elevator and performs some transfer work.

2:00 p.m.—Superior transfer—brings transfer to Superior and does switching in Superior Yard and returns to Itasca to tie up.

3:00 p.m.—assignment usually goes to Duluth with the transfer but occasionally is used at Itasca Elevator first when there is unfinished elevator work from the 7:00 a.m. engine.

8:00 a.m.—Duluth assignment switches at Duluth and takes care of passenger equipment on train No. 515.

4:00 p.m.—Duluth assignment switches at Duluth.

The above designation shows in general the yard assignments which were operated in the Head-of-Lakes territory both prior and subsequent to November 4, 1957. It will be noted from this designation that while there are 9 switch engines actually shown, there are only 3 switch engines, that is the 7:30 a.m.—3:30 p.m., and 11:30 p.m.—assignments that are actually Itasca Yard assignments.

The 7:30 a.m., 3:30 p.m. and 11:30 p.m. assignments work on the lead and perform switching from yard checks which have been made by the clerks. The

6:00 a.m., 2:00 p.m. and 3:00 p.m. assignments are transfer jobs that primarily haul cars from Itasca to Superior or Duluth and return doing some switching at Superior or Duluth from lists furnished by yard clerks at such points as they have always done. For the information of the Board, there is a small yard in Superior at which there are yard clerks to make up and furnish lists for engine foremen, which practice is the same now as it was prior to November 4, 1957. The two engines assigned at Duluth were never directly supervised by the yardmaster; in fact, they had little or no supervision at all and merely performed routine switching and transfer work. The 7:00 a.m. Itasca Elevator engine takes carloads of grain to Itasca Elevator and usually is required to stay there all day long, switching trains and empties. The switching at the Elevator is under the direction of the elevator employes in accordance with filling their requirements and is done without any switch list or supervision, the personnel of the plant formerly and still do tell the engine foreman how they want their cars spotted, etc.

There is a book located at the yard office at Itasca in which orders for empty equipment and other information relative to industries' requirements, etc., are placed by the clerks, and any other special instructions inserted. The yard foremen read the book and perform the work.

As indicated above, all road freight trains operating into and out of Itasca Yard normally arrive and depart between the hours of 7:00 p.m. and 3:00 a.m. The handling of the work at Itasca is routine to the extent that it can be performed by the engine crews assigned without supervision. However, when the three yardmaster positions were abolished effective at the close of business November 3, 1957, one yardmaster position was established 7:00 a.m. to 3:00 a.m. to be on duty during the time that the road trains arrived and departed from Itasca.

Claim has been presented in this case in behalf of Claimant Bohn for a day's pay at the appropriate yardmaster rate for November 3, 1957 and each subsequent date account "abolishment and change of a yardmaster position at Itasca." Claim has been denied.

**POSITION OF CARRIER:** As indicated by the Carrier's Statement of Facts in this case, there are actually three yard engine assignments at Itasca performing switching in the yard at that point, one yard engine assignment being one on each shift. The switching performed by these three crews consists almost entirely of routine yard classification work, and is and can be performed by them without yardmaster supervision. The carrier's supervisory officers determined that there was no necessity or justification for around-the-clock yardmaster assignment which had been in effect at Itasca and therefore abolished the three yardmaster assignments and established one yardmaster assignment to cover the hours during which trains normally arrived and departed from Itasca. The observation of the carrier's supervisory officers at Itasca indicates that since the three yardmaster positions were abolished at Itasca there has been no yardmaster supervision exercised at that point, except by the yardmaster assigned at Itasca 7:00 p.m. to 3:00 a.m.

Attached hereto as Carrier's Exhibit "A" is a copy of the General Chairman's letter of January 20, 1958 with which the claim in this case was originally appealed to the carrier's Director of Personnel. Attached hereto as Carrier's Exhibit "B" is a copy of the carrier's Director of Personnel's letter of May 9, 1958 to the General Chairman in which was pointed out certain inaccuracies as contained in the General Chairman's letter appealing this case



and the claim of Yardmaster Phipps also involving Itasca and before this Board in another docket.

Attention of this Board is directed to the fact that in appealing the case to the carrier while the General Chairman has contended that "employees outside the scope of the yardmasters' agreement performing yardmaster service on the second track at Itasca Yard, Itasca, Wisconsin.", a careful review of the General Chairman's letter appealing the claim clearly indicates a failure to produce any evidence that yard crews at Itasca are being supervised by other than yardmasters. The General Chairman in his letter appealing this case simply stated that while yardmasters were assigned at Itasca they exercised supervision over yard crews employed at that point, then contends:

"\* \* \* the carrier assigned three new Footboard yardmasters positions to take of the yardmaster positions that were abolished November 3rd, 1957."

and

"\* \* \* I found various duties formerly performed by the yardmaster being taken care of by both Clerks and Operators."

The carrier does not deny that some work at Itasca which may have been performed by yardmasters when assigned at that point is now being performed by other employees, particularly clerks. The carrier submits, however, that the work which was formerly performed at Itasca by yardmasters, if any, which is now being performed by clerks, is purely clerical work and has never been by agreement assigned exclusively to yardmasters. In this connection the carrier wishes to call attention to the fact that at page 2 of the General Chairman's letter of January 20, 1958 appealing this case, a copy of which is attached in this case as Carrier's Exhibit "A", the General Chairman contended that the yardmasters when assigned "\* \* \* furnished lists to the Crew to switch off of." and "\* \* \* it was his responsibility for the marking of the Board and to see that the crews were called properly, also his duty to work with the dispatcher regarding ordering of trains figuring tonnage and cars to be used."

As the carrier has previously indicated to this Board in this and other cases, and as the carrier has indicated to the General Chairman in conference repeatedly, the making of switch lists on this property is regularly done by yard clerks. These so-called switch lists are in fact yard checks showing the cars in the yard and the destination of the cars. At Itasca, for example, in-bound cars in the yard are shown on the switch list as is the destination of the cars, that is, industries indicated in the Head-of-Lakes district or the railroads to which such cars are to be delivered. From these lists showing the destination of the cars the three switch assignments at Itasca merely make up the road trains in blocks and switch the blocks together, and make up cuts of cars for transfer to Superior or Duluth and for delivery to the various industries. The making of such switch list constitutes purely yard clerks' work, and from these lists the engine foreman received the information as to the work to be performed.

It is to be noted in this case that the General Chairman has contended that "\* \* \* it was his responsibility for the marking of the Board \* \* \*" and "\* \* \* to see that the crews were called properly." The General Chairman did not contend either that the yardmaster in fact marked the board or that the yardmaster in fact called crews, and as a matter of fact it is the understanding

of the carrier that the yardmaster actually did neither. The handling of crew boards and the calling of crews is on this property work regularly performed by clerks, and certainly there is nothing in the agreement between this carrier and the Railroad Yardmasters of America that gave yardmasters the exclusive right to perform that work. Even if it is assumed that the yardmaster in fact marked the board and called the crews, in doing so he was performing clerical work and not yardmasters' work, and the performance of such board marking and crew calling by clerks subsequent to the abolishment of the yardmasters' positions at Itasca did not in any way constitute violation of the yardmasters' agreement.

It is to be noted that in the above quoted portion of the General Chairman's letter he contended that it was the yardmaster's duty to work with the dispatcher regarding ordering of trains and figuring tonnage and cars to be used. As the carrier has indicated to this Board in numerous cases, the figuring of tonnage is purely clerical work, and is performed by clerks at nearly all points on the carrier's property. Even if it is assumed that a yardmaster while assigned did figure tonnage in doing so he was performing clerical as distinguished from supervisory work. The performance of this clerical work by clerks subsequent to the abolishment of the yardmasters' positions cannot be deemed a violation of the yardmasters' agreement. The ordering of trains, and the designation of cars to be handled in such trains is on this property under the jurisdiction of the dispatcher, and was at Itasca both prior and subsequent to the abolishment of yardmaster positions at that point. While the yardmaster was assigned at Itasca it is presumed that they gave certain information to the dispatchers, which the dispatchers would use in establishing his ordering time in determining the cars to be handled out of Itasca. The actual calling of the crews for the trains was, as previously indicated, clerical work and is performed by clerks.

For the information of this Board while as the carrier has previously pointed out, the marking of the board and the calling of the crews is clerical work, such board is marked at 11:00 p.m. daily, or in other words, during the assigned hours of the one yardmaster at Itasca. To the extent that the yardmaster is still assigned during these hours, it is still possible for this yardmaster to perform the same supervisory duties if any in fact exist in connection with this marking of the Board, as was previously performed by yardmasters at Itasca.

For the information of this Board, on March 12, 1958 Mr. James H. Whalen, yard clerk, Duluth, Minnesota, Mr. Wm. C. Lang, yard foreman, Itasca, Mr. P. G. Hagen, agent at Superior, and Mr. C. J. Parenteau, yard clerk, Superior, Wisconsin, were questioned by the carrier's trainmaster relative to the operation at Itasca. Attached hereto as Carrier's Exhibit "C" is a copy of the transcript of the questioning of these four employees. It is apparent from this transcript that the switching performed at Duluth and Superior by yard crews has been performed by these crews for years as a matter of routine without yardmaster supervision, regardless of whether a yardmaster is or is not assigned at Itasca.

The case here before this Board involves one in which the carrier has abolished around-the-clock yardmaster assignments at Itasca and substituted therefor one yardmaster assigned 7:00 p.m. to 3:00 a.m. The organization has made several unsupported allegations that employees outside the yardmasters' agreement are performing yardmasters' work at Itasca during the hours when yardmasters are not assigned, but have failed completely to support such allegations by any facts that can be verified, or any evidence supporting their

allegations. In this respect the claim now before this Board is substantially identical to that which was before this Board in its Docket No. 1188 on which Award No. 1228 was issued by this Board, in which the Board stated, in part:

"The work of yardmasters does not lend itself to being spelled out or described in definite terms as does the work of many other classes of railroad employes, because the work of the yardmaster is basically the work of planning and supervising the work of other employes. The question of how much supervision is required over various operations is obviously one of managerial discretion to be decided by the Carrier. This discretion is limited, however, by agreement, to the extent that where Carrier requires yardmaster duties to be performed, they must be assigned to employes who are members of the yardmaster craft or subject to the yardmasters' Agreement. In any case where yardmaster positions are abolished, the question before the Board is whether or not any yardmaster duties are then performed by other employes, or whether, in fact, the Carrier has done away with all of the yardmaster duties. Resolution of the issues last referred to, essentially questions of fact, requires that the petitioning organization must bear the burden of proof in establishing facts supporting its position. These must necessarily be probative facts establishing that a substantial amount of the work claimed to have been performed by other than those covered by the Agreement was exclusively yardmaster work. In short, the evidence must be conclusive and unsupported allegations will not meet the burden of proof required.

"The claim in each of these six dockets asserts that someone other than yardmasters are doing yardmaster work. The "someone other" is identified by title or classification. We have searched these records in vain to find any compelling proof that the work allegedly done was that type work only entitled to be performed by yardmasters, If such work in fact was done. To say that someone does something does not make it so or establish it as a fact, without evidence that would provide us a sound basis for making such a finding. The burden of proof referred to above has not been met and these claims must fail. The cases cited by the Employes, in which sustaining awards were made, supplied the existence of necessary facts absent here."

For the failure of proof in this case as in Award No. 1228, that employes outside the scope of the yardmasters' agreement are performing work assigned exclusively to yardmasters, the carrier submits that this claim must be denied in its entirety.

While as the carrier has previously stated it does not believe there is any basis for a sustaining award in this case, the carrier submits that if for any reason the claim in this case is sustained in part or in whole, claimant is entitled to no more than the difference between what he actually earned and what he would have earned had his position not been abolished.

When Claimant Bohn's position was abolished on November 3, 1957 he on November 4, 1957 exercised the rights which he held as clerk and resumed working as clerk November 7, 1957. Under awards of this Board if claimant's position was improperly abolished he is entitled to only the difference between what he would have earned had his position remained in existence and what he actually earned on the position he worked. The same principle is clearly set forth in the 8th paragraph of rule 19 of the agreement between this carrier and the Railroad Yardmasters of America where it is provided:

"If the final decision on the property decrees that the charge against the yardmaster is not sustained, the record will be cleared of the charge and if he was suspended or dismissed, he will be returned to service with seniority unimpaired and be paid for all time lost, such wage loss to be the difference between what he would have earned as yardmaster and his earnings in other employment with the carrier."

In other words, the controlling agreement between this carrier and the Railroad Yardmasters of America clearly indicates and contemplates that employes held out of service on positions coming under the scope of the agreement between this carrier and the Railroad Yardmasters of America are entitled merely to be made whole for what they would have earned as yardmasters. The carrier submits that the same principle must of necessity be applicable here, if for any reason a sustaining award of this Board is issued.

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

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

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

(Exhibits not reproduced).

**OPINION OF BOARD:** This case involves the abolishment of three around-the-clock yardmaster positions at the Itasca, Wisconsin, yard and the alleged assignment of yardmaster work to other employes not covered by the controlling Agreement between the Yardmasters' organization (RYA) and this Carrier.

The Itasca yard is an arrival and departure yard for trains operating into and out of what is known as the Head-of-the-Lakes territory. Yard traffic consists of two inbound and two outbound time freight trains. All road freights either originate or terminate at Itasca which is as far as freight trains may operate on the line.

The following yard assignments take up or complete service at Itasca yard:

1st Shift	2nd shift	3rd shift
7:30 AM to 3:30 PM	3:30 PM to 11:30 PM	11:30 PM to 7:30 AM
6:00 AM to 2:00 PM	2:00 PM to 10:00 PM	
7:00 AM to 3:00 PM	3:00 PM to 11:00 PM	
8:00 AM to 4:00 PM	4:00 PM to 12:00 M	

On October 31, 1957, Carrier issued the following notice:

"Superior, Wisconsin  
October 31, 1957.

Special Order #24

All Concerned:

Effective Sunday November 3, 1957, one Yardmasters position will be established at Itasca with hours of 7:00 p.m. to 3:00 a.m., daily, regular man being assigned Saturdays off and relief will be provided. During the time there is no yardmaster on duty at Itasca Yard engine foreman on three around the clock assignments at Itasca will have charge of the entire operation in Itasca yard, and will be compensated Footboard Yardmasters rate of pay for so doing.

Please be governed accordingly.

J. W. Alsop, Superintendent."

It is the Organization's position that if it is shown that yardmaster positions have been abolished and new positions simultaneously created covering relatively the same kind of work, with a resulting loss of compensation by yardmasters, then violation of Rule 11 of the effective Agreement is established. That rule reads as follows:

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

The Carrier answers that it has the unqualified right to abolish positions and services which, in its judgment, are no longer required and that where, as here, the Organization contends that as a result of the abolishment of yardmaster positions, others not covered by the Yardmasters' Agreement are performing yardmaster work, the Organization must show that a substantial volume of that work is being done by such other employees.

The dispositive issue in this case is whether the positions established by the Carrier simultaneously with the abolishment of the Yardmaster positions, i.e., the "footboard yardmasters" designated by Special Order No. 24, were, in fact, created in order to perform "relatively the same class of work" as had been performed by yardmasters. If so, then Rule 11 has been violated.

Because the Scope Rule of the Agreement contains no precise definition of yardmaster duties and functions, it is necessary to read that rule in the light of the Carrier's operating rules. They read as follows:

"RULE 895.

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

"RULE 896.

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

"RULE 897.

Yardmasters when assigned, will have charge of the yard located in their territory and, of men employed in yard operation; also the movement of trains and engines and distribution of cars therein. They

will be responsible for trains being made up in the order designated and departure at the designated time."

"RULE 898.

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

The question to be determined from the evidence of record is: Has a substantial part of the yardmaster duties set out in the foregoing operating rules been assigned to footboard yardmasters not covered by the effective Agreement?

We think Special Order No. 24 is revealing in reaching an answer to the question. The Order was issued concurrently with the Abolishment of the yardmaster positions and contains, among other things, the following significant language:

"... During the time there is no yardmaster on duty at Itasca Yard engine foreman (sic) on three around the clock assignments at Itasca will have charge of the entire operation in Itasca yard, and will be compensated Footboard Yardmasters rate of pay for so doing. . ."  
(Emphasis ours)

There is only one reasonable inference that can be drawn from this language—that the Carrier found it necessary at Itasca to create footboard yardmaster classifications or to increase the pay of the engine foremen to the footboard yardmaster rate in order to require the performance of work theretofore performed by the yardmasters. It is of some significance that when the Referee, in the course of oral argument before this Division, asked the Carrier representative why the engine foremen had been given the footboard yardmaster rate, the answer was that he did not know. It is also significant that there is no showing here that the volume of work at Itasca has decreased appreciably or that there is less need for yardmaster supervision at that point. Moreover, the record contains convincing and substantial evidence that engine foremen acting as footboard yardmasters have, in fact, assumed additional supervisory duties and responsibilities which include those set out in the operating rules for yardmasters.

The Organization thus has made out what amounts to a prima facie case of contract violation which Carrier must refute and overcome. This the Carrier has failed to do.

Award No. 1158 of this Division (Referee Cluster) is in point under the facts and circumstances of this case. There it was said:

"Another fact which is undisputed in the record is that on the same date that the yardmaster positions were abolished, Carrier reclassified the positions of yard foreman in West Chicago Yard to that of footboard yardmaster. With regard to this action, Carrier stated that 'the duties of yardmaster at West Chicago have decreased to the extent that the remaining duties can be properly performed by footboard yardmasters'."

“... it is also significant that in this case, as in none of the others presently before the Division between these two parties in which yardmaster positions have been abolished, the Carrier felt it necessary to reclassify the yard foremen to footboard yardmaster with the clear implication that some duties formerly performed by the yardmasters would have to be assumed by them.” (Emphasis ours)

We find that Carrier violated Rule 11 of the Agreement and that the claim should be sustained but only to the extent that compensation to be paid Claimant shall be limited, as required by Rule 19 of the Agreement, to the difference between what he would have earned as a yardmaster and his earnings in other employment with this Carrier.

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

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

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

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

**AWARD:** Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
BY Order of FOURTH DIVISION

ATTEST: Patrick V. Pope  
Secretary

Dated at Chicago, Illinois, this 12th day of June, 1959.