

Award No. 1494

Docket No. 1485

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

The Fourth Division consisted of the regular members and in addition Referee Harold M. Weston 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—The following yardmasters be paid at the appropriate yardmaster rate for days as shown below until conditions complained of are corrected account clerks and telegraph-clerk handling switchmen's crew board at 22nd Street, St. Louis:

G. L. EmigFriday, Aug. 1, 1958 and all subsequent Fridays.
J. B. SavensSaturday, Aug. 2, 1958 and all subsequent Saturdays.
D. J. BurkeSunday, Aug. 3, 1958 and all subsequent Sundays.
E. L. WhitneyMonday, Aug. 4, 1958 and all subsequent Mondays.
A. V. DixonTuesday, Aug. 5, 1958 and all subsequent Tuesdays.
W. W. Taylor ...Wednesday, Aug. 6, 1958 and all subsequent Wednesdays.
E. W. Alt, Jr., ...Thursday, Aug. 7, 1958 and all subsequent Thursdays.
Bobby D. Smith Monday, Aug. 4, 1958 and all subsequent Mondays.
A. R. HayesTuesday, Aug. 5, 1958 and all subsequent Tuesdays.
B. E. HelveyWednesday, Aug. 6, 1958 and all subsequent Wednesdays.

EMPLOYEES' STATEMENT OF FACTS: Prior to June 18, 1956, the yardmen's crew board had always been handled by the yardmasters and recognized as work belonging to that craft, as shown by copy of letter reproduced below:

"St. Louis, Mo., July 14th, '55.

File: STC-5415-B.

Messrs.	A. R. Hayes,	Yardmaster —	22nd St. Tower
	R. H. Jones,	"	" " " "
	D. J. Burke,	"	" " " "
	A. V. Dixon,	"	" " " "
	E. W. Alt, Jr.,	"	" " " "

This is to acknowledge receipt of your time slips as follows:—

A. R. Hayes — July 4, 5, 6, 7, 9, 10, 11, and 13, 1955
R. H. Jones — July 4, 5, 6, 7, 8, '55
D. J. Burke — July 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 1955
A. V. Dixon — July 5 and 7, 1955
E. W. Alt, Jr. — July 8, 9, 10, 11, 12 and 13, 1955

on which you are claiming one day as a clerk account handling switchmen's board marking and calling extra and regular switchmen for service.

It has always been the practice and is considered work of the yardmasters to mark their own yardmen's crew board and secure switchmen to fill vacancies.

There was no clerical work performed, and claims are declined.

/s/ H. Jones"

Effective 12 Noon, June 18, 1956, this work was delegated by management to others outside the scope of Yardmasters' Agreement, as per notice below.

BULLETIN

ALL YARDMEN:— 23RD STREET YARD

EFFECTIVE AT 12 NOON, JUNE 18, 1956, OPERATORS AT 22ND STREET YARD OFFICE . . . STATION NO. 328, WILL HANDLE CREW BOARD FOR YARDMASTERS

YARDMEN DESIRING TO LAY OFF OR REPORT FOR DUTY WILL REPORT TO OPERATORS INSTEAD OF YARDMASTERS.

/s/ H. JONES, SUPT."

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

Letterhead of MISSOURI PACIFIC RAILROAD COMPANY

H. Jones
Superintendent

"October 1, 1958
File:—TC-6634-B

St. Louis 3, Mo

Mr. R. H. Laws
Local Chairman, RYofA,
Lesperance Street
St. Louis, Missouri

Dear Sir:

This is to acknowledge receipt of time slips which you submitted on September 30, 1958 in favor of the following:—

G. L. Emig	August 1st
J. B. Savens	August 2nd
D. J. Burke	August 3rd
E. L. Whitney	August 4th
A. V. Dixon	August 5th
E. W. Taylor	August 6th
E. W. Alt, Jr.	August 7th
B. E. Helvey	August 6th
A. R. Hayes	August 5th
Bobby D. Smith	August 4th

claiming a day as yardmaster each date account Clerks and Telegrapher-Clerk handling switchmens' crew board at 22nd Street, St. Louis.

The handling of all Train, and engine men and yardmen crew board is work that has been traditionally performed by clerical forces

throughout the years, except in isolated cases where the small amount of duties required to handle the Switchmens' seniority board was concerned, in which cases it was performed by yardmasters. It is my understanding that such duties can be performed by either yardmasters or clerks. When the new Switchmens' rotary extra board agreement was put in effect the amount of time required to handle such a board was more than could be absorbed by yardmasters in connection with their yardmaster duties; therefore, it was then placed on clerks and operators who had time to perform such duties along with their other train and engine men boards.

Time slips submitted are declined and request that such work be placed back on the yardmasters is denied.

Your very truly,

/s/ H. Jones

Superintendent"

"St. Louis, Mo., Nov. 25, '58.

File: TC-6634½-B.

Mr. R. H. Laws,
Local Ch., RY of A.,
Lesperance Street,
St. Louis, Missouri.

Dear Sir:—

Your letter of November 19th, '58 appealing time claims of various 23rd Street Yardmasters for dates between August 1st and 7th, '58 for day as yardmaster account clerks and telegraphers handling switchmen's crew board at 22nd Street.

I cannot change decision given to you in my declining letter of October 1st, '58, therefore, your appeal is declined.

At any future date when you desire to discuss matters involving the yardmasters you should set up a date and time for conference as I will be glad to discuss any matter with you after conference date has been set.

Also note that in your appeal letter of November 19th, '58 you covered two claims which are of a separate and distinct nature, and in order that our files may be properly kept, appeals should be made by separate letter.

Yours very truly,

/s/ H. Jones

Superintendent."

* * * * *

Letterhead of
RAILROAD YARDMASTERS of AMERICA
.....Local Lodge No.....

"December 11, 1958

Mr. L. M. Elledge, Ass't Gen's. Mgr.,
Rm. 204, Union Sta., MoPac R.R.,
Little Rock, Arkansas.

Dear Sir:

I am appealing Mr. Jone's, Supt., of St. Louis Terminal, declining letter dated 11-25-58, File TC6634½-B, sent to Mr. R. H. Laws, Local

Chairman, Railroad Yardmasters of America, Lesperance St., in connection with marking of yardmens' crew board at 22nd St., St. Louis, Mo. Time claims as follows:

G. L. Emig,	Friday, August 1, 1958 and all subsequent Fridays thereafter until conditions are corrected.
J. B. Savens,	Saturday, August 2, 1958 and all subsequent Saturdays thereafter until conditions are corrected.
D. J. Burke	Sunday, August 3, 1958 and all subsequent Sundays thereafter until conditions are corrected.
E. L. Whitney,	Monday, August 4, 1958 and all subsequent Mondays thereafter until conditions are corrected.
A. V. Dixon,	Tuesday, August 5, 1958 and all subsequent Tuesdays thereafter until conditions are corrected.
W. W. Taylor,	Wednesday, August 6, 1958 and all subsequent Wednesdays thereafter until conditions are corrected.
E. W. Alt, Jr.,	Thursday, August 7, 1958 and all subsequent Thursdays thereafter until conditions are corrected.
Bobby D. Smith,	Monday, August 4, 1958 and all subsequent Mondays thereafter until conditions are corrected.
A. R. Hayes,	Tuesday, August 5, 1958 and all subsequent Tuesdays thereafter until conditions are corrected.
B. E. Helvey,	Wednesday, August 6, 1958 and all subsequent Wednesdays thereafter until conditions are corrected.

The making of yardmens' crew boards and securing switchmen to fill vacancies has been work performed by yardmasters at 22nd St., St. Louis, Mo., since 1918 and, in June 1956, this work was arbitrarily taken away from the Yardmasters and assigned to operators and a trainmaster's clerk. The Railroad Yardmasters feel that the Carrier's arbitrary action in this matter is their taking advantage of the overlapping of days. This is clearly set out in awards 13334 and 15908 of Division One and many similar awards of all the Divisions of the National Railway Adjustment Board.

In light of the fact that the service which was formerly performed by yardmasters and which now has been arbitrarily given to another craft or class, is work properly belonging to men working under the Yardmasters' Schedule, which establishes the rights of yardmasters to perform this class of service and that the Yardmasters always have a distinct and separate class of employees with separate wages, hours and other conditions of employment, while performing a distinct class of service, and permitting another craft or class of employee to perform this work entitles the claimant yardmasters to a day's pay for such work under the minimum day rule.

I request these claims be allowed and this work be re-assigned to yardmasters.

Respectfully,

/s/ V. R. Adkins

General Chairman

cc-G. R. Butaud
Ernest D. Smith"

Letterhead of
MISSOURI PACIFIC RAILROAD COMPANY

L. M. Elledge
Assistant General Manager

Little Rock, Arkansas

"December 19, 1958

Mr. V. R. Adkins:
General Chairman, R.Y.A.,
R. R. No. 2,
Columbia, Ill.

Dear Sir:

Please refer to your letter of December 11, appealing decision of Superintendent Jones, in connection with time claims of various yardmasters at Lesperance Street account marking of yardmen's crew board at 22nd Street, beginning with claim of G. L. Emig, August 1, 1958, and ending with B. E. Helvey, Wednesday, August 6, 1958, as listed in your letter.

Our investigation indicates that prior to June 1956 when the switchmen's Rotary Extra Board Agreement went into effect Yardmasters at 23rd Street marked and filled jobs on the extra switchmen's seniority board, which involved a very little amount of their time, while clerks and callers handled train and enginemen's crew boards.

When the Yardmen's Rotary Extra Board Agreement went into effect account increased volume of work in connection with keeping record of vacancies, calling men, etc., Yardmasters could not devote such an amount of time to this detail and satisfactorily take care of their yardmaster work, therefore, the yardmen's crew board was placed with the train and enginemen's crew boards and the work turned over to clerks and callers.

The handling of crew boards can be assigned to either clerks or yardmasters and this practice has been followed on the Missouri Pacific Railroad for many years, therefore, claims presented are declined.

Yours very truly,

/s/ L. M. Elledge"

Letterhead of
RAILROAD YARDMASTERS of AMERICA
.....Local Lodge No.

"January 8, 1959

Mr. B. W. Smith,
Missouri Pacific Bldg.,
13th & Olive Sts.,
St. Louis, Mo.

Dear Sir:

I am appealing Mr. Elledge's decision in his declining letter of December 19, 1958, File A-59157, in connection with the marking of

yardmen's crew board at 22nd Street, St. Louis, Mo. Time claims as follows:

G. L. Emig,	Friday, Aug. 1, 1958 and all subsequent Fridays thereafter until conditions are corrected.
J. B. Savens,	Saturday, Aug. 2, 1958 and all subsequent Saturdays thereafter until conditions are ocrrected.
D. J. Burke,	Sunday, Aug. 3, 1958 and all subsequent Sundays thereafter until conditions are corrected.
E. L. Whitney,	Monday, Aug. 4, 1958 and all subsequent Mondays thereafter until conditions are corrected.
A. V. Dixon,	Tuesday, Aug. 5, 1958 and all subsequent Tuesdays thereafter until conditions are corrected.
W. W. Taylor,	Wednesdays, Aug. 6, 1958 and all subsequent Wednesdays thereafter until conditions are corrected.
E. W. Alt, Jr.,	Thursday, Aug. 7, 1958 and all subsequent Thursdays thereafter until conditions are corrected.
Bobby D. Smith,	Monday, Aug. 4, 1958 and all subsequent Mondays thereafter until conditions are corrected.
A. R. Hayes,	Tuesday, Aug. 5, 1958 and all subsequent Tuesdays thereafter until conditions are corrected.
B. E. Helvey,	Wednesday, Aug. 6, 1958 and all subsequent Wednesdays thereafter until conditions are corrected.

The marking of yardmens' crew boards and securing switchmen to fill vacancies has been performed by yardmasters in St. Louis since 1918 and in June, 1956, this work was arbitrarily taken away from the yardmasters and assigned to operators, which is a violation of the RYA's agreement, which is supported by the Fourth Division awards 697, 433, 445 and 1158. This Division has decided that work of a class included in a collective bargaining agreement belongs to the employees upon whose behalf it was executed and, unless otherwise specifically provided for in the agreement, such work cannot be unilaterally designated or assigned by the Carrier to others without violating the agreement. Therefore, it is our position that work being performed by yardmasters as to the effective date of the agreement between the Missouri Pacific R.R. Co., and employees thereon represented by the Railroad Yardmasters of America effective Feb. 1, 1945, except as otherwise indicated, is work belonging to yardmasters.

Mr. Elledge states in his letter that the reason for declining these claims and not reassigning this work to yardmasters, is because there is too much work involved for yardmasters to handle satisfactorily and take care of their yardmasters work, and the handling of crew boards can be assigned to either clerks or yardmasters. I wish to say that in this case, as I pointed out to Mr. Elledge in my letter of December 11, 1958, this work was arbitrarily taken away from the yardmasters and assigned to operators, not assigned to clerks as stated by Mr. Elledge; therefore, our position should be sustained and this work reassigned to the yardmasters, in which our case is supported by the Fourth Division awards mentioned above and numerous other awards not mentioned in my letter.

To further support our position on this violation I am attaching a letter from Mr. H. Jones, Superintendent of St. Louis Terminal, in which letter the Management admits this is yardmasters' work.

I request these claims be paid and this work reassigned to yardmasters.

Yours truly,

/s/ V. R. Adkins

General Chairman

Letterhead of
MISSOURI PACIFIC RAILROAD COMPANY

B. W. SMITH
Chief Personnel Officer

G. W. JOHNSON

R. P. LOVE

Assistant Chief Personnel Officer

J. W. WHITE

Personnel Officer

"St. Louis 3, Missouri

January 19, 1959

VG-S 245-132

cc: 245-133

Mr. V. R. Adkins
General Chairman - RYA
RR No. 2
Columbia, Illinois

Dear Sir:

We have your letter of January 8, 1959, appealing from decision of Assistant General Manager L. M. Elledge in connection with time claims of G. L. Emig and nine others for payment of a day's pay in instances when marking of the crew board at 22nd Street, St. Louis, Missouri was done by employees not covered by the Yardmasters' Agreement.

The record in this case shows the work involved was transferred from Yardmasters to others in June, 1956, which was more than two years before presentation of claims which were not made until August, 1958. These claims are barred by the provisions of Article V(a) of the national agreement of August 12, 1954, account not presented within 60 days after date of the occurrence on which based.

Without prejudice to position expressed in the preceding paragraph of this letter, it is also the position of the Carrier that the claims would not be supported by the Agreement if they had been timely presented.

The work of marking crew boards is not the exclusive work of yardmasters on this property as employees of other crafts have also performed such work for many years. We think it is obvious such work is not that on which a yardmaster's rate of pay is based. It is a situation in which yardmasters have been doing work which is not the exclusive subject matter of the Yardmasters' Agreement.

In these circumstances it cannot be said the work of marking crew boards is contracted exclusively to any craft and the transfer of it from one craft to another is not a violation of the agreement of either.

The record does not indicate any force reduction as a result of this transfer of work not a loss of any kind or degree to either of these claimants. It has been stated by Adjustment Board authority that even

when violations occur claims are not payable unless loss or damage can be shown. Furthermore the amount of work involved does not even approach 8 hours per day as claimed.

Decision fo Mr. Elledge is sustained and the claims are respectfully declined.

Yours truly,

/s/ B. W. Smith"

"January 21, 1959

Mr. B. W. Smith,
MoPac, Bldg., Rm. 150C,
13th & Olive Sts.,
St. Louis, Mo.

Dear Sir:

Please refer to your letters, even dates Jan. 19, 1959, file no's. 245-132 and 245-133.

I do not accept your decision on these cases and would like to further discuss them with you.

When we meet on our Section 6 Notice of Apr. 14, 1958, starting 10:00 A.M., Feb. 2, 1959, I will be prepared to discuss these at that time, if agreeable with you.

Yours truly,

/s/ V. R. Adkins

Gen. Chairman"

Letterhead of
MISSOURI PACIFIC RAILROAD COMPANY

B. W. Smith
Chief Personnel Officer

G. W. Johnson

R. P. Love

Assistant Chief Personnel Officers

J. W. White

Personnel Officer

"St. Louis 3, Missouri

January 28, 1959

VG-S 245-132

cc: 254-133

245-125

Mr. V. R. Adkins
General Chairman - RYofA
Route 2
Columbia, Illinois

Dear Sir:

We have your letter of January 21, 1959, regarding claims covered by our files Nos. 245-132 and 245-133.

We will endeavor to discuss these claims with you when you are in the office February 2, 1959, in connection with your Section 6 Notice of April 14, 1958.

Yours truly,

/s/ B. W. Smith"

* * * * *

Letterhead of
MISSOURI PACIFIC RAILROAD COMPANY

B. W. SMITH
Chief Personnel Officer

G. W. JOHNSON

R. P. LOVE

Assistant Chief Personnel Officers

J. W. WHITE

Personnel Officer

"St. Louis 3, Missouri
March 9, 1959

VG-S 245-132

cc: 254-133

Mr. V. R. Adkins
General Chairman - RYofA
Route 2
Columbia, Illinois

Dear Sir:

This has reference to our discussion in conference February 3, 1959, of the claims of G. L. Emig and nine others for payment of a day's pay in instances when marking of the crew board at 22nd Street, St. Louis, Missouri, was done by employees not covered by the Yardmasters' Agreement, beginning August 1, 1958.

At that time you took exception to statement in our letter of January 19, 1959, to the effect that the work involved did not even approach 8 hours per day as claimed.

It appeared obvious that you construed this statement to refer to a 24-hour period, whereas it actually referred to a yardmaster day or shift. The claims for each of the claimants is for 8 hours pay per day and our statement dealt with a comparison between the claim and the actual amount of work involved in connection with each claim.

Further investigation, involving an actual check of the time consumed, develops the average time consumed is only 40 minutes on first trick, 54 minutes on second and 38 minutes on third trick.

As stated in our letter of January 19, 1959, this is not exclusive yardmaster work and the amount of time involved would not in any eventuality justify payments of 8 hours per day to claimants who were on duty and under pay with no losses incurred as a result of the assignment of this work to clerks.

Decision given you in our letter of January 19, 1959, declining the claims is affirmed.

Yours truly,

/s/ B. W. Smith"

Attention is directed to Superintendent Jones' letter to Local Chairman Lawes, dated October 1, 1958, which, in part reads as follows:

"When the new switchmen's Rotary Board Agreement was put in effect the amount of time required to handle such a board was more than could be absorbed by yardmasters in connection with their yardmaster's duties; therefore, it was then placed on clerks and operators who had time to perform such duties along with their other train and engine mens' boards."

Also, Assistant General Manager Elledge's letter dated December 19, 1958, states, in part:

"The yardmen's crew board was placed with the train and engine men's crew boards and the work turned over to clerks and callers."

As Chief Personnel Officer B. W. Smith was advised in conference, these statements are erroneous, as the facts are that the Trainmaster's clerk and operators handle only the yardmen's crew board, which is one mile from the train and engine men's crew board, the latter being handled otherwise.

It is apparent that the Carrier assigns the work whenever and wherever it pleases without regard for craft lines or contractual rights. The work here involved was always performed by yardmasters and to remove same and farm out to others is a violation of Yardmasters' Agreement.

In Third Division Award 615, the Board said:

"The right to exclusive performance in the absence of exception arises from the application of an elementary principle of law. The 'schedules' are not and do not purport to be the agreement of employment. The agreement of employment is almost universally unwritten. The 'schedules' are merely the subordinate rules and conditions of such employment. The actual contract of employment itself is implied. Since by the patent facts such a contract must exist, as an elemental principle of law it must have a determinable subject matter; stated differently, there can be in law no such thing as a contract but that its subject matter is susceptible of definite determination. It follows from this that in the absence of some definite exclusion, the contract must be deemed to embrace all of the field involved to be a valid contract at all. If it were purely optional with the Carrier to say how much or what of a definite kind of work was the subject matter of the contract, it could say none and the consequence would be in the absence of a subject matter that there would be no contract."

We also read the following in Third Division Awards indicated below:
"Third Division Award No. 754.

This Board has repeatedly held that positions or work once within collective agreements cannot be removed therefrom, arbitrarily, and the work assigned to those not within the purview of such agreements, or to employees occupying positions specifically 'excepted' from the scope of these agreements by understanding or agreement between the parties. Compare Awards Nos. 385, 458, 631, 637, 738 and 751."

"Third Division Award No. 757.

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."

"Third Division Award No. 1273.

It has been repeatedly held by this Board that work embraced by the scope rule of an agreement may not properly be removed from such agreement and assigned to employees not subject to its terms."

* * * * *

Thus, it is obvious that here the Carrier did just what has been repeatedly held by the various Boards it may not do, unilaterally and arbitrarily removed work once within collective agreements, and assigned same to others not within the purview of the Yardmasters' Agreement.

It is also apparent that statements of Chief of Personnel Smith in his letter dated March 9, 1959, as to time involved in the performance of the work is inconsistent with the contentions of both Assistant General Manager Elledge and Superintendent Jones. As a matter of fact, yardmen are being called 24 hours a day and the Board is marked up 3 times in each 24 hour period. Further, Mr. Smith's claim that the assignment of this work to clerks resulted in no losses is untenable, since it would have been necessary to establish at least two additional yardmasters positions. Also, Mr. Smith's contention that these claims are barred by the provisions of Article V(a) of the August 12, 1954 Agreement, is without basis, this being a continuous violation.

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

CARRIER'S STATEMENT OF FACTS:

1. There is an agreement between the parties hereto effective February 1, 1945, (except as otherwise indicated in reprint dated January 1, 1948), which by reference is made a part of this submission.

2. On August 1, 1958, a time slip was filed in behalf of G. L. Emig, occupation shown as "yardmaster," on which was written, under "Remarks," the following:

"Claim one day as Yardmaster for Friday, Aug. 1, 1958 and each subsequent Friday thereafter until condition complained of is corrected account trainmasters clerk and operators marking switchmens switchboard and securing switchmen to fill vacancies at 21st St."

Said time slip was headed "St. Louis Terminal."

An identical claim was filed on August 2, 3, 4, 5, 6, 7, 6, 5 and 4 in behalf of the other nine claimants named in the Employees' Statement of Claim; the only difference being in the days of the week as shown thereon.

The time slips referred to on the first page of this submission were then attached to the following letter addressed to Mr. Howard Jones Superintendent, St. Louis Terminal, under date of September 30, 1958, by Mr. Richard H. Laws, Local Chairman, Lodge No. 7, Railroad Yardmasters of America, which reads:

"St. Louis

Sept. 30, 1958

Mr. H. Jones
 Superintendent
 St. Louis Terminal

The yardmasters of the St. Louis Terminal are claiming that a condition exists which is incompatible with past practices. That is: their work is being done by a clerk. The marking of the 21st St. crew board has been a job of the yardmasters for years untold until recently taken over by trainmasters, clerks and operators. Also the calling of switchmen to fill vacancies occurring after board marking.

Until this condition is corrected the yardmasters are claiming a day for each day that this occurs and each subsequent day here after until this condition is corrected.

Yours truly,

Richard H. Laws

Local Chairman

Lodge No. 7 M.P.R.Y.A."

3. On October 1, 1958, Superintendent Jones replied to Local Chairman Laws, declining these claims, as follows:

"October 1, 1958
 File TC-6634-B

Mr. R. H. Laws,
 Local Chairman, RYofA,
 Lesperance Street
 St. Louis, Missouri

Dear Sir:

This to acknowledge receipt of time slips which you submitted on September 30, 1958 in favor of the following:

G. L. Emig.....	August 1st
J. B. Savens.....	August 2nd
D. J. Burke.....	August 3rd
E. L. Whitney.....	August 4th
A. V. Dixon.....	August 5th
W. W. Taylor.....	August 6th
E. W. Alt, Jr.....	August 7th
B. E. Helvey.....	August 6th
A. R. Hayes.....	August 5th
Bobby D. Smith.....	August 4th

claiming a day as yardmaster each date account Clerks and Telegrapher-Clerk handling switchmens' crew obard at 22nd Street, St. Louis.

The handling of all Train and engine men and yardmen crew board is work that has been traditionally performed by clerical forces throughout the years, except in isolated cases where the small amount of duties required to handle the Switchmens' seniority board was ocu-

cerned, in which cases it was performed by yardmasters. It is my understanding that such duties can be performed by either yardmasters or clerks. When the new Switchmens' rotary extra board agreement was put in effect the amount of time required to handle such a board was more than could be absorbed by yardmasters in connection with their yardmaster duties; therefore, it was then placed on Clerks and operators who had time to perform such duties along with their other train and engine men boards.

Time slips submitted are declined and request that such work be placed back on the yardmasters is denied.

Yours very truly,

H. Jones

Superintendent"

It is to be noted that the board for train and enginemen has always been handled by clerical forces and that the yardmen's board (switchmen) has always been handled by clerical forces, except in isolated cases where the small amount of duties required to handle the switchmen's board did not require any considerable amount of time, in which event yardmasters at some points on the property perform this service.

The decision of the Superintendent was not acceptable to the Local Chairman and on December 11, 1958 said claims were appealed to Mr. L. M. Elledge, Assistant General Manager, by Mr. V. R. Adkins, General Chairman of the Yardmasters, in which it was contended by the General Chairman that the marking of yardmen's crew boards and securing switchmen to fill vacancies had been performed by yardmasters at 22nd Street, St. Louis, since 1918 until June, 1956, at which time said work was assigned to operators (telegraphers) and a trainmaster's clerk. He then stated:

"In light of the fact that the service which was formerly performed by yardmasters and which now has been arbitrarily given to another craft or class, is work properly belonging to men working under the Yardmasters' Schedule, which establishes the rights of yardmasters to perform this class of service *****."

He then requested that these claims be allowed and the work of marking the yardmen's board be reassigned to yardmasters.

On December 19, 1958, the General Chairman's claim and request were declined by the Assistant General Manager in the following letter:

"December 19, 1958
A-59157

Mr. V. R. Adkins,
General Chairman, R.Y.A.,
R.R. No. 2,
Columbia, Illinois.

Dear Sir:

Please refer to your letter of December 11, appealing decision of Superintendent Jones, in connection with time claims of various Yardmasters at Lesperance Street account marking of yardmen's crew board at 22nd Street, beginning with claim of G. L. Emig, Friday, August 1, 1958, and ending with B. E. Helvey, Wednesday, August 6, 1958, as listed in your letter.

Our investigation indicates that prior to June 1956 when the switchmen's Rotary Extra Board Agreement went into effect Yardmasters at 23rd Street marked and filled jobs on the extra switchmen's seniority board, which involved a very little amount of their time, while clerks and callers handled train and enginemen's crew boards.

When the Yardmen's Rotary Extra Board Agreement went into effect account increased volume of work in connection with keeping record of vacancies, calling men, etc., Yardmasters could not devote such an amount of time to this detail and satisfactorily take care of their yardmaster work, therefore, the yardmen's crew board was placed with the train and enginemen's crew boards and the work turned over to clerks and callers.

The handling of crew boards can be assigned to either clerks or yardmasters and this practice has been followed on the Missouri Pacific Railroad for many years, therefore, claims presented are declined.

Yours very truly,

(Signed) L. M. Elledge"

Your Board will note that the Assistant General Manager stated that prior to June 1956, when the switchmen's rotary extra board was established, yardmasters at 23rd Street marked and filled jobs on the extra switchmen's senior board, which involved a very small amount of work, and that clerks and callers handled train and enginemen's crew boards. He further pointed out to the General Chairman that the establishment of the yardmen's rotary extra board increased the time required in connection with keeping records of vacancies, calling men, etc., and that yardmasters could not devote enough time to such detailed work and at the same time satisfactorily take care of their yardmaster duties. He also stated that the handling of crew boards can be assigned to either clerks or yardmasters (or telegraphers) and this practice has been followed on this Carrier for many years.

4. The decision of Assistant General Manager Elledge was not acceptable to the General Chairman and on January 8, 1959 these claims and request that the work of marking the yardmen's crew board be reassigned to yardmasters were appealed to Mr. B. W. Smith, Chief Personnel Officer.

On January 19, 1959, these claims were declined by the Chief Personnel Officer in the following letter:

"St. Louis 3, Missouri
January 19, 1959
VG-S 245-132
cc: 245-133

Mr. V. R. Adkins
General Chairman - RYA
RR No. 2
Columbia, Illinois

Dear Sir:

We have your letter of January 8, 1959, appealing from decision of Assistant General Manager L. M. Elledge in connection with time claims of G.I. Emig and nine others for payment of a day's pay in instances

when marking of the crew board at 22nd Street, St. Louis, Missouri was done by employes not covered by the Yardmasters' Agreement.

The record in this case shows the work involved was transferred from Yardmasters to others in June, 1956, which was more than two years before presentation of claims which were not made until August, 1958. These claims are barred by the provisions of Article V(a) of the national agreement of August 12, 1954, account not presented within 60 days after date of the occurrence on which based.

Without prejudice to position expressed in the preceding paragraph of this letter, it is also the position of the Carrier that the claims would not be supported by the Agreement if they had been timely presented.

The work of marking crew boards is not the exclusive work of yardmasters on this property as employes of other crafts have also performed such work for many years. We think it is obvious such work is not that on which a yardmaster's rate of pay is based. It is a situation in which yardmasters have been doing work which is not the exclusive subject matter of the Yardmasters' Agreement.

In these circumstances it cannot be said the work of marking crew boards is contracted exclusively to any craft and the transfer of it from one craft to another is not a violation of the agreement of either.

The record does not indicate any force reduction as a result of this transfer of work nor a loss of any kind or degree to either of these claimants. It has been stated by Adjustment Board authority that even when violations occur claims are not payable unless loss or damage can be shown. Furthermore the amount of work involved does not even approach 8 hours per day as claimed.

Decision of Mr. Elledge is sustained and the claims are respectfully declined.

Yours truly,

B. W. SMITH"

Your Board's attention is directed to the second paragraph of the Chief Personnel Officer's letter in which he pointed out to the General Chairman that the work forming the basis of his complaint was assigned to other than yardmasters in June, 1956, which was more than two years before presentation of the instant claims to the Superintendent on September 30, 1958. It was his view that since the occurrence upon which the claims were based occurred more than two years prior to the time these claims were presented, they are accordingly barred by the provisions of Article V(a) of the National Agreement of August 12, 1954, applicable to yardmasters on this property.

He further pointed out to the General Chairman that the work of marking crew boards is not work upon which the yardmaster's rate of pay is based and that it is not work assigned exclusively to yardmasters or subject to the provisions of the agreement applicable to them.

5. These claims were discussed in conference between the General Chairman and the Chief Personnel Officer on February 3, 1959, and on March 9, 1959 the conference was confirmed in writing, at which time the General Chairman

was informed that further investigation through an actual check of the time consumed developed that the average time consumed in marking the yardmen's crew board at 23rd Street is as follows:

23rd Street: First trick.....	an average of 40"
Second trick.....	" " " 54"
Third trick.....	" " " 38"
Total for 24-hour period	<hr/> 2'12"

6. Nothing further was heard from the Railroad Yardmasters of America until receipt of a letter dated July 13, 1959, over the signature of Mr. M. G. Schoch, President, Railroad Yardmasters of America, notifying your Board of the Organization's intent to file this dispute with the Fourth Division, National Railroad Adjustment Board.

CARRIER'S POSITION AS TO THE TIME LIMIT: It is undisputed in this record that the occurrence upon which these claims are based was the Carrier's action in relieving yardmasters at 23rd Street from the performance of clerical work of marking yardmen's crew board and calling yardmen to fill temporary vacancies effective June 6, 1956. This occurrence was more than two years prior to the presentation of these claims. This fact was pointed out to the General Chairman by the Chief Personnel Officer in his letter dated January 19, 1959, quoted in paragraph 4 of Carrier's Statement of Facts.

Article V of the Agreement between railroads represented by the Eastern, Western and Southeastern Carrier's Conference Committees and their employees represented by the Railroad Yardmasters of America, dated August 12, 1954, reads in part as follows:

"ARTICLE V

All claims or grievances arising on and after January 1, 1955 shall be handled as follows:

(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 calendar days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 calendar days from the date same is filed, notify the employee or his representative of the reasons for such disallowance. If not so notified, the claim or grievance shall be considered valid and settled accordingly, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

In view of the fact that these claims were not filed until more than two years subsequent to the occurrence upon which they are based, they were not timely presented and therefore are now barred by Article V(a) of the National Agreement of August 12, 1954.

CARRIER'S POSITION AS TO THE MERITS: It is the position of the Carrier that the work involved in marking yardmen's crew board, filling vacancies in yardmen positions and keeping the records incidental thereto is not work which has been exclusively assigned to any class or craft of employees on this property.

The St. Louis Terminal Division of this Carrier includes St. Louis on the west side and Dupon on the east side of the Mississippi River.

On the west or St. Louis side of the river there is a yard extending from 12th Street to 23rd Street, sometimes referred to as 23rd Street Yard. There is also a yard known as Lesperance Street Yard and a yard known as Ivory-Carondelet. Lesperance Street Yard lies adjacent to 23rd Street Yard and Ivory-Carondelet lies near the southern limits of the City of St. Louis.

In view of the fact that yard crews go on and off duty in the 23rd St. Yard at both 12th Street and 21st Street, yardmasters are assigned on three shifts around the clock, seven days per week, at both 12th and 23rd Streets. An average of 25 crews go on and off duty in 23rd Street Yard each 24 hours. Yardmasters are also assigned around the clock at Lesperance Street Yard. An average of 17 yard crews go on and off duty at Lesperance Street Yard each 24 hours.

Yardmen's crew boards are located at 23rd Street, Lesperance Street and Ivory-Carondelet. Although no yardmasters subject to the Yardmasters' Agreement are employed at Ivory-Carondelet, an average of six yard crews go on and off duty at Ivory each 24 hours. Necessary supervision is provided by a General Yardmaster on the first shift and footboard yardmasters on the second and third shifts.

During the year 1955 the yardmen in the St. Louis Terminal exercised their option to go on a five-day work week and this increased the amount of clerical work required in order to comply with the provisions of the 40-hour work week.

During June, 1956 the Carrier and the Brotherhood of Railroad Trainmen entered into a rotary extra board agreement, applicable to yardmen, which provided that yardmen would thereafter be worked first in, first out off the rotary board rather than be worked from a strict seniority mark-up arrangement. This increased the amount of clerical work incident to the marking of the board and the filling of vacancies in yardmen positions.

Prior to June 7, 1956, the effective date of the rotary extra board agreement, yardmasters assigned at 23rd Street performed the necessary clerical work in connection with the 5-day work week agreement applicable to yardmen and took care of the strict seniority mark-up of yardmen and called yardmen to fill vacancies occasioned by men laying off or being absent for other reasons.

The yardmasters assigned at 12th Street were not involved in this work because the board from which yardmen worked in the 23rd Street Yard was kept at 23rd Street.

Handling of yard ground crews in Lesperance Street was done by yardmasters in the same manner as at 23rd Street but the crews at Ivory-Carondelet Yard were handled by a General Yardmaster on the first shift and clerks on the second and third shifts.

By reason of the increase in clerical work made necessary by changing from the seniority mark-up plan to the yardmen's rotary extra board, the yardmasters at 23rd Street were relieved of the marking of the board and the clerical work incidental thereto and this work was thereafter assigned to telegrapher-clerks on the first and second shift and the Trainmaster's clerk on the third shift. No change was made at Lesperance Street and the marking of the board and the clerical work incidental thereto continues to be performed by the General Yardmaster on the first shift and Assistant General Yardmasters on the second and third shifts.

There has been no change in the marking of the board and the clerical work incidental thereto at Ivory-Carondelet, said work being performed by yard clerks on all three shifts.

As previously stated, the clerical work incidental to the marking of crew boards and the calling of yardmen to fill temporary vacancies increased at the time the yardmen exercised their option to go on the five-day work week during 1955, and shortly thereafter claims were filed by the Railroad Yardmasters of America contending that the Carrier was in violation of its agreement with the Brotherhood of Railway and Steamship Clerks by requiring the Assistant General Yardmaster at 21st Street Tower to mark the crew board and assign jobs each morning as well as telephoning the men for particular jobs throughout the day. It was further contended that the work was increased when the five-day work week agreement went into effect, and stated that,

“As you know, a clerk in Little Rock handles this job of phoning the men and marking the board.”

In this connection see attached hereto, as Carrier's Exhibit “A”, letter dated December 20, 1959, from Mr. Richard H. Jones, General Chairman, to Mr. L. M. Elledge, Assistant General Manager.

The General Chairman's contention was declined by the Assistant General Manager under date of January 13, 1956, in which he stated in part as follows:

“The marking of crew board and handling of crews has been performed by Assistant General Yardmasters for a number of years, and the fact that it is handled in another manner at other places is no basis for claims that have been made by Assistant General Yardmasters at St. Louis.”

The Assistant General Manager's letter of January 13, 1956 is attached hereto as Carrier's Exhibit “B”.

The decision of the Assistant General Manager was not acceptable to the General Chairman and on March 14, 1956, he appealed from his decision to Mr. T. Short, then Chief Personnel Officer. Under date of March 23, 1956, the Chief Personnel Officer sustained the decision of the Assistant General Manager, and stated in part as follows:

“It cannot be a violation of the Clerks' Agreement for yardmasters to perform work which was never covered by that Agreement, and even if it was, a yardmaster claim could not be supported on basis of alleged violation of an agreement which does not cover yardmaster service.

There is nothing in the Yardmasters' Agreement which prohibits the assignment of the work here involved to yardmasters.”

It is to be observed from the exchange of correspondence referred to and quoted in part above that the Railroad Yardmasters of America were then contending that the work of marking the yardmen's crew board and the clerical work incidental thereto was covered by the provisions of the agreement between the Carrier and the Brotherhood of Railway Clerks and were requesting that the yardmasters be relieved of this work. The Carrier did not feel at that time that the work forming the basis of the yardmasters' complaint was sufficient to interfere with the performance of their yardmaster duties and declined to relieve them of this work at that time. The Carrier's position at that time was that the work in dispute was not covered by the Clerks' Agreement and that there was

nothing contained in the Yardmasters' Agreement which prohibited the Carrier from assigning such incidental duties to the yardmasters where the yardmasters' duties were such that they were able to perform such incidental duties.

As also previously stated, when the Carrier and the Brotherhood of Railroad Trainmen entered into an agreement providing for a yardmen's rotary extra board which increased the amount of clerical work theretofore being performed by yardmasters, it then relieved yardmasters of these incidental clerical duties and assigned them to telegrapher-clerks and clerks at 23rd Street as well as at some other points on the property. However, it is important to note that the yardmasters were not relieved of these incidental duties at all points within the St. Louis Terminal.

The agreement between the Missouri Pacific Railroad Company and the Railroad Yardmasters of America, effective February 1, 1945, (except as otherwise indicated in reprint dated January 1, 1948), does not contain a classification of work rule. For the information and convenience of your Board, we are quoting the scope rule below:

"SCOPE: 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:

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."

You will note that the scope rule 1 (a) provides that the rules of the Yardmasters' Agreement are limited in their application to positions below the rank of General Yardmaster specified therein. Said scope rule does not refer to

nor describe the work which may or may not be required of the positions specified therein.

Paragraph (c) specifically provides that the rules of the Yardmasters' Agreement shall not apply to General Yardmasters in positions established as of the effective date of the Agreement, which includes St. Louis Terminal, including Dupo, Illinois, and the last paragraph specifically provides that the rules of the Yardmasters' Agreement shall impose no restrictions upon Management as to the duties which may be required of or performed by General Yardmasters at the points named therein.

Notwithstanding the fact that there is no classification of work rule contained in the Yardmasters' Agreement on this property, it is now contended by the Employees that in view of the fact that yardmasters subject to the provisions of said agreement have, from time to time and at various points on the property, handled the marking of yardmen's crew boards and the calling of yardmen to fill temporary vacancies and the clerical work incident thereto, that this constitutes an exclusive assignment of said clerical work to the yardmasters. This contention is now made in spite of the fact that in 1955 the same organization was contending that the Carrier was in violation of the Clerks Agreement because the performance of these incidental clerical duties was then being required of the yardmasters.

The Carrier has caused to be made a survey of its property at all locations on the Western and Southern Districts subject to the agreement referred to in paragraph 1 of Carrier's Statement of Facts to determine the points where crew boards are maintained and to determine what class or craft of employees is being required to handle such yardmen's crew board. This survey has been reduced to a Statement Showing Location Where Yardmen's Crew Boards are Maintained and Class of Employees Who Handles Them, copy of which is attached hereto as Carrier's Exhibit "C".

It is of particular interest to note that yardmen's crew boards are maintained at 35 different points on this property and that these yardmen's crew boards are maintained by yardmasters subject to the provisions of the Yardmasters' Agreement at only four of those points.

It is also of special interest to note that crew boards are being handled by other than yardmasters covered by the Yardmasters' Agreement at all other points and by a variety of classes or crafts of employees, including clerks, telegrapher-clerks, agent-telegraphers, General Yardmasters and Assistant Trainmasters. Thus it would appear conclusive that this incidental clerical work has not been exclusively assigned to yardmaster subject to the Yardmasters' Agreement on this property or to any other class or craft of employees whatsoever.

We have searched the awards of the Fourth Division of the National Railroad Adjustment Board, which Division has jurisdiction over disputes between carriers and the class or craft of yardmasters, but we have been unable to find any award involving a similar contention as the one presently before your Board; i.e., a contention that the incidental clerical duties involved in maintaining or handling yardmen's crew boards is exclusive work of yardmasters subject to the provisions of agreements between carriers and the Railroad Yardmasters of America.

In reviewing these awards we have discovered, however, that many of them have consistently held that the work normally attaching to positions of yardmasters is yard supervisory work and not work of an administrative or clerical nature. In Award No. 436, for example, your Board stated in part as follows:

"The rule established and applied in Award 357 appears to be that if the carrier should be found from the evidence to have assigned or delegated **yard supervisory work, duties and authority** to an employe of another class instead of to a yardmaster at hand or nearby **and that a substantial portion of such employe's time during his tour of duty was occupied in performing the distinctive work of a yardmaster**, that is of being in charge of a **trick of the operation**, then, the carrier would be held, on a satisfactory showing of such facts, to have the duty to afford to the job the correct classification and rate of pay." (Emphasis added).

The foregoing language clearly recognizes that the work of a yardmaster is that of yard supervision and that only in the event a substantial portion of distinctive work of a yardmaster is performed by other than yardmasters would there be any violation of the Yardmasters' Agreement. In Award No. 436 your Board denied the claim in that case that other than yardmasters were performing the work of yardmasters.

In Award No. 445 your Board stated as follows:

"As a matter of course if no supervisory Yardmaster work is performed or if such work performed by other employes is minor and incidental in character, this Board will not ordinarily require the carrier to establish and fill the position of Yardmaster."

In the Opinion of Board, (Award No. 445), the writer referred to and adopted the language contained in Award No. 436, quoted in part above; i.e., that there must be evidence that the Carrier has **delegated yardmaster supervisory work, duties and authority** to employes of another class before a violation could occur.

In Award No. 1158 your Board stated:

"The work of yardmaster 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.**" (Emphasis added).

Your Board then stated (Award No. 1158):

"As stated in other awards involving these parties, the general rule is that the burden is on the petition(er) where it is claimed that yardmaster work is being performed by other employes."

Once again in Award No. 1151 your Board stated:

"The scope rule does not contain a description of yardmaster's work, but it is well recognized that the **essential nature of the yardmaster position** is the exercise of supervision over other yard employes. In any particular case, the line between supervision as exercised by a yardmaster, and the passing on of directions and information, as done by a yard clerk, may be a narrow one. ***** the burden is on the petitioning organization to establish facts supporting its contention." Award No. 1151 was a denial award.

In Award No. 1299 your Board recognized that the performance of incidental or other duties by a yardmaster in conjunction with the performance of

yard supervisory duties does not constitute an exclusive assignment of such incidental or other duties to yardmasters. In Opinion of Board you will find the following statement:

"Certainly, the handling of the bleeding and marking cars, to which yardmasters previously devoted much of their time is not an exclusive yardmaster work prerogative."

Award No. 1299 also recognizes that yard supervisory duties are uniquely associated with the yardmasters' craft, but not the bleeding or marking of cars as was there involved.

In the instant case, as is revealed by Carrier's Statement of Facts, in paragraph 5, the time involved in handling of the yardmen's crew board at 23rd St., now being performed by telegrapher-clerks and Trainmaster's clerk, is as follows:

23rd Street: First trick.....	40"
Second trick.....	54"
Third trick.....	38"
Total for 24-hr. period.....	2'12"

As shown above, an actual check made of the time involved in handling of yardmen's crew board at 23rd Street is less than one hour on each of three shifts; the time ranging from a minimum of 38" to a maximum of 54", or an average of 44" per shift.

No yardmaster positions were abolished by reason of the action taken by the Carrier effective June 7, 1956, of requiring telegrapher-clerks and others at 23rd Street to handle the marking of the yardmen's rotary extra board and the calling of crews incidental thereto.

As stated by your Board in numerous awards the duties normally attaching to position of yardmasters are yard supervisory duties and not those of an administrative or clerical nature as here involved.

Furthermore, it is clear from Carrier's Exhibit "C" that yardmen's crew boards are maintained at 35 points on Carrier's property and that said boards are maintained by yardmasters subject to the Yardmasters' Agreement at only four of those points. Insofar as we are advised, the only changes in the class or craft of employees required to maintain yardmen's crew board, effective June 7, 1956, when yardmen's rotary extra board were established, occurred at 23rd Street, St. Louis and at Dupon, Illinois, also a point within the St. Louis Terminal.

All matters contained herein have been the subject of discussion in conference or through correspondence between the parties on the property.

For the reasons fully set fourth in this submission, there is no basis for these claims and they must therefore be denied.

Oral hearing is desired.

(Exhibits Not Reproduced)

OPINION OF BOARD: It is Petitioner's complaint that effective June 18, 1958, the duties attending the marking of the switchmen's crew board at the 22nd Street Yard, St. Louis, Missouri, were transferred from Yardmasters to clerks, callers and telegraph clerks.

The record indicates that since 1918 and up to June 18, 1956, those duties had been performed by Yardmasters at the specific location in question. During that period, on February 1, 1945, a collective bargaining agreement was consummated between the Carrier and the Petitioner. That Agreement was in effect on June 18, 1958, and at all times material herein and is applicable to the instant dispute. It contains a Scope Rule that limits the benefits and obligations of the Agreement to Yardmasters. As is generally the case with respect to yardmaster agreements, it does not define the duties of the yardmaster since their work does not lend itself to being spelled out or described in definite terms. Nevertheless, we are satisfied that the handing of the crew board at the 22nd Street point in St. Louis amounted to a regular and traditional practice at the time the Agreement was entered into and is covered by its Scope Rule.

It is accordingly our view that the Carrier violated the Agreement by unilaterally assigning work covered by the Agreement to employees not subject to its terms. While it may be true that the duties in question do not constitute one of the primary functions of yardmasters, we cannot agree that they are negligible or insubstantial under any measurement formula, including the study mentioned by the Carrier, set forth in the record. Employees are entitled to the entire work content of their position that is embraced within the scope of the Agreement and it would be unreasonable to sanction the unilateral whittling away of any part of that total content.

The Carrier contends that the claim is barred by Article V(c) of the National Agreement of August 12, 1954, since it was not filed within sixty days of the occurrence on which it is based. In our opinion that contention is untenable. The violation we have found to exist is a continuing one that had not been corrected as of the date the claim was filed or at any time thereafter. Section (d) of Article V of the National Agreement specifically covers that situation and provides that "A claim may be filed at any time for an alleged continuing violation of any agreement" provided, however, that "no monetary claim shall be allowed retroactively for more than 60 calendar days prior to the filing thereof."

In the light of the foregoing discussion, the claim will be sustained except that the payments requested will be limited to the period beginning sixty calendar days prior to September 28, 1958, the date the claim was filed.

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

The carrier and the employees 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.

The applicable Agreement of February 1, 1945, was violated.

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 26th day of September, 1960.

DISSENT OF CARRIER MEMBERS TO AWARDS 1494 AND 1495, RYA vs.

The awards in these disputes disregard the fact that the marking of boards has never been the exclusive duty of any class of employes on this rier. It has been performed by clerks, telegraphers, telegrapher-clerks, and telegraphers and other employes not subject to the Yardmasters' Agreement both prior and subsequent to the effective date, February 1, 1945, of that Agreement. It is obvious that this minor task, which an actual check shows takes from 38 to 54 minutes of a clerk's time on each shift, is one like the filing papers which come across a yardmaster's desk, which may be performed by yardmaster or a clerk or other non-supervisory employes. It is not "work" which is reserved exclusively to yardmasters or any other class of employes but may be performed by yardmasters or other employes as the exigencies of the service dictate. In fact, at the "specific location in question", the yardmasters' representatives demanded in 1955 that "this clerical duty" be assigned to clerks, dropped their demand when the Carrier pointed out the fact that this minor task had been performed by either yardmasters or other employes for many years and had never been the exclusive function of any class of employes. The erroneous reasoning of these awards, if followed, will lead to the eventual elimination of yardmasters from the status of supervisors. Certainly, the majority have effectively downgraded yardmasters by requiring them to perform an obvious non-supervisory task which prevents them from performing their primary function, the supervision of the making up and breaking up of trains and other yard operations.

The awards are erroneous and require our dissent.

C. A. Conway

W. F. Euker

J. R. Wolfe

Carrier Members