

**Award No. 1580**

**Docket No. 1502**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**FOURTH DIVISION**

**The Fourth Division consisted of the regular members and in addition Referee R. Dean Burch when award was rendered.**

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**PARTIES TO DISPUTE:**

**RAILROAD YARDMASTERS OF AMERICA**

**THE CHICAGO RIVER & INDIANA RAILROAD COMPANY**

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

Yardmaster M. R. Jackson be allowed one day's pay at the appropriate yardmaster rate for March 23, 1959, and the senior unassigned yardmaster disadvantaged be allowed one day's pay for March 24, and all subsequent dates until the condition complained of is corrected, account unilateral and improper abolishment effective March 23, 1959, of the 3 P. M., to 11 P. M., yardmaster assignment at 47th and Loomis Streets, Chicago, Ill.

**EMPLOYES' STATEMENT OF FACTS:** Claimant M. R. Jackson, prior to March 23, 1959 was regularly assigned as Yardmaster at 47th and Loomis Streets, Chicago, Illinois.

Upon the abolishment of the Yardmaster position as of that date, the work of the Yardmaster which had been for years performed by those coming within the scope of Yardmasters' Agreement was thereafter performed by the Assistant Superintendent, Trainmaster and others outside the scope of the Agreement.

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

“Chicago, Illinois  
March 16, 1959

**BULLETIN NO. 218**

**ALL YARDMASTERS:**

Effective Monday, March 23, 1959, the following Yardmaster position will be abolished:

47th Street-Loomis Street — 3:00 PM to 11:00 PM.

W. J. Berry  
Superintendent

LJC:bf”

Letterhead of  
RAILROAD YARDMASTERS OF AMERICA

"Chicago Junction Ry. Local Lodge No. 33

M. V. Smalley,  
General Chairman

5256 S. Newland Avenue  
Chicago 38, Illinois

March 17, 1959

Mr. W. J. Barry, Supt.  
CR&I RR Co.  
4024 South Ashland Avenue  
Chicago 9, Illinois

Dear Sir:

Reference made to your Bulletin No. 218, dated March 16, 1959, 'Effective Monday, March 23, 1959, the following Yardmaster position will be abolished:

47th Street-Loomis Street — 3:00 PM to 11:00 PM.'

We hereby make claim for yardmaster disadvantaged for one day's pay at appropriate yardmaster rate of pay beginning March 23, and for all subsequent dates until the condition complained of is corrected, account unilateral and improper abolishment, effective March 23, 1959, 3:00 PM to 11:00 PM yardmaster assignment 47th Street - Loomis Street, and the performance of work of the yardmaster class and craft and the assumption of the responsibility and the authority of the yardmaster craft and class by employees other than yardmasters and outside the scope and coverage of the Yardmasters' Agreement.

Please advise.

Very truly yours,

/s/ M. V. Smalley,  
General Chairman.

MVS:jm

P.S. Calling your attention to agreement made May 14, 1957, **Article V — Duration of Agreement** 'The purpose of this Agreement is to fix the general level of compensation during the period of this Agreement. Therefore, subject to the provisions of paragraph (d) of this Article and the exceptions contained in Article VI, neither party to this Agreement will serve any notice or progress any pending notice to — (b) — increasing or decreasing the number of employees required to be used under existing agreement.'

Letterhead of  
CHICAGO JUNCTION RAILWAY  
(The C.R.&I.R.R. Co., Lessee)  
THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY

W. J. Barry  
Superintendent  
L. J. Cole  
Asst. Superintendent

Chicago 9, Ill.

"March 25, 1959  
Agreement  
(Yardmasters 23)

Mr. M. V. Smalley  
General Chairman  
RR Yardmasters of America  
5256 So. Newland Avenue  
Chicago 38, Illinois

Dear Sir:

Referring to your letter of March 17, 1959, which had reference to our Bulletin No. 218, dated March 16, 1959, abolishing 3:00 PM to 11:00 PM Yardmaster assignment at 47th Street - Loomis Street, effective March 23, 1959.

You refer in your letter to Agreement made May 14, 1957, Article V, paragraph (d) and Article VI. Please be advised that we do not see any violation of the Agreement to which you refer.

The Yardmaster at 47th Street-Loomis Street is not needed at the present time, therefore, the position was abolished.

Very truly yours,

/s/ W. J. Barry  
W. J. Barry  
Superintendent

LJC:bf"

\* \* \* \* \*

Letterhead of  
RAILROAD YARDMASTERS OF AMERICA  
"Chicago Junction Rwy Local Lodge No. 33

5256 S. Newland Avenue  
Chicago 38, Illinois  
April 10, 1959

Mr. A. L. Liesenfeldt  
Assistant Gen'l Mgr. — Labor Relations  
Chicago Junction Railway  
4024 So. Ashland Avenue  
Chicago 9, Illinois

Dear Sir:

On March 17, 1959, I made claim to Superintendent W. J. Barry for one day's pay at the appropriate yardmaster rate for March 23, 1959, and all subsequent dates until the condition complained of is corrected, account unilateral and improper abolishment, effective March 23, 1959, of the 3 P.M. to 11 P.M. yardmaster assignment at 47th and Loomis Sts., and the performance of work of the yardmaster class and craft and the assumption of the responsibility and the authority of the yardmaster craft and class, by employes other than yardmasters, outside the scope and coverage of the Yardmasters' Agreement.

The above claim was denied by Superintendent W. J. Barry, in letter to me under date of March 25, 1959 and I hereby appeal from Superintendent Barry's denial decision.

Furthermore, I amend my claim of March 17, 1959, by specifying Yardmaster M. R. Jackson as the claimant for March 23, 1959 and the senior unassigned yardmaster for March 24 and all subsequent dates until the condition complained of is corrected.

I desire to add in this connection that I have made a check of the operations in this district on March 23 and March 24 and found that trainmaster and others outside the scope and coverage of yardmasters Agreement were performing the work of the yardmaster class and assuming the responsibility and authority of the yardmaster class and craft.

I trust you will agree that this claim is valid and authorize its payment; otherwise, if you desire to confer on the matter, please suggest early time and place for such conference, and oblige

Yours very truly,

/s/ M. V. Smalley

cc: Mr. W. J. Barry, Sup't. — to please note your denial decision is rejected.

M. V. Smalley, General Chrmn".

\* \* \* \* \*

Letterhead of  
THE CHICAGO RIVER & INDIANA RAILROAD COMPANY

A. F. Liesenfelt  
Assistant General Manager — Labor Relations

2721 - 161st Street  
Hammond, Indiana  
"May 29, 1959

Mr. M. V. Smalley, General Chairman  
Railroad Yardmasters of America  
5256 South Newland Avenue  
Chicago 38, Illinois

Dear Sir:

Replying to your letters of April 10, 1959 and April 27, 1959, wherein you refer to the abolishment of the Yardmaster position at 47th Street and Loomis Street, and which matter was discussed at the meeting held at LaSalle Street Station on Friday, May 22, 1959.

The claim involved in this dispute was originally filed on March 17, 1959, or six days before the position was abolished. Also, the claim as originally filed and amended was for unspecified dates and unnamed claimants, except perhaps in one instance, and this Carrier therefore holds they are invalid.

However, without prejudice to the above position, it is the position of this Carrier that the agreement referred to in the post-script on your letter of March 17, 1959, addressed to Superintendent W. J. Barry has no application in the instant case.

Also without prejudice to the above position, it is the position of this Carrier that the services of a Yardmaster are not needed at 47th-Loomis Street and your request that the condition complained of be corrected, and also the payment of any claims filed in connection thereto, is declined.

Yours very truly,

/s/ A. F. Liesenefelt"

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Letterhead of  
RAILROAD YARDMASTERS OF AMERICA  
"Chicago Junction Local Lodge No. 33  
(Chicago River & Indiana Railroad Co.)

August 17, 1959  
5256 S. Newland Ave.,  
Chicago, Ill.

Mr. A. F. Liesenefelt, Asst. General Manager-Labor Relations  
Chicago River & Indiana Railroad Co.  
2721 - 161st Street,  
Hammond, Indiana

Dear Sir:

Referring to your letter dated May 29, 1959, confirming our conference held at the LaSalle Street Station on Friday, May 22nd, also denying claim presented on account of the abolishment of the yardmaster position at 47th and Loomis Streets, effective March 23, 1959.

The abolishment of the 3 P.M., to 11 P.M., position at 47th and Loomis Streets, effective March 23, 1959, eliminated the last remaining yardmaster position at that point, and the subsequent per-

formance of the yardmaster work by others outside the scope of the Agreement is a violation.

We do not agree with you that the claim is invalid. It was specifically filed to cover March 23, 1959, the effective date of abolishment, on behalf of M. R. Jackson, and on behalf of the oldest unassigned yardmaster for March 24, 1959 and all subsequent dates until the condition is corrected.

It was your contention, and this is verified in letter to me dated May 29th, that the services of a yardmaster are not needed at 47th and Loomis Streets, but the yardmaster work at that point still exists as heretofore. The reason why the services of a yardmaster are not needed is because such services are being performed by the trainmaster and others as I indicated to you in conference and as I now confirm in writing, to wit:

In this area there are 36 industries to be served as indicated on list attached hereto as Exhibit 'A', in addition to Backway Yard, Short Backway and Loomis Street Yard, Armour Car Shop Yard and East End District to be supervised.

The following crews perform work in that area, who require direction and supervision:

Job #13, from 12 o'clock noon to 2:30 P.M., starting at Ashland Ave., at 6:30 A.M.;

Job #26, starts at Ashland Avenue at 2:45 P.M., where they get a train of cars for the Backway District and take to 47th and Racine and work under the jurisdiction of the yardmaster formerly at 47th and Loomis;

Job #11, 3 P.M., Packingtown, starts at Ashland Avenue where it picks up a train and goes to 47th and Loomis.

Job #29 — 3 P.M., — Armour Car Shops, starts at 47th and Loomis.

On Monday, March 23, 1959, I made an on-the-ground check at 47th and Loomis Streets from 1:50 P.M., to 12:20 A.M., March 24, 1959, and observed the following:

On this date Assistant Superintendent L. J. Cole and Clerk Baum instructed Conductor in charge of Crew #13, in connection with the work to be performed incident to the attached switching lists, showing work content, which I identified as Exhibit 'B'.

Trainmaster Crilly arrived at 2:55 P.M., went over a line-up of the yard, check of tracks, etc., made a study of the switching orders indicating the work to be done and then issued instructions to the crews and clerk, consuming from 2:55 P.M., to 6:55 P.M., in thus performing the yardmaster work.

Trainmaster Crilly departed at 6:55 P.M., and again returned at 9 P.M., to see how the work was progressing and to issue additional instructions.

I also made a similar check on March 24th and observed again Mr. Crilly go through practically the same procedure.

To be specific — on March 23rd, after Trainmaster Crilly secured a check of the yards and various tracks and went over the work requirements in that area, he instructed the Conductor in charge of Run #29 to take cars on Track #11, Loomis Street Yard to Armour Car Shop. Rerail car on Track #14 at Armour Car Shop; pull and set Lipsitt Steel. The crew got 37 cars out of Lipsitt Steel and spotted 25 cars inbound; completing this assignment at 5 P.M.

Mr. Crilly then instructed this crew to go to Armor Car Shop and get the Packingtown Cars (17); then to go back again and get 50 Westerns. The crew made 1 hour and 35 minutes overtime.

Trainmaster Crilly instructed the Conductor in charge of Crew #26 and supervised in connection with work requirements indicated by photostatic copies of switch list attached, marked as Exhibit 'C'.

Trainmaster Crilly also instructed and supervised Crew #11 in the work-content represented by photostatic copies of Switch List attached identified as Exhibit 'D'.

As further definite proof that Trainmaster Crilly is taking the active hand in performing the Yardmaster work as outlined above, we furnish herewith also photostatic copies of instructions and directions which he left with clerk for crews. These are in Trainmaster Crilly's handwriting with signature of initials 'J.P.C.', and identified as Exhibit 'E'.

Am also attaching hereto, as Exhibit 'F' copy of letter dated May 1, 1959, from Conductor Frank Smerken outlining the method of procedure in the performance of the yardmaster work at that point, since the abolishment of the position.

The evidence is conclusive so as to leave no doubt that the work of the yardmaster is being performed by others outside the Scope of the Agreement and you will please accept this as notice that your denial is not being accepted and the matter is being turned over to Grand Lodge for submission to the Fourth Division of the National Railroad Adjustment Board.

Very truly yours,

/s/ M. V. Smalley  
M. V. Smalley  
General Chairman

encl.  
cc: Grand Lodge"

\* \* \* \* \*

The evidence produced hereinbefore proves conclusively that the yardmasters work still exists and is being performed by others outside the scope of the controlling Agreement.

The duties of the yardmaster position which was in existence over a long period of years, still remain to be performed and are assignable to the class by the terms of the Agreement, and action of the Carrier in "farming out" the work to others is in violation of contractual rights accruing to the yardmaster class or craft.

It has been well established that where there is a contract there must be an exclusive assignment of "work" duties, as was so aptly set forth in Third Division Award No. 615:

"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."

This principle is also upheld by Fourth Division Awards 102, 436, 445, 697, 1158 and others too numerous to mention.

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:** Yardmasters employed by The Chicago River and Indiana Railroad Company are represented by the Railroad Yardmasters of America who were certified to represent that class of employees by the National Mediation Board in their certification dated January 6, 1958, Case No. R-3243.

At the time of the aforementioned certification, there was in effect an agreement between the Railroad Yardmasters of North America, Inc. and the Carrier effective April 1, 1944, copy of which is on file with your Board, and by reference is made a part of this dispute. This Agreement is still in effect during negotiation of a new agreement between the parties to this dispute.

Prior to March 23, 1959, there was one yardmaster position at 47th and Racine Avenue and Loomis Street, 3:00 P. M. to 11:00 P. M., under the scope of the Yardmasters' Agreement. This yardmaster position had its headquarters in the office building located at 47th and Racine Avenue. There were also three Assistant General Yardmaster positions, one on each of the three tracks, having jurisdiction over Carrier's entire property.

The position in dispute was bulletined on February 1, 1955, as follows:



"All Yardmasters:

"February 1, 1955  
Agreement 3  
(Yardmaster)

"Effective February 2, 1955, the following position is open and bids will be accepted until Midnight, February 6th, 1955.

"Yardmaster position — 47th & Racine Ave. and Loomis Street.  
Hours — 3:00 PM to 11:00 PM  
Day of Rest — Sunday

M. W. Amoss,  
Superintendent

"cc—Messrs. E. L. Keller  
H. D. White  
D. J. Durkin  
R. G. McHugh  
W. J. Brischke  
W. C. Uhle  
P. F. Reynolds

"cc: Mr. V. Ford, Chairman, Yardmasters Union of North America, Inc."

Under date of March 16, 1959, Superintendent W. J. Barry issued the following notice:

"Chicago, Illinois  
March 16, 1959

**"BULLETIN NO. 218**

**"ALL YARDMASTERS:**

"Effective Monday, March 23, 1959, the following Yardmaster position will be abolished:

47th Street-Loomis Street — 3:00 PM to 11:00 PM.

W. J. Barry  
Superintendent"

Under date of March 17, 1959, General Chairman M. V. Smalley wrote Superintendent W. J. Barry as follows:

"Reference made to your Bulletin No. 218, dated March 16, 1959, 'Effective Monday, March 23, 1959, the following Yardmaster position will be abolished:

47th Street-Loomis Street — 3:00 PM to 11:00 PM.'

"We hereby make claim for yardmaster disadvantaged for one day's pay at appropriate yardmaster rate of pay beginning March 23, and for all subsequent dates until the condition complained of is

corrected, account unilateral and improper abolishment, effective March 23, 1959, 3:00 PM to 11:00 PM yardmaster assignment 47th Street - Loomis Street, and the performance of work of the yardmaster class and craft and the assumption of the responsibility and the authority of the yardmaster craft and class by employes other than yardmasters and outside the scope and coverage of the Yardmasters' Agreement.

"Please advise.

\* \* \* \* \*

"P.S. Calling your attention to agreement made May 14, 1957, **Article V — Duration of Agreement** 'The purpose of this Agreement is to fix the general level of compensation during the period of this Agreement. Therefore, subject to the provisions of paragraph (d) of this Article and the exceptions contained in Article VI, neither party to this Agreement will serve any notice or progress any pending notice to —

(b) — increasing or decreasing the number of employees required to be used under existing agreements.' "

Superintendent Barry replied to Mr Smalley under date of March 25, 1959, as follows:

"Referring to your letter of March 17, 1959, which had reference to our Bulletin No. 218, dated March 16, 1959, abolishing 3:00 PM to 11:00 PM Yardmaster assignment at 47th Street - Loomis Street, effective March 23, 1959.

"You refer in your letter to Agreement made May 14, 1957, Article V, paragraph (d) and Article VI. Please be advised that we do not see any violation of the Agreement to which you refer.

"The Yardmaster at 47th Street-Loomis Street is not needed at the present time, therefore, the position was abolished.

Under date of April 10, 1959, General Chairman Smalley appealed claim to Carrier's highest designated appeals officer in the following letter:

"On March 17, 1959, I made claim to Superintendent W. J. Barry for one day's pay at the appropriate yardmaster rate for March 23, 1959, and all subsequent dates until the condition complained of is corrected, account unilateral and improper abolishment, effective March 23, 1959, of the 3 P.M. to 11 P.M. yardmaster assignment at 47th and Loomis Sts., and the performance of work of the yardmaster class and craft and the assumption of the responsibility and the authority of the yardmaster craft and class, by employes other than yardmasters, outside the scope and coverage of the Yardmasters' Agreement.

"The above claim was denied by Superintendent W. J. Barry, in letter to me under date of March 25, 1959 and I hereby appeal from Superintendent Barry's denial decision.

"Furthermore, I amend my claim of March 17, 1959, by specifying Yardmaster M. R. Jackson as the claimant for March 23, 1959 and the senior unassigned yardmaster for March 24 and all subsequent dates until the condition complained of is corrected.

"I desire to add in this connection that I have made a check of the operations in this district on March 23 and March 24 and found that trainmaster and others outside the scope and coverage of yardmasters Agreement were performing the work of the yardmaster class and assuming the responsibility and authority of the yardmaster class and craft.

"I trust you will agree that this claim is valid and authorize its payment; otherwise, if you desire to confer on the matter, please suggest early time and place for such conference, and oblige.

"cc: Mr. W. J. Barry, Sup't — to please note your denial decision is rejected."

Assistant General Manager, Labor Relations A. F. Liesenfelt's reply dated May 29, 1959, read:

"Replying to your letters of April 10, 1959 and April 27, 1959, wherein you refer to the abolishment of the Yardmaster position at 47th Street and Loomis Street, and which matter was discussed at the meeting held at LaSalle Street Station on Friday, May 22, 1959.

"The claim involved in this dispute was originally filed on March 17, 1959, or six days before the position was abolished. Also, the claim as originally filed and amended was for unspecified dates and unnamed claimants, except perhaps in one instance, and this Carrier therefore holds they are invalid.

"However, without prejudice to the above position, it is the position of this Carrier that the agreement referred to in the postscript on your letter of March 17, 1959, addressed to Superintendent W. J. Barry has no application in the instant case.

"Also without prejudice to the above position, it is the position of this Carrier that the services of a Yardmaster are not needed at 47th-Loomis Street and your request that the condition complained of be corrected, and also the payment of any claims filed in connection thereto, is declined.

General Chairman Smalley's reply dated August 17, 1959, is quoted below:

"Referring to your letter dated May 29, 1959, confirming our conference held at the LaSalle Street Station on Friday, May 22nd, also denying claim presented on account of the abolishment of the yardmaster position at 47th and Loomis Streets, effective March 23, 1959.

"The abolishment of the 3 P.M., to 11 P.M., position at 47th and Loomis Streets, effective March 23, 1959, eliminated the last remaining yardmaster position at that point, and the subsequent per-

formance of the yardmaster work by others outside the scope of the Agreement is a violation.

"We do not agree with you that the claim is invalid. It was specifically filed to cover March 23, 1959, the effective date of abolishment, on behalf of M. R. Jackson, and on behalf of the oldest unassigned yardmaster for March 24, 1959 and all subsequent dates until the condition is corrected.

"It was your contention, and this is verified in letter to me dated May 29th, that the services of a yardmaster are not needed at 47th and Loomis Streets, but the yardmaster work at that point still exists as heretofore. The reason why the services of a yardmaster are not needed is because such services are being performed by the trainmaster and others as I indicated to you in conference and as I now confirm in writing, to wit:

"In this area there are 36 industries to be served as indicated on list attached hereto as Exhibit 'A', in addition to Backway Yard, Short Backway and Loomis Street Yard, Armour Car Shop Yard and East End District to be supervised.

"The following crews perform work in that area, who require direction and supervision;

Job #13, from 12 o'clock noon to 2:30 P.M., starting at Ashland Ave., at 6:30 A.M.;

Job #26, starts at Ashland Avenue at 2:45 P.M., where they get a train of cars for the Backway District and take to 47th and Racine and work under the jurisdiction of the yardmaster formerly at 47th and Loomis;

Job #11, 3 P.M., Packingtown, starts at Ashland Avenue where it picks up a train and goes to 47th and Loomis.

Job #29 — 3 P.M., — Armour Car Shops, starts at 47th and Loomis.

"On Monday, March 23, 1959, I made an on-the-ground check at 47th and Loomis Streets from 1:50 P.M., to 12:20 A.M., March 24, 1959, and observed the following:

"On this date Assistant Superintendent L. J. Cole and Clerk Baum instructed Conductor in charge of Crew #13, in connection with the work to be performed incident to the attached switching lists, showing work content, which I identified as Exhibit 'B'.

"Trainmaster Crilly arrived at 2:55 P.M., went over a line-up of the yard, check of tracks, etc., made a study of the switching orders indicating the work to be done and then issued instructions to the crews and clerk, consuming from 2:55 P.M., to 6:55 P.M., in thus performing the yardmaster work.

"Trainmaster Crilly departed at 6:55 P.M., and again returned at 9 P.M., to see how the work was progressing and to issue additional instructions.

"I also made a similar check on March 24th and observed again Mr. Crilly go through practically the same procedure.

"To be specific — on March 23rd, after Trainmaster Crilly secured a check of the yards and various tracks and went over the work requirements in that area, he instructed the Conductor in charge of Run #29 to take cars on Track #11, Loomis Street Yard to Armour Car Shop. Rerail car on Track #14 at Armour Car Shop; pull and set Lipsitt Steel. The crew got 37 cars out of Lipsitt Steel and spotted 25 cars inbound; completing this assignment at 5 P.M.

"Mr. Crilly then instructed this crew to go to Armour Car Shop and get the Packingtown Cars (17); then to go back again and get 50 Westerns. The crew made 1 hour and 35 minutes overtime.

"Trainmaster Crilly instructed the Conductor in charge of Crew #26 and supervised in connection with work requirements indicated by photostatic copies of switch list attached, marked as Exhibit 'C'.

"Trainmaster Crilly also instructed and supervised Crew #11 in the work-content represented by photostatic copies of Switch List attached identified as Exhibit 'D'.

"As further definite proof that Trainmaster Crilly is taking the active hand in performing the Yardmaster work as outlined above, we furnish herewith also photostatic copies of instructions and directions which he left with clerk for crews. These are in Trainmaster Crilly's handwriting with signature of initials 'J.P.C.', and identified as Exhibit 'E'.

"Am also attaching hereto, as Exhibit 'F' copy of letter dated May 1, 1959, from Conductor Frank Smerken outlining the method of procedure in the performance of the yardmaster work at that point, since the abolishment of the position.

"The evidence is conclusive so as to leave no doubt that the work of the yardmaster is being performed by others outside the Scope of the Agreement and you will please accept this as notice that your denial is not being accepted and the matter is being turned over to Grand Lodge for submission to the Fourth Division of the National Railroad Adjustment Board.

Because the attachments referred to in the aforementioned letter are voluminous they are attached hereto listed as Carrier's Exhibit A.

Assistant General Manager-Labor Relations A. F. Liesenfelt's reply to General Chairman Smalley's letter of August 17, 1959, read as follows:

"Replying to your letter of July 17, 1959, wherein you refer to the abolishment of the yardmaster position at 47th and Loomis Streets.

"Without prejudice to the position taken in my letter of May 29, 1959: A review of the information contained in your letter of August 17, 1959, has been made. Among the items listed; briefly

it is my information, that some of the industries listed in the Exhibit 'A' attached to your letter have no traffic or have gone out of business in the location mentioned; that other industries are served by engines that come under the supervision of the Assistant General Yardmaster; and, further, that there has been a considerable decrease in the business of many of the industries located in this vicinity.

"I am constrained to maintain the position taken in my letter of May 29, in which payment of the claims was declined."

Within the past five years, there has been a considerable decrease in business in the area involved in this dispute. Many plants have moved out of this area, have closed their doors, or have streamlined their operations. For instance, Armour and Company has closed down its Car Shop, has demolished many buildings and has greatly reduced the number of rail shipments in this area. The following industries in this area require no switch service for the reasons listed:

Armour and Company Wool West	No traffic
Armour General Storage	No traffic
Armour Refinery East	No traffic
Armour Packers East	No traffic
Armour Car Shop Yard	No traffic
Armour #2 and #3 Boiler	No traffic
Miller and Hart	Went out of business
Globe Mills	No traffic

There also has been extensive track removal in the Loomis Street and Short Backway Yard.

Many smaller firms have closed operations in this area. These changes have resulted in a considerable decrease in rail traffic on this carrier, consequently, the duties of the second trick Yardmaster had decreased to such an extent that they could be absorbed by the Assistant General Yardmaster.

The Employees' Statement of Claim, as herein stated, was copied verbatim from letter dated October 16, 1959, from the National Railroad Adjustment Board, Fourth Division, addressed to Mr. A. F. Liesenfelt, Assistant General Manager — Labor Relations, advising that President M. G. Schoch of the Railroad Yardmasters of America will file within thirty (30) days ex parte submission involving this dispute.

Attention is called to the fact that the statement of Claim before your Board alleges only claim is account unilateral and improper abolishment effective March 23, 1959 of the yardmaster position cited in the claim.

Attention is also called to President M. G. Schoch's notice dated October 15, 1959, particularly the portion entitled "Description of Dispute" wherein statement is made that this dispute has been handled in accordance with Section 3, First, Paragraph (i) of the Railway Labor Act, as amended. Carrier submits this statement is erroneous and will so show in its Principal Point No. 1 of its Position.

**POSITION OF CARRIER:** The position of the Carrier is based upon the following principal points.

1. Claim is barred by the time limit rule.
2. Rules cited by the organization do not support the claim.
3. The duties and responsibilities of Yardmaster was not taken over by employees other than Yardmasters.
4. Claim on behalf of M. R. Jackson for March 23, 1959, is erroneous.
5. Organization has not asserted burden of proof.
6. Awards of the Fourth Division, National Railroad Adjustment Board, support Carrier's position.

Each of these principal points will be hereinafter discussed in the order set forth above.

# 1. CLAIM IS BARRED BY THE TIME LIMIT RULE.

As shown in Carrier's Statement of Facts, there is in effect on this property an agreement effective April 1, 1944, which was in effect on the date of the instant claim.

Rule 10 of this agreement reads:

## "Time Limits in Handling of Grievances or Claims

"Grievances or claims shall be made within thirty days from date of the occurrence on which grievance or claim is based. If not filed within this period, claim is barred.

"Decisions by subordinate officers and any appeals shall be promptly made.

"Decisions by the chief operating officer designated by the carrier to handle disputes shall be final and binding unless within ninety days after written notice of such decision the said officer is notified in writing that his decision is not accepted. In the event of such notification all grievances or claims involved in such decisions shall be barred unless referred to an adjustment board under and in accordance with the provisions of Section 3 of the amended Railway Labor Act within one year from the date of said decision."

Section 3 First (i) of the Railway Labor Act provides:

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier

designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

It has been the custom and practice on this property since this agreement was signed in 1944 for employes covered by this agreement to present claims or grievances in writing to the Trainmaster within the time limit specified. In fact, the complainant organization prior and subsequent to the filing of the instant claim, has initiated all of its claims with the Trainmaster.

The first paragraph of this Rule 10 was not complied with because claim was not presented in writing to the officer of the company (Trainmaster) within thirty days from the date of occurrence on which claim is based. In fact, claim has never been presented in writing or otherwise to the Trainmaster.

Further, Carrier submits the claim is also barred by claimants' failure to comply with other provisions of the first paragraph of this Rule 10. By this, Carrier has reference to this pertinent point. The rule states "**Grievances or claims shall be made within thirty days from date of the occurrence on which grievance or claim is based. If not filed within this period, claim is barred** (emphasis added)." Carrier asserts that by the filing of this claim **before** the position in question was abolished, claimant has precluded any determination of its merits by your Board. This rule is not ambiguous. It specifically states the manner in which a claim or grievance will be filed and the period of time in which to file **from** date of occurrence. Petitioner has **never** filed the instant claim within thirty days **from** date of **occurrence**. In fact, claim was filed on March 17, 1959, or six days **before** date of occurrence. In view of the fact that the instant claim was not filed in accordance with the provisions of the first paragraph of Rule 10, then, in accordance with the last sentence of this Rule 10, claim is barred. Carrier has not agreed either directly or by implication to waive these provisions.

This last sentence of the first paragraph of Rule 10 is not ambiguous. There are no "ifs, ands or buts" about it. The rule specifically states that if a claim is not filed **within** the period specified, claim is **barred**. This method is made mandatory by this wording. Therefore, since the instant claim was not made **within** thirty days **from** date of occurrence on which claim is based, claim is barred.

Without prejudice to Carrier's position that **all** claims are barred by the time limit rule, Carrier submits that part of the claim as referred to "the senior unassigned yardmaster . . . for March 24, and all subsequent dates until the condition complained of is corrected" is invalid. It has been held in numerous awards of your Board that claims for unnamed claimants for unspecified dates are not sufficiently specific and should be dismissed for want of jurisdiction because such claims have not been handled in the usual manner as required by Section 3 First (i) of the Railway Labor Act. This section which requires that all disputes be referred to the "Adjustment Board with a full statement of the facts and all supporting data" means that it must include the most important fact of all — the name of the employe injured by an alleged breach of an agreement and specific date of claim. A claim or grievance that does not give the name of the employe on whose behalf it is filed, obviously does not comply with the requirement that a "full statement of the facts" be given.



## 2. RULES CITED BY THE ORGANIZATION DO NOT SUPPORT THE CLAIM.

Without prejudice to Carrier's position in its Principal Point No. 1 that claim is barred by the time limit rule, Carrier submits the rules cited by the organization do not support the claim.

When the General Chairman initiated claim with the Superintendent he cited Agreement signed May 14, 1957, between this Carrier and the Railroad Yardmasters of North America, Inc. (Carrier's Exhibit B) and particularly Article V which reads:

### **"ARTICLE V — DURATION OF AGREEMENT**

"The purpose of this Agreement is to fix the general level of compensation during the period of this agreement. Therefore, subject to the provisions of paragraph (d) of this article and the exceptions contained in Article VI, neither party to this Agreement will serve any notice or progress any pending notice to —

- "(a) Increase or decrease rates of pay established by Articles I, II, III and IV of this Agreement.
- "(b) Increase or decrease the rate of compensation provided in existing agreements or understandings, or eliminate or establish agreements providing the rate of compensation, covering overtime payments, arbitrary payments, Sunday or holiday payments, constructive allowance payments; negotiate other agreements providing for paid holidays, or agreements which would have the effect of increasing or decreasing the number of paid vacation days or holidays, or of increasing or decreasing the number of employees required to be used under existing agreements.
- "(c) Establish a hospital, medical or surgical plan for employees and their dependents.
- "(d) This Article V will not debar management and committees from agreeing upon any subject of mutual interest.
- "(e) This Article V does not prevent the progressing of pending notices, the serving of notices, and the negotiations of agreements on other matters not prohibited by the foregoing provisions of this Article V.
- "(f) Notwithstanding the provisions of Article VI of this Agreement, this Article V shall terminate effective November 1, 1959."

Article VI referred to in this Article V reads:

### **"ARTICLE VI — EFFECT OF THIS AGREEMENT**

"This Agreement is in settlement of the dispute growing out of notices served on the carriers by the Railroad Yardmasters of

North America, Inc. on or about June 22, 1956, and shall be construed as a separate agreement by and on behalf of said carriers and its employees represented by the organization signatory hereto, and shall remain in effect until October 31, 1959 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended, except that notices served on the carriers prior to the effective date of this Agreement, dealing with the rate of compensation covering arbitrary payments or constructive allowance payments may be progressed, to become effective not earlier than November 1, 1959, within, but not beyond, the specific procedures for peacefully resolving disputes which are provided for in the Railway Labor Act, as amended, and except that notices for general increases or decreases in basic rates of pay, to become effective not earlier than November 1, 1959, may be served before the expiration of the three-year period and may be progressed within, but not beyond, the specific procedures for peacefully resolving disputes which are provided for in the Railway Labor Act, as amended."

Let us assume, but at the same time emphatically deny, that this Board might find some merit to the Employees' contention that jobs could not be abolished during the life of the Agreement of May 14, 1957. Although Carrier feels certain this Board will not make a decision favorable to the Employees under these rules, however, if such should be the case, then Carrier wishes to call attention to the fact that that basis would not exist after October 31, 1959 when the so-called moratorium provisions of the May 14, 1957 Agreement expired.

Carrier submits these Articles V and VI have no application in the instant dispute. Article V states that "The purpose of this Agreement is to fix the general level of compensation during the period of this Agreement." This Article V also has reference to the serving of any notice or the progressing of any pending notice by either party in connection with the increase or decrease in rates of pay. Article VI contains moratorium provisions in connection with the serving of said notices. In the instant case Carrier has not served any notice nor has it progressed any notice as contemplated in this agreement. Carrier submits there is no prohibition in that agreement or in any other agreement whereby Carrier is debarred from abolishing positions as the needs of the service dictate.

The organization is also alleging violation of the Scope Rule, Rule 1 of the Yardmasters' Agreement, which reads:

"Scope

"The term 'Yardmaster,' as used herein, shall be understood to include Assistant General Yardmasters, District Yardmasters, and Yardmasters."

Carrier submits the Scope Rule does not contain a definite provision regarding the assignment and/or duties of Yardmasters. This rule in no way refers to the duties or assignment of a Yardmaster and only describes what is understood to be included in the term "Yardmaster." Nowhere in the agreement is there any rule that refers to the particular kind of work to be performed, and Carrier submits there is no provision which defines the duties of a Yardmaster. In Award No. 838 your Board stated, in part:

"The effective Agreement, in the Scope Rule or elsewhere, neither defines or undertakes to limit the duties of Yardmasters or Assistant Yardmasters. No reference is made to their duties or the particular kind of work to be performed by them . . ."

### 3. THE DUTIES AND RESPONSIBILITIES OF A YARDMASTER WERE NOT TAKEN OVER BY EMPLOYEES OTHER THAN YARDMASTERS.

In filing this claim the organization is contending that after the 3:00 P. M. Yardmaster assignment at 47th and Loomis Street was abolished, the duties and responsibilities at this location were taken over by employees other than Yardmasters. This is not a fact.

On November 17, 1954, Carrier abolished the 2:30 P. M. and 11:00 P. M. Loomis Street and the 3:00 P. M. 47th and Racine assignments account that Yard being taken out of service as an interchange yard for eastern connecting lines and the resulting decrease in traffic at that point. While there were industries in this area to be served by Carrier's engines, it was deemed by Carrier that the use of Yardmasters was not warranted because of the nature of the work. Since these assignments were abolished on November 17, 1954, and whenever no Yardmaster was on duty, the Conductor of the engine crew has always programmed the work during his tour of duty from switch lists of industries. When the crew begins work the Conductor first goes to the Yard Office and collects all the switch lists placed there by industries desiring switches and any other special instructions or movements required of him. These special instructions may be in the form of a note from the Yard Clerk assigned to that territory transmitting information from an industry or information which the Superintendent or other official deems necessary for him to have, or it may contain information from the Assistant General Yardmaster at Ashland Avenue concerning matters relating to that particular area. For the past thirty years or so, regardless of whether or not a Yardmaster was on duty, the Conductor always programmed his switching moves except when a special move was to be made and instructions for this move came either through the Yard Clerk or from the Yardmaster, Assistant General Yardmaster, Trainmaster, or other official. Before these assignments were abolished in 1954, the only difference in this procedure was that the Yardmaster would occasionally hand the switch lists to the Conductors. If at that time the Yardmaster had any special instructions he would transmit them to the Conductor. However, it was not uncommon for the Yard Clerk to later contact the Conductor and give him information concerning certain switches which certain industries requested. Neither was it uncommon for an industry to call the Trainmaster direct and give him a switch order over the telephone and in that event he would either contact the Yardmaster, give this order to the Yard Clerk to give to the Conductor, or if he was able, to give the order directly to the Conductor. It has also been the practice on this property for over the past thirty years for Trainmasters, Assistant Superintendents, Superintendents, and other officials, to instruct Conductors in this manner and no complaint was received from either the Yardmaster or other Organizations.

When the 3:00 P. M. Yardmaster assignment was established at 47th Street — Loomis Street on February 2, 1955, there was no change in the method of operation. Before and since that time, it has been the usual practice for Trainmasters to instruct crews in the performance of their specific duties, with or without the presence of a Yardmaster.

During the progression of this claim on the property, the organization made allegations some of which were supplemented by exhibits which are shown as Carrier's Exhibits A-1 to A-33, inclusive; Carrier's brief comments in this regard follow:

In Exhibit A-1 is shown a list of industries allegedly under the jurisdiction of Yardmaster, 47th and Loomis Street District. This so-called list was apparently made up by the organization as Carrier has never designated any such list under a Yardmaster's jurisdiction. No date is shown nor is any trick time shown as to when it allegedly applies. However, Carrier has shown in its Statement of Facts that in many cases there is no rail traffic in or out of these industries, the firm has ceased operations, there has been extensive track removal in yards, and in one case the yard was abolished.

Further, the following industries listed in Exhibit A-1 are serviced by the following crews who are directed by the Assistant General Yardmaster at 40th and Ashland Avenue:

Serviced by 6:30 a.m. West Yard Assignment — #12

Siegel Weller	11:00 a.m. switch
Peer Food	"
Reliable Packing	"
Swift and Company	"
#99 House	"

Serviced by 2:30 p.m. 47th & Racine Avenue Assignment — Run #207

Armour & Co. Wool West  
 Darling & Co. Wells West  
 " " 47th & Cook  
 " " 46th & Cook  
 " " 45th & Cook  
 Bridgeport Warehouse  
 Boyd's East  
 Roberts and Oakes  
 Howard Golz Company  
 Ready Foods

Serviced by 2:30 p.m. West Yard Assignment — Run #22

Siegel Weller	3:00 p.m. switch
Swift & Co #33 House	"

Serviced by 2:45 p.m. Ashland Avenue Assignment — Run #26

Lipsett Steel  
 Goodman Manufacturing  
 Compost #2 - #4 - #6 (Alleys)  
 G. H. Hammond Company  
 Darling & Co. 45th & Racine East Track  
 " " " " West "  
 " " " " New East "  
 Armour Refinery North  
 Backway Weigher Scale

Serviced by 10:30 p.m. Ashland Avenue Assignment — Run #35

Sieel Weller	11:00 p.m. and 3:00 a.m. switch
Armour Refinery West Track	
Libby North	

In connection with Exhibits A-2 to 28 inclusive, Carrier submits these are switch lists which the Conductor collects usually at the beginning of his tour of duty, and occasionally during the tour of duty and from which lists he services the industries in accordance with their instructions as contained in the lists.

In the case of Exhibits A-3, A-4 and A-7 Carrier submits these lists were apparently made up by the Yard Clerk on duty at that location presumably in response to a telephone call from that industry.

Exhibit A-10 is dated March 19, 1959, or four days before position was abolished.

No date is shown for Exhibits A-29 and 31.

General Chairman Smalley's letter dated August 17, 1959, as shown in Carrier's Statement of Facts, indicates the switch lists and instructions which he attached thereto (Carrier's Exhibits A-2 to A-33 inclusive) cover the date of March 23rd, 1959. However, switch lists shown as Carrier's Exhibits A-30, A-32 and A-33 are dated April 4, 1959.

Exhibits A-29 to 33 inclusive, contain for the most part track checks and information and instructions from the Trainmaster.

With regard to Exhibits A-2 to 28 inclusive, this Carrier submits it has been the practice on this carrier for at least thirty years for the Conductor to perform switching of industries from these switch lists which is an integral part of a Conductor's duties.

With reference to Exhibits A-29 to 33 inclusive, Carrier submits the organization is attempting to have your Board believe that Trainmasters are not permitted to give certain instructions to crews. This is not a fact. As hereinbefore stated, Trainmasters have issued certain instructions to crews for at least the past thirty years, without complaint.

The letter signed by "Frank Smerken" as shown in Exhibit A-34 is presumably written by Yardman Frank Smerken, employed by this Carrier, although it is not so identified. From this letter Mr. Smerken would like to have your Board believe that the Trainmaster was performing the work of a Yardmaster. It is interesting to note that this purported letter does not contain any specific dates nor time and is remarkably vague as to definite moves made or definite instructions issued. It does, however, confirm Carrier's Statement that the Yard Clerk has given instructions to crews in this area and no complaint has been received in that regard. It also confirms what Carrier has hereinbefore stated, that there has been a tremendous decrease in business in this area by showing therein that only two assignments — the 2:45 P. M. Backway and 3:00 P. M. 47th and Racine — remain.

The two engines assigned to this area service some twenty-six industries and the nature of their services is routine and does not vary substantially over a period of time. All of the tracks and industries in this area are known and familiar to the yard foremen and crews. These yard foremen are not instructed by the Yard Clerk, Trainmaster, Assistant Superintendent, or any official, how to accomplish movement of cars. To the contrary, the yard foreman accomplishes the movements in accordance with his knowl-

edge of tracks and industries and his past experience and he is not "supervised" by the yard clerk or any other person.

Carrier submits the claim presented by the organization is general, vague, and indefinite, and lacking as to specific dates, instances, circumstances, etc.

The operation of this area is under the supervision of the Assistant General Yardmaster and the normal instructions to crews are given by him or are relayed from him by the Yard Clerk to the crew.

The duties of a Trainmaster are strictly of a supervisory nature and he has the responsibility for the safe, efficient and economical performance of all train, engine and yard operations within his jurisdiction and takes corrective action whenever necessary. The organization has not offered any evidence that the Trainmaster or any other employe encroached upon the duties or responsibilities of an employe coming under the Yardmaster agreement.

#### 4. CLAIM ON BEHALF OF M. R. JACKSON FOR MARCH 23, 1959, IS ERRONEOUS.

Carrier submits there is no basis for the claim on behalf of M. R. Jackson for March 23, 1959, and that claim for the senior, unassigned yardmaster is conjectural.

The employes statement of claim, as hereinbefore stated, was copied verbatim from a letter from the National Railroad Adjustment Board, Fourth Division, dated October 16, 1959, and addressed to Mr. A. F. Liesenfelt, Assistant General Manager-Labor Relations, and stated therein that "Yardmaster M. R. Jackson be allowed one day's pay at the appropriate yardmaster rate for March 23, 1959, . . . account unilateral and improper abolishment effective March 23, 1959 of the 3:00 P. M. to 11:00 P. M. yardmaster assignment at 47th & Loomis Streets, Chicago, Ill."

The Statement of Claim, then, in effect, means that the organization is claiming a day's pay at the yardmaster rate for M. R. Jackson alleging that he was "disadvantaged" on March 23, 1959. Carrier submits that this statement is erroneous because it records indicate that on March 23, 1959, M. R. Jackson worked the 2:30 P. M. Yardmaster assignment at Halsted Street. Therefore, M. R. Jackson was not "disadvantaged" for the day claimed.

#### 5. ORGANIZATION HAS NOT ASSERTED BURDEN OF PROOF.

Except for statements in General Chairman Smalley's letter dated August 17, 1959, in response to Carrier's letter of May 29, 1959, showing certain instructions they allege were issued by the Assistant Superintendent, Trainmaster, and Yard Clerk, on March 23rd and 24th, and which the carrier presumes they will present to the Board, the organization has, in the handling of this claim on the property, presented little or nothing in support of their claim; no factual evidence, argument, or explanation. They are merely asserting that a Yardmaster is being deprived of work when a position was abolished.

Carrier submits the organization has not asserted the burden of proof in order to validate the claim.

In letter dated May 29, 1959, addressed to General Chairman Smalley of the Railroad Yardmasters of America, by Carrier's Assistant General Manager-Labor Relations, which is shown in Carrier's Statement of Facts, it is stated, in part:

"The claim involved in this dispute was originally filed on March 17, 1959, or six days before the position was abolished. Also, the claim as originally filed and amended was for unspecified dates and unnamed claimants, except perhaps in one instance, and this Carrier therefore holds they are invalid.

"However, without prejudice to the above position, it is the position of this Carrier that the agreement referred to in the postscript of your letter of March 17, 1959, addressed to Superintendent W. J. Barry has no application in the instant case.

"Also without prejudice to the above position, it is the position of this Carrier that the services of a Yardmaster are not needed at 47th-Loomis Street and your request that the condition complained of be corrected, and also the payment of any claims filed in connection thereto, is declined."

In response to the aforementioned letter, General Chairman Smalley in his letter dated August 17, 1959, attempted to submit evidence to substantiate his claim. On only one claim date—March 23, 1959—is it alleged that a specific thing was done by one other than a yardmaster. In regards to the remainder of the claim, a general allegation is made but specific proof is absent. However, this purported "evidence" as shown in Carrier's Principal Point No. 3, is not "evidence" but is a practice that has been in effect on this property for at least thirty years, regardless whether or not there was a yardmaster on duty. The organization has not submitted any evidence or proof during the handling of this claim on the property that the abolishment of the position in question was a violation of any agreement. It has been held in many awards of your Division, as well as the other Divisions of the Board, that the burden of proof rests upon the complaining organization. This is clearly stated, in Fourth Division Award No. 1057, wherein the Opinion read, in part:

"The burden rests on the Organization to substantiate this claim by much more evidence than the general allegation that yardmaster work on these dates and at these times was performed by others than a yardmaster and that claimant was available to perform these services."

In Award No. 831, it was stated, in part:

"Under these circumstances the Board is compelled to the conclusion that the Organization has not met its burden as to the proof, and that it has not shown by evidence or argument that the Trainmasters in question performed any direct supervision of the type and character interdicted by the Scope Rule of the effective agreement. We must rule that the effective Agreement has not been violated. The claim must be and is denied."

Fourth Division Award No. 828 held, in part:

"The burden of proof that the complained of instructions . . . violated the current Yardmasters' agreement clearly rests upon the complainant organization."

In its Opinion in Award No. 797, the Board said, in part:

". . . The burden is on the Organization to establish the facts supporting its contention, and we have concluded that it has not done so in this respect. . . ."

6. AWARDS OF THE FOURTH DIVISION, NATIONAL RAILROAD ADJUSTMENT BOARD, SUPPORT THE CARRIER'S POSITION.

Award No. 1299 of your Division held, in part:

"Taking cognizance of the fact that only three yard engines are regularly assigned at North Fond du Lac, one on each shift, and giving further consideration to the extent and range of yard and road activity engaged in at this point, the asserted intrusion upon the Yardmasters' work sphere is not discernible."

See also Award No. 1301.

In Award No. 1273 of your Board, it was stated:

"Carrier relies principally upon this Division's Award 184, wherein it is stated.

"\* \* \* But because this planning, coordination and supervision must be done does not result in the conclusion that a yardmaster must always be appointed to do it. As before stated there must be sufficient of these duties to justify the creation of a yardmaster's position. Economy of operation requires that needless positions be not created.

'It is largely within the prerogative of the management to determine the amount of necessary supervision which it requires. \* \* \*'

"We have said that once it is established that the work performed was the type of work performed by yardmasters, careful attention must be given to the facts in each instance. If the work was taken away from the yardmaster, was it 'merely incidental' to the proper duties of the employe who handled it (Awards 396, 797, 828, 815, 925, 955, 1151, 1127) and was it of a 'substantial nature.' (Awards 358, 359, 363, 365, 367, 396 and 406.)

\* \* \* \* \*

"Comparison of the instant facts with those giving rise to Awards 190, 483 and 1158, wherein the yardmaster claimants successfully carried the burdens of proof necessary for them to prevail in a complaint of this nature, is eloquent in showing that



here the burden was not met that the work done was of a 'substantial nature', and the claim must be denied."

Award No. 955 of the Fourth Division held, in part:

"... The record does not support the Organization's claim that French performed yardmaster work which enabled Carrier to abolish two Assistant General Yardmaster positions. There is nothing of a substantial nature presented that leads us to believe that the East Youngstown General Yard District has not, since August 8, 1952, been operated as Carrier claims."

Reference was made in Carrier's Principal Point No. 5 to Fourth Division Awards Nos. 828 and 797. In addition, further reference is made to Award No. 828 wherein it was said, in part:

"From a careful examination of the record, and an analysis of the facts before us, it is the conclusion of the Board that the instructions complained of were not substantial but such instructions were only incidental to the other main duties, activities and responsibilities of the assistant trainmasters; and that it clearly does not appear that such instructions were of either such character or volume as to constitute a failure on the part of the Carrier to establish any additional Yardmaster positions, or to warrant payment of certain claimed compensation to three yardmasters, not working as such, on the above 1947 dates, or back to January 28, 1948. The claim is denied."

Award No. 184 of your Division is pertinent to the instant case. The Opinion in this award reads, in part:

"... We cannot decree an assignment of yardmasters' duties where the conditions do not justify it. It will be noted that this idea of substantial volume appears in various awards. In Award 106 this Board stated '\* \* \* when it appears that other employees are performing such supervisory duties to a PREPOND-ANT degree,' etc. (Emphasis added) In Award 88 it was held 'the question as to whether yardmasters shall be employed and positions established must be determined upon the basis of the requirements of the service.' And in 'Rules for Reporting Information on Railroad Employees' as to classification, etc., issued by the United States Railroad Labor Board and approved by the Interstate Commerce Commission, hereinafter referred to as 'Rules for Reporting Information', yardmasters were classified as those 'in which the PREPONDERATE duties of incumbents are to supervise the work of employes engaged in breaking up, making up, and handling trains and general yard switching within a railroad yard or an assigned district of a large railroad yard; and to perform related work.' (Emphasis supplied.)

\* \* \* \* \*

"... As before stated there must be sufficient of these duties to justify the creation of a yardmaster's position. Economy of operation requires that needless positions be not created.

"It is largely within the prerogative of the management to determine the amount of necessary supervision which it requires. Work that is routine may require only instruction as to what must be done and a checking up of what has been done. When a switching crew is handed a list, if competent, it can be depended on to carry through. Given the 'what' it knows the 'how' . . . It transpires, therefore that each case must be determined largely on its own facts. The type, and size of the yard, the conditions of operation, the number of cars handled, and density and nature of traffic at certain hours, the ability to cover two shifts by one supervisor, are all factors which govern the amount of supervisory work which must be done and therefore, the question of whether the supervision exercised by officials or others is of sufficient volume to justify a yardmaster . . ."

The Opinion of Board in Fourth Division Award 1151 read, in part:

"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 employees. 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. However, it is clear from decisions of this Division, that where it is claimed that particular work belongs to the members of a certain class or craft and is being performed by employees not members of that class or craft, the burden is on the petitioning organization to establish facts supporting its contention. See Awards 413, 797. We do not think that the record in this case is sufficient to sustain the contention of the Organization that the work performed by the yard clerk at the Grand Avenue Yard is supervisory in nature and therefore reserved to yardmasters."

Awards Nos. 1088, 1089 and 1090 of the Fourth Division, National Railroad Adjustment Board, involved claims somewhat similar to that in the instant dispute. The Opinion of Board in these awards read:

Award No. 1088:

"The Agreement does not define the work of Yardmasters. The occupational classification published by the United States Railroad Labor Board in 1921 defines, 'YardMaster — Description of Class: The above class includes positions in which the preponderant duties of incumbent are to supervise the work of employees engaged in breaking up, making up and handling trains and general yard switching within a railroad yard or an assigned district of a large railroad yard; and to perform related work.'

\* \* \* \* \*

"There is nothing in the record that would establish the contention of the Organization that Yardmaster's duties were being performed by the Yard Clerk."

Award No. 1089:

"The Agreement does not define the duties of Assistant General Yardmasters and Yardmasters. Such was the interpretation of this Division in Award 838, involving the same parties and the same rules, where Referee Conkling held:

"The effective Agreement, in the Scope Rule or elsewhere, neither defines nor undertakes to limit the duties of Yardmasters or Assistant Yardmasters (sic). No reference is made to their duties or the particular kind of work to be performed by them. \* \* \*

"The alleged violations submitted cover the period of 113 days' elapsed time. This Board in making an analysis thereof can come to only one conclusion and that is, the work performed by the Trainmasters did not violate the Agreement."

Award No. 1090:

"There is no violation of the Agreement in the Carrier abolishing the three Yardmaster positions and the assigning and the combining of the duties of such positions with the Assistant General Yardmasters' positions. As has been held by this Board, the Agreement does not define the duties of Assistant General Yardmasters and Yardmasters. There is no basis to support the claim that 'the Assistant General Yardmaster is performing service in two crafts — Yardmaster and Assistant General Yardmaster.' "

In Award No. 1319 of the Fourth Division, claim was filed alleging an Assistant Trainmaster was performing Yardmaster work. In denying the claim the Board ruled:

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

See also Award No. 1327 of the Fourth Division, National Railroad Adjustment Board.

Carrier submits that the several items of purported usurpation of Yardmaster functions on which the organization bases its claim, which Carrier has shown has either been the practice on this property for over the past thirty years or is insignificant, or both, did not constitute the existence of a sufficient volume of Yardmaster work to reasonably warrant the assignment of a full time Yardmaster on the 3:00 P. M. to 11:00 P. M. shift.

#### CONCLUSION:

The Carrier has shown:

1. Claim is barred by the time limit rule.
2. Rules cited by the organization do not support the claim.
3. The duties and responsibilities of Yardmaster was not taken over by employes other than Yardmasters.
4. Claim on behalf of M. R. Jackson for March 23, 1959 is erroneous.
5. Organization has not asserted burden of proof.
6. Awards of the Fourth Division, National Railroad Adjustment Board, support Carrier's position.

It will be recalled, as stated in Carrier's Statement of Facts, that the only claim before your Board is the claim "account unilateral and improper abolishment effective March 23, 1959 of the 3:00 P. M., to 11:00 P. M., Yardmaster assignment at 47th and Loomis Streets, Chicago, Ill." Carrier submits there is no prohibition in any agreement whereby Carrier is debarred from abolishing the instant position, or any position, as the needs of the service dictate.

All data submitted herein have been presented to the employes either in conference and/or by correspondence.

The Carrier submits claim is without merit and if not dismissed account barred by the time limit rule and failure of the organization to comply with Section 3 First (i) of the Railway Labor Act, it should be denied as without merit.

Oral hearing is requested.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On March 16, 1959, Carrier by bulletin announced that effective March 23, 1959, the yardmaster position at 47th Street-Loomis Street, Chicago, would be abolished.

On March 17, 1959, claim was filed with Carrier's Superintendent by General Chairman Smalley as follows:

"Reference made to your Bulletin No. 218, dated March 16, 1959, 'Effective Monday, March 23, 1959, the following Yardmaster position will be abolished:

47th Street-Loomis Street — 3:00 PM to 11:00 PM.'

"We hereby make claim for yardmaster disadvantaged for one day's pay at appropriate yardmaster rate of pay beginning March 23, and for all subsequent dates until the condition complained of is corrected, account unilateral and improper abolishment, effective March 23, 1959, 3:00 PM to 11:00 PM yardmaster assignment 47th Street - Loomis Street, and the performance of work of the yardmaster class and craft and the assumption of the responsibility and the authority of the yardmaster craft and class by employes other

than yardmasters and outside the scope and coverage of the Yardmaster's Agreement.

"Please advise.

\* \* \* \* \*

"P.S. Calling your attention to agreement made May 14, 1957, **Article V — Duration of Agreement** 'The purpose of this Agreement is to fix the general level of compensation during the period of this Agreement. Therefore, subject to the provisions of paragraph (d) of this Article and the exceptions contained in Article VI, neither party to this Agreement will serve any notice or progress any pending notice to —

(b) ——— increasing or decreasing the number of employees required to be used under existing agreements.' "

On April 10, 1959, General Chairman Smalley amended the claim as follows:

"Furthermore, I amend my claim of March 17, 1959, by specifying Yardmaster M. R. Jackson as the claimant for March 23, 1959 and the senior unassigned yardmaster for March 24 and all subsequent dates until the condition complained of is corrected."

Carrier has raised several procedural objections to the consideration of this claim and we will consider them seriatim:

1) Claim is barred by the Time Limit Rule.

(a) Carrier contends that since claim was filed with the superintendent rather than the trainmaster, is is a violation of Rule 10, which provides:

"Grievances or claims shall be made within thirty days from date of the occurrence on which grievance or claim is based. If not filed within this period, claim is barred.

"Decisions by subordinate officers and any appeals shall be promptly made.

"Decisions by the chief operating officer designated by the carrier to handle disputes shall be final and binding unless within ninety days after written notice of such decision the said officer is notified in writing that his decision is not accepted. In the event of such notification all grievances or claim involved in such decisions shall be barred unless referred to an adjustment board under and in accordance with the provisions of Section 3 of the amended Railway Labor Act within one year from the date of said decision."

The record is devoid of any proof as to whom the Carrier has designated as ". . . chief operating officer designated by the Carrier to handle disputes

. . ." and the Organization contends that it has been its practice to file disputes with the Superintendent. In the absence of proof as to whom the Carrier designated and its failure to raise this question on the property, the objection is overruled.

(b) Claim was not filed "within thirty days from date of occurrence on which grievance or claim is based."

There seems to be no question that the claim herein was premature but this fact in no way prejudiced Carrier — in fact, it received advance notice. The obvious purpose of the rule was to protect the Board from stale claims and this Board does not fulfill its function by pouncing upon minor technicalities where, as here, neither party is prejudiced and the purpose of the particular rule has not been thwarted.

2) Claim for an unnamed Claimant fails for lack of specificity.

There is considerable to be said for Carrier's assertion that under the type of claim made by the Organization herein, it may be deprived of some defenses it might have raised against named individuals. The problem in this regard is complicated, however, by the fact that this is a continuing claim and it is practically an impossibility to determine who, from day to day, would be disadvantaged. Again, the claim, as alleged, sufficiently describes the claimants, so that in the event of a sustaining award, they can be identified. In view of the foregoing, we can proceed to disposition of the case on its merits.

This is another in an extremely long line of cases involving the abolishment of a yardmaster's position, the claim being that employes not covered by the yardmasters' agreement are performing yardmasters' work in violation of the scope rule.

**"Rule 1 — Scope.** The term 'yardmaster' as used herein shall be understood to include assistant general yardmasters, district yardmasters and yardmasters."

Our attention, in this regard, has also been called to the Carrier's "Book of Rules" which sets out in some detail the duties imposed on yardmasters.

The "scope" of a yardmaster's duties has been before this Board innumerable times and as yet no final settlement has been made of the problem. Admittedly a yardmaster's duties are supervisory, but of a general nature which are not easily enumerated.

So many cases have been cited by both parties that precedent in this type of case is almost valueless. Out of the myriad cases there do seem to be some principles which deserve our consideration:

- 1) Carrier has the right to determine what, if any, supervision it wants, in the absence of specific agreement.
- 2) Under a scope rule such as we have in this case and the "Book of Rules" of the Carrier, infra yardmaster's work must be performed by yardmasters. To hold otherwise would mean that yardmasters' agreements were meaningless.

- 3) Carrier has the absolute right to abolish a position so long as substantial yardmasters' duties are no longer required to be performed.
- 4) Claimant has the burden of proof to show that "substantial" yardmasters' duties are being done by persons outside the scope of the yardmasters' agreement.

It can be seen then that we have a question of fact to resolve as to whether substantial yardmasters' duties remain to be performed at 47th & Loomis.

From the Exhibits attached to the Organization's ex parte submission, it is seen that in some instances Trainmaster Crilly has prepared switch lists which undoubtedly fall within the rather vague duties of a yardmaster. The question before us, however, is whether yardmasters' duties of a "substantial" nature are being performed by the yard clerks and the trainmaster. We have considered carefully all of the Organization's exhibits and find nothing to indicate that yard clerks are supervising anyone. They are distributing messages possibly, but they aren't exercising supervision. The Organization contends that Trainmaster Crilly is spending "practically all of his time during an 8 hour period" directing and supervising the crews, but we find no substantial evidence to support that contention.

We are loath to interfere in management's historic prerogatives and on the record before us we refuse to interfere.

**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 employees 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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of FOURTH DIVISION

ATTEST: Patrick V. Pope  
Secretary

Dated at Chicago, Illinois, this 12th day of February, 1962.

#### **DISSENT OF THE LABOR MEMBERS TO AWARD 1580 (Docket 1502)**

The opinions expressed by the author of this award not only indicate a total lack of understanding of railroad operations, but also a complete failure to grasp the most elementary principles already so well established by deci-

sions of all the Divisions of this Board, as to defy questioning, that in the absence of agreement to the contrary all work of a craft belongs to those on whose behalf the agreement was made, and work may not be removed therefrom without violating the agreement.

Here we have a situation wherein the Carrier abolished a yardmaster position and thereafter the trainmaster, with the assistance of the clerk, performed the identical work previously handled by the yardmaster. On the ground checks were made which indicated that the trainmaster alone was consuming five to six hours daily performing the yardmaster work in the area involved. These checks, outlining in detail the activities of the trainmaster, which were never denied by the Carrier, as well as other evidence presented, clearly depicted the transfer of practically a full day's work to others outside the scope of the yardmaster agreement. All of which was disregarded with the words, "We are loathe to interfere in management's historic prerogatives." What prerogatives? To emasculate agreements?

This is a most unfair award and we dissent vigorously.

LABOR MEMBERS

**R. H. Wachowiak**

**J. P. Tahney**

**W. J. Ryan**