

Award No. 1650

Docket No. 1734

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

PARTIES TO DISPUTE:

THE WASHINGTON TERMINAL COMPANY

BROTHERHOOD OF RAILROAD TRAINMEN

STATEMENT OF CLAIM:

1. Claim of the Brotherhood of Railroad Trainmen in behalf of Yardman G. D. Stevens, July 24, 1961, "Allow one day's pay at Yardmaster rate of pay account being runaround by F. E. Cole, who was called to work "E" Bridge, when I was available on the eligible list for the vacancy."
2. Claim of the Brotherhood of Railroad Trainmen in behalf of Yardman Henry Adkins, August 4, 1961, "Allow one day's pay at yardmaster rate of pay, account being available on the eligible list and not called for yardmaster vacancy."
3. Claim of the Brotherhood of Railroad Trainmen in behalf of Yardman C. D. McCoy, August 5, 1961, "Allow one day's pay at yardmaster rate of pay, account being available on the eligible list and not called for yardmaster vacancy."
4. Claim of the Brotherhood of Railroad Trainmen in behalf of Yardman M. D. Hayter, August 10, 1961, "Allow one day's pay at yardmaster rate of pay, account being available on the eligible list and not called for yardmaster vacancy."
5. Claim of the Brotherhood of Railroad Trainmen in behalf of Yardman M. D. Hayter, August 11, 1961, "Allow one day's pay at yardmaster rate of pay, account being available on the eligible list and not called for yardmaster vacancy."
6. Claim of the Brotherhood of Railroad Trainmen in behalf of Yardman C. D. McCoy, August 30, 1961, "H. Cornett was used to fill vacancy at "E" Bridge when the claimant was available and not called for such service."
7. Claim of the Brotherhood of Railroad Trainmen in behalf of Yardman R. L. Moore, September 2, 1961, "On the date in question the claimant was available for yardmaster vacancy and was not called to work the same."

8. Claim of the Brotherhood of Railroad Trainmen in behalf of Yardman R. L. Moore, September 3, 1961, "on the date in question the claimant was available for yardmaster vacancy and was not called to work the same."

CARRIER'S STATEMENT OF FACTS: For over 50 years yardmen employed by The Washington Terminal Company have been represented by the Brotherhood of Railroad Trainmen. The term "yardman" as used in the Agreement between The Washington Terminal Company and its yardmen represented by the Brotherhood of Railroad Trainmen is defined as follows:

"The word 'Yardman' or 'Yardmen' as used in this Agreement refers to Conductors (Foremen), Brakemen (Helpers), Back-up Men, Pilots and Switchtenders."

Under date of June 4, 1942, the Railroad Yardmasters of America was recognized as the duly accredited representative of yardmasters in the service of The Washington Terminal Company. Thus, the Agreement between The Washington Terminal Company and the Brotherhood of Railroad Trainmen covers conductors, brakemen, back-up men, pilots and switchtenders, and the Agreement between The Washington Terminal Company and the Railroad Yardmasters of America covers yardmasters.

The problem of how management could be expected to fill vacancies in the regular yardmaster ranks when yardmasters holding regular positions request permission to be absent for any reason is one of long standing on the property as this Division knows from the submissions presented by the parties in the dispute involved in Docket 1343, Award 1390, of this Division. The Members of the Division will recall that in the dispute involved in Docket 1343, Award 1390, this Carrier argued that the Memorandum of Understanding dated May 25, 1950, between this Carrier and the Brotherhood of Railroad Trainmen (copy attached as Exhibit A) required the Carrier to use yardmen off a list of yardmen eligible to fill day to day yardmaster vacancies to fill such yardmaster vacancies before it could use regularly assigned yardmasters on their assigned days off or before it could use unassigned yardmasters (employees possessing insufficient yardmaster seniority to hold regular yardmaster assignments) unless the unassigned yardmasters were entitled to be used in accordance with their yardmen's seniority standing on the list of yardmen eligible to fill day to day yardmaster vacancies. The Members of the Division will also recall that yardmen off the "eligible list" were being given a prior right to be so used over regularly assigned yardmasters on their assigned days off and unassigned yardmasters.

The Members of the Division will also recall that in the dispute identified as Docket 1343, Award 1390, the Carrier took the position that if the Fourth Division assumed jurisdiction of the dispute, the Brotherhood of Railroad Trainmen should be heard, and the division under date of December 17, 1958, notified the Brotherhood of Railroad Trainmen of the pendency of the dispute and furnished that Organization copies of the ex parte submissions filed with the Fourth Division by the Railroad Yardmasters of America and The Washington Terminal Company. The Brotherhood of Railroad Trainmen was advised that it could submit within 30 days of December 17, 1958, any written argument or evidence it desired for consideration by the Division. Copy of the Division's letter of December 17, 1958, addressed to representatives of the Railroad Yardmasters of America, the Brotherhood of Railroad Trainmen, and The Washington Terminal Company is attached as Exhibit B. The Mem-

bers of the Division will also recall that under date of January 31, 1959, the General Chairman of the Brotherhood of Railroad Trainmen advised that that Organization would "... refrain from participation in the hearing ...". Copy of the General Chairman's letter of January 31, 1959, is attached as Exhibit C. The Brotherhood of Railroad Trainmen filed no written argument or evidence and did not participate in the hearing.

Under date of June 25, 1959, this Division, with Mr. Curtis G. Shake sitting as Referee, rendered its Award 1390 in the dispute identified as Docket 1343. In that Award the Division sustained the claims of the Railroad Yardmasters of America and ruled that "... unassigned yardmasters are entitled to perform extra yardmaster work in preference to yardmen designated for that purpose," and that Claimant Cornett, who was an unassigned yardmaster on all dates involved except November 7, 1957, was entitled to be paid because he was not so used. The Board also ruled, with respect to November 7, 1957, a day on which Cornett was occupying a regular yardmaster assignment and which was a relief day of that assignment, that Cornett should be paid a day's pay at time and one-half because he was not used to fill a yardmaster vacancy on that date when a yardman was paid time and one-half for filling the yardmaster vacancy.

After Award 1390 was rendered, there were several conferences between the Railroad Yardmasters of America and the Carrier regarding the application of the Award, and the Carrier applied the Award in accordance with the discussions. The manner in which employes are used to fill day to day yardmaster vacancies in accordance with Award 1390 is shown below. For the purposes of ready reference, employes used to fill day to day yardmaster vacancies are defined as follows:

Unassigned Yardmaster

An employe who possesses insufficient yardmaster seniority to hold a regular yardmaster assignment.

Substitute Yardmaster

An individual on the list of employes eligible to fill day to day yardmaster vacancies but who possesses no yardmaster seniority.

Regularly Assigned Yardmaster

A yardmaster who holds a regular yardmaster assignment.

In the application of Award 1390, an unassigned yardmaster is given preference to fill yardmaster vacancies at the straight time rate on the trick on which he is regularly scheduled to work. If no such unassigned yardmaster is available, the vacancy may be filled by the use of a substitute yardmaster available at the straight time rate. If the vacancy cannot be filled at the straight time rate, a regularly assigned yardmaster may be used at the time and one-half rate on his assigned day off. If no such regularly assigned yardmaster is available, an unassigned yardmaster may be used at the time and one-half rate on his assigned day off. If no such unassigned yardmaster is available, a substitute yardmaster may be used at the time and one-half rate on his assigned day off. This arrangement, which is the application of Award 1390 agreed upon by the Railroad Yardmasters of America and the Carrier, was placed in effect July 24, 1961, and Claim No. 1 from the Brotherhood of Railroad Trainmen is the result of the first application thereof.

The following is a description of the facts in each of the claims:

Claim No. 1, July 24, 1961

On July 24, 1961, C. W. Rogers, who was occupying the position of Yardmasters, "E" Bridge/Warehouse, first trick, was off on vacation. G. D. Stevens, the claimant in this case, possesses no yardmaster seniority. On the date of the claim, Stevens occupied a regular position as Conductor, Crew E&F-1, first trick, and was on his assigned day off. On July 24, 1961, there were no unassigned yardmasters available to fill this first trick yardmaster vacancy. There were no substitute yardmasters available who could be used at the straight time rate. Therefore, inasmuch as the filling of the yardmaster vacancy involved time and one-half, regularly assigned yardmaster, F. E. Cole, who was on his assigned day off, was called in to fill the yardmaster vacancy at "E" Bridge/Warehouse, first trick, and was paid at the time and one-half rate. This yardmaster vacancy was filled in accordance with the Yardmasters' Agreement as interpreted by this Division in Award 1390.

Claim No. 2, August 4, 1961

On August 4, 1961, F. H. Birdseye, the regularly assigned yardmaster, A&C Yards, third trick, was excused account of a death in the family. H. Adkins, the claimant in this case, possesses no yardmaster seniority. On the date of the claim, Adkins occupied a regular position as Conductor, Relief Crew 6, third trick, and was absent account of illness. There were no unassigned yardmasters available to fill this vacancy on the third trick, and there were no substitute yardmasters available at the straight time rate. Therefore, inasmuch as the yardmaster vacancy had to be filled at the time and one-half rate, regularly assigned yardmaster, G. F. Howe, who was on his assigned day off, was called in to fill the yardmaster vacancy at A&C Yards, third trick, and was paid at the time and one-half rate. This yardmaster vacancy was filled in accordance with the Yardmasters' Agreement as interpreted by this Division in Award 1390.

Claim No. 3, August 5, 1961

On August 5, 1961, C. Dempsey, regularly assigned relief yardmaster scheduled to work E&F/G&H Yards, second trick, was excused. C. D. McCoy, the claimant in this case, possesses no yardmaster seniority. On the date of the claim, McCoy occupied a regular position as conductor, Crew G-2, second trick, and worked his regular assignment. H. Cornett, an unassigned yardmaster, was available at the straight time rate and was called to fill the yardmaster vacancy, E&F/G&H Yards, second trick. This yardmaster vacancy was filled in accordance with the Yardmasters' Agreement as interpreted by this Division in Award 1390.

Claim No. 4, August 10, 1961

On August 10, 1961, C. J. Nichols, regularly assigned yardmaster, "E" Bridge/Warehouse, second trick, was excused. Extra Brakeman Hayter, the claimant in this case, possesses no yardmaster seniority. On the date of the claim, Extra Brakeman Hayter did not stand to work the second trick from the extra list. H. Cornett, an unassigned yardmaster, was available at the straight time rate and was called to fill the yardmaster vacancy, "E" Bridge/Warehouse, second trick. This yardmaster vacancy was filled in

accordance with the Yardmasters' Agreement as interpreted by this Division in Award 1390.

Claim No. 5, August 11, 1961

On August 11, 1961, F. H. Birdseye, regularly assigned yardmaster, E&F/G&H Yards, third trick, was off sick. Extra Brakeman Hayter, the claimant in this case, possesses no yardmaster seniority and on the date of the claim did not stand to work the third trick from the extra list. P. C. Via, an unassigned yardmaster, was available at the straight time rate and was called to fill the yardmaster vacancy, E&F/G&H Yards, third trick. This yardmaster vacancy was filled in accordance with the Yardmasters' Agreement as interpreted by this Division in Award 1390.

Claim No. 6, August 30, 1961

On August 30, 1961, C. J. Nichols, regularly assigned yardmaster, "E" Bridge/Warehouse, second trick, was off excused. C. D. McCoy, the claimant in this case, possesses no yardmaster seniority. On the date of the claim, McCoy occupied a regular position as conductor, Crew G-2, second trick, and worked his regular assignment. H. Cornett, an unassigned yardmaster, was available at the straight time rate and was called to fill the yardmaster vacancy, "E" Bridge/Warehouse, second trick. This yardmaster vacancy was filled in accordance with the Yardmasters' Agreement as interpreted by this Division in Award 1390.

Claim No. 7, September 2, 1961

On September 2, 1961, C. D. Dempsey, regularly assigned relief yardmaster scheduled to work A&C Yards, third trick, was occupying a different yardmaster assignment temporarily. R. L. Moore, the claimant in this case, possesses no yardmaster seniority. On the date of the claim, Moore occupied a regular position as conductor, Crew G&H-3, third trick, and worked his regular assignment. P. C. Via, an unassigned yardmaster, was available at the straight time rate and was called to fill the yardmaster vacancy, A&C Yards, third trick. This yardmaster vacancy was filled in accordance with the Yardmasters' Agreement as interpreted by this Division in Award 1390.

Claim No. 8, September 3, 1961

On September 3, 1961, C. D. Dempsey, regularly assigned relief yardmaster scheduled to work A&C Yards, third trick, was occupying a different yardmaster assignment temporarily. R. L. Moore, the claimant in this case, possesses no yardmaster seniority. On the date of the claim, Moore occupied a regular position as conductor, Crew G&H-3, third trick, and worked his regular assignment. P. C. Via, an unassigned yardmaster was available at the straight time rate and was called to fill the yardmaster vacancy, A&C Yards, third trick. This yardmaster vacancy was filled in accordance with the Yardmasters' Agreement as interpreted by this Division in Award 1390.

All of these claims were presented to the Train Master, and the Train Master denied the claims on the basis that the yardmaster vacancies were filled in accordance with the Yardmasters' Agreement. The decisions of the Train Master denying the claims were appealed to the Manager. Claim No. 1 was discussed in appeal conference on September 13, 1961, and the General

Chairman of the Brotherhood of Railroad Trainmen took the position that Claimant Stevens, who possesses no yardmaster seniority, should have been used to fill the yardmaster vacancy on July 24, 1961, at the time and one-half rate rather than using Cole, a regularly assigned yardmaster, at the time and one-half rate. The Carrier stated that the yardmaster vacancy at "E" Bridge/Warehouse, first trick, July 24, 1961, was filled by Yardmaster Cole in accordance with the Agreement between The Washington Terminal Company and its yardmasters represented by the Railroad Yardmasters of America as interpreted by this Fourth Division in Award 1390. The claim was denied and a copy of the Manager's decision dated September 25, 1961, is attached as Exhibit D. Claims No. 2 through No. 8 were discussed in appeal conference October 11, 1961, and the Carrier again stated that the yardmaster vacancies involved in the claims were filled in accordance with the Agreement between The Washington Terminal Company and its yardmasters represented by the Railroad Yardmasters of America as interpreted by this Fourth Division in Award 1390. Copies of the Manager's decisions are attached as Exhibits E through K.

POSITION OF CARRIER: As set forth in the Carrier's Statement of Facts, the Agreement between this Carrier and the Brotherhood of Railroad Trainmen covers work performed by yardmen, i.e., conductors, brakemen, back-up men, pilots, and switchtenders; it does not cover work within the scope of the Yardmasters' Agreement. Yardmasters employed by The Washington Terminal Company are represented by the Railroad Yardmasters of America, and all yardmaster work is covered by the Agreement between The Washington Terminal Company and the Railroad Yardmasters of America. A copy of the Agreement between The Washington Terminal Company and its yardmen represented by the Brotherhood of Railroad Trainmen effective July 1, 1959, with additional Mediation Agreement effective October 12, 1960, (hereinafter referred to as the Trainmen's Agreement) is on file with the First Division, National Railroad Adjustment Board, and is by reference made a part of this submission. A copy of the Agreement between The Washington Terminal Company and its yardmasters represented by the Railroad Yardmasters of America effective March 1, 1956, (hereinafter referred to as the Yardmasters' Agreement) is on file with this Division and is by reference made a part of this submission.

For the Board's ready reference, the Scope Rule of the Yardmasters' Agreement reads as follows:

"SCOPE

"The provisions of this agreement shall govern the hours of service, working conditions and rates of pay of Yardmasters of all grades.

"DEFINITIONS

"Yardmasters report to and receive their instructions from the Train Master or his designated representative. Within assigned districts and as directed, they have charge of yards, of employes, movements of trains and engines and distribution of cars therein.

"The term 'Yardmaster in Charge' as used herein shall be understood to mean an individual who is in charge on a trick of the operation within the Terminal.

"The term 'Yardmaster' as used herein shall be understood to mean an individual who is in charge of a trick of the operation within an established yard territory.

"The term 'duly accredited representative', as used in this Agreement, unless otherwise specifically designated, shall be understood to mean the regularly constituted Committee, or any member or members thereof, or an officer of the Organization signatory hereto."

The claims involved in this dispute are penalty time claims for additional pay at the yardmaster's rate filed by the Brotherhood of Railroad Trainmen on behalf of yardmen who possess no yardmaster seniority because such yardmen were not used to fill yardmaster vacancies. The claims are predicated on the theory that although the claimant yardmen possess no yardmaster seniority, they are entitled to perform yardmaster work covered by the scope of the Yardmasters' Agreement without regard to the provisions of the Yardmasters' Agreement and to the exclusion of employees holding yardmaster seniority.

In Claim No. 1, the Brotherhood of Railroad Trainmen in claiming that on July 24, 1961, Claimant Stevens, who possesses no yardmaster seniority (substitute yardmaster) and who was on his assigned day off, should have been used to fill the yardmaster vacancy at "E" Bridge/Warehouse, first trick. The yardmaster assignment at "E" Bridge/Warehouse, first trick, is a regular yardmaster assignment scheduled to be filled by a regularly assigned yardmaster or a regularly assigned relief yardmaster. As set forth in the Statement of Facts, there were no unassigned yardmasters available on the first trick and no substitute yardmasters who could be used at the straight time rate. Therefore, regularly assigned yardmaster, F. E. Cole, who was on his assigned day off, was used at the time and one-half rate in accordance with the Yardmasters' Agreement as interpreted by this Division in Award 1390.

In Claim No. 2, the Brotherhood of Railroad Trainmen is claiming that on August 4, 1961, Claimant Adkins, who possesses no yardmaster seniority (substitute yardmaster) and who was absent account of illness, should have been used to fill the yardmaster vacancy at A&C Yards, third trick. The yardmaster assignment at A&C Yards, third trick, is a regular yardmaster assignment scheduled to be filled by a regularly assigned yardmaster or a regularly assigned relief yardmaster. As set forth in the Statement of facts, there were no unassigned yardmasters available on the third trick and no substitute yardmasters who could be used at the straight time rate. Therefore, regularly assigned yardmaster, G. F. Howe, who was on his assigned day off, was used at the time and one-half rate in accordance with the Yardmasters' Agreement as interpreted by this Division in Award 1390.

In Claim No. 3, the Brotherhood of Railroad Trainmen is claiming that on August 5, 1961, Claimant McCoy, who possesses no yardmaster seniority (substitute yardmaster) should have been used to fill the yardmaster vacancy at E&F/G&H Yards, second trick. The yardmaster assignment at E&F/G&H Yards, second trick, is a regular yardmaster assignment scheduled to be filled by a regularly assigned yardmaster or a regularly assigned relief yardmaster. As set forth in the Statement of Facts, Cornett, an unassigned yardmaster, was available at the straight time rate on the second trick and was used to fill this yardmaster vacancy in accordance with his yardmaster seniority. Cornett's assignment was in accordance with the Yardmasters' Agreement as interpreted by this Division in Award 1390.

In Claim No. 4, the Brotherhood of Railroad Trainmen is claiming that on August 10, 1961, Claimant Hayter, who possesses no yardmaster seniority (substitute yardmaster), should have been used to fill the yardmaster vacancy at "E" Bridge/Warehouse, second trick. The yardmaster assignment at "E" Bridge/Warehouse, second trick, is a regular yardmaster assignment scheduled to be filled by a regularly assigned yardmaster or a regularly assigned relief yardmaster. As set forth in the Statement of Facts, Cornett, an unassigned yardmaster, was available at the straight time rate on the second trick and was used to fill this yardmaster vacancy in accordance with his yardmaster seniority. Cornett's assignment was in accordance with the Yardmasters' Agreement as interpreted by this Division in Award 1390.

In Claim No. 5, the Brotherhood of Railroad Trainmen is claiming that on August 11, 1961, Claimant Hayter, who possesses no yardmaster seniority (substitute yardmaster), should have been used to fill the yardmaster vacancy at E&F/G&H Yards, third trick. The yardmaster assignment at E&F/G&H Yards, third trick, is a regular yardmaster assignment scheduled to be filled by a regularly assigned yardmaster or a regularly assigned relief yardmaster. As set forth in the Statement of Facts, Via, an unassigned yardmaster, was available at the straight time rate on the second trick and was used to fill this yardmaster vacancy in accordance with his yardmaster seniority. Via's assignment was in accordance with the Yardmasters' Agreement as interpreted by this Division in Award 1390.

In Claim No. 6, the Brotherhood of Railroad Trainmen is claiming that on August 30, 1961, Claimant McCoy, who possesses no yardmaster seniority (substitute yardmaster), should have been used to fill the yardmaster vacancy at "E" Bridge/Warehouse, second trick. The yardmaster assignment at "E" Bridge/Warehouse, second trick, is a regular yardmaster assignment scheduled to be filled five days a week by a regularly assigned yardmaster and by a regularly assigned relief yardmaster on Tuesdays. However, on Wednesdays no regular relief is provided and Cornett, an unassigned yardmaster, was available at the straight time rate on the second trick and was used to fill this yardmaster vacancy in accordance with his yardmaster seniority. Cornett's assignment was in accordance with the Yardmasters' Agreement as interpreted by this Division in Award 1390.

In Claim No. 7, the Brotherhood of Railroad Trainmen is claiming that on September 2, 1961, Claimant Moore, who possesses no yardmaster seniority (substitute yardmaster), should have been used to fill the yardmaster vacancy at A&C Yards, third trick. The yardmaster assignment at A&C Yards, third trick, is a regular yardmaster assignment scheduled to be filled by a regularly assigned yardmaster or a regularly assigned relief yardmaster. As set forth in the Statement of Facts, Via, an unassigned yardmaster, was available at the straight time rate on the third trick and was used to fill this yardmaster vacancy in accordance with his yardmaster seniority. Via's assignment was in accordance with the Yardmasters' Agreement as interpreted by this Division in Award 1390.

In Claim No. 8, the Brotherhood of Railroad Trainmen is claiming that on September 3, 1961, Claimant Moore, who possesses no yardmaster seniority (substitute yardmaster), should have been used to fill the yardmaster vacancy at A&C Yards, third trick. The yardmaster assignment at A&C Yards, third trick, is a regular yardmaster assignment scheduled to be filled by a regularly assigned yardmaster or a regularly assigned relief yardmaster. As set forth in the Statement of Facts, Via, an unassigned yardmaster, was

available at the straight time rate on the third trick and was used to fill this yardmaster vacancy in accordance with his yardmaster seniority. Via's assignment was in accordance with the Yardmasters' Agreement as interpreted by this Division in Award 1390.

As set forth above, none of the claimant yardmen possess yardmaster seniority. P. C. Via, an unassigned yardmaster, possesses a yardmaster seniority date of November 22, 1956, and H. Cornett, an unassigned yardmaster, possesses a yardmaster seniority date of December 12, 1956.

From the above, it is apparent that the yardmaster vacancies, which the Brotherhood of Railroad Trainmen alleges should have been filled by yardmen who possess no yardmaster seniority, were vacancies in regular yardmaster assignments which fall within the scope of the Agreement between this Carrier and the Railroad Yardmasters of America. The Carrier submits that inasmuch as the Railroad Yardmasters of America is the duly accredited representative of the yardmasters in the employ of The Washington Terminal Company and holds the contract covering yardmaster work, it is the Railroad Yardmasters of America which has the exclusive right to negotiate with the Carrier regarding the filling of yardmaster vacancies. The Railroad Yardmasters of America has so negotiated and the results of this negotiation will be found in Rule 3-B-2 of the Agreement between this Carrier and the Railroad Yardmasters of America. Rule 3-B-2 reads as follows:

"The Company will designate by bulletin notice and written advice to the General Chairman, a sufficient number of individuals to perform extra yardmaster service. In instances where no unassigned yardmasters or regularly designated individuals are available to fill existing vacancies, regular assigned yardmasters will be afforded the opportunity to fill vacancies for which they are available and qualified, in accordance with the following principles:

"(1) A regular assigned yardmaster shall have preference to work his own vacancy on an assigned rest day, over an individual who possesses no yardmaster seniority and who has not been specifically designated to perform extra yardmaster service.

"(2) A yardmaster shall have preference to work any vacancy for which he is available and qualified, over an individual who has not been properly selected and designated by bulletin notice and advice to the General Chairman to perform extra yardmaster service."

Rule 3-B-1(e) of the Yardmasters' Agreement as revised January 7, 1958 is also in point:

"Temporary vacancies of less than 30 days may be filled by the senior regular assigned yardmaster making request for same. Temporary vacancies of more than 5 and less than 30 days may be filled by such individuals who possess yardmaster seniority making request for same or by the senior regular assigned yardmaster making request for same. It is understood that in the application of this provision of Rule 3-B-1(e) the Company will not be subject to additional expense."

This Division in Award 1390 interpreted the above quoted rules, and this Division in interpreting Rule 3-B-2 held:

"We accordingly hold that unassigned yardmasters are entitled to perform extra yardmaster work in preference to yardmen designated for that purpose."

The Division also determined that a regularly assigned yardmaster is entitled to work at the time and one-half rate in preference to working a substitute yardmaster at the time and one-half rate by virtue of the application of Rule 3-B-1 (e) of the Yardmasters' Agreement.

The Brotherhood of Railroad Trainmen, however, contends that the Memorandum of Understanding of May 25, 1950, between this Carrier and the Brotherhood of Railroad Trainmen (Carrier's Exhibit A), grants to yardmen on the "eligible list" (substitute yardmasters) the exclusive right to be used to fill day to day yardmaster vacancies and that only when the "eligible list" is exhausted may a regularly assigned yardmaster be used at the time and one-half rate. The Brotherhood of Railroad Trainmen further contends that although P. C. Via and H. Cornett possess yardmaster seniority, they may not be used to fill day to day yardmaster vacancies unless their seniority as yardmen entitles them to be so used.

The Carrier calls attention to the fact that the Memorandum of Understanding dated May 25, 1950, between the Carrier and the Brotherhood of Railroad Trainmen was before this Division for consideration in the case involved in Docket 1343, Award 1390. Additionally, the Members of the Division were aware from the submissions in Docket 1343 that yardmen had been used to fill day to day yardmaster vacancies over the years in accordance with their seniority standing on the "eligible list." Thus, both the Memorandum of Understanding dated May 25, 1950, between this Carrier and the Brotherhood of Railroad Trainmen and the past practice were before this Division for its consideration in the case involved in Docket 1343, Award 1390.

The claims in the dispute identified as Docket 1343, Award 1390, involved fundamentally the same question as this dispute; namely, whether unassigned yardmasters are entitled to perform extra yardmaster work at the straight time rate in preference to yardmen from the "eligible list" and whether when the overtime rate is involved regularly assigned yardmasters are entitled to perform extra yardmaster work in preference to yardmen from the "eligible list." In Award 1390, this Division ruled:

"The record before us discloses two significant and undisputed facts. First, the extra work which the Claimant says he should have been permitted to perform was yardmaster's work and within the Scope of the Yardmasters' Agreement. Secondly, the Claimant was the only qualified, available and unassigned yardmaster."

In the instant dispute, the work for which the Brotherhood of Railroad Trainmen lays claim is yardmasters' work and within the Scope of the Yardmasters' Agreement. In six of the eight claims involved in this dispute (Claims No. 3 through No. 8), the employee assigned to perform the yardmaster's work was the senior available unassigned yardmaster. Thus, in Claims No. 3 through No. 8, the Carrier filled the yardmaster vacancy in accordance with the following determination of this Division in Award 1390:

"We accordingly hold that unassigned yardmasters are entitled to perform extra yardmasters work in preference to yardmen designated for that purpose."

With respect to Claims No. 1 and No. 2, inasmuch as the Carrier found it necessary to fill the yardmaster vacancies at the time and one-half rate because there were no unassigned yardmasters available and no substitute yardmasters available at the straight time rate, the vacancies were filled by regularly assigned yardmasters on their assigned days off at the time and one-half rate. This action was in accord with the following portion of Award 1390:

"It should be noted that on November 6, 1957, Claimant had exercised his yardmaster's seniority into a regular yardmaster's position and that November 7 was the rest day of that position. As a consequence, Claimant was entitled to time and one-half on account of not being called on the 7th, by virtue of the application of Rule 3-B-1(e)."

Thus, this Division has determined that regardless of the Memorandum of Understanding dated May 25, 1950, between the Carrier and the Brotherhood of Railroad Trainmen, and regardless of any past practice, unassigned yardmasters are entitled to perform extra yardmaster work in preference to yardmen designated for that purpose, and employees possessing yardmaster seniority are entitled to yardmaster vacancies which are filled at the time and one-half rate before yardmen possessing no yardmaster seniority are entitled to yardmaster vacancies which have to be filled at the time and one-half rate. The Carrier has applied Award 1390. The Carrier submits that the claims involved in this docket should be denied in accordance with the determinations made by this Division in Award 1390.

The Brotherhood of Railroad Trainmen has also contended, specifically with respect to Claim No. 1, that the Award in Docket No. 16 of Washington Terminal Company-Brotherhood of Railroad Trainmen Special Board of Adjustment No. 283 renders Claim No. 1 payable. A copy of the Award in Docket No. 16 of Special Board No. 283 is attached as Exhibit L. The claim involved in Docket 16 was a claim from a yardman, who possessed no yardmaster seniority (substitute yardmaster), that he should have been used to fill an extra yardmaster assignment in the Mailhouse on December 16, 1957, which assignment was filled by the use of the regularly assigned yardmaster in the Mailhouse on his assigned day off. The case involved in Docket 16 was argued before Special Board No. 283 in February 1959. At that time, this Fourth Division had not rendered its Award 1390. Therefore, Award 1390 was not presented to the Special Board for consideration in making its determination in the case involved in Docket 16. As a matter of fact, if the Carrier had had the benefit of Award 1390 prior to the submission of the case involved in Docket 16 to Special Board No. 283, the Carrier would not have agreed to the submission of that case to a Special Board established by agreement between The Washington Terminal Company and the Brotherhood of Railroad Trainmen. If the case were to be argued before Special Board No. 283 now, the Carrier would take the position that Special Board No. 283 had no jurisdiction over the dispute and that it properly fell within the jurisdiction of the Fourth Division. The Carrier submits that inasmuch as the Fourth Division of the National Railroad Adjustment Board by law has jurisdiction in disputes involving yardmaster work, the Award of a Special Board set up by agreement between the Carrier and the Brotherhood of Railroad Trainmen cannot supersede Award 1390.

Award 1531 of this Division is also in point. According to the Award, the dispute involved the question of whether a temporary yardmaster vacancy "... is properly allocated to yardmasters and governed by the terms

of the Yardmasters' Agreement or whether such vacancy is allocated to switchmen and must be filled by switchmen under the terms of the Switchmen's Agreement." The Award reads in part as follows:

"The record establishes that this is a 'yardmaster dispute' and, as such, falls exclusively within the jurisdiction of this Division.

"The subject matter of the dispute is the right to claim and perform service as yardmaster on a temporary yardmaster vacancy involves the question of whether such vacancy is properly allocated to yardmasters and governed by the terms of the Yardmasters' Agreement, or whether such vacancy is allocated to switchmen and must be filled by switchmen under the terms of the Switchmen's Agreement. In other words, it involves the performance of yardmaster work.

"It is, therefore, clear to the Division that the dispute presents a 'yardmaster dispute' falling exclusively within the jurisdiction of the Fourth Division. See First Division Awards 11299 to 11338 inclusive, all of which dismissed claims of like nature in the following language:

" 'By the decision of the Supreme Court of the United States (January 13, 1947) rendered in the case of the Order of Railway Conductors of America, H. W. Fraser, President, et al, vs. O. E. Swan, et al., this Division does not have jurisdiction of this dispute.'

"The use of switchmen to fill vacancies of yardmaster as in the instant case was challenged by the organization representing those yardmasters and their position was upheld by this Division's Award No. 1178.

"The practice of using switchmen to fill vacancies of yardmaster under circumstances as in the instant case, which prevailed prior to rendition of Award No. 1178, can no longer be construed as anything other than an understanding between the carrier and the switchmen's organization that, as between those two parties, the use of switchmen to fill yardmaster vacancies is not objectionable. That understanding between those parties does not, however, operate to require or permit the use of switchmen to fill vacancies of yardmasters in contravention of the yardmasters' agreement or when such use of switchmen does not have the concurrence of the yardmasters' organization.

"It is well established that the carrier could not lawfully deal with the Switchmen's Union of North America in connection with matters regulating the class or craft of yardmasters unless that organization was the certified collective bargaining agent for the yardmaster craft: that Organization is not, however, the representative of that craft. Consequently, the manner of filling vacancies of yardmasters, being a matter addressing itself to the parties to the agreement covering yardmasters, the carrier could not lawfully enter into an agreement with an organization representing switchmen, that switchmen would be used to fill yardmaster vacancies unless such an agreement were concurred in by the designated representative of the craft of yardmaster.

"The right to negotiate with the carrier rules governing the performance of the work of the yardmaster craft, including the filling of temporary vacancies, is vested solely in the organization legally authorized to represent the yardmaster craft. See Awards 430, 495 and 1360 by this Division. See also Switchmen's Union of North America v. Southern Pac. Co., C. A. Cal.1958, 253 F. 2d81, certiorari denied 79 S.Ct. 29, 358 U. S. 818, 3L.Ed. 2d 60, rehearing denied 79S.Ct. 152, 358 U. S. 896, 3 L.Ed.2d 123., and Order of Railway Conductors and Brakemen v. Switchmen's Union of North America, C.A.Ga. 1959, 269 F.2d 726, certiorari denied 80 S.Ct. 206, 361 U. S. 899, 4 L.Ed.2nd 155.

"This Board, therefore, finds that the contentions of the petitioners are borne out by what is said above and by the facts and the claim made by the Switchmen's Union of North America must be denied."

The Carrier submits that the disputes involved in this docket, like the dispute involved in Award 1531, are "yardmasters' disputes" and as such fall exclusively within the jurisdiction of this Fourth Division. The Carrier also calls particular attention to the following portion of Award 1531:

"The practice of using switchmen to fill vacancies of yardmaster under circumstances as in the instant case, which prevailed prior to rendition of Award No. 1178, can no longer be construed as anything other than an understanding between the carrier and the switchmen's organization that, as between those two parties, the use of switchmen to fill yardmaster vacancies is not objectionable. That understanding between those parties does not, however, operate to require or permit the use of switchmen to fill vacancies of yardmasters in contravention of the yardmasters' agreement or when such use of switchmen does not have the concurrence of the yardmasters organization."

The Carrier submits that in the dispute now before this Division, the use of the claimant yardmen on the dates for which claims are made would have been in contravention of the Yardmasters' Agreement and obviously would not have had the concurrence of the Yardmasters' Organization.

In summation the Carrier submits that the disputes involved in this docket are "yardmaster disputes" and as such fall exclusively within the jurisdiction of this Division. The Carrier submits that it has shown conclusively that the issues here involved have been previously adjudicated by the Fourth Division in its Award 1390. The yardmaster vacancies for which the Brotherhood of Railroad Trainmen herein lays claim were filled by yardmasters possessing yardmaster seniority in accordance with Award 1390. There is, thus, no merit in the contention of the Brotherhood of Railroad Trainmen and these claims asserted by the Brotherhood of Railroad Trainmen should, therefore, be denied.

All data used herein has been submitted to, discussed with, or is known by the employees' representatives.

Oral hearing is desired.

(Exhibits not reproduced.)

STATEMENT OF FACTS: The existing agreement between the Washington Terminal Company and the Brotherhood of Railroad Trainmen with respect to the use of yardmen shown on the eligible list was consummated May 25, 1950. Dispute arose as a result of discussion had with the carrier on January 14, 1955 with respect to the use of conductors and brakemen who have indicated in writing their desire to be used for extra yardmaster and assistant yardmaster work filling day-to-day vacancies. For convenient reference of your Honorable Board, the following are being reproduced, viz:

(Letter from General Chairman Jenkins to Manager S. Kerl of the Washington Terminal Company dated February 3, 1955.)

"Referring to discussion had January 14, 1955 concerning use of Conductors and Brakemen who have indicated in writing of their desire to be used for Extra Yardmaster and Assistant Yardmaster work filling day to day vacancies.

"Please be advised that Lodge 584 gave further consideration to this matter at our regular meeting February 2, 1955 when they instructed the undersigned to give you the benefit of their deliberations, viz:

- (1) The Brotherhood does not feel obligated to enter into any understanding with respect to Conductors and Brakemen being used to fill day to day vacancies for AYM.
- (2) On and after this date when Conductors and Brakemen are used to fill Extra Yardmaster or Assistant Yardmaster vacancies such Conductors or Brakemen will claim one additional day's pay for not being permitted to fill their regular assignment.

"Accordingly, you will be expected to entertain time claim growing out of conditions whereby when regular assigned Conductors and Brakemen are used to fill Extra Yardmaster and Assistant Yardmaster vacancies."

(Manager S. Kerl's reply to General Chairman Jenkins dated February 7, 1955)

"I have your letter of February 3rd concerning use of Conductors and Brakemen who have indicated in writing their desire to be used for Yardmaster and Assistant Yardmaster work filling day to day vacancies.

"In view of the provisions of our current agreement and other current understandings had thereto, do I understand that you are serving official notice under provisions of Section 6 of the Railway Labor Act in regard to those matters? Your letter does not so indicate. If that is your purpose you should so state and the matter will be handled in the prescribed way.

"On the basis of your letter, this is to advise that your reference to time claims being filed has no merit in view of Article 19 (A) of the current agreement and understandings had subsequent thereto, past and agreed upon practice, all of which act as a deterrent

against filing claims such as referred to by you and any so presented will be declined as being in violation of the terms of the current agreement, understandings subsequently reached, past and agreed upon practice, and likewise of the provisions of the Railway Labor Act as amended."

(Letter from General Chairman Jenkins to Manager S. Kerl, dated February 10, 1955.)

"This will acknowledge receipt of your letter dated February 7, 1955 concerning use of Conductors and Brakemen to fill day to day vacancies as Yardmaster and Assistant Yardmaster.

"Your letter suggests that we serve formal notice on the Washington Terminal Company to properly apply the provisions of the current agreement and also, that Article 19 (A) of the current agreement gives the management privilege to use regular assigned men to fill vacancies of another class or craft without compensating them for their regular assignment awarded them thru the provisions of the current agreement.

"We contend that Article 19 (A) guarantees yardmen required to perform service other than their regular assigned duties will be paid the rate applicable to the service performed which shall not be less than the going rate for position to which the yardman is ordinarily assigned — all of which only fixes the rate for the outside service and does not give the management the authority to abolish seniority rights expressed by the individual to work a particular assignment that was awarded such individuals under provisions of the current agreement, namely: Articles 10 and 11.

"Appropriate time claims are being presented to the Train Master as per Article 23 for his consideration."

(Letter from General Chairman Jenkins to Manager S. Kerl dated April 25, 1956)

"Please accept this as official notice under the applicable provisions of the Railway Labor Act that a dispute exists between this Brotherhood and the Washington Terminal with respect to the filling of extra AYM assignments.

"Recently the management entered into an agreement with the Railroad Yardmasters of America that is in direct conflict with the then-existing agreement held by this organization with the Terminal Company.

"I would appreciate your setting a date of conference when this matter may be disposed of."

(Reply of Manager S. Kerl to General Chairman Jenkins, May 4, 1956)

"Receipt is acknowledged of your letter of April 25th serving official notice under the applicable provisions of the Railway Labor Act with respect to filling extra AYM assignments.

"For the purpose of discussing this subject, will see you at this office at 1:30 PM, E.S.T., Tuesday, May 22nd, 1956."

The Board will please note there has been a change in the managerial staff and Mr. M. H. Lingenfelter is currently the Manager who handled this matter.

(Letter from Manager Lingenfelter to General Chairman Jenkins dated June 2, 1956)

"Referring to Mr. Kerl's letter to you of May 29th concerning conference that was postponed on May 22nd, when you were called out of the city, having to do with the following matters:

- (1) Initial conference to discuss existing dispute with reference to the filling of AYM vacancies as contained in formal notice to management dated April 25, 1956.
- (2) Claims (34 in number) listed in my letter of May 11th.

"For the purpose of discussing these matters will see you at this office at 9:00 AM EST, Tuesday, June 5th, 1956."

At the conference on June 5, 1956 the General Chairman handed Manager Lingenfelter the Committee's position, as follows:

"Position of employees represented by the Brotherhood of Railroad Trainmen with reference to formal notice served on The Washington Terminal Company, dated April 25, 1956, that a dispute exists under the applicable provisions of the Railway Labor Act, as amended, with respect to the filling of extra AYM vacancies.

"Since the origin of the Washington Terminal Company, Yardmen have been used to fill extra AYM vacancies. From the origin of the Terminal and until September 16, 1942 that class (AYMs) were not represented by any organization and neither did they have a working agreement with the Terminal Company. September 16, 1942 the Terminal Company entered into an agreement with the RYA that provided for rules, rates of pay and working conditions for only **regularly assigned Yardmasters** and was as silent as night with respect to conditions affecting extra AYM or the filling of such vacancies.

"The Agreement of September 16, 1942, was continued in effect until March 1, 1956 at which time the Terminal Company entered into a new working agreement. We wish to reiterate that since the origin of the Terminal Company and particularly from September 1, 1942 until March 1, 1956 extra vacancies for AYM were filled exclusively by Yardmen, however, there may be some isolated condition where a regular yardmaster was used to fill an extra AYM vacancy. But the existing foot-loose arrangement of filling day to day AYM vacancies brought about the agreement of May 25, 1950 between The Washington Terminal Company and this Brotherhood that provided for the promotion of Yardmen to regular assignments as AYM and the filling of extra or day to day AYM vacancies. In other words it was found expedient by both parties to reduce the long established practice to an orderly working

agreement when filling extra AYM vacancies. Subsequent to the effective date of the agreement held with the BRT the filling of extra AYM vacancies was changed on occasion without proper negotiations and agreement which resulted in time claims being filed and disposed of satisfactorily in keeping with the BRT's interpretation placed upon the rule providing for the manner in which extra AYM vacancies shall be filled. Aside from that there has been no material change in that working condition until the management entered into an agreement, effective March 1, 1956 with the RYA that has changed the method of filling extra AYM vacancies that deprives Yardmen the right to work all extra vacancies in that regularly assigned AYMs are permitted to cover certain extra AYM vacancies on their ADO and such procedure is in our opinion in violation of the Agreement held with the Brotherhood. Further, we contend that we have a bona fide working agreement embracing this service and in addition enjoyed a long established practice that extends beyond any record of agreements held with any other organization, therefore, management has no right to bargain away any prior rights or equity earned by Yardmen represented by this Brotherhood in the filling of AYM (extra) vacancies. We will insist upon time claims being honored when the terms of our current working agreement are violated in this fashion. Consequently, the question is put — does the BRT have an agreement with The Washington Terminal Company that provides for the use of Yardmen to fill all extra AYM vacancies?"

(Letter from Manager Lingenfelter to General Chairman Jenkins dated June 11, 1956)

"Referring to your various letters of May 15th, concerning the following claims:

Claim Y-3706, W. S. Mahoney, April 8, 1956.
 Claim Y-3708, A. P. Houchens, April 30, 1956.
 Claim Y-3720, W. S. Mahoney, April 22, 1956
 Claim Y-3721, W. S. Mahoney, April 30, 1956
 Claim Y-3721, W. S. Mahoney, May 7, 1956

"In view of these claims all being of the same nature and conclusion that was reached on June 5th, no doubt these are claims that will be required to be screened in connection with the settlement agreed to, therefore, conference to discuss the same is not necessary at this time, the same to be included in claims to be screened per understanding had.

"This letter is intended to meet the provisions of Article 23, and if this is not your understanding, then I am declining the claims."

(Letter from General Chairman Jenkins to Manager Lingenfelter dated June 19, 1956)

"Please be referred to formal notice served on The Washington Terminal Company under date of April 25, 1956 as provided for in the applicable provisions of the Railway Labor Act that a dispute exists between The Washington Terminal Company and its employees represented by this Brotherhood with respect to the filling of extra AYM vacancies. Conference was initially set for May 22, 1956 and

it was mutually agreed to postpone the same until June 5, 1956 at which time the initial conference was had. Also, reference is made to your letter of June 11, 1956 which in my opinion does not fully cover the discussion that took place June 5, 1956 and am writing you for your concurrence in my understanding of what took place.

"At the conference of June 5, 1956 you were handed our written position and after lengthy discussion of the same it was agreed to the following:— (1) Yardmen shown on the eligible list who have made written application under the terms of the May 25, 1950 Agreement, to be used as extra AYM would be used to fill all such vacancies and when additional extra AYM's are needed to fill remaining vacancies management will arrange to cover the same. (2) Time claims presented for one day's pay at time and one half emanating from violation of the principle outlined in item (1) hereof will be revised to one day's pay at AYM's pro rata rate of pay without prejudice to the right of employees hereafter being paid at the overtime rate when not used for such service under conditions cited in the claims.

"Am attaching hereto time claims involved and would appreciate you advising the payroll on which the same will be included."

(Letter from Manager Lingenfelter to General Chairman Jenkins dated June 25, 1956)

"Referring to your letter of June 19th, in connection with my letter of June 11th, concerning the claims listed therein.

"My letter was not intended as a confirmation of conclusion reached at initial conference of June 5th, 1956, when discussion was had of your formal notice of April 25th, 1956 with reference to claim that dispute existed between The Washington Terminal Company and its employees represented by the Brotherhood of Railroad Trainmen with respect to the filling of extra Yardmaster vacancies.

"This letter will confirm understanding reached and resulted in withdrawal by you of the notice dated April 25th, 1956.

- (1) Yardmen shown on the eligible list who have made written application to the Train Master under the terms of the May 25th, 1950 Agreement, to be used as Extra Yardmasters, if available, will be used to fill vacancies for Yardmasters, and if additional extra Yardmasters are needed such vacancies will be filled by the management.
- (2) Time claims which were presented on the basis of a day at time and one-half account of claimed violation of understanding had with reference to filling of vacancies for Yardmasters will be revised to provide for one day's pay at Yardmasters' pro rata rate of pay without prejudice to future claims that may be made by eligible Yardmen when not used for such service under conditions cited in the claims that were filed.

- (3) In the general discussion that took place with reference to additional names being added to the eligible list, it was understood and agreed that yardmen making application and selected to be added to eligible list for use as Yardmaster, and who may require time to qualify will not be allowed in excess of twenty-one day's pay by the Company for such qualification, the employees taking as much time as they feel necessary on their own time to reach the qualifications required to fill all assignments on the trick of duty to which they are assigned or selected."

In each of the claims herein cited claimant properly stood to be called from the eligible list under the terms of the understanding confirmed in Mr. Lingenfelter's letter of June 25, 1956, as quoted herein above.

A reading of the aforementioned clearly demonstrates there is in existence an agreement between The Washington Terminal Company and its yardmen represented by the Brotherhood of Railroad Trainmen that provides for the orderly arrangement of filling day-to-day vacancies for yardmaster. Each of the claims herein cited above are for yardmen who were first out and available on the eligible list and were not called to perform yardmaster service, and the carrier elected in each instance to call a regularly assigned yardmaster who is not shown on the eligible list or use an unassigned yardmaster out of turn on the eligible list to fill the job in spite of what was agreed to in the foregoing. There is also in evidence an Award from the Washington Terminal Company-Brotherhood of Railroad Trainmen Special Board of Adjustment No. 283, Docket 16, which sustains the employees' position when the carrier elected to use regularly assigned Yardmaster F. E. Cole December 16, 1957 when G. D. Stevens was first out and available on the eligible list to fill day-to-day vacancies. That Award reads as follows:

"STATEMENT OF CLAIM: G. D. Stevens, December 16, 1957, "Allow 1 day's pay at Y.M. rate acct. F. E. Cole being used at time and half on relief day as extra mail Y.M., Low Level when I was available at straight time."

"FINDINGS: On the dates involved in these claims, a regularly assigned yardmaster, one Mr. Cole, was used on his rest day on what the Carrier termed a special duty assignment in the Mail House.

"Under a Memorandum Agreement dated May 25, 1950 governing procedure to be followed in the application of the rule concerning promotions of Conductors and Yardmen to Yardmasters, it appears that day to day vacancies as yardmaster and extra work for short periods of duration such as Christmas holidays are to be filled by promoted Brakemen and Conductors. In the instant case it is clear that Mr. Cole worked as a yardmaster and was paid as a yardmaster for extra work made necessary by reason of the Christmas mail rush. Therefore it would appear that he was engaged in extra duty as a yardmaster despite the carrier's assertion that it was a Special Duty Assignment. The work involved should have been assigned to the claimant inasmuch as he was first out on the eligible list for yardmaster service on the dates in question.

AWARD

Claims sustained.

SPECIAL BOARD OF ADJUSTMENT NO. 283

(s) Francis J. Robertson

Francis J. Robertson — Chairman

(s) E. E. Wallace

E. E. Wallace — Employee Member

(s) M. L. Stewart

M. L. Stewart — Carrier Member

Washington, D. C.

October 6, 1959"

AWARD IN
DOCKET NO. 17

SPECIAL BOARD OF ADJUSTMENT NO. 283

BROTHERHOOD OF RAILROAD TRAINMEN

and

THE WASHINGTON TERMINAL COMPANY

STATEMENT OF CLAIM: J. Algaze, December 20, 1957,
"Allow one day at Yardmaster rate acct. using R. E. Brimes and
P. C. Via as Yardmaster this date.

FINDINGS: On Friday, December 20, 1957, the Carrier used
a regularly assigned yardmaster, one P. C. Via, to work on his re-
lief day as a so-called Special Duty Yardmaster in the Mail House on
the second trick. It also held Yardmaster Grimes to work overtime
to follow up work which he had programmed and assist the yard-
master who relieved him.

We see no impropriety in the Carrier continuing Mr. Grimes
on duty to work overtime on his regular assignment. However, for
reasons given in our Award in Docket No. 16, the use of Mr. Via as
opposed to the claimant who was on the eligible list was improper
and therefore the claim is sustainable.

AWARD

Claim sustained as indicated in Findings.

SPECIAL BOARD OF ADJUSTMENT NO. 283

/s/ Francis J. Robertson

Francis J. Robertson — Chairman

/s/ E. E. Wallace

E. E. Wallace — Employee Member

/s/ M. L. Stewart

M. L. Stewart — Carrier Member

Claim Y-61-1414, G. D. Stevens, July 24, 1961, was submitted to the
Train Master August 15, 1961, in accordance with Article 21 of the current
agreement. Train Master denied the claim within 30 days (August 25, 1961)
and the same was appealed to Manager Lingenfelter August 30, 1961. Sep-
tember 1, 1961, Manager Lingenfelter's letter listed the aforementioned
claim, viz:

"Claim Y-61-1414, G. D. Stevens, July 24, 1961. (The other claims mentioned in this Docket were listed similarly for regular monthly conference on September 13, 1961)

"In accordance with Article 21 of the Agreement effective July 1, 1959, the above claims referred to this office by you in the month of August 1961 are listed for discussion in conference commencing at 9:00 AM, EST, Wednesday, September 13, 1961."

At the conference on September 13, 1961, and in the discussion of Claim Y-61-1414, G. D. Stevens, July 24, 1961, which is listed as Claim No. 1 herein, the Committee handed the carrier its position, which reads as follows:

"Claim No. Y-61-1414 — G. D. Stevens, July 24, 1961.

On the date in question the claimant was available on the 'eligible list' and stood to work vacancy as Yardmaster at 'E' Bridge. F. E. Cole was called for the vacancy at 'E' Bridge, however, Cole is not shown on the 'eligible list' to fill day to day Yardmaster vacancies. Therefore, in keeping with Award in Docket No. 16, Special Board of Adjustment No. 283, Brotherhood of Railroad Trainmen and the Washington Terminal Company the claim should be allowed."

The carrier denied the claim under date of September 25, and their decision reads as follows:

"As discussed in conference, this claim is for a day's pay at the yardmaster rate because G. D. Stevens, who was occupying a regular position as conductor on Crew E&F-1, was not used to fill a yardmaster vacancy at 'E' Bridge, first trick, July 24. As you were advised in conference, the yardmaster vacancy at 'E' Bridge on the first trick, July 24, was filled by Yardmaster Cole in accordance with the Agreement between The Washington Terminal Company and its yardmasters represented by the Railroad Yardmasters of America, as interpreted by the Fourth Division of the National Railroad Adjustment Board in Award 1390."

October 26, 1961, 31 days after the BRT was appraised by the highest officer designated by the carrier to render decision, the Carrier submitted the above mentioned claims to Fourth Division, NRAB, and sent a copy of their notice to the BRT. A copy of Article 21 of the Agreement between the Washington Terminal Company and its Yardmen represented by the BRT, effective July 1, 1959, is attached and marked as Exhibit 'A'. Also, reproducing for convenient reference of the Board the following provision of the current agreement reading:

"It is agreed that management will continue to notify the General Chairman of the Railroad Yardmasters of America as yardmen, who are posting as Yardmasters, become qualified in each location; however, yardmen who are posting will not be used on any yardmaster's position during the period they are posting except in the event the eligible list is exhausted and the list of yardmasters off on relief days on the particular tour is exhausted."

POSITION OF THE COMMITTEE: In its answer to the Carrier's ex parte submission, the Committee will show:

(1) This dispute does not fall within the jurisdiction of the Fourth Division.

(2) The 8 claims should be allowed in keeping with agreed upon rules and the numerous decisions reached by the parties on the property.

1. This dispute does not fall within the jurisdiction of the Fourth Division.

As set forth in the Employees' Statement of Facts, the Agreement shown on page 7 hereof, between the Carrier and the BRT embraces the use of yardmen shown on the eligible list to be used as extra yardmasters. In each of the claims herein cited claimant properly stood to be called from the eligible list under the terms of the understanding confirmed by Mr. Lingenfelter's letter of June 25, 1956, which is reproduced on page 7 hereof. The BRT progressed the matter under the provision of the Railway Labor Act, which resulted in the Agreement of June 25, 1956, implementing the agreement of May 25, 1950. In other words the Carrier conceded that the use of yardmen to fill day-to-day yardmaster vacancies was covered by the Agreement of May 25, 1950 and confirmed the understanding with the letter Agreement of June 25, 1956. A reading of the June 25, 1956, letter agreement clearly demonstrates there is in existence an agreement between the Washington Terminal Company and its yardmen represented by the Brotherhood of Railroad Trainmen that provides for the orderly arrangement of filling day-to-day vacancies for yardmaster. Each of the claims herein cited above are for yardmen who were first out and available on the eligible list and were not called to perform yardmaster service as provided for in the May 25, 1950 agreement and Manager Lingenfelter's letter of June 25, 1956. The instant case was progressed on the property by the yardmen of the Washington Terminal Company represented by the BRT in keeping with the current agreement — Article 21 (Employees Exhibit A) The claims were submitted in writing to the Train Master within 30 days of the occurrence. The Train Master denied the claims within 30 days from the date submitted and said claims were appealed to Manager Lingenfelter as required by Paragraph (C) of Article 21, and conference was set for September 13, 1961, when such claims were discussed. Manager Lingenfelter's decision was received as required by Paragraph (C) of Article 21. Paragraph (E) of Article 21, reads:

“(E) Decision by the highest officer designated by the carrier to handle claims shall be final and binding unless within one year from date of said officer's decision such claim is disposed of on the property or proceedings for the final disposition of the claim are instituted by the employe or his duly authorized representative and such officer is so notified. It is understood, however, that the parties may by agreement in any particular case extend the time limits referred to in this Article.”

Your Honorable Board will please note that Manager Lingenfelter's decision dated August 25, 1961, is **“ * * * final and binding unless within one year from date of said officer's decision such claim is disposed of on the property or proceedings for the final disposition of the claim are instituted by the employe or his duly authorized representative and such officer is so notified. * * * ”** We contend that the Carrier cannot submit a claim to your Honorable Board as their decision is **“ * * * final and binding * * * ”** unless **“ * * * the employe or his duly authorized representative * * * ”** submits the case to your Honorable Board. Further, this Committee contends that your Honorable Board does not have jurisdiction to pass upon the application of

Article 21 of the current agreement between this Carrier and its employees represented by this Brotherhood. We submit that the Carrier violated the provisions of Article 21 when submitting the above-mentioned claims to your Honorable Board as Manager Lingenfelter is not the 'employee' nor is he the 'duly authorized representative' of the employees involved. Hence, the provisions of Article 21 do not permit Manager Lingenfelter or the Carrier to move against the employees in submitting their 'final and binding' decision to your Honorable Board. We repeat that this Committee holds that the Fourth Division does not have jurisdiction to hear a question that arises under the provisions of the current working agreement between the Carrier and its employees represented by this Brotherhood.

SUBJECT TO AND WITHOUT WAIVING THE COMMITTEE'S ABOVE OUTLINED POSITION THAT THE CLAIMS REFERRED TO IN THE CARRIER'S NOTICE DATED OCTOBER 26, 1961, ARE NOT PROPERLY BEFORE THIS FOURTH DIVISION AND SHOULD BE DISMISSED, THE COMMITTEE MAKES THE FOLLOWING SUBMISSION TO THE CARRIER'S EX PARTE SUBMISSION.

2. The 8 claims involved in this dispute have merit and should be allowed.

In each of the claims herein cited claimant properly stood to be called from the eligible list under the terms of the understanding confirmed in Mr. Lingenfelter's letter of June 25, 1956, as quoted herein above. A reading of the aforementioned clearly demonstrates there is in existence an agreement between the Carrier and its yardmen represented by this Brotherhood that provides for the orderly arrangement of filling day-to-day vacancies for yardmaster. Each of the claims herein cited above are for yardmen who were first out and available on the eligible list and were not called to perform yardmaster service, and the carrier elected in each instance to call a regularly assigned yardmaster who is not shown on the eligible * * * list or use an unassigned yardmaster out of turn on the eligible list to fill the job in spite of what was agreed to in the foregoing. There is also in evidence an Award from the Washington Terminal Company-Brotherhood of Railroad Trainmen Special Board of Adjustment No. 283, Docket 16, which sustains the employees' position when the carrier elected to use regularly assigned Yardmaster F. E. Cole December 16, 1957 when G. D. Stevens was first out and available on the eligible list to fill day-to-day vacancies. That Award reads as follows:

"STATEMENT OF CLAIM: G. D. Stevens, December 16, 1957, "Allow 1 day's pay at Y.M. rate acct. F. E. Cole being used at time and half on relief day as extra mail Y.M., Low Level when I was available at straight time."

"FINDINGS: On the dates involved in these claims, a regularly assigned yardmaster, one Mr. Cole, was used on his rest day on what the Carrier termed a special duty assignment in the Mail House.

"Under a Memorandum Agreement dated May 25, 1950 governing procedure to be followed in the application of the rule concerning promotions of Conductors and Yardmen to Yardmasters, it appears that day to day vacancies as yardmaster and extra work for short periods of duration such as Christmas holidays are to be filled by promoted Brakemen and Conductors. In the instant case it is clear that Mr. Cole worked as a yardmaster and was paid as a yardmaster for extra work made necessary by reason of the Christmas mail rush. Therefore it would appear that he was engaged in extra duty as a

yardmaster despite the carrier's assertion that it was a Special Duty Assignment. The work involved should have been assigned to the claimant inasmuch as he was first out on the eligible list for yardmaster service on the dates in question.

AWARD

Claims sustained.

SPECIAL BOARD OF ADJUSTMENT NO. 283

(s) **Francis J. Robertson**
Francis J. Robertson — Chairman

(s) **E. E. Wallace** (s) **M. L. Stewart**
E. E. Wallace — Employee Member M. L. Stewart — Carrier Member

Washington, D. C.
October 6, 1959"

At the conference on September 13, 1961, and in the discussion of Claim Y-61-1414, G. D. Stevens, July 24, 1961, which is listed as Claim No. 1 herein, the Committee handed the carrier its position, which reads as follows:

"Claim No. Y-61-1414 — G. D. Stevens, July 24, 1961.

On the date in question the claimant was available on the "eligible list" and stood to work vacancy as Yardmaster at "E" Bridge. F. E. Cole was called for the vacancy at "E" Bridge, however, Cole is not shown on the "eligible list" to fill day to day Yardmaster vacancies. Therefore, in keeping with Award in Docket No. 16, Special Board of Adjustment No. 283, Brotherhood of Railroad Trainmen and The Washington Terminal Company and numerous decisions reached in conference with The Washington Terminal Company the claim should be allowed."

The carrier denied the claim under date of September 25, and their decision reads as follows:

"As discussed in conference, this claim is for a day's pay at the yardmaster rate because G. D. Stevens, who was occupying a regular position as conductor on Crew E&F-1, was not used to fill a yardmaster vacancy at "E" Bridge, first trick, July 24. As you were advised in conference, the yardmaster vacancy at "E" Bridge on the first trick, July 24, was filled by Yardmaster Cole in accordance with the Agreement between The Washington Terminal Company and its yardmasters represented by the Railroad Yardmasters of America, as interpreted by the Fourth Division of the National Railroad Adjustment Board in Award 1390."

The Committee does not wish to belabor the Board with reproductions of previous decisions reached in conference with the carrier. However, the Committee can positively state that the present managerial officers and previous managerial officers have agreed in conference in the allowance of numerous time claims such as herein cited above. The decisions reached in conference to pay and use yardmen to fill all yardmaster vacancies from the

eligible list was continued until it was necessary to progress the matter to the Washington Terminal Special Board of Adjustment No. 283, which sustained the employes' position, and thereafter the carrier has honored that decision until July 24 when the carrier arbitrarily commenced the use of regularly assigned yardmasters and unassigned yardmasters to fill day-to-day vacancies. Shown below are the yardmen on the eligible list who have made written application for yardmaster work, viz:

8:00 to 4:00

1. G. D. Stevens
2. V. A. Horrell

12:00 to 8:00

1. H. C. Adkins
2. R. L. Moore
3. V. A. Horrell
4. M. D. Hayter (Ex. Brakeman)

4:00 to 12:00

1. C. D. McCoy
2. J. Algaze
3. J. R. Tolley
4. P. C. Via) Via and Cornett are unassigned yardmaster, i. e., a yardman
5. H. Cornett) possessing yardmaster seniority but insufficient seniority to hold a regular position as yardmaster who therefore is working in a regular assignment as yardman.
6. M. D. Hayter (Ex. Brakeman)

prior to July 24, 1961, the Carrier used the senior yardman shown on the eligible list to fill day-to-day yardmaster vacancies, which is in keeping with the current agreement and decision reached before Washington Terminal Special Board No. 283. Subsequent to July 24, 1961, the Carrier arbitrarily used regular assigned yardmasters who are not shown on the eligible list and unassigned yardmasters out of turn to fill such vacancies. There is also evidence of an agreement reached in conference on settlement of time claims that if a yardman who has made application in writing for the eligible list refuses to accept a call for yardmaster vacancy, also loses his turn on the crew or the extra list, as the case may be, which demonstrates the clarity of the agree-upon procedure to fill day-to-day yardmaster vacancies.

In conclusion we submit that the claimants were available on the eligible list and not called for yardmaster vacancies and placed claim because the Carrier used regularly assigned yardmaster or unassigned yardmasters to fill vacancy as extra yardmaster in violation of the existing agreement and Special Board Award Docket No. 16. The Committee's statement of facts clearly demonstrates that the carrier fully recognizes that of an employe not shown on the eligible list for yardmaster work is valid basis for claim on behalf of the available yardman on the eligible list who was not called for such service. Also, the carrier cannot deny that they have paid claims for run around on the eligible list when the senior yardman shown thereon was not called for extra yardmaster work.

Therefore, your Honorable Board is requested to give force and effect to the existing agreement between the parties that provides that extra yardmaster work will be relegated to the yardman shown on the eligible list for extra yardmaster work. Also, preserve the decision reached on this property in Docket No. 16, Special Board of Adjustment No. 283.

OPINION OF BOARD: The Organization, defendant here, contends that this Division should not assume jurisdiction of this dispute, alleging

among other things, that the claim has not been handled in accordance with Circular No. 1 of the National Railroad Adjustment Board.

We find the record discloses that the dispute has been handled in accordance with the provisions of Circular No. 1 and the Railway Labor Act.

The record establishes that this is a "yardmaster" dispute and, as such, falls exclusively within the jurisdiction of this Division.

The subject matter of the dispute is the right to claim and perform service as yardmaster on a temporary and/or day-to-day yardmaster vacancy and involves the question of whether such vacancy is allocated to yardmasters and governed by the terms of the Yardmasters' Agreement, or whether such vacancy is allocated to yardmen and must be filled by yardmen under the terms of the yardmen's agreement. In other words, it involves the performance of yardmasters' work.

It is, therefore, clear to the Division that the case presents a "yardmaster dispute" falling exclusively within the jurisdiction of the Fourth Division. See First Division Awards 11299 to 11338 inclusive, all of which dismissed claims, of like nature, in the following language:

"By the decision of the Supreme Court of the United States (January 13, 1947) rendered in the case of the Order of Railway Conductors of America, H. W. Fraser, President, et al, vs. O. E. Swan, et al, this Division does not have jurisdiction of this dispute."

The use of yardmen to fill yardmaster vacancies was challenged by the organization representing those yardmasters and the organization's position was upheld by this Division's Award No. 1390. The same question was involved in cases submitted to this Division both prior to and subsequent to Award No. 1390 and in all those cases this Division held as in Award No. 1390: see Fourth Division Awards 430, 495, 1360 and 1531.

The carrier properly states that yardmasters employed by the Washington Terminal Co. are represented by the Railroad Yardmasters of America, and all yardmaster work is covered by the Agreement between the Washington Terminal Co. and the Railroad Yardmasters of America. Accordingly, the practice of using yardmen to fill yardmaster vacancies prior to rendition of Award No. 1390 can no longer be construed as anything other than an understanding between the carrier and the yardmen's organization that, as between those two parties, the use of yardmen to fill yardmaster vacancies is not objectionable. That understanding between those parties does not, however, operate to require or permit the use of yardmen to fill the yardmaster vacancies in contravention of the yardmasters' agreement or when such use of yardmen does not have the concurrence of the yardmasters' organization.

It is well established that the carrier could not lawfully deal with the Brotherhood of Railroad Trainmen in connection with matters regulating the class or craft of yardmasters unless that organization was the certified collective bargaining agent for the yardmaster craft; that organization is not, however, the representative of that craft. Consequently, the manner of filling vacancies of yardmasters, being a matter addressing itself to the parties to the agreement covering yardmasters, the carrier could not lawfully enter into an agreement with an organization representing yardmen, that yardmen would be used to fill yardmaster vacancies unless such an

agreement were concurred in by the designated representative of the craft of yardmaster.

The right to negotiate with the carrier rules governing the performance of the work of the yardmaster craft, including the filling of temporary and/or day-to-day vacancies, is vested solely in Railroad Yardmasters of America, the organization legally authorized to represent the yardmaster craft. See Awards 430, 495 and 1360 by this Division. See also Switchmen's Union of North America v. Southern Pac. Co., C. A. Cal. 1958, 258 F. 2d 81, certiorari denied 79 S. Ct. 28, 358 U. S. 818, 3 L. Ed. 2d 60, rehearing denied 79 S. Ct. 152, 358 U. S. 896, 3 L. Ed. 2d, 123, and Order of Railway Conductors and Brakemen v. Switchmen's Union of North America, C. A. Ga. 1959, 269 F. 2d 726, certiorari denied 80 S. Ct. 206, 361 U. S. 899, 4 L. Ed. 2d 155.

This Board, therefore, finds that the contentions of the petitioner are borne out by what is said above and by the facts and the claim made by the Brotherhood of Railroad Trainmen must be denied.

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 waived right of appearance at hearing thereon.

AWARD

Contentions of petitioner sustained and claim denied in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION

ATTEST: Patrick V. Pope
Secretary

Dated at Chicago, Illinois, this 15th day of June, 1962.