

**NATIONAL RAILROAD ADJUSTMENT BOARD****FOURTH DIVISION**

**The Fourth Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.**

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**PARTIES TO DISPUTE:****RAILROAD YARDMASTERS OF NORTH AMERICA, INC.****THE NEW YORK CENTRAL RAILROAD COMPANY,  
EASTERN DISTRICT**

**STATEMENT OF CLAIM:** Claim and request of the petitioner that former Yardmaster J. J. Lunn be compensated for one day's pay at prevailing yardmaster rate for June 17, 1959 and each subsequent day until his former yardmaster position is restored.

Claim is based on the fact that the yardmaster position at Rome, N. Y. was abolished on June 17, 1959 and the duties and responsibilities performed by Yardmaster J. J. Lunn prior to June 17, 1959 were assigned to employes other than those listed in Scope Rule 1 of effective agreement.

**EMPLOYES' STATEMENT OF FACTS:** In 1924 the Railroad Yardmasters of North America, Inc. and the New York Central Railroad Company negotiated an agreement covering all classes of yardmaster positions which was understood to include general yardmasters, assistant general yardmasters, assistant yardmasters, except general yardmasters referred to in Ex Parte No. 72, Interstate Commerce Commission.

Between July 15, 1924 and July 1, 1958 said agreement was revised several times, but in no revision of the agreement was any rule enacted that would barter away any of the duties commonly known as yardmaster duties, nor have any of the duties and responsibilities of yardmasters as set out in the Carrier's Rules for the Government of the Operating Department, Rules 811 to 816 inclusive, been changed over the years.

The agreement was made in good faith that work, duties and responsibilities of yardmasters would be performed by employes of the class and craft of yardmasters. It has been well recognized by carriers that all yardmaster work is included in the coverage of the effective agreement covering yardmasters.

In many awards by the Fourth Division, it has been held that the carrier has violated the scope rule of agreements by assigning work covered by that agreement to others not subject to the rule.

In the instant claim, the carrier on June 17, 1959 did arbitrarily abolish the long established position of yardmaster at Rome, N. Y., and assign the work, duties and responsibilities of former Yardmaster J. J. Lunn to the Agent and yard clerks employed at Rome, N. Y.

**POSITION OF EMPLOYEES:** There is definitely a basic principal that a collective agreement, in this case collective agreement covering yardmaster work, covers a class and craft whose duties and responsibilities are well established and well recognized.

It is also a basic principal recognized by various divisions of the National Railroad Adjustment Board, that carriers may not arbitrarily remove work from collective agreements and assign the work to employees not covered thereby.

The petitioner takes the position that in the years from 1943 to 1959 there was definitely yardmaster work to be performed, otherwise the position would not have been established and maintained over the years.

There was no change in the operation of Rome Yard after June 17, 1959, date on which the position was abolished, as against the operation prior to June 17, 1959. There was a decline in the number of cars handled in 1959 due to the steel strike and a strike in the copper industry, yet the supervision and yard power was necessary in order to protect the remaining business.

The carrier does not attempt to deny that the agent at Rome did, on and after June 17, 1959, fully assume the duties and responsibilities of former Yardmaster Lunn.

The petitioner respectfully requests that your Honorable Board will find the carrier has arbitrarily abolished the yardmaster position at Rome, N. Y., and assigned the yardmaster work to the Agent and his clerks, and that they will order the carrier to restore the position of yardmaster at Rome, N. Y., reimbursing Yardmaster J. J. Lunn for any monetary loss suffered by him after June 17, 1959.

**HEARING:** An oral hearing is not desired unless the carrier requests an oral hearing.

All data in support of the organization's position in connection with this claim has been presented to the carrier and made a part of this dispute.

**CARRIER'S STATEMENT OF FACTS:** There is on file with your Board an Agreement effective July 1, 1958 between the Railroad Yardmasters of North America, Inc., hereinafter known as the Organization, and the New York Central Railroad Company, hereinafter known as the Carrier, which is hereby made a part of this submission.

The city of Rome, N. Y., is located on the Carrier's Mohawk and St. Lawrence Division. The main line is located on the south side of the Mohawk River. A three track yard, with a capacity of approximately 300 cars is located adjacent to the main line. This yard is used principally by main line freight trains to drop or pick up cars. A single track branch line begins at Signal Station 34 at the east end of the yard, crosses the Mohawk River and extends through the city of Rome to Cam-

den, a distance of 22 miles. This branch line is known as the Rome Branch. The switching limits for Rome yard crews extends for approximately 4 miles along the Rome Branch and with the exception of one consignee located on the main line, all shippers and receivers of freight at Rome are located north of the Mohawk River and are served from the Rome Branch.

A local freight train operates from Utica to Rome, thence over the Rome Branch to Camden and return, daily except Sunday.

A check of Carrier's records from 1918 to the present showed that prior to 1941, no regular position of yardmaster was in existence at Rome. On July 7, 1941 one regular position of yardmaster at Rome was authorized and established. This position, which is subject to the present dispute, remained in effect until abolished on June 16, 1959.

The Freight Agent at Rome has always been responsible for the operation of both the freight station and the freight yard.

In 1941, Rome was a busy station. The Rome Branch at that time extended to Richland and was used as a low-grade route for freight trains operating between Utica and Watertown. Three freight trains on the Rome Branch and at least four main-line freight trains dropped or picked up cars at Rome. There was a force of eleven positions in the freight office as well as a force of sixteen employes handling less carload freight in the freight house. From four to six yard engine assignments were worked each week day.

On July 7, 1941, in order to relieve the freight agent from the detailed supervision of the yard operation, a single position of yardmaster was established on the first trick. The principal duties of the yardmaster were to plan and supervise the work of the yard engine assignments and to arrange for the calling of trainmen to cover the available vacant positions.

In recent years the volume of business at Rome has sharply declined. Carrier's Exhibit "A" shows clearly the decrease in cars dispatched in road freight trains from Rome. Also shown is the number of yard engine tricks worked during 1947, the earliest year comparable figures were available to show the reduction in yard engine tricks worked during the period 1956-1959 inclusive. By June, 1959, there were only two regular yard engine assignments at Rome. One yard crew worked from 7 A. M.- 3 P. M.; the other crew worked from 3 P. M. - 11 P. M., Monday-Friday inclusive. The yard operation at Rome had become a routine industrial switching operation requiring a minimum of planning and supervision. The work of calling crews had been transferred to the crew dispatchers at Utica. The freight station and warehouse force had declined to a total of five regular positions. There was not sufficient work to require the services of a full-time yardmaster position as the small amount of supervision required could readily be resumed by the freight agent.

On June 16, 1959, the position of Yardmaster at Rome was abolished. The incumbent of the position, J. J. Lunn, did not exercise his displacement rights within the craft of yardmasters. Instead he displaced on the position of Chief Clerk - Cashier at Rome Freight station, a position that is subject to all the rules of the Clerks' Agreement and has continued on that position to date.

The claim involved in this dispute was originally presented to the Carrier's local supervision on June 24, 1959 and was subsequently appealed to the Carrier's highest appeals officer, T. A. Seymour, Assistant General Manager-Labor Relations, who in turn denied the claim on January 18, 1960.

**POSITION OF CARRIER:**

**1. THE FOURTH DIVISION OF THE NATIONAL RAILROAD ADJUSTMENT BOARD IS WITHOUT JURISDICTION.**

This dispute involves a jurisdictional issue in that the Railroad Yardmasters of North America, Inc., questions the right of Carrier to have its employes subject to the scope of its Schedule Agreement with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, perform the work in dispute. Therefore, as employes represented by the Clerks' Organization have rights which would obviously be affected by an award in this dispute, that Organization becomes an interested party and, as such, is entitled to due notice of all hearings concerning such dispute so as to be in a position to protect its interests. This right is specifically accorded in Section 3, First (j) of the Railway Labor Act, as amended, which provides:

“(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employe or employes and the carrier or carriers involved in any disputes submitted to them.”

The record does not indicate that notice concerning this dispute has been given to the Clerks' Organization. Such failure to notify all parties involved has resulted in Adjustment Board awards remanding or dismissing such disputes and the Carrier, therefore, submits that this dispute should likewise be remanded or dismissed for lack of jurisdiction.

Without waiver or prejudice to its position that your Board is without jurisdiction, the Carrier will set forth its position that the claim is also without merit.

**2. THE RULES OF THE AGREEMENT DO NOT SUPPORT THE CLAIM.**

Rule 1—Scope of the Agreement reads as follows:

“The term ‘Yardmaster’ as used herein shall be understood to include Assistant General Yardmasters, Yardmasters, Regular Relief Yardmasters, unassigned and/or Extra Yardmasters when working as Yardmasters, and in addition shall include the following positions and their regular relief:”

(List of locations showing positions of Assistant Stationmasters omitted)

Rule 1, the Scope Rule, lists only positions subject to the rules of the Agreement. It does not define the work to be performed by these positions nor does it restrict to these positions the performance of any spe-

cific work. Consequently it is necessary to look into custom and practice on the property to determine the practical application of the rule.

On this property the principal duty of a yardmaster is to supervise and direct the work of yard crews in making up or breaking up of trains, or performing general or industrial switching. He reports to the official in charge of the territory to which he is assigned; at the larger yards, that official is usually a general yardmaster whereas at a smaller yard it is ordinarily the freight agent. The work of a yardmaster is primarily supervision and coordination of the work of one or more yard crews. He may or may not make out switch lists or mark cars or call crews but ordinarily this work is performed by clerks even where yardmasters are employed. The work of a yardmaster is primarily supervision and the necessity for supervision determines whether or not a position of yardmaster is required. In a station or yard where the switching operation is routine and little or no supervision is required, yardmasters are not employed.

Examples of the operations at comparable locations follow:

#### **LOCKPORT, NEW YORK**

Two yard crews are assigned on the day shift. However, the work of these crews is primarily routine industrial switching and whatever minimal supervision is required is provided by the freight agent. A yardmaster is not employed at Lockport.

#### **KINGSTON, NEW YORK**

A yard engine works on the day, afternoon, and night shifts. On the day and afternoon shifts, the switching operation is routine and little or no supervision is required. The supervision for these tricks is provided by the freight agent. However, on the night shift, five local freight trains are made up. It is important that cement traffic must make scheduled trains. Because of the need for direct supervision, a position of yardmaster on the night shift was established in 1948 and is still in existence.

#### **CHATHAM, NEW YORK**

Two yard engine crews were formerly employed, one on the day shift and one on the night shift. The switching operation on the day shift was principally routine industrial switching and whatever minimal supervision was required was provided by the freight agent. However, it was important that cement traffic arriving at Chatham in the Hudson Branch local freight train be properly switched on the night shift in order to be ready for four separate connecting trains and a position of yardmaster was established. When the cement traffic was routed via Selkirk rather than Chatham, the Hudson Branch local freight train was discontinued. The necessity for supervision on the night shift at Chatham no longer existed and the position of yardmaster was abolished without protest from the Organization.

On Carrier's property, the freight agents at medium size stations such as Lockport, Rome, Kingston, and Chatham, to name only a few, are responsible for both the freight station and freight yard operation. They exercise supervision over both the station and yard operation. Rule 1 of the Agreement has been applied at such medium sized stations as follows: if the nature of the yard operation is primarily routine industrial switching requiring a minimum of supervision, the freight agent

will provide such supervision. If necessary to provide proper supervision a yardmaster's position may be established and continued as long as the need for such supervision exists.

As will be explained subsequently in Principal Point 2, the yard operation at Rome has become a routine industrial switching operation requiring only a minimum of supervision. Accordingly the abolishment of the yardmaster's position at Rome was not in violation of Rule 1 as it has been applied on the property.

Any loss of compensation by Claimant is the result of his own action and is contrary to the requirements of the Yardmasters' Agreement.

When the position of yardmaster at Rome, held by J. J. Lunn, was abolished on June 16, 1959, Mr. Lunn, whose seniority dating as a Mohawk Division yardmaster was 6-21-43, did not exercise his displacement rights as a yardmaster but instead used his clerical seniority to displace on the position of Chief Clerk at Rome freight station. Furthermore, on October 2, 1959, a position of yardmaster at Selkirk Yard was advertised for bid to all yardmasters in the Mohawk Division Seniority District. Claimant failed to bid and the position was awarded on October 13 to H. R. Hamal, whose seniority dating as a Mohawk Division yardmaster is 1-27-56. Rule 7(f) of the Agreement reads as follows:

"Any unassigned yardmaster who fails to bid for or accept a new or vacant position as yardmaster or who declines occasional or extra yardmaster work for which he is available shall lose his seniority as yardmaster, and his name shall be removed from the yardmasters' roster. For the purpose of applying this rule, yardmasters will keep their employing officer advised of their post office address."

By his failure to bid for the position of yardmaster at Selkirk yard on October 2, 1959, Mr. Lunn not only was responsible for his loss of earnings but made it necessary for Carrier to comply with Rule 7(f) and remove his name from Mohawk Division Yardmasters' seniority roster. Through an oversight on the part of both the Carrier and the Organization, Mr. Lunn was listed on the combined seniority roster of Mohawk and St. Lawrence Division yardmasters published on January 1, 1960, with his full seniority. This error was subsequently corrected and on the Yardmasters' seniority roster published on January 1, 1961, Mr. Lunn's name is not shown.

Without prejudice to its position that the claim in dispute is without merit or agreement support, the Carrier submits that any monetary loss resulted from claimant's own action. Furthermore, because of his action, Mr. Lunn's seniority as a yardmaster was forfeited October 13, 1959. Mr. Lunn obviously had no desire to protect his seniority as a yardmaster after June 16, 1959 as he neither exercised his rights to displace junior yardmasters in the seniority district nor bid for available positions to which his seniority entitled him. Were the position of yardmaster at Rome restored, Mr. Lunn would be ineligible to bid for it. The claim before your Board reads as follows:

"Claim and request of the petitioner that former Yardmaster J. J. Lunn be compensated for one day's pay at prevailing yardmaster rate for June 17, 1959 and each subsequent day until his former yardmaster position is restored."

**3. THERE WAS NOT SUFFICIENT WORK REMAINING AT ROME TO JUSTIFY A FULL TIME POSITION OF YARDMASTER.**

A check of the readily available records, which go back as far as 1918, does not show the existence of a yardmaster position at Rome prior to July 7, 1941.

Prior to that date and since, the freight agent at Rome has always been held responsible for the operation of both the freight station and the freight yard. There are three large industries at Rome who manufacture copper and brassware products, including wire and cable. By mid 1941, the traffic received from these industries had increased greatly because of national defense activity. In addition, a large Army Air Force Base was in the process of construction. The freight agent had to supervise a force of eleven employes in the freight station office and a force of sixteen employes in the freight station warehouse handling LCL freight. Each working day, from four to six yard engine assignments were used, depending upon business conditions. There were three regular assignments on the day shift, one regular assignment on the afternoon shift, and additional extra assignments called to work afternoons, or nights, or both, as required.

In order to relieve the agent of some of the details of the switching operation, a one-trick position of yardmaster was established at Rome. The principal duties of this position were to plan and supervise the work of the yard engine assignments and to see that trainmen were called to cover vacancies on regular yard assignments or to work extra yard engine assignments. The yardmaster directed the operation of three yard crews on the day trick and programmed the work to be performed by afternoon and night crews. However, the yardmaster was subordinate to the freight agent and the final responsibility for the yard operation at Rome remained with the freight agent.

By mid 1959, the volume of business handled in Rome Yard had declined sharply from previous levels. The opening of the New York State Thruway enabled highway truck lines to compete more successfully for the traffic available from the industries in Rome.

The Rome Branch was abandoned between Camden and Richland and freight train service on the branch was reduced to one local freight train per day.

A large timber creosoting plant on the Rome Branch adjacent to Rome ceased operation. This plant during the busy summer months would load in excess of 300 cars per month and the majority of these cars were classified for road train movement in Rome Yard.

Carloads of sand loaded at stations on the Rome Branch that were formerly weighed and classified for road train movement at Rome were instead moved directly from the originating station to Utica Yard for weighing and classification. This traffic alone averaged in excess of 100 cars per month.

Less carload freight traffic to and from industries in Rome that had formerly moved in freight cars to and from Rome freight station was now handled by over-the-road-trucks operating in pick-up and delivery

service from Utica freight station. Carrier's Exhibit A shows very clearly the decline in freight cars dispatched from Rome from 1956 through 1959, as well as the decline in yard engine tricks worked at Rome during this period. A summary of yard engine tricks worked in 1947, the earliest year for which comparable figures are available, was included to indicate further how the work at Rome has dropped from post World War II levels; comparable figures for cars dispatched from Rome in 1947 are not available.

In June 1959, the hours of service of the yardmaster were 7 A. M. - 4 P. M. with one hour for lunch, Monday - Friday inclusive. There were two regular yard engine assignments, one working 7 A. M. - 3 P. M., the other working 3 P. M. - 11 P. M., Monday - Friday inclusive. The principal duties performed by the yardmaster were as follows: he made sure that the 7 A. M. yard crew was ready to start work on time. He accompanied the crew to the yard to pick up cars set off by main line freight trains. From the information shown on the waybills, he chalked these cars so they could be switched by the yard crew. He stayed with the crew while they switched out the inbound cars to line them up in consignee order and remained with them while they were switching the various industries. From the waybills and the demurrage clerks' physical track check of the private sidings and team tracks, he made up the necessary switch lists for the yard crew. He checked with the freight office to find out if orders had been received from patrons for rush switch moves or for empty cars for loading and if so, he gave the necessary instructions to the crew. He weighed cars on the track scale when necessary. In the afternoon, he telephoned industries to find out what switching service would be required from the afternoon yard crew and what empty equipment would be required for loading. He made sure that the afternoon crew was ready to start work at 3 P. M. and gave them a line up of the work to be performed.

By June 1959, there was not sufficient work at Rome to justify the services of a full time yardmaster. The switching operation had become a routine operation requiring a minimum of supervision and planning. Only two yard engine crews worked each day, one on the morning shift and one on the afternoon shift. The crews were made up of experienced men who knew the locations and service requirements of the patrons. They needed only a list of the cars to be placed at or pulled from the various sidings and team tracks. With such information, they were able to perform the necessary switching without the constant supervision of the yardmaster or the freight agent. They did not have to make up trains nor switch cars for important connecting trains. Cars dispatched from Rome Yard were switched into three general classifications: Utica and East, Syracuse and West, and Canastota. They were left in the yard for night trains to pick up.

On June 16, 1959, the position of yardmaster at Rome was abolished. The marking of inbound cars from the waybills and preparation of switch lists is performed by a clerk who has made a physical track check of the sidings and team tracks. Any weighing of cars is performed by a station clerk. Station clerical forces contact shippers in the afternoon to develop what switching is necessary and make out the necessary orders to be given to the conductor of the afternoon switching crew. These duties are clerical in nature and are customarily performed by clerks even where yardmasters are employed. Your Board has recognized that such duties can be performed by clerks as will be shown in Principal Point 4.



The freight agent exercises general supervision over the switching crews. He checks the yard crew to insure they have a full complement and are ready to start work on time. On occasions when a rush switching order is received from a patron, he may personally give such order to the switching crew and stay with them until it is done as also in other unusual circumstances such as a derailment, a heavy snowstorm, an entire crew of inexperienced trainmen, etc. The freight agent does not spend 3-4 hours in the yard each day doing work performed by the yardmaster, as alleged by the Organization. In the absence of specific complaints from patrons or carrier officials, the supervision exercised by the agent consists of insuring that the crews are complete and ready to start on time, that they have sufficient information to execute their work, and that the work available has been performed. This should not take the Agent more than 1½ hours per day at the very most.

The Carrier submits that the work of the yardmaster at Rome has virtually disappeared. The clerical work of the position has properly reverted to clerks. Whatever supervision is required may properly be performed by the freight agent as formerly was done before the position of yardmaster was established; or as often referred to as the flow and ebb principle. The Carrier submits that the claim lacks merit and should be denied.

#### **4. AWARDS OF THE NATIONAL RAILROAD ADJUSTMENT BOARD SUPPORT THE POSITION OF THE CARRIER.**

Carrier has shown hereinbefore that the duties of the Agent at Rome increased to the extent that the supervision of yard operations could be better performed if a position of yardmaster was created and that the agent be relieved of supervision over the employes in the performance of those duties. When the need for the additional supervision disappeared those duties ebbed back to the agent who always had been held responsible for the operation of both the freight station and the freight yard.

Your Board has recognized that the work of a yardmaster is basically the planning of work for other employes and supervision of their work as is shown in the following excerpts from the Opinion of Board in a few such Awards:

##### **Award No. 1151 — Referee H. Raymond Cluster**

“The scope rule does not contain a description of yardmaster’s work, but it is well recognized that the essential nature of the yardmaster position is the exercise of supervision over other yard employes. In any particular case, the line between supervision as exercised by a yardmaster, and the passing on of directions and information, as done by a yard clerk, may be a narrow one. 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 employes not members of that class or craft, the burden is on the petitioning organization to establish facts supporting its contention. \* \* \*”

##### **Award No. 1228 — Referee Dwyer W. Shugrue**

“The work of yardmasters does not lend itself to being spelled out or described in definite terms as does the work of many other classes of railroad employes, because the work of the yardmaster is basically the work of planning and supervising the work

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

**Award No. 1088 — Referee Walter R. Johnson**

"Prior to the abolishment of the Yardmaster's position and the assignment of the Yard Clerk, involved in this proceeding, the force on duty at Ivanhoe Yard consisted of the following:

- “1st trick — Yard Clerk
- 2nd trick — Yardmaster
- 3rd trick — Yardmaster

"On July 21, 1954, the Carrier issued a notice abolishing the position of Yardmaster on third trick at Ivanhoe Yard and directed that full jurisdiction over said yard be vested in the Third Trick Yardmaster in the West Yard at McKees Rocks, which is the next yard east of the Ivanhoe Yard. At the same time a third trick Yard Clerk was established at Ivanhoe Yard to work under the jurisdiction of the Yardmaster in the West Yard at McKees Rocks.

"The claims involved herein are based on the contention of the Organization that work belonging to a Yardmaster is being performed by Yard Clerk in violation of the Agreement.

\* \* \* \* \*

"Carrier denied that the Yard Clerk performs Yardmaster duties and it is shown that he was directed not to assume any such duties.

"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. 1299 — Referee Harold M. Gilden**

"Singularly absent from the North Fond du Lac Yard picture here presented is any clear showing either of the existence of such a substantial volume of traffic as would reasonably warrant the assignment of a yardmaster at this location, or of the prevalence of a significant amount of supervisory duties uniquely associated with the Yardmaster's Craft.

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

“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 Yardmaster’s work sphere is not discernible.”

The issues involved in this case once again bring to the front the question of the Carrier’s right to operate its railroad efficiently and economically and at the same time operate within the terms of the various working agreements in effect on its property. The principle is well established that a Carrier, not only has the exclusive right to operate its railroad in the most efficient and economical manner, but is duty bound to do so. Your Board also has stated that it is the inherent function of Management to determine the size of the force required to handle its business, and to moderate and rearrange such forces to meet changing requirements. This position is amply supported by many Board awards. Excerpts from several awards of the First Division are cited below in support of Carrier’s position as to its right to operate efficiently and economically.

**AWARD 14772:**

“No rule has been violated and the carrier was merely exercising its right to operate in an economical manner.”

**AWARD 15636:**

“It is elemental that the efficient and safe operation of a railroad is the prerogative of management except to the extent that it has been limited by law and the contracts which it has made.”

**AWARD 17705:**

“\* \* \* The Board is without authority to direct methods of operation when no rule has been violated.”

Excerpts from some Third Division awards follow:

**AWARD 439:**

“\* \* \* Neither can the Board agree that, under the application of the agreement between the employes and the carrier, the duties and work of a classified position must entirely disappear before the regular assignment of a position may be discontinued or abolished, as to do so would soon require all employment on the railroads to be regular full time assignments, would do away with the necessity for or use of extra employes, and would be against the economic operation of the carriers and opposed to the best interests of the carriers, the employes, and the public \* \* \*”.

**CONCLUSION:** The Carrier has shown that the claim involved in this dispute lacks merit or agreement support. Without receding from its position that the claim is without merit the Carrier submits that any loss of earnings was the result of Claimant’s own action. It should be denied in its entirety.

All data submitted in support of Carrier’s position has been presented to the Organization and made a part of this dispute.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This claim is based on Petitioner's contention that Carrier violated their Agreement by abolishing a yardmaster position at Rome, New York, on June 17, 1959, and assigning its duties to employes outside the scope of the Agreement.

There is no provision in the Agreement that limits Carrier's fundamental authority to determine, in its managerial discretion, the amount of supervision necessary for its operations. Accordingly, it was not a violation of the Agreement for Carrier to abolish the position in question. See Awards 797, 1208 and 1228.

The claim nevertheless would possess substance if the duties of the abolished position were transferred outside the Agreement, thus rendering the protection afforded employes by its provisions illusory and meaningless. However, an examination of the record establishes that Petitioner has failed to submit sufficient competent evidence to support this charge. Its original submission contains not a scintilla of proof regarding the point and its Supplemental Statement in Answer to Carrier's Submission, though more complete and detailed, presents for the most part assertions rather than the necessary evidence. It may be noted that rebuttal obviously is not the time for Petitioner to submit evidence in support of its affirmative case.

This Board on numerous occasions has emphasized the principle that, to be successful, a claim must be supported by sufficient competent and specific evidence. See, e.g., Awards 1151, 1182, 1208 and 1228. This is not a harsh or unduly onerous requirement but one that is essential to fair and orderly process in any type proceeding, no matter how informal it may be. We do not require that a claim comply with technical rules of evidence but one that is unsupported by clear specific proof manifestly cannot be sustained.

Petitioner has failed to sustain its burden of proving that more than an insubstantial volume of yardmaster work is being performed by employes outside the Agreement. The claim will be denied.

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

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

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

The parties to said dispute were given due notice of hearing thereon. The applicable Agreement was not violated.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **FOURTH DIVISION**

**ATTEST:** Patrick V. Pope  
Secretary

Dated at Chicago, Illinois, this 20th day of June, 1962.

Champlin-Shealy Co., Chicago, Ill.

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