

NATIONAL RAILROAD ADJUSTMENT BOARD**FOURTH DIVISION**

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

PARTIES TO DISPUTE:**RAILROAD YARDMASTERS OF AMERICA****THE BALTIMORE AND OHIO RAILROAD COMPANY**

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

Yardmaster Howard Alexander be allowed one day at the appropriate yardmaster rate for April 10, 1961, and all subsequent dates until condition complained of is corrected, on account of the abolishment of the 3 P. M. to 11 P. M. yardmaster position at North Vernon, Indiana, and performance of yardmaster work by others outside the scope of the Agreement.

EMPLOYES' STATEMENT OF FACTS: Effective at end of tour of duty April 9, 1961, the 3 P. M. to 11 P. M. Yardmaster position at North Vernon, Indiana, was abolished and thereafter the work was performed by others outside the scope of the Agreement.

Claims are also payable due to failure of Superintendent A. S. Waller to comply with the requirement of Article V, Section (a) of the Agreement of August 12, 1954, in failing to give reason for disallowance.

POSITION OF EMPLOYES: To avoid burdening the record the individual time claims presented by Yardmaster Alexander are not included in this submission; however, the following is replica of denial notice serviced on Claimant by the Regional Accountant:

Form 762A Rev. 2Spl.

"THE BALTIMORE AND OHIO RAILROAD COMPANY

No. 2402

4-11-1961

Notice in Connection with Time Claimed

H. ALEXANDER
YM
NORTH VERNON, IND.
VAR.
DATES

Dear Sir:

Your time report of March 10-10-11-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28 19.... from to..... on which you claim one day at YM rate, each date, A/C 2nd Trick abolished and other personnel used to perform the work which has been done by regular yardmaster.

is declined by the undersigned for the following reasons:

- | | |
|---|--|
| Not supported by agreement | Paid according to Deadhead Rule. |
| Time claim not approved. | Deadhead slip shows continuous time. |
| Incorrect mileage. | No. U.S. Mail slip attached. |
| Incorrect time. | Claim received after time limit. |
| This job pays local rate. | Time lunch period taken not shown. |
| Paid actual mileage deadheading. | Not 2nd tour of duty in yard service, 22½ or 24 hours. |
| Conversion rule does not support. | Not in excess of 40 straight time hours in your work week. |
| Contract pays whichever is greater. | |

You have been allowed:

- | | |
|----------------------------|------------------------------------|
| No time. | Half day. |
| Local rates. | Continuous time. |
| Switchtender's rate. | Pro rata time. |
| Thru freight rates. | Overtime only. |
| Baggage rate only. | miles. |
| Helper's rate. | Initial Terminal Delay only. |
| Eight hours. | |

Superintendent
A.S.W.

Yours truly,
Regional Accountant"

The position of the Employes is further evidenced by the exchange of correspondence in the handling of this dispute on the property, reproduced as follows:

Mr. A. S. Waller,
Superintendent,
Washington, Indiana.

"North Vernon, Indiana,
May 1st, 1961

Dear Sir:

Attached form 762A Rev 2 Spcl Number 2402 and copies of time claims from March 10th to March 28th inclusive, in favor of Howard

Alexander for one day at Yard Master's rate account of position abolished March 9th, 1961, and other personnel used to perform the work formerly done by Mr. Alexander.

Attached also his letter of April 16th giving reasons for claims. After you have studied them please return the time slips for further handling, if they are rejected. Please issue memorandum of conference covering the above dates if they are not allowed.

/s/ O. A. Smith

Copy Mr. Howard Alexander."

"100m. 10-59

Form 300 Linen

Letterhead of

THE BALTIMORE AND OHIO RAILROAD COMPANY

SUBJECT: Claim of Howard Alexander for one day at Yardmaster's, March 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, and 28, 1961, account 2nd trick yardmaster job abolished at No. Vernon.

Washington, Indiana, May 6, 1961

Mr. O. A. Smith
Local Chairman - Yardmasters
North Vernon, Indiana

Dear Sir:

Your letter of May 1, 1961, concerning the above claim.

This claim is respectfully declined. If you wish to progress claim further please submit employee's statement of facts.

Yours truly,

/s/ A. S. Waller
A. S. Waller
Superintendent

1-20"

Letterhead of

"RAILROAD YARDMASTERS OF AMERICA
Baltimore & Ohio LOCAL LODGE No. 13
6257 Bridgetown Rd., Cincinnati 11, Ohio

June 8, 1961

Mr. A. S. Waller, Superintendent
Baltimore & Ohio R.R.
Washington, Indiana

Dear Sir:

The second trick 3 P. M. to 11 P. M. yardmaster position at North Vernon was abolished March 9, 1961. Notice was posted changing the hours of first trick yardmaster from 7 A. M.-3 P. M. to 6:15 A. M.-2:15 P. M., and third trick from 11 P. M.-7 A. M. to 10:15 P. M.-6:15 A. M. signed B. M. Thomas, Trainmaster. The first trick yardmaster was instructed to issue the following message at 2 P. M. March 10, 1961:

A.S.W. Superintendent

B.M.T. Trainmaster

C&E. No. 86

C&E Seymour switcher

Seymour switcher head in track 7, cut engine off and put in pit (left Seymour 5:10 P. M. and arrived N. Vernon 5:45 P. M.) No. 86 head in track 5, cut engine off and take to pit (left Seymour 10:40 P. M. arrived N. Vernon 11:30 P. M.) If necessary 97 to head in, Riley passing track, track 3 will be clear; have 7 mtys for Shoals. If you want 97 to get them, they will head out in No. 7 (signed O.A.S.) No. 97 arrived N. Vernon 6:40 P. M., picked up 7 mtys to Shoals, departed 7:05 P. M. Instructions issued by other than yardmaster for 97 to pick up.

Each day since yardmaster job was abolished, the first trick yardmaster was instructed to issue messages to A. S. Waller, superintendent, B. M. Thomas, trainmaster, and chief dispatcher, giving turnover of N. Vernon yard.

The following trains operate in and out and through N. Vernon on the second trick:

Louisville Sub-Div local 85 and 84 called 2:35 for 2:55 P. M. departed yards about 3:15 P. M. St. Louis 97 between Cincinnati and St. Louis through N.V. about 5:30 P. M. Louisville Sub B90 between Louisville and Cincinnati arrived N.V. about 10 P. M. These trains have occasional cars to set off and pick up. Passenger trains 1&2 and 3&4 between Cincinnati, O. and St. Louis. Ordinarily there was no work on these trains.

Local trains as follows:

Dearborn turn which is called to leave N.V. 9 A. M. and returns to N.V. between 5 P. M. and 10 P. M. does all the local work on east end of division. Seymour switcher called to leave N.V. 10:30 A. M. and returns about 6 P. M. does all local work at Seymour, Indiana. Local 86 operates from Shops, Ind. to N.V. and arrives about 9:30 P. M. to 11 P. M. These are regular trains other than road work trains, yard work trains and drag. All of these trains are operating at present time under the same conditions except passenger trains 3 & 4 which were taken off April 30, 1961.

The management has changed the hours of the first trick yardmaster from 7 A. M.-3 P. M. to 6:15 A. M.-2:15 P. M. and instructed 1st trick yardmaster to furnish A. S. Waller, superintendent and B. M. Thomas, trainmaster a complete turnover of the yards, head-in

tracks and instructions to all trains operating on 2nd trick. This in turn goes to chief dispatcher who in turn handled the movement and instructions to trains at N.V. in case of hot boxes or any unforeseen work or problems. This is done by communication from dispatcher to operator to yard clerk to train involved. Some time messages are furnished direct to trains. Enclosure marked E-1 filed 4:50 P. M. over superintendent's signature and under dispatcher's file plainly shows this. Company time slips show 1st trick yard engine and yardmaster held on overtime a total of 16 days from March 10 to May 22, 1961. Overtime as follows:

March 15 - 1'15"	April 7 - 5"	May 5 - 30"
March 16 - 1'30"	April 12 - 1'00"	May 12 - 1'45"
March 17 - 30'	April 13 - 1'00"	May 13 - 25"
March 27 - 1'30"	April 20 - 1'10"	May 18 - 3'00"
March 29 - 30'	April 21 - 10"	
March 31 - 1'0"	April 28 - 45"	

Time claims have been entered by displaced yardmaster Howard Alexander for March 10, 1961 and all subsequent dates until second trick yardmaster job is restored, based on other than yardmasters performing yardmaster duties. Local Chairman O. A. Smith sent you copies of time claims together with Form 762-A. rev., dated April 11, 1961, over signature of Regional Accountant Scrafford declining claims, and advised you who was performing yardmaster work, and our contention concerning these claims.

Your letter of May 6, 1961 addressed to Local Chairman Smith respectfully declined time claims, stating that if he wished to progress claims further to please submit employee's statement of facts. This case has been turned over to the writer for handling and I wish to advise that all facts were embodied in the time claims presented to you. Further, I wish to point out that practically the same operation is being performed at North Vernon today with crews that come under yardmaster jurisdiction as was done formerly, with exception of second trick yard engine being abolished.

It is the contention of our Committee that yardmaster scope rule is being violated daily by dispatchers, operators, yard clerks and car inspectors from 2:15 P. M. to 10:05 P. M. The claims are justified and should be honored, and the yardmaster job at North Vernon re-established to eliminate any further filing of time claims.

Yours truly,

/s/ Albert Healey
Regional Chairman

cc: R. M. Semple
O. A. Smith
H. Alexander"

Letterhead of
"THE BALTIMORE AND OHIO RAILWAY COMPANY
Office of Superintendent
Washington, Indiana

A. S. WALLER
Superintendent

June 19, 1961

L-15

Mr. Albert Healey,
Regional Chairman,
Railroad Yardmasters of America,
6257 Bridgetown Rd.,
Cincinnati 11, Ohio.

Dear Sir:

Your letter of June 8, regarding claim account second trick Yardmaster position abolished at North Vernon, Indiana.

If the decision as given to Local Chairman Smith in my letter of May 6 is to be appealed, it will be necessary for Local Chairman to confer with me and enter into a Memorandum of Conference.

Yours truly,

/s/ A. S. Waller

1-4"

Letterhead of
RAILROAD YARDMASTERS OF AMERICA
(AFL-CIO)
B&O Local Lodge No. 13

September 1, 1961

921 West Third Street
Niles, Ohio

Mr. T. S. Woods, Manager Labor Relations, Non-Operating
Baltimore and Ohio Railroad Company
Baltimore 1, Md.

Dear Sir:

Claim — Claim is for displaced Yardmaster Howard Alexander, North Vernon, Indiana, for March 10, 1961 and all subsequent dates— 3:00 P.M. to 11:00 P.M. The second trick yardmaster position at North Vernon, Indiana, was abolished on March 9, 1961. Notice was

posted changing the hours of first trick yardmaster position from 7:00 A.M. to 3:00 P.M. to 6:15 A.M. to 2:15 P.M. and the third trick yardmaster position from 11:00 P.M. to 7:00 A.M. to 10:15 P.M. to 6:15 A.M., signed by B. M. Thomas, Trainmaster. The first trick yardmaster was instructed to issue the following message at 2:00 P.M. March 10, 1961.

A.S.W. - Supt.

B.M.T. - Tmaster

C&E - No. 86

C&E - Seymour Switcher.

Seymour switcher head in track 8 cut engine off and put in pit (left Seymour 5:10 P.M. and arrived N. Vernon 5:45 P.M.) No. 86 head in track 5, cut engine off and take to pit (left Seymour 10:40 P.M. arrived N. Vernon 11:30 P.M.) If necessary for 97 to head in, Riley passing track, track 3 will clear: have 7 mtys for Schoals. If you want 97 to get them they will head out No. 7 (signed) O.A.S. No. 97 arrived N. Vernon 6:40 P.M. picked up 7 mtys at Schoals, departed at 7:05 P.M. Instructions issued by other than yardmaster for 97 to pick up.

Each day since yardmaster job was abolished, the first trick yardmaster was instructed to issue messages to A. S. Waller, Superintendent, B. M. Thomas, Trainmaster, and Chief Dispatcher, giving turnover of N. Vernon Yard.

The following trains operate in and out and through N. Vernon on the second trick.

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Local trains as follows—Dearborn which is called to leave N. Vernon and returns to N. Vernon between 5:00 P.M. and 10:00 P.M. does all the local work on east end of Division. Seymour switcher called to leave N.V. 10:30 A.M. and returns about 6:00 P.M. does all local work at Seymour, Ind. Local 86 operates from Shops, Ind. to N. Vernon and arrives about 9:30 to 11:00 P.M. These are regular trains other than road work trains, yard work trains and drags. All of these trains are operating at present under the same conditions except passenger trains 3 and 4 which were taken off April 30, 1961.

The management has changed the hours of the first trick yardmaster from 7 A.M. to 2:00 P.M. to 6:15 P.M. to 2:15 P.M. and instructed first trick yardmaster to furnish A. S. Waller, Superintendent and B. M. Thomas - Trainmaster a complete turnover of the yards, head in tracks and instructions to all trains operating in 2nd trick. This in turn goes to Chief Dispatcher who in turn handles the movement and instructions to trains at North Vernon in case of hot

boxes or any other unforeseen work or problems. This is done by communication from dispatcher to operator to yard clerk to train involved. Sometimes messages are furnished direct to trains. Enclosure marked E-1, filed 4:50 P.M. over superintendent's signature and under dispatcher's file plainly shows this. Company time slips show first trick yard engine and yardmaster held over on overtime a total of 16 days from March 10 to 22, 1961. Overtime as follows.

March 15 - 1'15"	April 7 - 05"	May 5 - .30"
March 16 - 1'30"	April 12 - 1'00"	May 12 - 1'45"
March 17 - 30"	April 13 - 1'00"	May 13 - .25"
March 27 - 1'30"	April 20 - 1'10"	May 18 - 3'00"
March 29 - 30"	April 21 - .10"	
March 31 - 1'30"	April 28 - 45"	

Time claims have been entered by displaced yardmaster Howard Alexander for March 10, 1961, and all subsequent dates until second trick yardmaster position is restored and other than yardmasters performing yardmaster's duties on this turn.

Local Chairman O. A. Smith send Superintendent A. S. Waller copies of time claims together with Form 762-A. Rev, dated April 11, 1961, over signature of Regional Accountant Scrafford, declining claims and advised him who was performing yardmaster work, and our contentions concerning these claims. Superintendent Waller replied by letter dated May 6, 1961, respectfully declining these claims and stating that if he wished to progress these claims further to please submit employe's statement of facts. Case was then turned over to Regional Chairman A. Healey, who advised Superintendent A. S. Waller by letter dated June 8, 1961, that all facts were embodied in time claims presented to him. Further, he pointed out, that practically the same operation is being performed at North Vernon now with crews that formerly came under yardmasters' jurisdiction, but now are under other than yardmasters.

First— This claim should be paid because the yardmasters' Scope Rule is being violated because other than yardmasters are performing yardmasters' duties at North Vernon, Indiana, on the second trick 3:00 P.M. to 11:00 P.M. since March 10, 1961, by dispatchers, yard clerks, operators and car inspectors.

Second— The sixty day clause was violated by Superintendent A. S. Waller, who has not declined claims in answer to Regional Chairman A. Healey's letter dated June 8, 1961, sent to him.

Please list this case for discussion at our next meeting on Sept. 12, 1961.

Very truly yours,

/s/ Robert M. Semple
General Chairman

Waller/"

Letterhead of
"THE BALTIMORE AND OHIO RAILROAD COMPANY
PERSONNEL DEPARTMENT
BALTIMORE 1, MD.

T. S. WOODS
Manager Labor Relations - Nonoperating

October 9, 1961

Mr. R. M. Semple, General Chairman
Railroad Yardmasters of America
921 W. Third Street, Niles, Ohio

Dear Sir:

Referring to our conference of September 12, 1961, when we discussed the claim of Yardmaster Howard Alexander, North Vernon, Indiana, for a day's pay on March 10, 1961, and all subsequent dates, account 3 P. M. - 11 P. M. yardmaster position being abolished.

Effective with the end of tour of duty March 9, 1961 the 3 P. M.- 11 P. M. yardmaster position at North Vernon, Indiana, was abolished and the tour of first trick yardmaster changed from 7 A. M.- 3 P. M. to 6:15 A. M. - 2:15 P. M. and the third trick yardmaster changed from 11 P. M. - 7 A. M. to 10:15 P. M. - 6:15 A. M. Also, effective March 10, 1961, the first trick yardmaster commenced issuing instructions as to tracks on which specific cars were located to be picked up and tracks on which specific cars were to be set off by crews during the period from 2:15 P. M. to 10:15 P. M., as well as tracks trains will use to head in and out of yard.

In the instant case the instructions as to switching to be done emanate and originate from employees coming under the Yardmasters' Agreement, those relaying such instructions to crews merely acting in the capacity of messengers. Further no supervision whatsoever is exercised over the crews by other than yardmasters. The question of how much supervision is required over various operations is one of managerial discretion.

As to your contention that these claims are valid on the basis that the Superintendent failed to render a decision within 60 days from June 8 when the case was appealed to him, I see no basis of validity in such a contention. The Superintendent replied to Regional Chairman Healey under date of June 19 and it is my position that no inference other than that the claim was declined could be taken therefrom.

Inasmuch as work exclusively belonging to yardmasters in this case has not been taken away from that craft, but continues to be performed by yardmasters, it is not felt there has been any violation of the Yardmasters' Agreement. Therefore, the claims are declined.

Yours truly,

/s/ T. S. Woods"

Letterhead of
"THE BALTIMORE AND OHIO RAILROAD COMPANY
PERSONNEL DEPARTMENT
BALTIMORE 1, MD.

T. S. WOODS
Manager Labor Relations-Nonoperating

January 16, 1962

Mr. R. M. Semple, General Chairman
Railroad Yardmasters of America
921 W. Third Street, Niles, Ohio

Dear Sir:

At conference on January 9, 1962, we rediscussed the claim of Yardmaster Howard Alexander, North Vernon, Indiana, for a day's pay on March 10, 1961, and all subsequent dates, account 3 P. M. - 11 P. M. yardmaster position being abolished.

During our conference we again reviewed your contention that these claims were valid on the basis that the Superintendent failed to render a decision within 60 days from June 8 when the case was appealed to him. The record indicates that the Superintendent replied to Regional Chairman Healey under date of June 19. The inference is absolute that the claim was declined in that letter. Certainly, no one was confused about its status. I see no reason for modifying the final decision given under date of October 9, 1961.

Very truly yours,

/s/ T. S. Woods"

Letterhead of
"RAILROAD YARDMASTERS OF AMERICA
537 S. Dearborn Street
Chicago 5, Illinois
Tel. WAbash 2-0954

February 5, 1962

Mr. T. S. Woods, Manager Labor Relations-Non-Operating
The Baltimore and Ohio Railroad Company
Personnel Department
Baltimore 1, Md.

Dear Sir:

General Chairman Semple has turned over to us, for further handling with the Fourth Division, NRAB, his claim on behalf of Yardmaster Howard Alexander, North Vernon, Indiana, last referred to in your letter to Mr. Semple under date of January 16, 1962.

Before sending this claim to the Fourth Division we wish to call your attention to the fact that the claim should have been paid long

ago for the simple reason that Superintendent A. S. Waller, in his original decision to Local Chairman O. A. Smith under date of May 6, 1961, failed to comply with the requirement of Article V, Section (a) of the Agreement of August 12, 1954, to which your railroad is a party, in that he simply 'respectfully declined' the claim and failed to notify Local Chairman Smith 'of the reasons for such disallowance' as required.

We suggest, therefore, that you immediately authorize payment of the claim.

Very truly yours,

/s/ M. G. Schoch
M. G. Schoch
President

cc: Mr. R. M. Semple, General Chairman"

Letterhead of

"THE BALTIMORE AND OHIO RAILROAD COMPANY
PERSONNEL DEPARTMENT
BALTIMORE 1, MD.

T. S. WOODS
Manager Labor Relations-Nonoperating

February 15, 1962

Mr. M. G. Schoch, President
Railroad Yardmasters of America
537 S. Dearborn St., Chicago 5, Ill.

Dear Sir:

Referring to your letter of February 5, 1962, wherein you advise that General Chairman Semple has referred to you for further handling with the Fourth Division, NRAB, the claim of Yardmaster Howard Alexander, North Vernon, Ind., for a day's pay on March 10, 1961 and all subsequent dates, account 3:00 P. M.-11:00 P. M. yardmaster position being abolished.

In your letter you suggest that payment of this claim be authorized on the basis that Superintendent Waller, in his original decision to Local Chairman Smith dated May 6, 1961, failed to comply with the requirements of Article V, Section (a), of the Agreement of August 12, 1954, in that he merely declined the claim and failed to notify Local Chairman Smith 'of the reasons for such disallowance'.

This is the first instance in the handling of this claim that any reference has been made to any alleged impropriety in the decision given Local Chairman Smith by Superintendent Waller. In his letter of May 6, 1961 Superintendent Waller stated in part: 'This claim is respectfully declined. If you wish to progress claim further please

submit employe's statement of facts.' It occurs to me that since the Local Chairman had failed to furnish the Superintendent any statement of particulars as to the factual record or as to the basis on which claim had been made, there can scarcely be any impropriety in the letter sent the Local Chairman.

I would appreciate your further comments.

Very truly yours,

/s/ T. S. Woods

cc: Mr. R. M. Semple, General Chairman
Railroad Yardmasters of America
921 W. Third St., Niles, Ohio"

Letterhead of

"RAILROAD YARDMASTERS OF AMERICA

537 S. Dearborn Street
Chicago 5, Illinois

Tel. WAbash 2-0954

March 26, 1962

Mr. T. S. Woods, Manager Labor Relations-Non-Operating
The Baltimore and Ohio Railroad Company
Personnel Dept.
2 N. Charles St.
Baltimore 1, Md.

Dear Sir:

In reply to your letter of February 15, 1962, which was an answer to my letter of February 5, 1962, concerning the claim of Yardmaster Howard Alexander, North Vernon, Ind., for a day's pay on March 10, 1961 and all subsequent dates, etc.:

Noting your statement in the third paragraph of your letter that 'This is the first instance in the handling of this claim that any reference has been made to any alleged impropriety in the decision given Local Chairman Smith by Superintendent Waller,' permit me to observe that in the circumstances what we said to you in our letter of February 5, 1962, still fully applies and that the claim is payable.

We would very much prefer that you allow it now, to having to progress the case to the Fourth Division, Notice of Intent in that connection is due April 9, 1962 and I would appreciate further advice from you before the 9th of next month.

Very truly yours,

/s/ M. G. Schoch
M. G. Schoch
President

cc: Mr. R. M. Semple, General Chairman"

Letterhead of
"THE BALTIMORE AND OHIO RAILROAD COMPANY
OFFICE OF SUPERINTENDENT
WASHINGTON, INDIANA

J. F. STEVENS
Superintendent

"June 13, 1962

L-15

Mr. Albert Healy,
Regional Chairman,
Railroad Yardmasters of America,
6257 Bridgetown Road,
Cincinnati 11, Ohio.

Dear Sir:

Referring further to your letter of June 8, 1961, regarding claim of Yardmaster Howard Alexander, North Vernon, Indiana, for a day's pay on March 10, 1961, and all subsequent dates:

At the end of tour of duty March 9, 1961, the 3 P. M.-11 P. M. Yardmaster position at North Vernon was abolished, and the first trick changed from 7 A. M.-3 P. M. to 6:15 A. M.-2:15 P. M., and the third trick changed from 11 P. M.-7 A. M. to 10:15 P. M.-6:15 A. M.

Effective March 10, 1961, the first trick Yardmaster started issuing instructions as to tracks on which specific cars were located to be picked up and where specific cars were to be set off by crews during the time yardmasters were not on duty, that is, between 2:15 P. M. and 10:15 P. M.

These instructions as to switching originate with the Yardmasters, and the employees through which these instructions are relayed to the crews act only as messengers. No supervision is exercised over the crews except by Yardmasters.

In view of these facts it is not felt any rules of your agreement were violated and the claim is therefore denied.

Yours truly,

/s/ J. F. Stevens

Cy-Mr. T. S. Woods,
Mr. A. W. Conley.

K-4"

The evidence submitted clearly shows the violation and warrants sustaining the claim on its merits. In the circumstances, however, the Board need not

consider the merits, the Carrier representative having failed to give reason for disallowing the claim, the claim then became payable forthwith.

The claim should be sustained.

CARRIER'S STATEMENT OF FACTS: This claim originates at North Vernon, Indiana, on the Carrier's St. Louis Division. Prior to March 9, 1961, Yardmasters were assigned around-the-clock at North Vernon. For many months prior to March, 1961 there was a continuing decline in business, particularly evident in the operation in and around North Vernon. As a result of this decline in business, the yard engine on the second trick at that point was discontinued.

There being no yard engine on duty on the second trick there was insufficient work to warrant working a yardmaster on the second trick. In a word, the Carrier decreed that it did not require supervision on that particular trick.

Accordingly, effective with the end of tour of duty on March 9, 1961, the second trick position of yardmaster at North Vernon, Indiana, was abolished. Effective with the end of tour of duty on that date, the tour of duty of first trick yardmaster was changed from 7:00 A. M. to 3:00 P. M. to be from 6:15 A. M. to 2:15 P. M., and the tour of duty of the third trick yardmaster changed from 11:00 P. M. to 7:00 A. M. to be from 10:15 P. M. to 6:15 A. M.

North Vernon is a terminal from which Locals are dispatched periodically to the Louisville Branch and to both sides of the St. Louis Division. In addition, certain through freight trains operate through North Vernon and as the occasion demands, may perform work at that point. Following the abolishment of the second trick yardmaster position, the yardmaster on the preceding trick, the first trick yardmaster, issues whatever instructions may be necessary to through freight trains picking up and/or setting off cars at North Vernon on the second trick, in addition to any Local that might originate or terminate at that point on the second trick. Actually, almost without exception, Locals depart from North Vernon during the hours of the first trick. These instructions dealt with tracks on which specific cars were located to be picked up and tracks on which specific cars were to be set off, as well as tracks trains would use to head in and out of the yard during the period between 2:15 P. M. and 10:15 P. M.

These instructions prepared by the first trick yardmaster in turn are handed to the Dispatcher at North Vernon, who, in turn, relays or conveys them to the train or engine crews involved, through the operator or yard clerk. The operator or yard clerk merely acts as messenger for the first trick yardmaster. They exercise no supervision whatever over the train or engine crews.

Prior to and subsequent to March 9, 1961, operators and yard clerks were on duty on the second trick at North Vernon. These employees come within the scope of Agreements with The Order of Railroad Telegraphers and Brotherhood of Railway and Steamship Clerks. The operators and yard clerks at North Vernon perform precisely the same functions required of operators and yard clerks at other locations on this property. There was no material or substantial change in the duties or responsibilities of the operator positions or the yard clerk positions.

All that happened was that after March 9, 1961 there was no supervision exercised by a yardmaster on the second trick at North Vernon. There were no yard crews started on the second trick at North Vernon. When it was nec-

essary to furnish instructions to Locals or through freight crews operating at that terminal, such instructions always emanated from the yardmaster on the first trick.

For example, in a letter dated September 1, 1961 General Chairman Sample addressed this Carrier's Manager Labor Relations in part as follows:

" * * * (The Carrier) instructed first trick yardmaster to furnish A. S. Waller, Superintendent and B. M. Thomas, Trainmaster, a complete turnover of the yards, head in tracks and instructions to all trains operating on 2nd trick. This in turn goes to Chief Dispatcher who in turn handles the movement and instructions to trains at North Vernon in case of hot boxes or any other unforeseen work or problems. This is done by communication from dispatcher to operator to yard clerk to train involved. Sometimes messages are furnished direct to trains. * * * "

In a word, there is no dispute between the parties but that instructions as to switching to be done emanate and originate from employees coming under the Yardmasters' Agreement, those relaying such instructions to crews merely acting in the capacity of messengers.

Carrier's Special Statement As To The Nature Of The Claim Made:

It will be observed that a portion of the claim as made and presented before this Board comprehends a claim for damages for subsequent dates. Thus, the claim itself is that the claimant be allowed " * * * one day at the appropriate yardmaster rate for April 10, 1961, and all subsequent dates, * * * ." There has been no adequate record submitted by the Yardmasters' Organization in this case to support claims for "subsequent dates." In a word this claim for damages is a blanket claim for a whole series of unidentified and undisclosed dates for which no factual record is presented.

The Adjustment Board, as well as other competent labor tribunals, have rejected such blanket claims where no detailed or specific statement of the record has been presented. For example, in Award 883 (Special Board of Adjustment No. 411) (BRT v. B&O), the Findings held in part that:

" * * * Claims for 'all others' and 'for all subsequent dates claimed or to be claimed and for all claims on record of this like nature' are denied. * * * "

POSITION OF CARRIER: The issue in this case relates to an allegation that others besides yardmasters are doing yardmasters' work. The Carrier positively denies such allegation.

It is the position of the Carrier in this case that there are no others besides yardmasters performing yardmasters' work on the second trick at North Vernon. There are no yard crews started at North Vernon on the second trick.

Yard clerks at North Vernon did not then exercise, and are not now exercising, supervisory functions over yard crews working in this area. Yard clerks on the second trick at North Vernon are performing the same kind and type of work they have always performed. This situation is equally true in the case of the operators at that point.

On occasion through freight trains may pick up and/or set off at North Vernon during the second trick. On occasion this may also be true in the case of Locals. All instructions to such train or engine crews are issued by the yardmaster on the preceding trick. These instructions are given to the operator who in turn relays them directly or through the yard clerks to the train or engine crews. Plainly, there is no violation of the Yardmasters' Agreement. Such crews are instructed by a yardmaster as to what moves should be accomplished, where cars are to be set out or picked up, etc. Certainly, no operator or yard clerk has any authority on this property for issuing instructions as to the work to be performed by train or engine service crews. In this case the operator and/or the yard clerk merely act as a messenger for the yardmaster. Neither the yard clerk nor the operator exercise any supervision whatever over the crews. The work to be done is done on the basis of instructions issued by the yardmaster.

The Carrier categorically denies that others besides yardmasters are doing yardmasters' work at North Vernon on the second trick.

Matters related to questions as to the necessity for yardmaster service fall wholly and exclusively within managerial discretion:

In this connection the Carrier would direct the Division's attention to Award No. 420 (RYA vs. B&O). The Findings in Award No. 420, read as follows:

"We must determine whether or not the Terminal Trainmaster and the Night General Yardmaster, or either of them, have been regularly required to perform the work of trick Yardmasters at Akron Junction, Ohio, in violation of the Yardmasters' Agreement.

The Employees have offered certain exhibits in support of their claim that the Terminal Trainmaster or the General Yardmaster perform Yardmaster work. To us Exhibits 'A' and 'C' contained in the Employees' Ex Parte Submission seem important; Exhibit 'B' being a 'self-serving declaration does not seem worthy of consideration.

From Exhibit 'C' we gather the following:

1. There are a total of fifteen foremen.
2. Eight foremen received their starting instructions from the Yardmaster only, four of whom receive all their instructions from the Yardmaster only, but the other four, during their tour of duty, call or may be called, by either the Yardmaster or Terminal Trainmaster.
3. Six receive starting instructions and all other instructions from either the Yardmaster or the Terminal Trainmaster or Night General Yardmaster.
4. Terminal Trainmaster and the Night General Yardmaster give instructions in the absence of the Yardmaster in order to avoid delays.

In other words, in the absence of the trick Yardmasters, either the Night General Yardmaster or the Terminal Trainmaster deliv-

ers to foremen instructions (switching lists) prepared by trick yardmasters or gives instructions to foremen over the telephone, but based upon instructions prepared by the trick yardmasters. Does this constitute being 'regularly required to perform the work of trick yardmasters?' We note from Exhibit 'A' signed jointly by the Carrier's and Yardmasters' representatives, that in June, 1945, the giving of instructions occasionally was not considered a violation of the Agreement.

What is 'the work of trick yardmasters?' The only evidence on this point has been furnished by the Carrier. There is quoted a description established by the U. S. Railroad Labor Board, with the approval of the I.C.C., as follows:

"The above class includes positions in which the preponderant duties of incumbents are to supervise the work of employes engaged in breaking up, making up and handling trains and general yard switching within a railroad yard or an assigned district of a large railroad yard; and to perform related work.'

The Carrier then quotes nineteen of its own Operating Rules which constitute, in effect, an amplification of the U. S. Railroad Labor Board description. The Employes have offered no evidence as to what constitutes work of a Yardmaster—either affirmatively, or in opposition to the Carrier's evidence. It seems clear that the important thing—the laying out of the work—is done by the trick Yardmasters; the orders emanate from them. In our opinion, the Employes have not established their claims. Therefore, we cannot find, that either the Terminal Trainmaster or the Night General Yardmaster does, or is 'regularly required to perform the work of trick yardmasters.' Where the line can be drawn is not involved in this award.

The claim must be denied."

In this Division's Award 947 (RYA vs. GTW) it was held in part as follows:

"The Organization states that Carrier fails to find support in the Agreement which justifies its contentions that 'there is no provision in the working Agreement that prohibits the cancelling of assignments' and that 'there is no provision in the working Agreement that would require the calling of relief.' It points to Rule 3(e) as a mandatory requirement that relief should have been called to fill the yardmaster tricks in question because such rule 'spells out specifically how that relief is to be accomplished.'

Carrier denies that Article 3(e) of the Agreement can be interpreted as a mandatory obligation in a case like this. It replies that 'If the demands of the service had required a yardmaster at either yard on dates and shifts in question, of course, the Carrier would have been guided by the provisions of Article 3(e) of their Agreement.'

The Board does not place importance on what had been done with respect to yardmaster supervision at these yards on previous holi-

days. We accept the Organization's statement that these positions were filled on previous holidays, but there is no evidence in the record as to prevailing work demands in the yards on those days.

The Board fails to find in the Agreement any rule that requires Carrier to fill yardmaster positions under circumstances such as these. The regular assigned Yardmasters asked permission not to work their tricks on the holidays. The engine crews at the Torrey and Chevrolet Yards were sent to the Belsey Yard to work those tricks and the Organization has not questioned Carrier's right in that connection. Before the claims could be sustained we would have to read much more into the Agreement than is there."

In this Division's Award 1151 (RYA vs. CNW) it was held in part:

"Prior to about April 14, 1952, Carrier maintained two positions of yardmaster at its Grand Avenue Yard, first and third tricks. Effective that date, the two positions were abolished and such supervision by yardmasters as was required at Grand Avenue Yard was assigned to the yardmasters at North Avenue Yard. * * *"

"The issue may be simply stated. Claimant contends that the yard clerk at Grand Avenue is exercising yardmaster functions; Carrier contends that he is not. The principles governing such a dispute may also be simply stated. It is Carrier's prerogative to decide when and where the supervisory functions performed by yardmasters are required in its operations. If it decides that they are not required at a certain place, it may dispense with them and abolish an existing yardmaster position. However, it may not abolish such a position and then continue to have the yardmaster functions performed by a clerk or any other employe not a member of the yardmaster craft or covered by the yardmaster Agreement. Thus, if a yard clerk is actually performing yardmaster functions, the claim should be sustained; if he is not, the claim should be denied. * * *"

"* * * Without attempting to discuss or reconcile all of the evidence, we find that the Grand Avenue Yard engines are engaged in servicing some fifteen industries in the Grand Avenue district and that the nature of the services rendered are routine and have not varied substantially over a long period of time. All of the tracks in the yard are classified track and the classifications are well known and familiar to the yard foremen and their crews. Essentially, the work of the yard clerk is the receiving of orders from the various industries as to when and where they want cars spotted or picked up, and the transmission of these orders to the yard foreman and yard crews. The yard clerk does not tell the yard foreman how to accomplish the movement of these cars, and does not control his actions. The yard foreman accomplishes the movements in accordance with his own knowledge of the yard, the industries, the classification of the tracks and his own past experience in accomplishing similar movements. He is not 'supervised' by the yard clerk. * * *"

In this Division's Award 1156 (RYA vs. CNW) it was held in part:

"* * * the Burden is upon the Petitioner to show that the work involved belongs specifically to yardmasters. In this case, as in those cases, the evidence discloses that the work done by the yard crews

involves the servicing of certain industries, is of a regular and recurring nature and does not vary in its general composition from week to week or month to month, but has remained essentially the same over a long period of time. It also discloses that the yard foremen and yard crews, through long performance of the duties at Weber Yard, are familiar with the operations of the yard to the extent that when told that certain cars are required to be taken to or removed from certain industries, they are able to plan and perform the work of moving these cars without supervision. The so-called "orders" and "instructions" given to the yard crews by the yard clerk and agent are not of a supervisory nature, but of an informational nature. Thus, as in Awards 1151 and 1155 (Dockets 1138 and 1142) the yard crews are not told how to do their job; they are merely told what job is to be done."

In this Division's Award 1208 (RYA vs. CNW) it was held in part:

"* * * The Organization contends that yardmaster work of the kind described in the foregoing operating rules has been 'farmed out' to others not within the scope of the agreement—more specifically, 'agents, clerks, operators and footboard yardmasters'—and that this is a violation of Rule 11 of the agreement.

"The awards of the Board consistently hold that work of a class included, either expressly or by implication, within the terms of the contract may not ordinarily be assigned to others outside the scope of the agreement. (Awards 102, 436, 445, 697, Fourth Division.) It is also a recognized and accepted rule that a carrier in the exercise of its managerial discretion may abolish a position (as it did here) where in its judgment the needs of the service require such action, provided, of course, that there is no contract bar. (See Award 482, Fourth Division.)

"Here the facts of record are determinative of the issue. The Organization has the burden of proof to show that a substantial volume of yardmaster supervisory duties is being performed by others. If the facts clearly and conclusively support the Organization's contention, then we must allow the claim; if they lack specificity and are inconclusive, we must deny it.

"The record discloses that the yardmaster position at Wausau had been in existence for some fifty years prior to its abolishment on January 1, 1957. For more than forty years prior to that date two shift yard engines had been worked in the yard. The yardmaster's primary duty was to coordinate and supervise the work and operation of the two engines and their crews during his assigned hours of service, which were from 9 A. M. to 5 P. M.

"The Carrier states that after a study had been made of the industrial switching at the Wausau Yard, it was decided that the switching operation could be handled more efficiently by establishing a 24-hour switching service—three continuous shifts, six days a week, using only one locomotive. Under this arrangement there is but one engine working at a time and, according to the Carrier, there is no longer any need for a yardmaster to coordinate the work of the two yard engines formerly in use.

"The Organization contends that there is a need for yardmaster supervision and coordination of the work and maintains that because footboard yardmasters are employed on the property, this is an admission of the necessity for a yardmaster. * * *"

"* * * what the engine foreman or footboard yardmasters are getting from those alleged to be performing the duties of yardmaster is information and not supervision or coordination of the actual work. * * * the evidence submitted by the Organization in behalf of the claim is not of sufficient substance to sustain the burden of proof required to justify an affirmative award. * * *"

In this Division's Award 1286 (RYA vs. B&O) it was held in part:

"Until February 16, 1957, when it was abolished, the 7:00 A. M.-3:00 P. M. yardmaster position at Hazelwood was filled by a regularly assigned yardmaster six days a week, with rest day on Sunday, and the position was filled on Sunday by a relief or extra yardmaster.

"On March 22, 1957, the position was re-established by Bulletin No. 15, advertised as Yardmaster's position at Hazelwood, hours 7:00 A. M.-3:00 P. M., with rest day Sunday. A regular yardmaster has been assigned to this position six days a week, but Carrier does not supply a relief or extra yardmaster on Sunday. Carrier states that none is needed, since Hazelwood is located at the west end of Glenwood Yard in Pittsburgh Terminal, and relief yardmasters at Glenwood can protect the whole yard on this Sunday trick. There is no contention in this case that the Sunday work is being performed by employees other than yardmasters.

"Petitioner claims that when Carrier discontinued supplying a relief yardmaster for the 7:00 A. M.-3:00 P. M. trick on Sundays at Hazelwood Yard, it violated Article 1, paragraph (d) of the Interim Agreement of November 2, 1950, which reads as follows:

'Present rules and practices governing the number of days per week in Yardmaster assignments and number of paid vacation days shall not be changed during the life of this Interim Agreement.'

"The problem is as to the meaning of the language '. . . practices governing the number of days per week in Yardmaster assignments . . . shall not be changed' . . .

"The language can only be interpreted in the light of the history and the context of the Interim Agreement of which it is a part. The Interim Agreement of November 2, 1950, was the result of extended negotiations with the Yardmasters' Organization on the request for a five-day work week. Emergency Board No. 66 in 1948 made certain recommendations as to a five-day work week for other railroad employees, but recommended no change in the prevailing practice of a six-day work week for yardmasters. On June 15, 1950, Emergency Board No. 84 recommended a five-day work week for yardmasters and recommended a formula for re-adjusting yardmasters' pay. This formula involved a one-sixth reduction in existing monthly pay, followed by an upward adjustment of 18 cents per hour.

"Following the findings and recommendations of Emergency Board No. 84, the Interim Agreement of November 2, 1950, which is involved in this case, was signed by the Carriers' National Conference Committees and the Railroad Yardmasters of America. Article 1 — Basic Rates of Pay, effective October 1, 1950, is as follows:

'(a) Basic monthly rates of pay of Yardmasters shall be reduced one-sixth and wage adjustments, so long as such rates remain in effect on such basis, shall be made on the basis of 200 hours per month.

'(b) Rates of pay resulting from the adjustment provided for in paragraph (a) hereof shall then be increased \$36.00 per month, and in consideration of other provisions of this agreement, shall be further increased \$10.00 per month, which adjusted rate shall cover 5 days of work per week.

'(c) There shall be no change in agreement rules covering working conditions, except —

(1) For the sixth day of work in the week the Yardmaster shall receive an additional day's pay at the straight-time rate.

(2) The daily rate shall be determined by multiplying the monthly rate by 12 and dividing by 261.

(3) The straight-time hourly rate shall be determined by dividing the monthly rate by 174.'

"(d) Present rules and practices governing the number of days per week in Yardmaster assignments and number of paid vacation days shall not be changed during the life of this Interim Agreement.

"Thus, it will be seen that the Interim Agreement of 1950 set up a method of computing Yardmasters' monthly pay based on a five-day work week plus additional pay at the straight-time rate for work on the sixth day. The function of section (d) was to make it clear that, although the method of pay-computation had been changed, the number of days per week in Yardmaster assignments—in other words, the number of days per week which Yardmasters were assigned to work—had not been changed by this Agreement, and prevailing practice was to govern.

"The prevailing practice on the B. & O. was that Yardmasters were, and still are, assigned to work a 6-day week. This is borne out by Circular No. 1135 of November 15, 1950, in which Carrier announced the implementation of the November 2, 1950, Interim Agreement, and in which it was stated:

'... In the event a regularly assigned Yardmaster should not work on the sixth day of his work week, he, of course, will not be paid for that day ...

'It should be understood that the Carrier does not have the right to establish five-day assignments for regularly assigned yardmasters.'

"Thus in the light of the history, purpose and context of section (d), the Board is of the opinion that this provision means that present rules and practices governing the number of days per week which a Yardmaster is assigned to work cannot be changed. For example, under this provision, Carrier would not be permitted to change Yardmaster assignments from a 6-day work week to a 5-day work week.

"There is nothing to indicate that this provision refers to the number of days per week that Yardmaster positions must be filled or to the question whether a relief man will be supplied on a rest day.

"Petitioner has referred to Fourth Division Award 594 in support of its claim, but that Award is not relevant in that there the claim was that yardmaster work had been performed by a person other than a Yardmaster.

"Third Division Awards 750, 1635, and 2783 have also been cited by Petitioner. However, those cases involved a special rule as to the Brotherhood of Railway and Steamship Clerks which is not present here.

"In the light of the Board's above interpretation of the applicable agreement here, the petitioner's claim must be denied."

In this Division's Award 1299 (RYA vs. C&W) (Referee Gilden) claims were denied with the following holdings:

"Singularly absent from the North Fond du Lac Yard picture here presented is any clear showing either of the existence of such 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 Yardmasters' 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 Yardmasters' work sphere is not discernible."

In addition, this Carrier would direct this Division's attention to its Award No. 1499 (RYA vs. B&O) (Referee James A. Murray). In that case prior to Sunday, February 23, 1958, yardmasters were assigned around-the-clock at Penn Mary Yard, Baltimore, Md. On that date all relief days of yardmasters at that point were changed to Sunday, and no work was assigned to the yardmasters theretofore working on Sundays. No yard crews were started at Penn Mary on Sundays and, if yard crews were needed at that point on that day they were dispatched from Bay View to handle whatever

business had arisen. The Yardmasters' Committee filed wage claim by reason of these changes.

The complete award in Award No. 1499 before this Division reads in full as follows:

"Form 1

Award No. 1499

Docket No. 1407

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

The Fourth Division consisted of the regular members and in addition Referee James A. Murray when award was rendered.

PARTIES TO DISPUTE:

RAILROAD YARDMASTERS OF AMERICA

THE BALTIMORE AND OHIO RAILROAD COMPANY

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

Claim of Yardmasters W. H. Shehan, W. G. Bull and M. W. McNamee for one day's pay each on February 23, 1958, account change being made in their assigned relief days and account not used to perform work on Sundays. Claim is also made for each succeeding Sunday until the original assigned relief days are restored.

OPINION OF BOARD: The claim and request of the Organization in this case is that the Yardmasters be awarded one day's pay each on account of changes being made in their assigned relief days, and on account of not being used to perform work on the relief days.

The claim of the Organization is that, contrary to the provisions of Article 4(a) of the Agreement, the Yardmasters' relief days were changed without being arrived at by conference. Also involved in this case is a claim that the Carrier is using Yard Clerks to perform the duties of Yardmasters at the Penn Mary Junction, in violation of the Scope Rule of the Agreement.

Prior to Sunday, February 23, 1958, Yardmasters were assigned around the clock at Penn Mary Junction, Bayview Yard District, Baltimore, Maryland, on the property of the Carrier. On the 23rd of February, all relief days were changed to Sunday, and no work was assigned to either of the Yardmasters theretofore working at Penn Mary on Sundays.

The relief days were changed and Sunday was set as the relief day without the prior concurrence or approval of the employees' Gen-

eral Committee, and following the change of relief days the practice of using relief or extra yardmasters on Sundays at Penn Mary was discontinued.

The Organization contends that the various statements in the form of affidavits and letters indicate that the work being performed at Penn Mary on Sundays was the type of work properly assignable to a Yardmaster, but that in fact the work on Sundays at Penn Mary was being performed by Yard Clerks not subject to the Agreement. The Organization contends that the turnover report prepared by a clerk on duty at Penn Mary indicates the work that he is doing requires the services of a Yardmaster.

There is a memorandum covering a meeting of February 11, 1958, which stipulates that the meeting was called by the Trainmaster representing the Carrier to serve notice on the Yardmasters' organization that pursuant to the provisions of Article 4(a) of the Agreement, the presently existing relief days assigned to the three claimant Yardmasters at the Penn Mary Yard, Baltimore, would be changed to Sunday. The memorandum reports the fact that the Carrier was not working yard engines at Penn Mary on Sundays due to a decline in business and that, therefore, the Carrier determined to change relief days to effect an abolishment of the Yardmasters' position for Sundays at this point in the Yard. The memorandum notes that the committee for the Employees objected to the change.

There is a record here that the Carrier pointed out to the Employees' committee that there was an economic need for a change in the supervision required at Penn Mary in the Bayview Yard. The Employees' committee objected to the change contemplated, but the change was made without the agreement of the Employees' committee.

The Yardmasters' organization then protests that the changing of relief days by agreement and by common practice could only be changed by agreement between the Carrier and the Employees' organization, and to change the days without agreement was a violation of Article 4, paragraph (a), which reads in part:

'Relief days shall be arrived at by conference between the Committee and the General Yardmaster or other proper officer.'

The Employees' organization suggests, therefore, that in the matter of changing relief days the same principles apply as would apply in the requirement that the Carrier bargain with its employees as to wages and conditions of employment. The Organization contends that the Carrier cannot change relief days in the absence of an agreement that the relief days be changed. This appears on its face to be unreasonable and requires a strong presentation by the Organization to convince the Board of that principle and that fact. The demonstration of the reasonableness of such an interpretation of the above-quoted provision of Rule 4(a) has not been presented here.

It may be that the Carrier is required to confer in order to obviate any unnecessary irritation or disruption of the employees' routine effected by a change in his relief days. However, these requirements that the Carrier confer with the employees about changed re-

lief days does not require that the Carrier come into a meeting without any preconceived plans as to what should be done. It does not mean a negation of the provisions of 4(a) that the Carrier does not agree to suspend its plan for changed relief days. It can confer at such times to implement the contemplated changes and any other matters that appear related to the changed relief days.

We do not find a violation of Article 4(a) of the Agreement. (Award 1049, Fourth Division.)

The second portion of the claim and request is concerned with the claim that the Carrier is utilizing the services of Yard Clerks at Penn Mary to perform duties normally and properly assignable because of the scope, nature, and importance and responsibility thereof to Yardmasters who are covered by the Agreement.

For some time prior to February, 1958, there was a continuing decline of business particularly evident in the operation in and around Penn Mary. Eventually yard crews were curtailed, and finally no yard crews were started at the Penn Mary point. In its determination and in its operation, the Carrier decided that if yard crews were needed at Penn Mary on Sunday, yard crews would be dispatched from Bayview to handle whatever business should be taken care of out of Penn Mary.

The Carrier asserts and maintains that the record demonstrates that both prior to and subsequent to February 23, Yard Clerks were assigned around the clock at Penn Mary, and that there had been no proof of any substantial or material change in the duties or responsibilities of Yard Clerks in their positions at Penn Mary.

Essentially, this is what has taken place. Since February 23, 1958, there have been no Yardmasters assigned to Penn Mary on Sunday. Yard crews are sent down to that point from Bayview, and such yard crews and engines start out and originate at Bayview, and instructions to them are issued by Foremen and Yardmasters at Bayview, where there is around-the-clock Yardmaster service every day. (See Award 1366, Fourth Division.)

It has been shown that there are several trains on Sundays which go to Penn Mary and work out of that point. There is also some considerable switching activity out of the Penn Mary point. The activities of Yard Clerks at that point, in the Carrier's contention, are simply passing on instructions relayed to them by Yardmasters at Bayview, and that Yard Clerks at Penn Mary are doing no more than their usual and proper jobs. The Carrier cites, for example, that Yard Clerks at every point, including Penn Mary, are only performing their usual and ordinary duty in checking tracks and making a list of cars standing on the various tracks in their area, which information is posted and relayed to Yardmasters at Bayview. The records show that Yard Clerks are not supervising or directing; they are merely relaying instructions, given to them by Yardmasters at Bayview for transmission to engine crews passing the Penn Mary point. If instructions are passed to them by Yard Clerks, the instructions themselves emanate and originate in the Yardmasters at Bayview, and the Clerks in such case are mere conduits or means of communication. They are not responsible for the issuing of any in-

structions; they are not supervisors or directors themselves. It is true that Yard Clerks maintain records, but they do not issue orders or instructions. They relay, but they do not originate instructions to yard crews at Penn Mary.

The report of the check conducted by the Carrier on March 9, 1958, indicates that the yard crews working out of Bayview are instructed by and supervised by Yardmasters.

The affidavits and statements submitted by the Organization as to the work on Sunday at Penn Mary do not outweigh the showing of the Carrier that the Yard Clerks are not performing supervisory work of the nature properly assignable to Yardmasters.

Insofar as the alleged claim for violation of the Scope Rule of the Agreement, we do not believe that the basic work of a Yard Clerk has been so expanded in this case as to constitute a violation of the Scope Rule of the Agreement. It is apparent from this record that the basic work of a Yard Clerk is receiving and transmitting orders and keeping records; and the record in this case does not show that the Yard Clerks are acting as supervisors or that they have the responsibilities of supervisors, as is asserted by the Organization. The record shows that Yard Clerks do pass information or instructions to Foremen, but they do not undertake on their own initiative or in their own judgment to determine or instruct how a Foreman shall accomplish his assigned task or what movement shall be accomplished by the Foreman. As far as the record in this case is concerned, the Foreman carries out his instructions in accordance with, and based upon, his own knowledge and experience and does not rely upon Yard Clerks for guidance. (Awards 1208, 1182, Fourth Division.)

The Organization points out that throughout the years there has been only one or two cases where relief days have not been arrived at by agreement. This is a fact which speaks well for the judgment of both parties, but the indecisive language of Article 4(a), with which we are concerned, does not require that it be interpreted to mean that there be collective bargaining to effect a change in relief days. Such a strained interpretation is not required in order to give full meaning and purpose to the provisions of 4(a) concerning conference regarding relief day changes when the Carrier in fact holds a meeting with the Organization and discloses its plans in connection with relief day changes. There is no doubt that such a proceeding does away with a considerable chance of hardship as a result of changes. But again, the requirement for a conference on a change of relief days does not carry with it the obligation to bargain collectively regarding a change in relief days.

We believe it should be the determination of this Board that the claim be denied.

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

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

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

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

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION

ATTEST: Patrick V. Pope
Secretary

Dated at Chicago, Illinois, this 10th day of October, 1960."

CARRIER'S SUMMARY

There is no rule in the Yardmasters' Agreement to support this claim. Certainly no rule in the Yardmasters' Agreement has been violated. Work belonging exclusively to the Yardmasters' craft is being performed by employees of that craft. Certainly there is no limitation in having yardmasters on other tricks issue instructions to train or engine service employees. Basically, it is the prerogative of Management to determine the amount of supervision in keeping with the demands of the service. For example, the Carrier understands the principle handed down by Award 420 of this Division to mean as to actual practice the trick yardmaster is directly responsible for the issuance of instructions to train and engine crews. On the other hand, the Carrier likewise understands this principle to mean that so long as the yardmaster initiates or issues the instructions a general yardmaster, an operator or an office boy can deliver the instructions to the crews to whom they are addressed. In other words, so far as the general yardmaster, operator or office boy are concerned, they are merely relaying information. The Carrier further understands this principle to mean that once the instructions are issued by trick yardmaster, the general yardmaster or any other officer may check on the proper compliance with the Yardmaster's instructions.

In the alternative, where a train or engine crew simply performs its duties in the yard based on such instructions and based on its own experience as to the location and classification of tracks, etc., certainly poses no violation of the Yardmasters' Agreement.

The movements made by through freight or local crews in this terminal are accomplished as a result of instructions of yardmasters. The primary function of a yardmaster is to supervise switching by yard crews. There was no yard crew on duty at North Vernon on the second trick and no supervision was required.

The wage claim here is not supported in the Working Agreement. It is not valid. The Carrier respectfully requests that this Division so hold and deny it accordingly.

Oral hearing is requested.

OPINION OF BOARD: Petitioner maintains that Carrier has violated Article V of the National Agreement of August 12, 1954. One of the require-

ments to which Carrier has committed itself by that provision is that when a claim is being disallowed, "the Carrier shall, within 60 calendar days from the date same is filed, notify the employee or his representative of the reasons for such disallowance." This may appear to be a highly technical requirement and we would very much prefer not to base a decision on a procedural point of this type. Nevertheless, each of the contracting parties—the Carrier as well as the Organization—is responsible for the inclusion of the Article V language in the Agreement, and what this Referee may think of its wisdom is not at all material. It is our function to interpret the Agreement as it now stands and not to rewrite it in accordance with our own theories of labor-management relations. See Third Division Award 9253.

It is quite apparent from an examination of the record that Carrier has violated Article V. When the claim was being processed on the property, the Yardmasters' Regional Chairman presented it by his letter of June 8, 1961, to the Superintendent, clearly stating that it is a claim "for March 10, 1961, and all subsequent dates" and that the "scope rule is being violated daily by dispatchers, operators, yard clerks and car inspectors from 2:15 P.M. to 10:05 P.M." Faced with this letter and its clear statement of claim, Carrier was obligated by Article V to notify Petitioner in writing, within 60 days of June 8, 1961, of any disallowance and the reason for such disallowance. Carrier's Superintendent failed to comply with this plain requirement and thereby breached the Agreement.

Petitioner raised this procedural objection in the very next letter, that of September 1, 1961, and has at no time waived it. Under these circumstances, the rule must be enforced and the claim sustained. See Fourth Division Award 1637 as well as Third Division Awards 10313 and 9205.

The record makes it entirely clear that the claim period is to be measured from March 10, 1961, and that the reference to April 10, 1961, in the formal statement is a typographical error. That Carrier was not prejudiced or misled by the error and was well aware of the dates involved are amply evidenced by the opening lines of its Superintendent's letter of June 13, 1962, to the Regional Chairman, which read as follows:

"Referring further to your letter of June 8, 1961, regarding claim of Yardmaster Howard Alexander, North Vernon, Indiana, for a day's pay on March 10, 1961, and all subsequent dates . . ."

Procedural objections must be timely made and since they were not raised on the property, the Board is not in a position to accept Carrier's belated contentions, on rebuttal, regarding procedural mishandling by the Organization.

On the other hand, there is no valid reason why the Board, which has had the benefit of vigorous discussion on the subject in numerous cases, should not proceed to interpret Article V insofar as it relates to the claim period, a non-procedural point. The violation occurred on August 7, 1961, the sixtieth day after the claim had been submitted to the Superintendent. In line with the conclusions reached in Award 1657, we find that the claim jelled on that date and thereafter embraced a definite earmarked period from March 10 through August 7, 1961. We have considered the dissents to that Award as well as Board decisions to the contrary (Second Division Award 3298 and Third Division Award 10173, for example) and the respective arguments for more extensive and more limited claim periods. It is, nevertheless, our opinion that the result we have reached represents the reasonable and realistic interpretation of Article V and the correct conclusion.

The claim will be sustained for the period beginning March 10, 1961, and ending August 7, 1961.

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.

Article V of the National Agreement of August 12, 1954, has been violated.

AWARD

Claim sustained in accordance with Opinion.

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

ATTEST: Patrick V. Pope
Secretary

Dated at Chicago, Illinois, this 22nd day of May, 1963.

CARRIER MEMBERS' DISSENT TO THE FOLLOWING AWARDS:

Award No. 1778, Docket No. 1713 — ARSA v. NYC-ED

Award No. 1779, Docket No. 1717 — ARSA v. NYC-ND

Award No. 1784, Docket No. 1736 — RYA v. L&N

Award No. 1789, Docket No. 1773 — RYA v. B&O

Award No. 1791, Docket No. 1778 — RPIU v. NYC-ED

"Carrier Members dissent."

CARRIER MEMBERS

A. H. Deane

J. R. Wolfe

C. A. Conway

OPINION OF LABOR MEMBERS WITH RESPECT TO AWARD 1789 (DOCKET 1773), RYA vs. B&O

No valid reason has been given for allowing this claim only for the period March 10, 1961, to August 7, 1961.

The claim as presented requested that "Yardmaster Howard Alexander be allowed one day at the appropriate yardmaster rate for April 10, 1961, and all subsequent dates until condition complained of is corrected."

Article V of the August 12, 1954 National Agreement provides that when a Carrier fails to comply with the requirements thereof "the claim or grievance shall be considered valid and settled accordingly." That can only mean that the claim as made "shall be considered valid." Hence, it was mandatory that the claim be sustained as made with no limitation on Carrier's liability. To do as was done here constitutes changing a basic part of the claim, which this Division has no authority to do, and further the conditions creating the controversy remain uncorrected.

In Fourth Division Award 1788 (Docket 1757) the majority says, among other things, in the Opinion of Board: "The parties have committed themselves to these procedural requirements and we are not disposed to indulge in distorted interpretations to avoid their impact." The parties to the August 12, 1954 Agreement likewise "committed themselves" to certain procedural requirements and the majority is guilty of a "distorted interpretation" when they improperly limit the payment in this case.

This Division failed in its responsibility "to settle all disputes" as required by the Railway Labor Act.

We subscribe to the sound logic expressed in Third Division Awards 10567 and 10173, which involved similar defaults on the part of the Carrier.

LABOR MEMBERS

R. H. Wachowiak

J. P. Tahney

W. J. Ryan