

**Award No. 1836**

**Docket No. 1782**

**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 AMERICA**

**THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY (Eastern Lines)**

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

Yardmasters T. J. McGurk and R. B. Sullivan, each be allowed one day at the appropriate yardmaster rate for October 26, 1960, and all subsequent dates until the violation is corrected, due to the work of yardmasters after the abolishment of the yardmaster positions being distributed to other crafts outside the scope of the Yardmasters' Agreement at Streator, Illinois.

**EMPLOYES' STATEMENT OF FACTS:** At Streator, Illinois, the Carrier's operations are continuous with crews working on all three shifts, daily.

For many years up to February 1, 1958, the Carrier had maintained at this point two regular Yardmaster positions, at which time one of the positions was abolished.

The Carrier after February 1, 1958, changed the hours of assignment of the remaining position several times in an effort to provide Yardmaster coverage over the operations and then, effective June 6, 1960, abolished the last Yardmaster positions.

**POSITION OF EMPLOYES:** The position of the Employees is evidenced by the exchange of correspondence in the handling of this dispute on the property, reproduced as follows:

Letterhead of  
RAILROAD YARDMASTERS OF AMERICA  
(AFL-CIO)

**"Santa Fe System Local Lodge No. 50**

611 S. Glenwood

Kansas City 22, Missouri

November 12, 1960

Mr. R. J. Yost, Superintendent  
AT & SF Railway Company  
Fort Madison, Iowa

Dear Sir:

We are claiming one day each date for each Yardmaster at Streator, Illinois beginning October 26, 1960 and all subsequent dates until violation is corrected, due to the work of Yardmasters being distributed to other crafts. For Mr. T. J. McGurk and Mr. R. B. Sullivan, one day each date for each man in seniority order. For years past Yardmasters have done the Yardmaster work at Joliet including giving tracks to the trains, marking switch lists, instruction in calling crews and general supervision. There is an abundance of evidence in our possession and more accumulating at all times which plainly illustrates that other crafts are handling the work of the Yardmaster at Streator, Illinois. For many years the Yardmasters were kept on at that point and the need still exists. It is not a reduction in business at that point as we know that for the past several years the business at Streator has been on the increase. This is definitely a violation of Article 1, Section 1b of the Current Yardmasters' Agreement whereby, 'other officials or authorized personnel of management is doing the Yardmaster work and thereby has illiminated' to Yardmaster positions at Streator, Illinois.

Please arrange for payment and correction of this condition.

Yours truly,

/s/ E. P. Wine  
E. P. Wine,  
General Chairman

EPW:mbt

CC to Mr. T. J. McGurk  
110 Colorado Avenue  
Streator, Illinois"

Letterhead of  
THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY

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ILLINOIS DIVISION

R. J. YOST  
Superintendent

G. L. KENNEDY  
Trainmaster

F. L. REES  
Division Engineer

J. E. LYNCH  
Trainmaster

C. R. ROSE  
Trainmaster

"In Reply Please Refer to Y-54124-A

Fort Madison, Iowa.

December 14, 1960.

Mr. E. P. Wine,  
General Chairman, Railroad Yardmasters of America,  
611 S. Glenwood,  
Kansas City 22, Missouri.

Dear Sir: —

Referring to your letter of November 12, 1960, making claims in favor of Yardmasters T. J. McGurk and R. B. Sullivan at Streator, Illinois:

These claims are not proper under the time limit rule and we have no recourse other than to consider them barred from consideration. Further, and without prejudice to the foregoing they are not supported by agreement rule.

The claims are respectfully declined.

Yours very truly

/s/ R. J. YOST

cc Messrs. T. J. McGurk  
R. B. Sullivan  
Streator, Illinois

Letterhead of  
RAILROAD YARDMASTERS OF AMERICA  
(AFL-CIO)

"Santa Fe System Local Lodge No. 50

611 Glenwood Avenue

Independence, Missouri

January 11, 1961

Mr. R. J. Yost, Superintendent  
AT & SF Railway Company  
Ft. Madison, Iowa

Dear Sir:

Please note the change of address.

Your decision in the Streator, Illinois case in favor of Yardmasters McGurk and Sullivan, your file Y-54124-A is not acceptable and it is being appealed to Mr. Olson.

Yours truly,

/s/ E. P. Wine  
E. P. Wine  
General Chairman"

Letterhead of  
RAILROAD YARDMASTERS OF AMERICA  
(AFL-CIO)

**"Santa Fe System** Local Lodge No. 50

611 S. Glenwood

Independence, Missouri

January 10, 1961

Mr. L. M. Olson, General Manager  
AT & SF Railway Company  
Topeka, Kansas

Dear Sir:

I am appealing to you from the adverse decision of Superintendent R. J. Yost, Fort Madison, Iowa, claims in favor of Yardmasters T. J. McGurk and R. B. Sullivan of Streator, Illinois, beginning October 26, 1960 and all subsequent dates until violation is corrected, due to the work of Yardmasters being distributed to other crafts. These claims for each man one day for each date until condition is corrected.

The Yardmaster work at Streator still exists and is done by other crafts and has been for several years. I am including with this letter attached evidence showing the work being done by others which is Yardmaster work that substantiates this claim. This is a violation of Article 1, Section 1b of the Current Yardmaster's Agreement inasmuch as the Yardmaster positions at that point were eliminated by this work and the elimination is being maintained due to others doing this work. With the enclosed evidence substantiating this claim we expect prompt payment and establishment of Yardmaster positions.

Please correct and advise.

Yours truly,

/s/ E. P. Wine  
E. P. Wine,  
General Chairman

EPW:mbt

CC to Mr. T. J. McGurk  
110 Colorado Avenue  
Streator, Illinois

Mr. R. B. Sullivan"

"EVIDENCE IN YARDMASTER CASES AT STREATOR,  
ILLINOIS

On the working day of October 26, 1960, 11:00 P.M. to 7:00 A.M.; at 11:00 P.M. Footboard Yardmaster instructed Yard Clerk that extra east 177 would pick up east cars on number 6 track and yard engine would add 12 Chicago cars off number 7 track and instructed the Yard Clerk to have him set out on number 4 track. Yard Clerk instructed engine 177 to set out on number 4 track. At 11:10 P.M. car men advised that east cars were coupled and he would inspect and that the branch cars were on number 10 track. At 1:10 A.M. Footboard Yardmaster received New York Central report from Chief Dispatcher for 5:30 A.M., 117 loads and 8 empties included 62 merchandise. Also, received instruction from Chief Dispatcher on loading S and L 59 trains. At 3:20 A.M. instructed Yard Clerk and car men that L 59 cars were lined up on 8 track and number 47 train on 11 track. At 4:10 A.M. operator instructed Footboard Yardmaster that L 59 cars were to be placed on number 23 track. At 5:20 A.M. received New York Central report from operator and informed Chief Dispatcher of break down of cup of 128 cars. Chief Dispatcher said to give S 59 loads only and Streator turn was ordered for 5:00 A.M. At 6:20 A.M. Footboard Yardmaster instructed crew on turn to pull in number 5 and engine back number 16 to round house. At 6:55 A.M. informs 7:00 A.M. Footboard Yardmaster that S 59 would take loads only. He informed me that he left that up to the Operator and Yard Clerk to figure how many cars and tonnage and Yard Clerk then instructed him on what cars not to run as they usually change the pick up on S and L 59. This definitely proves that the Operators and the Clerks and the Footboard Yardmasters are doing the Yardmasters work at Streator, Illinois.

On their working day of November 2, 1960, 11:00 P.M. to 7:00 A.M. At 11:50 P.M. the Footboard Yardmaster talked to Footboard Yardmaster at Chillicothe concerning the rear end only off of extra 1102 East. At 12:50 A.M. New York Central report from Chief Dispatcher and line up on east cars. At 4:40 A.M. a New York Central report from Chief Dispatcher to Footboard Yardmaster and line up on S 59.

November 5, 1960 7:00 A. M. to 3:00 P. M. At 7:10 A. M. Footboard Yardmaster called New York Central on delivery to their yard of 50 cars. At 8:30 A. M. the agent came into the yards and made change in the line up of number 47 train. At 9:35 A. M. Footboard Yardmaster called Chief Dispatcher on S and L 59 loading. At 10:15 P. M. Footboard Yardmaster talked to Agent concerning the tons and cars on S and L 59. At 12:30 P. M. Footboard Yardmaster called Chief Dispatcher on east and set out.

November 6, 1960, 7:00 A. M. to 3:00 P. M. At 7:15 A. M. Footboard Yardmaster lined up Streater turn in number 4 track. At 7:55 A. M. Footboard Yardmaster called Chief Dispatcher concerning L 59 set out of short cars. At 10:30 A. M. Footboard Yardmaster instructed crews on pick ups and car men on trains S and L 59.

November 7, 1960, 3:00 P. M. to 11:00 P. M. At 6:00 P. M. the Footboard Yardmaster called the Chief Dispatcher concerning handling of L 49 train. At 7:40 P. M. Footboard Yardmaster called Chief Dispatcher on the cars and tons for L 49 out of number 48's train. At 9:15 P. M. Footboard Yardmaster called Chief Dispatcher on stock pick up and work at Streater.

November 8, 1960, 11:00 P. M. to 7:00 A. M. At 11:00 P. M. Footboard Yardmaster instructed car men to couple east pick up. At 12:20 A. M. called Chief Dispatcher on west pick up and New York Central report. At 5:35 A. M. called Chief Dispatcher on New York Central report concerning cars to have for Santa Fe and how to be handled.

November 9, 1960, 11:00 P. M. to 7:00 A. M. At 12:20 A. M. Footboard Yardmaster called Chief Dispatcher on yard report and what to be done. At 12:35 A. M. Footboard Yardmaster talked to Chief Dispatcher on New York Central report and L 59 pick up. At 3:00 A. M. Footboard Yardmaster instructed Yard Clerk and car men on pick up and the necessary line up and coupling of hoses and air. Necessarily that Yard Clerk handled this work with train crews which was Yardmaster work.

November 12, 1960, 7:00 A. M. to 3:00 P. M. At 7:30 A. M. the Footboard Yardmaster called the Chief Dispatcher on the S and L 59 pick up. At 9:10 A. M. the Footboard Yardmaster instructed car men on handling of number 47 and the coupling of air and inspection. At 10:10 A. M. the Footboard Yardmaster instructed the car men and the Yard Clerk on the west pick up. Instructed crew on S and L 59 pick up. At 2:40 P. M. Footboard Yardmaster instructed number 48 to pull number 7 track.

November 13, 1960, 7:00 A. M. to 3:00 P. M. At 7:15 A. M. the Footboard Yardmaster instructed the Streater turn to pull number 5 track and back number 16 track. At 9:05 A. M. the Footboard Yardmaster called Chief Dispatcher on L 59 train and its handling. At 9:40 A. M. the Footboard Yardmaster instructed L and S 59 crews on pick up and the Yard Clerk on cars to run. The Yardmaster necessarily handled this with the engine crews

of the L and S 59 crews while the Footboard Yardmaster was working at another point. At 10:00 A.M. the Footboard Yardmaster instructed the car men to the handling of L and S 59.

November 16, 1960, 11:00 P.M. to 7:00 A.M. From 12:35 A.M. until 12:45 A.M., Footboard Yardmaster talked to the Chief Dispatcher on east pick up and New York Central delivery. At 6:15 A.M. Footboard Yardmaster called caller at Chillicothe on extra man in place of Murphy. Called extra man B. J. Overy. This calling of crews is definitely handled by the Yardmasters in time past and is a part of the Yardmasters work which is being handled by other crafts.

November 19, 1960, 7:00 A.M. to 3:00 P.M. At 9:20 A.M. the Operator instructed the Footboard Yardmaster to run 80 to 85 cars on S 59. At 2:40 P.M. the Footboard Yardmaster instructed the crew on number 48 to pull in number 5 track.

November 20, 1960, 7:00 A.M. to 3:00 P.M. At 7:10 A.M. Footboard Yardmaster instructed the Operator to have the New York Central pull number 4 track and double to number 7 track. This work handled by the Operator was a violation of the Yardmaster's Agreement inasmuch as the violation was also existed by the Footboard Yardmasters instructions. At 8:05 A.M. Footboard Yardmaster called Chief Dispatcher on S and L 59 concerning set out and pick up and cars to have. At 1:30 P.M. the Footboard Yardmaster called Chief Dispatcher on first 39's pick up and 7 cars of east pick up.

November 22, 1960, 11:00 P.M. to 7:00 A.M. At 11:50 A.M. the Footboard Yardmaster called the Chief Dispatcher concerning yard report and how to handle. At 1:35 A.M. Chief Dispatcher called the Footboard Yardmaster and changed the pick up on L 59. At 2:00 A.M. the Footboard Yardmaster instructed the car men and Yard Clerks on cars to couple and list in yard. At 3:55 A.M. Footboard Yardmaster called Chief Dispatcher on the extra 158 and what was to be added to the rear. At 5:20 A.M. the Footboard Yardmaster called the Chief Dispatcher concerning the New York Central report and the handling of it.

November 23, 1960, 11:00 P.M. to 7:00 A.M. At 12:30 A.M. the Footboard Yardmaster called the Chief Dispatcher concerning the east pick up. At 12:40 A.M. the Footboard Yardmaster instructed the Yard Clerk and car men on the east cars and trains that would pick up to be handled by the clerks and the car men. At 3:30 A.M. the Chief Dispatcher called the Footboard Yardmaster concerning the New York Central report and the handling of it.

November 26, 1960, 7:00 A.M. to 3:00 P.M. At 8:00 A.M. the Footboard Yardmaster called the Chief Dispatcher concerning the L 59 and first 39 later to pick up.

November 27, 1960, 7:00 A.M. to 3:00 P.M. At 8:05 A.M. the Footboard Yardmaster called the Chief Dispatcher on L 59

shorts and at 8:25 called Chief Dispatcher and received no answer. At 9:00 A.M. the Operator instructed the Footboard Yardmaster that the Chief Dispatcher called and to have L 59 leave short cars at Streater.

These instructions by the Operator was definitely Yardmaster work as has been all of this work of the Footboard Yardmaster. At 12:30 P.M. Footboard Yardmaster received instructions from the Trainmaster on the phone as to the Yardmaster work to be done and giving S 59 preference in leaving.

October 27, 1960, 11:00 P.M. to 7:00 A.M. At 11:00 P.M. the Footboard Yardmaster lined up work and the list to start to work. At 11:30 P.M. the Footboard Yardmaster called the Chief Dispatcher for a line up on trains and first New York Central report. Lined up Operator and Yard Clerk on work to be done. At 2:00 A.M. lined up east pick up and add cars to extra east 189. At 3:50 A.M. lined up Operator and Yard Clerk on work to be done and tried to give to New York Central. New York Central pulled number 4 with 65 cars at 5:30 P.M. and the New York Central pulled number 3 with 81 cars at 6:25 A.M. under the instruction of the Operator. L 59 pulled number 8 and the Streater turn pulled number 5 with 50 cars under the instruction of the Operator. At 5:10 A.M. the Footboard Yardmaster called the Chief Dispatcher for a new report on New York Central cuts to find out what each train (L 59 and L 53) could take. Instructed Yard Clerk and Operator on the number of cars L 59 and S 59 would get and the tracks they would be made up on. Made up work report and time slips in mail and made line up of for the day engine 7:00 A.M. All work of Yardmaster.

October 28, 1960, 11:00 P.M. to 7:00 A.M. Footboard Yardmaster lined up work and list to start work from 11:00 to 11:30 P.M. At 11:30 P.M. Footboard Yardmaster called the Chief Dispatcher for the first New York Central report and Santa Fe trains. Lined up Operator and Yard Clerk on work to be done. Arranged line up of east cars for east pick up and west pick up. At 3:50 A.M. Footboard Yardmaster went over with Clerk and Operator the work to be done and trains to handle. At 4:00 A.M. to 5:20 A.M. called Chief Dispatcher to give New York Central report and received from New York Central Operator 5:15 A.M. Got a line up on what L 59 and S 59 would take. Instructed Operator and Yard Clerk as to track New York Central would use and also L 59 and Streater turn.

October 29, 1960, 11:00 P.M. to 7:00 A.M. At 11:30 P.M. called Chief Dispatcher for line up on trains and the first New York Central report, was told all dope yet on New York Central. At 12:20 A.M. called Chief Dispatcher for New York Central report and received instructions on what pick up east and west cars. Instructed Operator and Yard Clerk on what cars were to be picked up off number 12 and set out on number 4. Operator and Clerks handled this work in the absence of the Footboard Yardmaster. Made up work report as to activities of yard during that portion of the period already worked. At 5:20



A. M. called Chief Dispatcher and gave him last New York Central report and got line up on what each was to pick up. Instructed Operator and Yard Clerk that New York Central would pull number 3 and come back number 4. L 59 pulled number 7 and Streater turn pulled number 4. At 6:50 A. M. made yard line up for day engine to use.

October 31, 1960, 11:00 P. M. to 7:00 A. M. At 11:30 P. M. called Chief Dispatcher for line up on trains due and report on yard. At 12:30 A. M. called Chief Dispatcher for New York Central report and line up on Santa Fe trains. Footboard Yardmaster instructed Operator and Yard Clerk as to what trains would pick up and setout. At 5:10 A. M. Footboard Yardmaster called Chief Dispatcher and gave him New York Central report and got line up on what he would have on L 59 and S 59 to pick up. Instructed Yard Clerks and Operator on tracks and cars for L 59, S 59 and New York Central. Made complete work report of the night's activities in the whole yard as per Yardmaster report.

November 3, 1960, 11:00 P. M. to 7:00 A. M. At 11:30 A. M. called Chief Dispatcher for line up on Santa Fe trains and instructed Operator and Yard Clerks on what were to take on pick up. At 2:20 A. M. called Chief Dispatcher for New York Central report. At 3:55 A. M. lined up Operator and Yard Clerk on track and cars for L 59 and New York Central. At 5:20 A. M. called Chief Dispatcher on loading for L 59 and made Yardmasters work report for nights activities.

November 4, 1960, 11:00 P. M. to 7:00 A. M. Called Chief Dispatcher for first New York Central report at 11:30 P. M. and instructed Operator and Yard Clerk on what was to take place in the handling of yard and cars. At 2:25 A. M. called Chief Dispatcher for first New York Central report and line up on Santa Fe trains. Footboard Yardmaster instructed Operator and Yard Clerk on what was to be done with trains and where they were to go and what pick up to make. At 5:15 A. M. gave Chief Dispatcher New York Central report from New York Central Operator and reviewed cars and tonnage on L 59 and S 59. Instructed Operator and Yard Clerk as to tracks New York Central, L 59 and S 59 were to use and cars they were to get. Made up work reports and yard turnover for the nights work of complete yard.

November 5, 1960, 11:00 P. M. to 7:00 A. M. At 11:25 P. M. called Chief Dispatcher for line up of trains on Santa Fe Footboard Yardmaster lined up Yard Clerk and Operator on cars and tracks. Lined up cars for pick ups and spotted house and pulled Q under Footboard Yardmaster's supervision as to tracks and disposition of cars handled by Yard Clerk. At 3:50 A. M. lined up Yard Clerk and Operator and work that was to be done and cars to pick up and set out. At 5:20 A. M. Footboard Yardmaster called Chief Dispatcher gave him New York Central report and got lineup on trains and loading on L 59 and S 59. Instructed Yard Clerk and Operator as to tracks and cars for New York Central, S 59, and L 59 also Streater turn would pull.

Made up work report for the nights activities of the complete yard and line up for day engine.

Letterhead of  
RAILROAD YARDMASTERS OF AMERICA  
(AFL-CIO)

**"Santa Fe System** Local Lodge No. 50

611 S. Glenwood

Independence, Missouri

January 10, 1961

Mr. L. M. Olson, General Manager  
AT & SF Railway Company  
Topeka, Kansas

Dear Sir:

I am appealing to you from the adverse decision of Superintendent R. J. Yost, Fort Madison, Iowa, claims in favor of Yardmasters T. J. McGurk and R. B. Sullivan of Streator, Illinois, beginning October 26, 1960 and all subsequent dates until violation is corrected, due to the work of Yardmasters being distributed to other crafts. These claims for each man one day for each date until condition is corrected.

The Yardmaster work at Streator still exists and is done by other crafts and has been for several years. I am including with this letter attached evidence showing the work being done by others which is Yardmaster work that substantiates this claim. This is a violation of Article 1, Section 1b of the current Yardmaster's Agreement inasmuch as the Yardmaster positions at that point were eliminated by this work and the elimination is being maintained due to others doing this work. With the enclosed evidence substantiating this claim we expect prompt payment and establishment of Yardmaster positions.

Please correct and advise.

Yours truly,

/s/ E. P. Wine  
E. P. Wine,  
General Chairman

EPW:mbt

CC to Mr. T. J. McGurk  
110 Colorado Avenue  
Streator, Illinois"

Mr. R. B. Sullivan

Letterhead of  
THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY

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EASTERN LINES

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L. M. OLSON,  
General Manager

J. B. NOE,  
Assistant General Manager  
Eastern District

S. S. ROSE,  
Assistant to General Manager

J. E. LESTER,  
Assistant General Manager  
Western District

M. H. COBLE,  
Assistant to General Manager

HENRY SCHULTEIS, JR.,  
Assistant to General Manager

"Topeka, Kansas,

January 16, 1961

YM-180.1-31

Mr. E. P. Wine,  
General Chairman, R. Y. of A.,  
611 South Glenwood,  
Independence, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of January 10, claims of Yardmasters T. J. McGurk and R. B. Sullivan, Streator, Illinois, October 26, 1960 forward.

After our investigation has been completed we will write you further.

Yours truly,

/s/ L. M. Olson"

Letterhead of  
RAILROAD YARDMASTERS OF AMERICA  
(AFL-CIO)

"Santa Fe System Local Lodge No. 50

611 S. Glenwood

Independence, Missouri

February 13, 1961

Mr. L. M. Olson, General Manager  
AT & SF Railway Company  
Topeka, Kansas

Further Evidence On Yardmaster Claims at Streator, Illinois,

Your File YM-180.1-31.

On the working day of December 15, 1960, 11:00 P. M. Footboard Yardmaster lined up work and lists to start work, called Chief Dispatcher for line up on trains for the night, lined up Yard Clerks and Operator on work to be done to 1:30 A. M. Placed number 7 mail cut off car on west house track and lined up pick up for extra east 329 at 3:20 A. M., lined up west cars for L59. Footboard Yardmaster received switch lists on set outs and made up number 47 train with instructions to clerk to handle line up. At 5:20 A. M. the Footboard Yardmaster called the Chief Dispatcher for line up on New York Central cars. Lined up Yard Clerk and Operator and car men as to what New York Central had, told Operator to have New York Central pull first cut number 4 with 65 cars and second cut number 3 with 85 cars. Lined up Operator and Clerk for L59 to pull number 6 track and they in turn told L59 to set out on number 5 track and pick up off of number 8, made turn over for day crew and called number 47 train for 8:30 A. M. Made up work report for night of work, lined up time slips and mailed all mail. This all work previously handled by Yardmasters on duty.

On the working day of December 16, 1960, the 11:00 P. M. Footboard Yardmaster lined up work to start work, called Chief for line up on trains for night. Lined up Yard Clerks and Operator and car men on work to be done and gave them number 5 for 47 train at 1:00 A. M. which the Operator lined and instructed to go number 5 track. Footboard Yardmaster lined up cars for extra east 1102 and extra east 1113 arranged for car men to work and the Clerk to check these cars on number 12. At 5:20 A. M. Footboard Yardmaster called the Chief Dispatcher and gave him New York Central report which was on line up for 6:10 A. M. and New York Central L-S3 due at 10:00 A. M. 68 cars. Instructed the Yard Clerks, Operator and car men on track to use for New York Central cut and L59 which Operator gave to crew on trains. Told Clerk what cars to have picked up by L59 out of yard and New York Central cut. Made turn over on yard and for daylight crew, called number 47 for 8:30 A. M. and made work report for nights work. All this formerly done by Yardmasters.

On the working day of December 17, 1960, 11:00 P. M. Footboard Yardmaster lined up work and lists to start work, called

Chief Dispatcher for line up on trains for the night, lined up Clerks, Operator and car men as to work to be done. Lined up east and west pick up notified car men and Clerks where they were to get the necessary air and line ups. Called Chief Dispatcher at 5:20 A.M. gave him the New York Central report which was, DS5645 with 71 cars LS3 9:30 A.M. with 98 cars. Instructed the Yard Clerks, Operator and car men as to what tracks to use number cars L59 would take and also S59 would pick up. Instructed Clerk and Operator what track to give L59 for set out which was done by the Clerk while engine was busy delivering Wabash and handling company track.

On the working day of December 19, 1960, 11:00 P.M. Footboard Yardmaster between that period of 11:00 and lunch time lined up work and lists to start work and called Chief Dispatcher for line up on trains for the night. Lined up the Yard Clerks and Operator and car men on work to be done and where the east cars were to be and picked up from and instructed Yard Clerk to get line up on New York Central cars to be delivered and delivered these cars. After 3:50 A.M. Footboard Yardmaster lined up pick up of 15 cars for extra 1124. Called Chief Dispatcher at 5:15 A.M. and gave him the New York Central Report and asked for tonnage wanted on L59. Instructed the Yard Clerks, Operator and car men on the pick ups and tracks to use for New York Central cut and L59 which tracks were given by the Operator and Clerk. Made out Yard turn over and night work report and mailed company mail. All these previously handled by Yardmaster when on duty.

On the working day of December 22, 1960, 11:00 P.M. Footboard Yardmaster lined up work to start work. Called Chief Dispatcher for line up on trains for the night. Lined up Yard Clerk, Operator and car men on work to be done. Instructed Yard Clerk to have extra east 333 set out 42 cars on number 4 and pick up 30 cars off number 7 track. At 5:20 A.M. called Chief Dispatcher and gave him New York Central report. Instructed Yard Clerk and Operator to give L59 13 cars off of number 8 track and let him go account New York Central cut would be late. This work handled by Operator and Clerk tracking trains and giving instructions to crews as to where to pick up and set out. Made work report for nights work and turn over of yard set in company mail. This work all Yardmaster work previously handled by that craft.

On the working day of December 23, 1960, 11:00 P.M. Footboard Yardmaster called Chief Dispatcher for line up on night trains, lined up switch lists from Clerks as to nights work and told Clerks and Operators and car men the necessary work to be done. Lined up pick up for extra east 1118 and instructed where to work. At 5:15 A.M. called Chief Dispatcher and gave New York Central report. Instructed Yard Clerks and Operators and car men to have New York Central pull number 3 and double to number 4. L59 to pull number 7, set out on Number 8 track and back his pick up to number 6 54 cars. These tracks given and instructions on set out and pick up by Operator and Clerk. Footboard Yardmaster made turn over of yards and night work report. All this work of Yardmasters when then on duty.

On the working day of December 24, 1960, 11:00 P. M. Footboard Yardmaster arranged lists and line up of nights work. Called Chief Dispatcher for line up on night trains. Lined up cars for extra east 1123 and told car men to work Yard Clerk to check and tell extra east 1123 where to pick up. Called Chief Dispatcher for New York Central report. Made line up for day engine work report and turn over and mailed mail.

On the working day of December 25, 1960, 11:00 P. M. Footboard Yardmaster lined up work and lists at time reporting for work. Called Chief Dispatcher for line up on trains for the night. Lined up Yard Clerks, Operator and car men on pick ups and set outs and where they were and work to be done on them. At 5:20 A. M. called Chief Dispatcher and gave him New York Central report which was for 4:00 A. M., 117 cars. Instructed Clerk and Operator to have New York Central pull number 3 track and double to number 5 track. Instructed Yard Clerks and Operator and car men to give S59 85 cars and L59 take balance of New York Central cut. This work supervised by Clerk and Operator while Footboard Yardmaster off switching at another point. Called Chief Dispatcher on late New York Central report which was 137 cars at 6:25 A. M. Made line up for day crew on condition of yard, made work report on the night yard and handled the company mail. This work of Yardmaster handled by Yardmaster craft before abolished.

On the working day of December 26, 1960, 11:00 P. M. Footboard Yardmaster lined up lists and arranged for work for the night. Called Chief Dispatcher for line up on trains for the night 11:30 P. M. At 12:00 P. M. lined up Yard Clerks and Operators and car men on work to be done and how to be handled. At 5:15 A. M. he called the Chief Dispatcher and gave him the New York Central report. Instructed Yard Clerk and Operator L59 to pull number 5 track and take all New York Central cut. Instructed Clerk and Operator to have New York Central pull number 3 track. These trains tracked and work supervised by Clerk and Operator in the absence Footboard Yardmaster switching at another point in the yard. Footboard Yardmaster made turn over condition of yard and work report for the work done by night engine and other crews.

On the working day of December 29, 1960, 11:00 P. M. Footboard Yardmaster lined up work and lists to start work and called Chief Dispatcher for line up on trains for the night. Lined up Yard Clerk, Operator, and car men on work to be done. Called Chief Dispatcher and gave him New York Central report. Instructed Yard Clerk and Operator on where New York Central would pull and where pick up would be made and the instructions for this work to be done by road crews was handled by the Clerk and the Operator while the Footboard Yardmaster was switching at another point in the yard. Upon going off duty made line up of tracks as to content, made work report for the night and mailed company mail. This formerly handled by Yardmaster's position and definitely his work for his class and craft.

On the working day of December 30, 1960, 11:00 P. M. Footboard Yardmaster lined up work and lists to start work and called Chief Dispatcher for line up on trains. Lined up Operator, Yard Clerks and car men on trains to work, pick ups to be made and set outs to be made. Lined up Clerks and Operator extra east 1109 pick up 22 cars off of number 12 track and set out 16 cars on number 4 track. This work supervised by the Clerk in the absence of Footboard Yardmaster on other work. At 5:15 A. M. called Chief Dispatcher and gave New York Central report. Instructed Yard Clerks, Operator and car men that New York Central would pull number 3 track and double to number 4 track. L59 to pull number 6 track, and S59 take 85 cars off New York Central cut with L59 taking the balance of New York Central cut and west cars that were at Streator. The work of these trains was supervised by the Clerk and the Operator while Footboard Yardmaster made turn over of yard and work report for the nights work plus mailing other mail. This work all of Yardmaster class and craft and handled by three other crafts.

On the working day of December 31, 1960, 11:00 P. M. Footboard Yardmaster on coming to work called the Chief Dispatcher for line up on trains and arranged his line up of work for the night. Gave Operator, Yard Clerks, and car men work to be done in his absence. Lined up east cars for extra 174 and lined up L59 cars placed on 23 track. Called Chief Dispatcher at 5:15 A. M. and gave him New York Central report and instructed Yard Clerk, Operator and car men to have the work done and the delivery made by the New York Central. Made report of the yard condition at time going off duty and work report for the nights work.

On the working day of January 1, 1961, 11:00 P. M. Footboard Yardmaster upon reporting for work lined up work and lists for his crew, called Chief Dispatcher for line up on trains. Arranged with Clerk and Operator and car men for work to be done on pick ups and set outs. After lunch delivered New York Central cars and pulled and Clerk and Operator handled pick up and set outs in his absence. Made work report for nights work. Turn over on condition of yard at going off duty and mailed company mail. This work formerly handled by Yardmaster class and craft.

Yours truly

/s/ E. P. Wine  
E. P. Wine  
General Chairman"

Letterhead of  
THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY

---

EASTERN LINES

---

L. M. OLSON,  
General Manager

J. B. NOE,  
Assistant General Manager  
Eastern District

S. S. ROSE,  
Assistant to General Manager

J. E. LESTER,  
Assistant General Manager  
Western District

M. H. COBLE,  
Assistant to General Manager

HENRY SCHULTEIS, JR.,  
Assistant to General Manager

“Topeka, Kansas,

March 2, 1961

YM-180.1-31

Mr. E. P. Wine,  
General Chairman, R. Y. of A.,  
611 South Glenwood Avenue,  
Independence, Missouri.

Dear Sir:

Referring to your letter of January 10, supplemented by yours of February 13, claims in favor of Yardmasters T. J. McGurk and R. B. Sullivan, Streator, Illinois, October 26, 1960 forward:

If these claims are premised on the abolishment of the two yardmaster assignments formerly in effect at Streator, as your letter indicates, which incidentally was effective February 1, 1958 and June 6, 1960, such claims are barred from consideration by Article V(a), the time limit rule, of the August 12, 1954 Agreement because they were not presented within sixty (60) days from the dates of abolishment of such positions, i.e., the dates of the occurrences on which the claims are based.

Without receding in any way from this position, we find that no work was or is being performed by other than yardmasters at Streator in violation of the Yardmasters' Agreement.

The claims are respectfully declined.

Yours truly,

/s/ L. M. Olson”

Letterhead of  
RAILROAD YARDMASTERS OF AMERICA  
(AFL-CIO)

“Santa Fe System Local Lodge No. 50



611 Glenwood Avenue

Independence, Missouri

April 8, 1961

Mr. L. D. Comer, Assistant Vice-President  
AT&SF Railway System  
80 E. Jackson Blvd.  
Chicago, Illinois

Dear Sir:

I am appealing to you from the adverse decision of General Manager Olson claims in favor of T. J. McGurk and R. B. Sullivan of Streator, Illinois, beginning October 26, 1960, and each subsequent date, these claims under Mr. Olsons file, YM-180.1-31.

I am presenting with this letter copies of evidence previously presented to Mr. Olson's office and will include in this letter evidence we have of a more recent date.

Mr. Olson in the second paragraph of his denial dated March 2, 1961, points out that the yardmaster jobs were pulled off some-time past and the claims were originated at a date beyond the sixty day time limit rule. This statement is not consistent with the Board rulings and the claim does not have to be made at the beginning of the violation but at any time that the violation exists, and consequently we cannot and the Board will not be in agreement with his assertion that these claims cannot be considered. I might point out that the consideration that he was not willing to give evidently was not strong enough but what he felt that he had to deny these claims because of their validity.

As stated above I am including in this letter evidence of a recent date of activities of those not in the yardmaster class, and not under the scope of the current Yardmasters Agreement who are doing yardmaster work constantly and consequently the violation of Article I, Section 1b, of the yardmasters agreement is violated. The evidence follows in a few paragraphs;

On the working day of January 30, 1960, 11:30 P.M. foot-board yardmaster lined up work and list to start work and called chief dispatcher for line up on trains at 11:30 P.M. Called Chief Dispatcher at 12:30 A.M. for first New York Central report. Yard clerk R. Hanson and operator R. Judy on arrival of extra 325 east lined them up as to set out and pick up and what the rear end add would be by message. Operator R. Judy lined up L59 on track to pull into and yard clerk R. Hanson instructed them on pick up and set out. Operator Judy instructed L59 to pull number 5 track and pick up off number 8 track. Yard clerk R. Hanson instructed train number 40 to set out on number 4 track and pick up off number 8 track, 25 cars. Footboard yardmaster McGurk called chief dispatcher 5:15 A.M. on New York Central cut which was lined up for 10:00 A.M. Made line up on

work for day engine, and work reports of night activities. All of this work formerly performed by yardmaster.

On the working day of February 2, 1961, footboard yardmaster McGurk lined up list to start work and called chief dispatcher for line up on trains at 11:35 P.M. 12:30 A.M. called chief dispatcher for first report on New York Central cut and line on trains. Clerk Hanson instructed extra east to pick up on 11 track and gave extra east message to set out on number 4 track, and lined up L59 to pull number 5 track and pick up 23 cars off of number 8 track. 5:15 A.M. Mr. McGurk called chief dispatcher and gave him New York Central report which was first out at 50 cars and no figure on L53 at this time. Made up line up for day engine and made work report for nights work. Instructed yard clerk to call number 47 for 8:30 A.M.

On the working day of February 3, 1961, 11:00 P.M. footboard yardmaster McGurk lined up work for crews in yard called chief dispatcher for line up on trains. 12:20 A.M. he called Chief dispatcher and gave him New York Central report of 79 cars at 1:40 A.M. Operator Kincade gave New York Central number 3 track and S59 number 2 track. Yard clerk Hanson lined up pick up for S59. Yard clerk Hanson instructed extra east to set out on number 4 track and pick up on number 12 track. Footboard yardmaster McGurk made up line up for day engine and mailed time tickets for day and instructed yard clerk to call number 47, 8:30 A.M.

On the working day of February 4, 1961, footboard yardmaster at 11:00 P.M. lined up work and list to start work, called chief dispatcher for line up on trains. At 12:30 A.M. called chief dispatcher for first New York Central report. Yard clerk R. Hanson gave extra east 326 message to pick up 12 cars off of number 7 track and set out on number 4 track and to pull number 3 track at 2:40 A.M. 5:15 A.M. Mr. McGurk called chief dispatcher and gave him New York Central report which was 62 cars for 7:00 A.M. Made line up for day engine and work report for night work.

Working day of February 6, 1961, footboard yardmaster upon coming to work made list of work to be done that night and called chief dispatcher for line up on trains. Operator R. Judy gave extra east message to pick up on number 12 and set out on number 4 track and gave message to L59 to pull number 5 and pick up off of number 8 track. Mr. McGurk made out report of nights work, line up for day engine and handled yardmasters mail.

On the working day of February 10, 1961, footboard yardmaster McGurk lined up work with car men, clerks and operators and made list to work by for the night. Called chief dispatcher for line up on trains. Yard clerk R. Hanson gave extra east 326 message to set out on number 4 track and pick up 14 cars off of number 12 track and extra east 1102 set out number 4 track and pick up 20 cars off of number 6 track. Operator Kincade gave L49 message to pull in number 5 track and pick up off of number 7 and to take part of New York Central cut.

On the working day of February 9, 1961, footboard yardmaster McGurk on coming to work lined up car men as work to do and made out lists of work to be done to work by. Called chief dispatcher for line up on trains. Yard clerk R. Hanson gave extra east message to set out on number 4 track and pick up 15 cars off of number 11 track. Operator R. Judy lined up L59 to pull number 5 track and pick up 21 cars off of number 8 track. 5:15 A.M. Mr. McGurk called chief dispatcher and gave him New York Central report which was 9:00 A.M. Made up work report for day engine and handled yardmaster mail, told clerk to order number 47, 8:30 A.M.

Working day of February 12, 1961, upon arriving to work footboard yardmaster called chief dispatcher for line up on trains, made up line up of work to be done and lists to start work in switching. Operator R. Judy gave L59 number 3 track to pull into and pick up off number 7 track and waits for some cars off New York Central cut, also lined up New York Central to pull number 6. Mr. McGurk made line up for day engine and work report of nights activities, and handled yardmasters mail.

On working day of February 13, 1961, footboard yardmaster McGurk upon arriving for work called chief dispatcher for line up on trains handled usual yardmaster work of making lists and lining up of men on work. Called chief dispatcher for line up on trains. Clerk Hanson gave message to extra east to pick up 40 cars off of number 8 and set out on number 4 track. Operator R. Judy instructed 159 to pull into number 3 track and pick up off of number 11 track. Mr. McGurk called chief dispatcher at 5:20 A.M. and gave him New York Central report, made out work report and made nights work report and handled yardmasters mail. Instructed yard clerk to call number 47 for 8:30 A.M.

On working day of February 16, 1961, footboard yardmaster lined up and made out lists to work by for the night called chief dispatcher on line up on trains. Yard clerk Hanson instructed extra east 334 to set out on number 4 track and pick up 15 cars off of number 11 track. Operator D. Meow lined up L59 to come down main line and pick up off of 23 track and set out on number 24 track. Mr. McGurk called chief dispatcher and gave him New York Central report and DS5 at 8:45 A.M. was 62 cars. Made up night work reports, made up line up for day engine, and mailed yardmasters mail. Instructed yard clerk to call number 47 for 8:20 A.M.

All the above activities were handled by men outside the yardmaster class and craft and the supervision taking place is over a full eight hour period which was formally handled by a yardmaster on duty. By splitting the activities of the yardmaster to several different crafts the management has maintained the elimination of yardmaster position at Streater thusly these claims and we expect payment and adjustment in the near future.

Yours truly,

/s/ E. P. Wine, General Chairman

cc: Mr. L. M. Olson,  
General Manager AT&SF Railway Company,  
Topeka, Kansas

Note: Mr. Olson please note this appeal.

EPW/gac''

Letterhead of  
THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY SYSTEM

PERSONNEL DEPARTMENT

Railway Exchange, 80 East Jackson Blvd., Chicago 4

W. L. MORE Vice President	Assistant Managers of Personnel:
	R. J. VANDERZYL
L. D. COMER Assistant Vice President	E. J. DROEGEMUELLER
	A. F. YOUNGBERG
	W. M. NOLAN
A. D. STAFFORD Manager of Personnel	L. P. RICKS

"April 11, 1961

170-1-2-35

Mr. E. P. Wine, Gen. Chairman  
Railroad Yardmasters of America  
611 Glenwood Avenue  
Independence, Missouri

Dear Sir:

This will acknowledge receipt of your letter of April 8, 1961, appealing claim in behalf of Yardmasters T. J. McGurk and R. B. Sullivan, Streator, Illinois, account alleged abolishment of Yardmaster Position October 26, 1960 and performance of such work by others.

After I have had an opportunity to obtain and review the facts in this claim, I shall communicate with you further.

/s/ L. D. Comer''

Letterhead of  
THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY SYSTEM

PERSONNEL DEPARTMENT

Railway Exchange, 80 East Jackson Blvd., Chicago 4

**W. L. MORE**  
Vice President

**L. D. COMER**  
Assistant Vice President

**A. D. STAFFORD**  
Manager of Personnel

Assistant Managers of Personnel:

**R. J. VANDERZYL**  
**E. J. DROEGEMUELLER**  
**A. F. YOUNGBERG**  
**W. M. NOLAN**  
**L. P. RICKS**

"June 2, 1961

170-1-2-35

**Mr. E. P. Wine**, General Chairman  
Railroad Yardmasters of America  
611 Glenwood Avenue  
Independence, Missouri

Dear Sir:

This will serve as reply to yours of April 8 in which you appeal from General Manager Olson's decision claims in favor of T. J. McGurk and R. B. Sullivan, Streator, Illinois, October 26, 1960 and subsequent dates.

I agree with that contained in Mr. Olson's letter of March 2. Additionally I would point out that the carrier, in the exercise of its prerogative expressed in Section 1(a) of Article I of the agreement, made the determination that there was not sufficient yardmaster work remaining at Streator to justify maintaining yardmaster positions.

Mr. Olson's decision is sustained; your claim is denied.

Yours truly,

/s/ L. D. Comer

cc - Mr. Olson"

Letterhead of

**THE ATCHISON, TOPEKA AND SANTA FE**  
**RAILWAY SYSTEM**

**PERSONNEL DEPARTMENT**

Railway Exchange, 80 East Jackson Blvd., Chicago 4

**W. L. MORE**  
Vice President

**L. D. COMER**  
Assistant Vice President

**A. D. STAFFORD**  
Manager of Personnel

Assistant Managers of Personnel:

**R. J. VANDERZYL**  
**E. J. DROEGEMUELLER**  
**A. F. YOUNGBERG**  
**W. M. NOLAN**  
**L. P. RICKS**

“August 22, 1961

Mr. E. P. Wine, General Chairman  
Railroad Yardmasters of America  
611 Glenwood Avenue  
Independence, Missouri

Dear Sir:

I have yours August 12 in which you request conference for the purpose of discussing the following claims, which I will merely identify by file numbers as you did in your letter:

170-1-2-36	170-4-5-B-4
170-60-6	170-1-2-40
170-1-3-6	170-1-2-41
170-2-6-37	170-1-2-42
170-1-2-35	170-1-3-7
170-1-3-4	170-1-2-43
170-1-3-5	170-1-2-45
170-1-3-3	170-1-2-44
170-1-2-34	170-1-2-39
170-4-2-E	

Both Mr. Vanderzyl (who will represent me if I cannot meet you personally) and I have been engaged to full capacity on other assignments. I have to suggest 10:00 A.M. Monday September 18, or if you prefer not to leave home on Sunday evening, Tuesday September 19 will do just as well.

Please advise.

Yours truly,

/s/ L. D. Comer”

Letterhead of

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY SYSTEM

PERSONNEL DEPARTMENT

Railway Exchange, 80 East Jackson Blvd., Chicago 4

W. L. MORE  
Vice President

L. D. COMER  
Assistant Vice President

A. D. STAFFORD  
Manager of Personnel

Assistant Managers of Personnel:

R. J. VANDERZYL  
E. J. DROEGEMUELLER  
A. F. YOUNGBERG  
W. M. NOLAN  
L. P. RICKS

"October 13, 1961

170-1-2-35

Mr. E. P. Wine, General Chairman,  
Railroad Yardmasters of America,  
611 Glenwood Avenue,  
Independence, Missouri.

Dear Sir:

In conference in my office on September 26 we discussed, among others, your claim in favor of T. J. McGurk and R. B. Sullivan, Streator, October 26, 1960 and subsequent dates.

This claim arose as result of discontinuance of yardmaster position at this point. There was nothing brought out in our discussion of this claim to alter our opinion, and this is to advise that my denial of your claim, as expressed in mine of June 2, 1961, is hereby confirmed.

Yours truly,

/s/ L. D. Comer"

Letterhead of  
RAILROAD YARDMASTERS OF AMERICA  
(AFL-CIO)

"**Santa Fe System** Local Lodge No. 50

611 Glenwood Avenue

Independence, Missouri

November 7, 1961

Mr. L. D. Comer, Assistant Vice President  
AT & SF Railway System  
80 East Jackson Blvd.  
Chicago, Illinois

Dear Sir:

Please grant a sixty (60) day extension of time under your file number 170-1-2-35 for yardmasters at Streator, Illinois.

The original date of denial was June 2, 1961.

Yours truly,

/s/ E. P. Wine  
E. P. Wine, General Chairman"

Letterhead of  
THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY SYSTEM

PERSONNEL DEPARTMENT

Railway Exchange, 80 East Jackson Blvd., Chicago 4

W. L. MORE Vice President	Assistant Managers of Personnel:
L. D. COMER Assistant Vice President	R. J. VANDERZYL E. J. DROEGEMUELLER A. F. YOUNGBERG W. M. NOLAN L. P. RICKS
A. D. STAFFORD Manager of Personnel	

"November 15, 1961

170-1-2-35

Mr. E. P. Wine, General Chairman  
Railroad Yardmasters of America  
611 Glenwood Avenue  
Independence, Missouri

Dear Sir:

Re claim of T. J. McGurk and R. B. Sullivan, Streator, October 26, 1960 and subsequent dates:

In response to your request: I am agreeable to a 60-day extension of time for your further consideration of this case, making February 1, 1962 the new expiration date.

Yours truly,

/s/ L. D. Comer"

Letterhead of  
THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY SYSTEM

PERSONNEL DEPARTMENT

Railway Exchange, 80 East Jackson Blvd., Chicago 4

W. L. MORE Vice President	Assistant Managers of Personnel:
L. D. COMER Assistant Vice President	R. J. VANDERZYL E. J. DROEGEMUELLER A. F. YOUNGBERG W. M. NOLAN L. P. RICKS
A. D. STAFFORD Manager of Personnel	



“January 25, 1962

170-60-6	170-1-2-41
170-1-2-39	170-1-2-44
170-1-3-7	170-1-2-42
170-1-2-40	170-1-2-35

Mr. E. P. Wine, General Chairman (8)  
 Railroad Yardmasters of America  
 611 Glenwood Avenue  
 Independence, Missouri

Dear Sir:

I have yours January 17 dealing with so many matters and so many files I have had some difficulty getting the files into proper grouping.

Taking the first group: I want to remind you there is no 'automatic 60 day extension'. Each extension must be properly negotiated.

It seems you are a little premature on most of these cases because the expiration date is presently the latter part of March, but rather than prolong the correspondence I am agreeable to a 60-day extension with respect to the eight cases in this group and will list them as follows:

Our File	Brief Description of Claimants	Present Expiration Date	Hereby Extended To
170-60-6	Woolson, Meehan (Los Angeles)	2-7-62	4-8-62
170-1-2-39	Bullard, Dawes (Ponca City)	2-16-62	4-17-62
170-1-3-7	L. C. Smith (Kansas City)	3-25-62	5-24-62
170-1-2-40	Heaton, (Chanute)	3-25-62	5-24-62
170-1-2-41	Hanson, Heaton (Chanute)	3-25-62	5-24-62
170-1-2-44	Various Yardmasters (Newton)	3-25-62	5-24-62
170-1-2-42	Saunders (Kansas City)	3-25-62	5-24-62
170-1-2-35	Sullivan (Streator)	2-1-62	4-2-62

I will make separate replies to cover the remaining portions of your letter.

Yours truly,  
 /s/ L. D. Comer”

The operations at this point embrace the entire 24-hour period daily with crews working around the clock, the yardmaster work of planning, directing and supervising being handled by others outside the scope and

in violation of the Agreement, as indicated by the record hereinbefore reproduced.

While the Scope Rule does not define the duties of a yardmaster, it must be construed to cover work belonging to that craft. To hold otherwise would render the whole agreement nugatory. As was said in Third Division Award No. 757:

"It is well settled by many decisions of this and the First Division of this Board and predecessor Boards, that as an abstract principle a carrier may not let out to others the performance of work of a type embraced within one of its collective agreements with its employees. See awards of this Division, 180, 323, 521 and 615; of the First Division, 351 and 1237. This conclusion is reached not because of anything stated in the schedule but as a basic legal principle that the contract with the employees covers all the work of the kind involved, except such as may be specifically excepted; ordinarily such exception appears in the Scope Rule, but the decisions likewise recognize that there may be other exceptions, very definite proof of which, however, is necessary to establish their status as a limitation upon the agreement. Mere practice alone is not sufficient, for as often held, repeated violations of a contract do not modify it."

See also Fourth Division Awards No. 445, 1343, 1494 and 1495.

Carrier's contention that this claim is barred by the Time Limit Rule of the August 12, 1954 Agreement, is without basis, since the claim is premised on day to day violations and not on the abolishment of the Yardmaster positions.

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

**CARRIER'S STATEMENT OF FACTS:** At Streator, Illinois, prior to February 1, 1958, there were two yard engine assignments in effect, each protected by an engine foreman receiving the so-called footboard yardmaster differential, one assignment going on duty at 9:30 A. M. and one assignment going on duty at 10:00 P. M. There were also two yardmaster positions assigned, one going on duty at 9:00 A. M. and the other at 9:30 P. M.

Effective with the close of work January 31, 1958 the 9:00 A. M. yardmaster position was abolished and T. J. McGurk, formerly regularly assigned as a yardmaster, displaced as engine foreman on the 10:00 P. M. yard engine assignment.

As a result of the abolishment of this 9:00 A. M. yardmaster position, claim as follows was presented to the Carrier's Superintendent at Fort Madison (Shopton), Iowa, dated February 27, 1958:

"February 27, 1958  
611 Glenwood  
Kansas City, Mo.

Mr. R. J. Yost, Superintendent  
Illinois Division  
Santa Fe Railroad  
Fort Madison, Iowa

Dear Sir:

Your Y 54012

Effective February 1, 1958 the 9:00 A.M. to 5:00 P.M. yardmaster job at Streator was abolished and other personnel is handling this work. I wish to serve formal notice that the yardmasters are claiming time for each day lost at Streator for our yardmasters at that point for February 1, 1958 and each subsequent day until this claim is settled.

Respectfully

/s/ E. P. Wine  
E. P. Wine  
Acting Local Chairman  
Illinois Division"

This claim was declined by the Superintendent and was subsequently handled on the property up to and including Mr. L. D. Comer, Assistant Vice President, the highest officer designated by the Carrier to handle such disputes who, under date of October 8, 1958, rendered the following decision:

"October 8, 1958  
170-1-2-Y

"Mr. E. P. Wine, General Chairman  
Railroad Yardmasters of America  
611 Glenwood  
Kansas City 22, Missouri

Dear Sir:

Replying to yours August 27 in which you appeal from Mr. Landreth's decision 'claims involving yardmasters at Streator'.

Upon investigation I find Mr. Landreth pointed out to you in detail, in his letter July 16, that your claim was not a proper one under the time limit rule because you did not identify specific claims or claimants for specific dates and did not even advise a specific basis for the alleged claim. I am in full accord with Mr. Landreth's denial of your claim on this basis and his decision is sustained.

I am also in full accord with Mr. Landreth's additional statements. It is a fact that the business at Streator dropped off to the point where the carrier was compelled to discontinue the 9 A.M. to 5 P.M. yardmaster position February 1, 1958 because there was not sufficient yardmaster work to require the services of a yardmaster. Section 1(a) of Article I of the agreement vests in the carrier the right to establish, maintain, and abolish yardmaster positions as the fluctuation of business demands. Having found it necessary to abolish the 9 A.M. yardmaster assignment, all yardmasters affected were handled in strict compliance with the applicable agreement provisions. It is the carrier's

position that there has been no violation of any of the rules of the Yardmasters' Agreement.

Yours truly,

/s/ L. D. Comer''

Messrs. Comer and Wine discussed this case in conference on January 13 and 14, 1959 and under date of January 16, 1959 Mr. Comer affirmed his prior declination of October 8, 1958 as follows:

“January 16, 1959

Mr. E. P. Wine, General Chairman  
Railroad Yardmasters of America  
611 Glenwood  
Kansas City 22, Missouri

Dear Sir:

Among the cases discussed in our conference on January 13 and 14, 1959 were the following:

\* \* \* \* \*

(5) Your appeal covering 'claims involving yardmasters at Streator,' your appeal having been made to me August 27, 1958 and my decision given you October 8, 1958. (Carrier's file 170-1-2-Y)

\* \* \* \* \*

This will confirm what I said to you in conference on January 13, 1959—that my previous decisions are reaffirmed, and this means that in none of these cases is the time limit extended as result of our conference.

Yours truly,

/s/ L. D. Comer''

Proceedings on the above-described dispute involving abolishment of the 9:00 A.M. yardmaster position, Streator, Illinois, effective with the close of work January 31, 1958, were not instituted by the Organization within six (6) months from October 8, 1958, the date of Mr. Comer's decision on this claim.

On January 16, 1959 the starting time of the one remaining yardmaster position at Streator was changed to 7:45 P.M., on February 9, 1959 to 3:00 P.M. and on November 26, 1959 it was changed to 11:00 P.M.

At Streator, Illinois, just prior to June 6, 1960, there were three yard engine assignments in effect, going on duty at 7:00 A.M., 3:00 P.M. and 11:00 P.M., and one yardmaster position assigned, as indicated above, going on duty at 11:00 P.M.

Effective with the close of work June 6, 1960, the yardmaster position was abolished and since that date there has been no yardmaster po-

sition in effect at that point, all engine foremen assigned at Streator receiving the so-called footboard yardmaster differential.

Neither T. J. McGurk, with a yardmaster's seniority date of October 27, 1946, nor R. B. Sullivan, with a yardmaster's seniority date of November 7, 1953, were regularly assigned yardmasters as of this date.

Claim reading as follows dated November 12, 1960 was received by the Carrier's Superintendent at Fort Madison (Shopton), Iowa from General Chairman Wine:

"611 S. Glenwood  
Kansas City 22, Missouri  
November 12, 1960

Mr. R. J. Yost, Superintendent  
AT & SF Railway Company  
Fort Madison, Iowa

Dear Sir:

We are claiming one day each date for each Yardmaster at Streator, Illinois beginning October 26, 1960 and all subsequent dates until violation is corrected, due to the work of Yardmasters being distributed to other crafts. For Mr. T. J. McGurk and Mr. R. B. Sullivan, one day each date for each man in seniority order. For years past Yardmasters have done the Yardmaster work at Joliet including giving tracks to the trains, marking switch lists, instruction in calling crews and general supervision. There is an abundance of evidence in our possession and more accumulating at all times which plainly illustrates that other crafts are handling the work of the Yardmaster at Streator, Illinois. For many years the Yardmasters were kept on at that point and the need still exists. It is not a reduction in business at that point as we know that for the past several years the business at Streator has been on the increase. This is definitely a violation of Article I, Section 1b of the Current Yardmasters' Agreement whereby, 'other officials or authorized personnel of management is doing the Yardmaster work and thereby has illminated' to Yardmaster positions at Streator, Illinois.

Please arrange for payment and correction of this condition.

Yours truly,  
/s/ E. P. Wine  
E. P. Wine, General Chairman"

Superintendent Yost declined the claim in letter dated December 14, 1960 as follows:

"Y-54124-A  
Fort Madison, Iowa,  
December 14, 1960.

Mr. E. P. Wine,  
General Chairman, Railroad Yardmasters of America,  
611 S. Glenwood,  
Kansas City 22, Missouri.

“Dear Sir:—

“Referring to your letter of November 12, 1960, making claims in favor of Yardmasters T. J. McGurk and R. B. Sullivan at Streator, Illinois:

“These claims are not proper under the time limit rule and we have no recourse other than to consider them barred from consideration. Further, and without prejudice to the foregoing, they are not supported by agreement rule.

“The claims are respectfully declined.

Yours very truly,

/s/ R. J. Yost”

General Chairman Wine then appealed from Mr. Yost's decision in letter dated January 10, 1961 to the Carrier's General Manager, Mr. L. M. Olson, which is reproduced below:

“611 S. Glenwood  
Independence, Missouri  
January 10, 1961

Mr. L. M. Olson, General Manager  
AT & SF Railway Company  
Topeka, Kansas

Dear Sir:

I am appealing to you from the adverse decision of Superintendent R. J. Yost, Fort Madison, Iowa, claims in favor of Yardmasters T. J. McGurk and R. B. Sullivan of Streator, Illinois, beginning October 26, 1960 and all subsequent dates until violation is corrected, due to the work of Yardmasters being distributed to other crafts. These claims for each man one day for each date until condition is corrected.

The Yardmaster work at Streator still exists and is done by other crafts and has been for several years. I am including with this letter attached evidence showing the work being done by others which is Yardmaster work that substantiates this claim. This is a violation of Article 1, Section 1b of the Current Yardmaster's Agreement inasmuch as the Yardmaster positions at that point were eliminated by this work and the elimination is being maintained due to others doing this work. With the enclosed evidence substantiating this claim we expect prompt payment and establishment of yardmaster positions.

Please correct and advise.

Yours truly,

/s/ E. P. Wine  
E. P. Wine,  
General Chairman”

“Evidence in Yardmaster Cases at Streator, Illinois

“On the working day of October 26, 1960, 11:00 P. M. to 7:00 A. M.; at 11:00 P. M. Footboard Yardmaster instructed Yard Clerk that extra east 177 would pick up east cars on number 6 track and yard engine would add 12 Chicago cars off number 7 track and instructed the Yard Clerk to have him set out on number 4 track. Yard Clerk instructed engine 177 to set out on number 4 track. At 11:10 P. M. car men advised that east cars were coupled and he would inspect and that the branch cars were on number 10 track. At 1:10 A. M. Footboard Yardmaster received New York Central report from Chief Dispatcher for 5:30 A. M., 117 loads and 8 empties included 62 merchandise. Also, received instruction from Chief Dispatcher on loading S and L 59 trains. At 3:20 A. M. instructed Yard Clerk and car men that L 59 cars were lined up on 8 track and number 47 train on 11 track. At 4:10 A. M. operator instructed Footboard Yardmaster that L 59 cars were to be placed on number 23 track. At 5:20 A. M. received New York Central report from operator and informed Chief Dispatcher of break down of cup of 128 cars. Chief Dispatcher said to give S 59 loads only and Streator turn was ordered for 5:00 A. M. At 6:20 A. M. Footboard Yardmaster instructed crew on turn to pull in number 5 and engine back number 16 to roundhouse. At 6:55 A. M. informs 7:00 A. M. Footboard Yardmaster that S 59 would take loads only. He informed me that he left that up to the Operator and Yard Clerk to figure how many cars and tonnage and Yard Clerk then instructed him on what cars not to run as they usually change the pick up on S and L 59. This definitely proves that the Operators and the Clerks and the Footboard Yardmasters are doing the Yardmasters work at Streator, Illinois.

“On their working day of November 2, 1960, 11:00 P. M. to 7:00 A. M. At 11:50 P. M. the Footboard Yardmaster talked to Footboard Yardmaster at Chillicothe concerning the rear end only off of extra 1102 east. At 12:50 A. M. New York Central report from Chief Dispatcher and line up on east cars. At 4:40 A. M. a New York Central report from Chief Dispatcher to Footboard Yardmaster and line up on S 59.

“November 5, 1960, 7:00 A. M. to 3:00 P. M. At 7:10 A. M. Footboard Yardmaster called New York Central on delivery to their yard of 50 cars. At 8:30 A. M. the agent came into the yards and made change in the line up of number 47 train. At 9:35 A. M. Footboard Yardmaster called Chief Dispatcher on S and L 59 loading. At 10:15 P. M. Footboard Yardmaster talked to Agent concerning the tons and cars on S and L 59. At 12:30 P. M. Footboard Yardmaster called Chief Dispatcher on east and set out.

“November 6, 1960, 7:00 A. M. to 3:00 P. M. At 7:15 A. M. Footboard Yardmaster lined up Streator turn in number 4 track. At 7:55 A. M. Footboard Yardmaster called Chief Dispatcher concerning L 59 set out of short cars. At 10:30 A. M. Footboard Yardmaster instructed crews on pick ups and car men on trains S and L 59.

“November 7, 1960, 3:00 P. M. to 11:00 P. M. At 6:00 P. M. the Footboard Yardmaster called the Chief Dispatcher concerning

handling of L 49 train. At 7:40 P.M. Footboard Yardmaster called Chief Dispatcher on the cars and tons for L 49 out of number 48's train. At 9:15 P.M. Footboard Yardmaster called Chief Dispatcher on stock pick up and work at Streater.

"November 8, 1960, 11:00 P.M. to 7:00 A.M. At 11:00 P.M. Footboard Yardmaster instructed car men to couple east pick up. At 12:20 A.M. called Chief Dispatcher on west pick up and New York Central report. At 5:35 A.M. called Chief Dispatcher on New York Central report concerning cars to have for Santa Fe and how to be handled.

"November 9, 1960, 11:00 P.M. to 7:00 A.M. At 12:20 A.M. Footboard Yardmaster called Chief Dispatcher on yard report and what to be done. At 12:35 A.M. Footboard Yardmaster talked to Chief Dispatcher on New York Central report and L 59 pick up. At 3:00 A.M. Footboard Yardmaster instructed Yard Clerk and car men on pick up and the necessary line up and coupling of hoses and air. Necessarily that Yard Clerk handled this work with train crews which was Yardmaster work.

"November 12, 1960, 7:00 A.M. to 3:00 P.M. At 7:30 A.M. the Footboard Yardmaster called the Chief Dispatcher on the S and L 59 pick up. At 9:10 A.M. the Footboard Yardmaster instructed car men on handling of number 47 and the coupling of air and inspection. At 10:10 A.M. the Footboard Yardmaster instructed the car men and the Yard Clerk on the west pick up. Instructed crew on S and L 59 pick up. At 2:40 P.M. Footboard Yardmaster instructed number 48 to pull number 7 track.

"November 13, 1960, 7:00 A.M. to 3:00 P.M. At 7:15 A.M. the Footboard Yardmaster instructed the Streater turn to pull number 5 track and back number 16 track. At 9:05 A.M. the Footboard Yardmaster called Chief Dispatcher on L 59 train and its handling. At 9:40 A.M. the Footboard Yardmaster instructed L and S 59 crews on pick up and the Yard Clerk on cars to run. The Yardmaster necessarily handled this with the engine crews of the L and S 59 crews while the Footboard Yardmaster was working at another point. At 10:00 A.M. the Footboard Yardmaster instructed the car men to the handling of L and S 59.

"November 16, 1960, 11:00 P.M. to 7:00 A.M. From 12:35 A.M. until 12:45 A.M., Footboard Yardmaster talked to the Chief Dispatcher on east pick up and New York Central delivery. At 6:15 A.M. Footboard Yardmaster called caller at Chillicothe on extra man in place of Murphy. Called extra man B. J. Overy. This calling of crews is definitely handled by the Yardmasters in time past and is a part of the Yardmasters work which is being handled by other crafts.

"November 19, 1960, 7:00 A.M. to 3:00 P.M. At 9:20 A.M. the Operator instructed the Footboard Yardmaster to run 80 to 85 cars on S 59. At 2:40 P.M. the Footboard Yardmaster instructed the crew on number 48 to pull in number 5 track.

"November 20, 1960, 7:00 A.M. to 3:00 P.M. At 7:10 A.M. Footboard Yardmaster instructed the Operator to have the New



York Central pull number 4 track and double to number 7 track. This work handled by the Operator was a violation of the Yardmaster's Agreement inasmuch as the violation was also existed by the Footboard Yardmasters instructions. At 8:05 A.M. Footboard Yardmaster called Chief Dispatcher on S and L 59 concerning set out and pick up and cars to have. At 1:30 P.M. the Footboard Yardmaster called Chief Dispatcher on first 39's pick up and 7 cars of east pick up.

"November 22, 1960, 11:00 P.M. to 7:00 A.M. At 11:50 A.M. the Footboard Yardmaster called the Chief Dispatcher concerning yard report and how to handle. At 1:35 A.M. Chief Dispatcher called the Footboard Yardmaster and changed the pick up on L 59. At 2:00 A.M. the Footboard Yardmaster instructed the car men and Yard Clerks on cars to couple and list in yard. At 3:55 A.M. Footboard Yardmaster called Chief Dispatcher on the extra 158 and what was to be added to the rear. At 5:20 A.M. the Footboard Yardmaster called the Chief Dispatcher concerning the New York Central report and the handling of it.

"November 23, 1960, 11:00 P.M. to 7:00 A.M. At 12:30 A.M. the Footboard Yardmaster called the Chief Dispatcher concerning the east pick up. At 12:40 A.M. the Footboard Yardmaster instructed the Yard Clerk and car men on the east cars and trains that would pick up to be handled by the clerks and the car men. At 3:30 A.M. the Chief Dispatcher called the Footboard Yardmaster concerning the New York Central report and the handling of it.

"November 26, 1960, 7:00 A.M. to 3:00 P.M. At 8:00 A.M. the Footboard Yardmaster called the Chief Dispatcher concerning the L 59 and first 39 later to pick up.

"November 27, 1960, 7:00 A.M. to 3:00 P.M. At 8:05 A.M. the Footboard Yardmaster called the Chief Dispatcher on L 59 shorts and at 8:25 called Chief Dispatcher and received no answer. At 9:00 A.M. the Operator instructed the Footboard Yardmaster that the Chief Dispatcher called and to have L 59 leave short cars at Streater. These instructions by the Operator was definitely Yardmaster work as has been all of this work of the Footboard Yardmaster. At 12:30 P.M. Footboard Yardmaster received instructions from the Trainmaster on the phone as to the Yardmaster work to be done and giving S 59 preference in leaving.

"October 27, 1960, 11:00 P.M. to 7:00 A.M. At 11:00 P.M. the Footboard Yardmaster lined up work and the list to start to work. At 11:30 P.M. the Footboard Yardmaster called the Chief Dispatcher for a line up on trains and first New York Central Report. Lined up Operator and Yard Clerk on work to be done. At 2:00 A.M. lined up east pick up and add cars to extra east 189. At 3:50 A.M. lined up Operator and Yard Clerk on work to be done and tried to give to New York Central. New York Central pulled number 4 with 65 cars at 5:30 P.M. and the New York Central pulled number 3 with 81 cars at 6:25 A.M. under the instruction of the Operator. L 59 pulled number 8 and the Streater

turn pulled number 5 with 50 cars under the instructions of the Operator. At 5:10 A. M. the Footboard Yardmaster called the Chief Dispatcher for a new report on New York Central cuts to find out what each train (L 59 and L 53) could take. Instructed Yard Clerk and Operator on the number of cars L 59 and S 59 would get and the tracks they would be made up on. Made up work report and time slips in mail and made line up of for the day engine 7:00 A. M. All work of a Yardmaster.

“October 28, 1960, 11:00 P. M. to 7:00 A. M. Footboard Yardmaster lined up work and list to start work from 11:00 to 11:30 P. M. At 11:30 P. M. Footboard Yardmaster called the Chief Dispatcher for the first New York Central report and Santa Fe trains. Lined up Operator and Yard Clerk on work to be done. Arrange line up of east cars for east pick up and west pick up. At 3:50 A. M. Footboard Yardmaster went over with Clerk and Operator the work to be done and trains to handle. At 4:00 A. M. to 5:20 A. M. called Chief Dispatcher to give New York Central report and received from New York Central Operator 5:15 A. M. Got a line up on what L 59 and S 59 would take. Instructed Operator and Yard Clerk as to track New York Central would use and also L 59 and Streater turn.

“October 29, 1960, 11:00 P. M. to 7:00 A. M. At 11:30 P. M. called Chief Dispatcher for line up on trains and the first New York Central report, was told all dope yet on New York Central. At 12:20 A. M. called Chief Dispatcher for New York Central report and received instructions on what pick up east and west cars. Instructed Operator and Yard Clerk on what cars were to be picked up and the extra numbers and what track they would be made up on, extra east pick up off number 12 and set out on number 4. Operator and Clerks handled this work in the absence of the Footboard Yardmaster. Made up work report as to activities of yard during that portion of the period already worked. At 5:20 A. M. called Chief Dispatcher and gave him last New York Central report and got line on what each was to pick up. Instructed Operator and Yard Clerk that New York Central would pull number 3 and come back number 4. L 59 pulled number 7 and Streater turn pulled number 4. At 6:50 A. M. made yard line up for day engine to use.

“October 31, 1960, 11:00 P. M. to 7:00 A. M. At 11:30 P. M. called Chief Dispatcher for line up on trains due and report on yard. At 12:20 A. M. called Chief Dispatcher for New York Central report and line up on Santa Fe trains. Footboard Yardmaster instructed Operator and Yard Clerk as to what trains would pick up and set out. At 5:10 A. M. Footboard Yardmaster called Chief Dispatcher and gave him New York Central report and got line up on what he would have on L 59 and S 59 to pick up. Instructed Yard Clerks and Operator on tracks and cars for L 59, S 59 and New York Central. Made complete work report of the night's activities in the whole yard as per Yardmaster report.

“November 3, 1960, 11:00 P. M. to 7:00 A. M. At 11:30 A. M. Called Chief Dispatcher for line up on Santa Fe trains and in-

structed Operator and Yard Clerks on what were to take on pick up. At 2:20 A.M. called Chief Dispatcher for New York Central report. At 3:55 A.M. lined up Operator and Yard Clerk on track and cars for L 59 and New York Central. At 5:20 A.M. called Chief Dispatcher on loading for L 59 and made Yardmasters work report for nights activities.

"November 4, 1960, 11:00 P.M. to 7:00 A.M. Called Chief Dispatcher for first New York Central report at 11:30 P.M. and instructed Operator and Yard Clerk on what was to take place in the handling of yard and cars. At 2:25 A.M. called Chief Dispatcher for first New York Central report and line up on Santa Fe trains. Footboard Yardmaster instructed Operator and Yard Clerk on what was to be done with trains and where they were to go and what pick up to make. At 5:15 A.M. gave Chief Dispatcher New York Central report from New York Central Operator and reviewed cars and tonage on L 59 and S 59. Instructed Operator and Yard Clerk as to tracks New York Central, L 59 and S 59 were to use and cars they were to get. Made up work reports and yard turnover for the nights work of complete yard.

"November 5, 1960, 11:00 P.M. to 7:00 A.M. At 11:25 P.M. called Chief Dispatcher for line up of trains on Santa Fe Footboard Yardmaster lined up Yard Clerk and Operator on cars and tracks. Lined up cars for pick ups and spotted house and pulled Q under Footboard Yardmaster's supervision as to tracks and disposition of cars handled by Yard Clerk. At 3:50 A.M. lined up Yard Clerk and Operator and work that was to be done and cars to pick up and set out. At 5:20 A.M. Footboard Yardmaster called Chief Dispatcher gave him New York Central report and got line up on trains and loading on L 59 and S 59. Instructed Yard Clerk and Operator as to tracks and cars for New York Central, S 59, and L 59 also Streater turn would pull. Made up work report for the nights activities of the complete yard and line up for day engine."

General Chairman Wine supplemented his January 10, 1961 appeal in letter dated February 13, 1961 as follows:

"611 S. Glenwood  
Independence, Missouri  
February 13, 1961

"Mr. L. M. Olson, General Manager  
AT & SF Railway Company  
Topeka, Kansas

Further Evidence on Yardmaster Claims at Streater, Illinois,

Your File YM-180.1-31.

"On the working day of December 15, 1960, 11:00 P.M. Footboard Yardmaster lined up work and lists to start work, called Chief Dispatcher for line up on trains for the night, lined up Yard Clerks and Operator on work to be done to 1:30 A.M. Placed number 7 mail cut off car on west house track and lined

up pick up for extra east 329 at 3:20 A.M., lined up west cars for L 59. Footboard Yardmaster received switch lists on set outs and made up number 47 train with instructions to clerk to handle line up. At 5:20 A.M. the Footboard Yardmaster called the Chief Dispatcher for line up on New York Central cars. Lined up Yard Clerk and Operator and car men as to what New York Central had, told Operator to have New York Central pull first cut number 4 with 65 cars and second cut number 3 with 85 cars. Lined up Operator and Clerk for L 59 to pull number 6 track and they in turn told L 59 to set out on number 5 track and pick up off of number 8, made turn over for day crew and called number 47 train for 8:30 A.M. Made up work report for night of work, lined up time slips and mailed all mail. This all work previously handled by Yardmasters on duty.

"On the working day of December 16, 1960, the 11:00 P.M. Footboard Yardmaster lined up work to start work, called Chief for line up on trains for night. Lined up Yard Clerks and Operator and car men on work to be done and gave them number 5 for 47 train at 1:00 A.M. which the Operator lined and instructed to go number 5 track. Footboard Yardmaster lined up cars for extra east 1102 and extra east 1113 arranged for car men to work and the Clerk to check these cars on number 12. At 5:20 A.M. Footboard Yardmaster called the Chief Dispatcher and gave him New York Central report which was on line up for 6:10 A.M. and New York Central L-S3 due at 10:00 A.M. 68 cars. Instructed the Yard Clerks, Operator and car men on track to use for New York Central cut and L 59 which Operator gave to crew on trains. Told Clerk what cars to have picked up by L59 out of yard and New York Central cut. Made turn over on yard and for daylight crew, called number 47 for 8:30 A.M. and made work report for nights work. All this formerly done by Yardmasters.

"On the working day of December 17, 1960, 11:00 P.M. Footboard Yardmaster lined up work and lists to start work, called Chief Dispatcher for line up on trains for the night, lined up Clerks, Operator and car men as to work to be done. Lined up east and west pick up notified car men and Clerks where they were to get the necessary air and line ups. Called Chief Dispatcher at 5:20 A.M. gave him the New York Central report which was, DS5645 with 71 cars LS3 9:30 A.M. with 98 cars. Instructed the Yard Clerks, Operator and car men as to what tracks to use number cars L59 would take and also S59 would pick up. Instructed Clerk and Operator what track to give L59 for set out which was done by the Clerk while engine was busy delivering Wabash Q and handling company track.

"On the working day of December 19, 1960, 11:00 P.M. Footboard Yardmaster between that period of 11:00 and lunch time lined up work and lists to start work and called Chief Dispatcher for line up on trains for the night. Lined up the Yard Clerks and Operator and car men on work to be done and where the east cars were to be and picked up from and instructed Yard Clerk to get line up on New York Central cars to be delivered and delivered these cars. After 3:50 A.M. Footboard Yardmaster lined

up pick up of 15 cars for extra 1124. Called Chief Dispatcher at 5:15 A. M. and gave him the New York Central report and asked for tonage wanted on L59. Instructed the Yard Clerks, Operator and car men on the pick ups and tracks to use for New York Central cut and L59 which tracks were given by the Operator and Clerk. Made out Yard turn over and night work report and mailed company mail. All these previously handled by Yardmaster when on duty.

“On the working day of December 22, 1960, 11:00 P. M. Foot-board Yardmaster lined up work to start work. Called Chief Dispatcher for line up on trains for the night. Lined up Yard Clerk, Operator and car men on work to be done. Instructed Yard Clerk to have extra east 333 set out 42 cars on number 4 and pick up 30 cars off number 7 track. At 5:20 A. M. called Chief Dispatcher and gave him New York Central report. Instructed Yard Clerk and Operator to give L59 13 cars off of number 8 track and let him go account New York Central cut would be late. This work handled by Operator and Clerk tracking trains and giving instructions to crews as to where to pick up and set out. Made work report for nights work and turn over of yard set in company mail. This work all Yardmaster work previously handled by that craft.

“On the working day of December 23, 1960, 11:00 P. M. Foot-board Yardmaster called Chief Dispatcher for line up on night trains, lined up switch lists from Clerks as to nights work and told Clerks and Operators and car men the necessary work to be done. Lined up pick up for extra east 1118 and instructed where to work. At 5:15 A. M. called Chief Dispatcher and gave New York Central report. Instructed Yard Clerks and Operators and car men to have New York Central pull number 3 and double to number 4. L59 to pull number 7, set out on number 8 track and back his pick up to number 6 54 cars. These tracks given and instructions on set out and pick up by Operator and Clerk. Foot-board Yardmaster made turn over of yards and night work report. All this work of Yardmasters when then on duty.

“On the working day of December 24, 1960, 11:00 P. M. Foot-board yardmaster arranged lists and line up of nights work. Called Chief Dispatcher for line up on night trains. Lined up cars for extra east 1123 and told car men to work Yard Clerk to check and tell extra east 1123 where to pick up. Called Chief Dispatcher for New York Central report. Made line up for day engine work report and turn over and mailed mail.

“On the working day of December 25, 1960, 11:00 P. M. Foot-board Yardmaster lined up work and lists at time reporting for work. Called Chief Dispatcher for line up on trains for the night. Lined up Yard Clerks, Operator and car men on pick ups and set outs and where they were and work to be done on them. At 5:20 A. M. called Chief Dispatcher and gave him New York Central report which was for 4:00 A. M., 117 cars. Instructed Clerk and Operator to have New York Central pull number 3 track and double to number 5 track. Instructed Yard Clerks and Operator and car men to give S59 85 cars and L59 take balance of New York Central cut. This work supervised by Clerk

and Operator while Footboard Yardmaster off switching at another point. Called Chief Dispatcher on late New York Central report which was 137 cars at 6:25 A.M. Made line up for day crew on condition of yard, made work report on the night yard and handled the company mail. This work of Yardmaster handled by Yardmaster craft before abolished.

"On the working day of December 26, 1960, 11:00 P.M. Footboard Yardmaster lined up lists and arranged for work for the night. Called Chief Dispatcher for line up on trains for the night 11:30 P.M. At 12:00 P.M. lined up Yard Clerks and Operators and car men on work to be done and how to be handled. At 5:15 A.M. he called the Chief Dispatcher and gave him the New York Central report. Instructed Yard Clerk and Operator L59 to pull number 5 track and take all New York Central cut. Instructed Clerk and Operator to have New York Central pull number 3 track. These trains tracked and work supervised by Clerk and Operator in the absence Footboard Yardmaster switching at another point in the yard. Footboard Yardmaster made turn over condition of yard and work report for the work done by night engine and other crews.

"On the working day of December 29, 1960, 11:00 P.M. Footboard Yardmaster lined up work and lists to start work and called Chief Dispatcher for line up on trains for the night. Lined up Yard Clerk, Operator, and car men on work to be done. Called Chief Dispatcher and gave him New York Central report. Instructed Yard Clerk and Operator on where New York Central would pull and where pick up would be made and the instructions for this work to be done by road crews was handled by the Clerk and the Operator while the Footboard Yardmaster was switching at another point in the yard. Upon going off duty made line up of tracks as to content, made work report for the night and mailed company mail. This formerly handled by Yardmaster's position and definitely his work for his class and craft.

"On the working day of December 30, 1960, 11:00 P.M. Footboard Yardmaster lined up work and lists to start work and called Chief Dispatcher for line up on trains. Lined up Operator, Yard Clerks and car men on trains to work, pick ups to be made and set outs to be made. Lined up Clerks and Operator extra east 1109 pick up 22 cars off of number 12 track and set out 16 cars on number 4 track. This work supervised by the Clerk in the absence of Footboard Yardmaster on other work. At 5:15 A.M. called Chief Dispatcher and gave New York Central report. Instructed Yard Clerks, Operator and car men that New York Central would pull number 3 track and double to number 4 track. L59 to pull number 6 track, and S59 take 85 cars off New York Central cut with L59 taking the balance of New York Central cut and west cars that were at Streater. The work of these trains was supervised by the Clerk and the Operator while Footboard Yardmaster absent at another point in the yard. Upon going off duty Footboard Yardmaster made turn over of yard and work report for the nights work plus mailing other mail. This work all of Yardmaster class and craft and handled by three other crafts.

"On the working day of December 31, 1960, 11:00 P.M. Foot-board Yardmaster on coming to work called the Chief Dispatcher for line up on trains and arranged his line up of work for the night. Gave Operator, Yard Clerks, and car men work to be done in his absence. Lined up east cars for extra 174 and lined up L59 cars placed on 23 track. Called Chief Dispatcher at 5:15 A.M. and gave him New York Central report and instructed Yard Clerk, Operator and car men to have the work done and the delivery made by the New York Central. Made report of the yard condition at time going off duty and work report for the nights work.

"On the working day of January 1, 1961, 11:00 P.M. Foot-board Yardmaster upon reporting for work lined up work and lists for his crew, called Chief Dispatcher for line up on trains. Arranged with Clerk and Operator and car men for work to be done on pick ups and set outs. After lunch delivered New York Central cars and pulled and Clerk and Operator handled pick up and set outs in his absence. Made work report for nights work. Turn over on condition of yard at going off duty and mailed company mail. This work formerly handled by Yardmaster class and craft.

/s/ E. P. Wine

Gen. Chairman"

Mr. Olson declined the appeal in letter dated March 2, 1961, which is reproduced below:

"March 2, 1961  
YM-180.1-31

"Mr. E. P. Wine,  
General Chairman, R. Y. of A.,  
611 South Glenwood Avenue,  
Independence, Missouri.

Dear Sir:

"Referring to your letter of January 10, supplemented by yours of February 13, claims in favor of Yardmasters T. J. McGurk and R. B. Sullivan, Streator, Illinois, October 26, 1960 forward:

"If these claims are premised on the abolishment of the two yardmaster assignments formerly in effect at Streator, as your letter indicates, which incidentally was effective February 1, 1958 and June 6, 1960, such claims are barred from consideration by Article V(a), the time limit rule, of the August 12, 1954 Agreement because they were not presented within sixty (60) days from the dates of abolishment of such positions, i.e., the dates of the occurrences on which the claims are based.

"Without receding in any way from this position, we find that no work was or is being performed by other than yardmasters at Streator in violation of the Yardmasters' Agreement.

"The claims are respectfully declined.

Yours truly,

/s/ L. M. Olson"

General Chairman Wine then appealed the case to the final appeal officer of the Carrier, Mr. L. D. Comer, Assistant Vice President, Chicago, Illinois, in letter dated April 8, 1961, as follows:

"611 Glenwood Avenue  
Independence, Missouri  
April 8, 1961

Mr. L. D. Comer, Assistant Vice-President  
AT&SF Railway System  
80 E. Jackson Blvd.  
Chicago, Illinois

Dear Sir:

"I am appealing to you from the adverse decision of General Manager Olson claims in favor of T. J. McGurk and R. B. Sullivan of Streator, Illinois, beginning October 26, 1960, and each subsequent date, these claims under Mr. Olsons file, YM-180.1-31.

"I am presenting with this letter copies of evidence previously presented to Mr. Olsons office and will include in this letter evidence we have of a more recent date.

"Mr. Olson in the second paragraph of his denial dated March 2, 1961, points out that the yardmaster jobs were pulled off sometime past and the claims were originated at a date beyond the sixty day time limit rule. This statement is not consistent with the Board rulings and the claim does not have to be made at the beginning of the violation but at any time that the violation exists, and consequently we cannot and the Board will not be in agreement with his assertion that these claims cannot be considered. I might point out that the consideration that he was not willing to give evidently was not strong enough but what he felt that he had to deny these claims because of their validity.

"As stated above I am including in this letter evidence of a recent date of activities of those not in the yardmaster class, and not under the scope of the current Yardmasters Agreement who are doing yardmaster work constantly and consequently the violation of Article I, Section 1b, of the yardmasters agreement is violated. The evidence follows in a few paragraphs:

"On the working day of January 30, 1960. 11:30 P.M. foot-board yardmaster lined up work and list to start work and called chief dispatcher for line up on trains at 11:30 P.M. Called Chief Dispatcher at 12:30 A.M. for first New York Central report. Yard clerk R. Hanson and operator R. Judy on arrival of extra 325 east lined them up as to set out and pick up and what the rear end add would be by message. Operator R. Judy lined up L59 on track



to pull into and yard clerk R. Hanson instructed them on pick up and set out. Operator Judy instructed L59 to pull number 5 track and pick up off number 8 track. Yard clerk R. Hanson instructed train number 40 to set out on number 4 track and pick up off number 8 track, 25 cars. Footboard yardmaster McGurk called chief dispatcher 5:15 A. M. on New York Central cut which was lined up for 10:00 A. M. Made line up on work for day engine, and work reports of night activities. All of this work formally performed by yardmaster.

"On the working day of February 2, 1961, footboard yardmaster McGurk lined up list to start work and called chief dispatcher for line up on trains at 11:35 P. M. 12:30 A. M. called chief dispatcher for first report on New York Central cut and line on trains. Clerk Hanson instructed extra east to pick up on 11 track and gave extra east message to set out on number 4 track, and lined up L59 to pull number 5 track and pick up 23 cars off of number 8 track. 5:15 A. M. Mr. McGurk called chief dispatcher and gave him New York Central report which was first out at 50 cars and no figure on L53 at this time. Made up line up for day engine and made work report for nights work. Instructed yard clerk to call number 47 for 8:30 A. M.

"On the working day of February 3, 1961, 11:00 P. M. footboard yardmaster McGurk lined up work for crews in yard called chief dispatcher for line up on trains. 12:20 A. M. he called Chief dispatcher and gave him New York Central report of 79 cars at 1:40 A. M. Operator Kincade gave New York Central number 3 track and S59 number 2 track. Yard clerk Hanson lined up pick up for S59. Yard clerk Hanson instructed extra east to set out on number 4 track and pick up on number 12 track. Footboard yardmaster McGurk made up line up for day engine and mailed time tickets for day and instructed yard clerk to call number 47, 8:30 A. M.

"On the working day of February 4, 1961, footboard yardmaster at 11:00 P. M. lined up work and list to start work, called chief dispatcher for line up on trains. At 12:30 A. M. called chief dispatcher for first New York Central report. Yard clerk R. Hanson gave extra east 326 message to pick up 12 cars off of number 7 track and set out on number 4 track and to pull number 3 track at 2:40 A. M. 5:15 A. M. Mr. McGurk called chief dispatcher and gave him New York Central report which was 62 cars for 7:00 A. M. Made line up for day engine and work report for night work.

"Working day of February 6, 1961, footboard yardmaster upon coming to work made list of work to be done that night and called chief dispatcher for line up on trains. Operator R. Judy gave extra east message to pick up on number 12 and set out on number 4 track and gave message to L59 to pull number 5 and pick up off of number 8 track. Mr. McGurk made out report of nights work, line up for day engine and handled yardmasters mail.

"On the working day of February 10, 1961, footboard yardmaster McGurk lined up work with car men, clerks and opera-

tors and made list to work by for the night. Called chief dispatcher for line up on trains. Yard clerk R. Hanson gave extra east 326 message to set out on number 4 track and pick up 14 cars off of number 12 track and extra east 1102 set out number 4 track and pick up 20 cars off of number 6 track. Operator Kincade gave L49 message to pull in number 5 track and pick up off of number 7 and to take part of New York Central out.

"On the working day of February 9, 1961, footboard yardmaster McGurk on coming to work lined up car men as work to do and made out lists of work to be done to work by. Called chief dispatcher for line up on trains. Yard clerk R. Hanson gave extra east message to set out on number 4 track and pick up 15 cars off of number 11 track. Operator R. Judy lined up L59 to pull number 5 track and pick up 21 cars off of number 8 track. 5:15 A. M. Mr. McGurk called chief dispatcher and gave him New York Central report which was 9:00 A. M. Made up work report for day engine and handled yardmaster mail, told clerk to order number 47, 8:30 A. M.

"Working day of February 12, 1961, upon arriving to work footboard yardmaster called chief dispatcher for line up on trains, made up line up of work to be done and lists to start work in switching. Operator R. Judy gave L59 number 3 track to pull into and pick up off number 7 track and waits for some cars off New York Central cut, also lined up New York Central to pull number 6. Mr. McGurk made line up for day engine and work report of nights activities, and handled yardmasters mail.

"On working day of February 13, 1961, footboard yardmaster McGurk upon arriving for work called chief dispatcher for line up on trains handled usual yardmaster work of making lists and lining up of men on work. Called chief dispatcher for line up on trains. Clerk Hanson gave message to extra east to pick up 40 cars off of number 8 and set out on number 4 track. Operator R. Judy instructed 159 to pull into number 3 track and pick up off of number 11 track. Mr. McGurk called chief dispatcher at 5:20 A. M. and gave him New York Central report, made out work report and made nights work report and handled yardmasters mail. Instructed yard clerk to call number 47 for 8:30 A. M.

"On working day of February 16, 1961, footboard yardmaster lined up and made out lists to work by for the night called chief dispatcher on line up on trains. Yard clerk Hanson instructed extra east 334 to set out on number 4 track and pick up 15 cars off of number 11 track. Operator D. Meow lined up L59 to come down main line and pick up off of 23 track and set out on number 24 track. Mr. McGurk called chief dispatcher and gave him New York Central report and DS5 at 8:45 A. M. was 62 cars. Made up night work reports, made up line up for day engine, and mailed yardmasters mail. Instructed yard clerk to call number 47 for 8:20 A. M.

"All the above activities were handled by men outside the yardmaster class and craft and the supervision taking place is

over a full eight hour period which was formally handled by a yardmaster on duty. By splitting the activities of the yardmaster to several different crafts the management has maintained the elimination of yardmaster position at Streator thusly these claims and we expect payment and adjustment in the near future.

Yours truly,

/s/ E. P. Wine  
E. P. Wine,  
General Chairman"

The "evidence previously presented" as referred to in the second paragraph of the next above-quoted letter apparently was a copy of the attachment accompanying General Chairman Wine's appeal letter of January 10, 1961 to General Manager Olson, hereinabove quoted, and for brevity not here repeated.

Mr. Comer declined the appeal, as presented, in letter dated June 2, 1961, as follows:

"June 2, 1961  
170-1-2-35

Mr. E. P. Wine, General Chairman  
Railroad Yardmasters of America  
611 Glenwood Avenue  
Independence, Missouri

Dear Sir:

"This will serve as reply to yours of April 8 in which you appeal from General Manager Olson's decision claims in favor of T. J. McGurk and R. B. Sullivan, Streator, Illinois, October 26, 1960 and subsequent dates.

"I agree with that contained in Mr. Olson's letter of March 2. Additionally I would point out that the carrier, in the exercise of its prerogative expressed in Section 1(a) of Article I of the agreement, made the determination that there was not sufficient yardmaster work remaining at Streator to justify maintaining yardmaster positions.

"Mr. Olson's decision is sustained; your claim is denied.

Yours truly,

/s/ L. D. Comer"

Conference was subsequently held between representatives of the Carrier and the Organization and under date of October 13, 1961, the following letter was written General Chairman Wine by Assistant Vice President Comer:

"October 13, 1961  
170-1-2-35

Mr. E. P. Wine, General Chairman,  
Railroad Yardmasters of America,  
611 Glenwood Avenue,  
Independence, Missouri.

Dear Sir:

In conference in my office on September 26 we discussed, among others, your claim in favor of T. J. McGurk and R. B. Sullivan, Streator, October 26, 1960 and subsequent dates.

This claim arose as result of discontinuance of yardmaster position at this point. There was nothing brought out in our discussion of this claim to alter our opinion, and this is to advise that my denial of your claim, as expressed in mine of June 2, 1961, is hereby confirmed.

Yours truly,

/s/ L. D. Comer"

Carrier granted the Organization two extensions of time for submission of this case to the Board, the last letter granting extension to April 2, 1962.

The following agreement rules are in effect between the Carrier and its yardmasters, represented by the Railroad Yardmasters of America (Agreement effective April 1, 1946):

**Article I — (\*) Section 1-a.** "This Agreement shall govern the rates of pay, hours of service and working conditions of yardmasters. The Management retains the right to establish, maintain and abolish yardmaster positions in any seniority district. Except as otherwise provided in this Article I, the term 'Yardmaster' as used in this Agreement shall include General Yardmasters, Assistant General Yardmasters, Yardmasters, Assistant Yardmasters and Relief Yardmasters, but shall not include Agent-Yardmasters or Footboard Yardmasters."

**Article I — (\*) Section 1-b.** "Other properly authorized representatives of the Company including General Yardmasters referred to in Section 2-a of this Article I, may, incidental to their other duties, perform in any seniority district duties performed by Yardmasters so long as such performance does not result in the elimination of a Yardmaster's position."

In reference to the rules of the agreement, it will be observed the Carrier and the Employees have agreed, in Article I, (\*) Section 1-a, that:

"\* \* \* the term 'Yardmaster' as used in this Agreement  
\* \* \* shall not include Agent-Yardmasters or Footboard Yardmasters."

Positions referred to as "Footboard Yardmasters" come within the scope of agreement between the carrier and the Brotherhood of Railroad Train-

men, and in reference to such positions the agreement with the Brotherhood of Railroad Trainmen contains the following rule:

“Article III

Foreman Acting as Yardmaster

Nothing in Article II shall prevent the Foreman from acting as Yardmaster should it be decided by the Superintendent that he can perform those duties in connection with his other duties; provided, that in such cases he shall have two helpers.

The wages for yard foremen who also act as yardmasters will be not less than two-thirds of one hour's pay in excess of the yard foremen's daily rate. The same rules for the basic day and overtime shall apply to such employes as applies to other yardmen.”

The above rule, with the exception of that portion relating to the **amount** of the differential, was a provision of the Agreement between the Carrier and the Brotherhood of Railroad Trainmen at the time agreement was first made between the Carrier and the Railroad Yardmasters of America, and since such positions came within the scope of agreement with the Brotherhood of Railroad Trainmen, the Board will understand the reason and necessity for including in Article I, Section 1-a of agreement with the Railroad Yardmasters of America the specific provision that:

“\* \* \* the term ‘Yardmaster’ as used in this Agreement \* \* \* shall not include Agent-Yardmasters or Footboard Yardmasters.”

Article V, Sections (a) through (d), of National Agreement entered into August 12, 1954, in effect between the parties to this dispute, provides:

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

“(b) If a disallowed claim or grievance is to be appealed, such appeal must be taken within 60 calendar days from receipt of notice of disallowance, and the representative of the Carrier shall be notified within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employes as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of

a claim or grievance on the property, extend the 60 calendar day period for either a decision or appeal, up to and including the chief officer of the Carrier designated for that purpose.

“(c) The procedure outlined in paragraphs (a) and (b) pertaining to appeal by the employe and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest operating officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest officer shall be barred unless within 6 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 6 months' period herein referred to.

“(d) A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 calendar days prior to the filing thereof. With respect to claims and grievances involving an employe held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient.”

#### **POSITION OF CARRIER:**

I. Decision by the highest officer designated by the Carrier is final and binding and that portion of the claim having to do with the abolishment of the 9:00 A.M. yardmaster position, Streator, Illinois, effective with the close of work January 31, 1958, is barred from appeal to the National Railroad Adjustment Board..

II. Refiling of alleged continuing claims, previously abandoned, is not contemplated by the time limit for handling claims agreement.

III. Claims are barred unless presented within sixty (60) days of the occurrence on which the claims are premised.

IV. If for some unforeseeable reason the Board does not agree that this claim is barred under I, II and/or III, the Carrier will show without prejudice, that the claim is without merit and should be denied.

I. DECISION BY THE HIGHEST OFFICER DESIGNATED BY THE CARRIER IS FINAL AND BINDING AND THAT PORTION OF THE CLAIM HAVING TO DO WITH THE ABOLISHMENT OF THE 9:00 A.M. YARDMASTER POSITION, STREATOR, ILLINOIS, EFFECTIVE WITH THE CLOSE OF WORK JANUARY 31, 1958, IS BARRED FROM APPEAL TO THE NATIONAL RAILROAD ADJUSTMENT BOARD.

From the Statement of Claim it will be observed claim for payment of a minimum day to each of two men each date, October 26, 1960 forward, is premised on the "abolishment of the yardmaster positions" at Streator, Illinois, the 9:00 A.M. yardmaster position having been abolished effective with the close of work January 31, 1958 and the 11:00 P.M. yardmaster position having been abolished effective with the close of work June 6, 1960, these being the last two yardmaster positions abolished at that point.

As set forth in Carrier's Statement of Facts, claim as a result of the abolishment of the 9:00 A.M. yardmaster position, effective with the close of work January 31, 1958, was timely presented and handled on the property up to and including the Carrier's highest officer of appeal, Mr. L. D. Comer, Assistant Vice President, who declined the claim in letter dated October 8, 1958. This claim was subsequently discussed in conference and the decision of October 8, 1958 affirmed by Mr. Comer in his letter of January 16, 1959 to General Chairman Wine. Proceedings for final disposition were not instituted by the employees or their duly authorized representative until March 29, 1962, or three years, five months and twenty-one days after the claim was definitely declined by the Carrier. No agreement was made to extend the six-month period described in Article V(c), which is quoted in "Carrier's Statement of Facts" and hereinafter again quoted in part for ready reference, either in conference or otherwise:

" \* \* \* All claims or grievances involved in a decision by the highest officer shall be barred unless within 6 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 6 months' period herein referred to."

It is clear that as the claim was not progressed to the Adjustment Board within six months of the date of the Assistant Vice President's decision, and no agreement having been made to extend the six months' period, the Carrier's decision, under the above rule, is final and binding, and that portion of the claim having to do with the abolishment of the 9:00 A.M. yardmaster position, Streator, Illinois, is barred from appeal to the National Railroad Adjustment Board.

Numerous awards of the Fourth Division, National Railroad Adjustment Board, support this position, for example:

**Award 863:**

"OPINION OF BOARD: \* \* \* The six months' limitation provision of the rules was not waived by the Carrier. The highest official of Carrier designated to handle these claims denied them on November 21, 1951. The Organization was required to file its ex parte submission with this Board on or before May 21, 1952, and submission was not filed with this Division until Sep-

tember 12, 1952, more than nine months after claims' final declaration by Carrier.

"Thus, it clearly appears from the record that this Board lacks jurisdiction herein and the claims are barred by the six months' limitation provision in the applicable controlling Agreement.

"As shown by the record and brought out at the hearing, this dispute was not progressed to this Board in accordance with the requirements of the controlling Agreement. Therefore, the appeal should be dismissed.

"Sustaining this conclusion and opinion are the following Awards of the Fourth Division: Nos. 183, 218, 493, 549, 562, 573, 592, 607, 649, 734 and 754."

"AWARD: Claim dismissed."

**Award 1098:**

"OPINION OF BOARD: \* \* \* Proceedings were not instituted by employe or his duly authorized representative, in compliance with Article V(c) of the Agreement, from the decision of the highest officer before the appropriate division of the National Railroad Adjustment Board within six months. In fact the record reveals that the 'notice of intent' was not filed until the 28th day of October, 1955, seven months and ten days after the denial of the claim by the Assistant General Manager. \* \* \* The time limit is for the purpose of guaranteeing speed and deterring laxity. Here there is no question but that laxity did occur and the time limit had expired before the cause was duly presented to this Board. No matter how meritorious the claim may be, this Board has no alternative but to dismiss the claim for want of jurisdiction for failure to present the claim before the six months' period had elapsed.

"AWARD: Claim dismissed."

**Award 1244:**

"OPINION OF BOARD: \* \* \* The discipline assessed was appealed to the highest operating officer designated by the carrier to handle such disputes. Under date of July 20, 1956, carrier's Director of Personnel, the officer referred to above, rendered a final decision and the claim was denied. \* \* \* On February 20, 1957, the petitioner advised this Division of the Adjustment Board of its intention to submit the dispute in ex parte submission. This was one month later than the six-month period referred to \* \* \* above. \* \* \* Article V (c) of the Agreement dated August 12, 1954, not having been complied with, other petitioner or carrier contentions and consideration of the merits are not now before us. The claim must be denied.

"AWARD: Claim is denied."



**Award 1433:**

“FINDINGS: \* \* \* The record in this docket clearly shows that the decision of the carrier’s highest officer was rendered on December 8, 1956. Claimant’s notice of intent to file with the Fourth Division, National Railroad Adjustment Board, was received on September 24, 1958. As the proceedings in this dispute were not initiated to this Division within the six months’ period provided in Article 11(c) the claim is dismissed.

“AWARD: Claim dismissed.”

II. REFILEING OF ALLEGED CONTINUING CLAIMS,  
PREVIOUSLY ABANDONED, IS NOT CONTEM-  
PLATED BY THE TIME LIMIT AGREEMENT.

As set forth in Carrier’s Statement of Facts, on November 12, 1960 General Chairman Wine presented claim to the Carrier’s Superintendent at Fort Madison (Shopton), Iowa for payment of a minimum day to each of two men each date, October 26, 1960 forward, stating therein:

“\* \* \* This is definitely a violation of Article 1, Section 1b of the Current Yardmasters’ Agreement whereby, ‘other officials or authorized personnel of management is doing the Yardmaster work and thereby has illiminated’ to (sic, apparently means “two”) Yardmaster positions at Streator, Illinois.”  
(Interpolation ours.)

and claim as set forth in Statement of Claim is premised on the “abolishment of the yardmaster **positions**” (Emphasis ours.) The last two yardmaster positions abolished at Streator, Illinois were the 9:00 A. M., effective with the close of work January 31, 1958, and the 11:00 P. M., effective with the close of work June 6, 1960. The instant dispute apparently is premised on the abolishment of these two yardmaster positions.

As also set forth in Carrier’s Statement of Facts, and reiterated under I above, claim as a result of the abolishment of the 9:00 A. M. yardmaster position, Streator, Illinois, effective with the close of work January 31, 1958, was timely presented and handled on the property up to and including the Carrier’s highest officer of appeal, Mr. L. D. Comer, Assistant Vice President, who declined the claim in letter dated October 8, 1958. Proceedings for final disposition were not instituted by the employees or their duly authorized representative within six months thereafter, no agreement was made to extend the six-month limitation agreed to in Article V(c), heretofore quoted, and said claim thereafter became barred.

Article V(c), National Agreement entered into August 12, 1954 provides that claims which are not handled within the time limitation set forth therein “shall be barred”. The agreement does not contemplate resubmission of the claims at a later date. Rather the agreement was entered into to provide the means for ending disputes within a reasonable time. Therefore, that portion of this claim premised on the abolishment of the 9:00 A. M. yardmaster position, Streator, Illinois, is not properly before this Board.

In support of this position the Carrier cites the following from "Opinion of Board", Award 793, Fourth Division, National Railroad Adjustment Board:

"A Yardmaster position existed at Cape Girardeau from 1913 until September 8, 1950, when it was abolished. After that date, such Yardmaster duties as remained were performed by the Station Agent, Chief Dispatcher and Assistant Superintendent.

"This claim was before the Division in Docket 732 (Award 734). In that award the Division found that the claim had not been progressed within the time limits provided by Rule 12; by reason thereof, the decision of the Superintendent denying the claim had become final. The claim was thereupon dismissed.

"Except for the date from which reparation is claimed, the claim in this docket does not vary in substance from the claim presented in Docket 732 (Award 734). Changing the date from which reparation is claimed does not change the date 'of the occurrence out of which such' grievance arose, or extend the periods in which the appeal may be made.

"But the Organization contends that it is a continuing violation; that each day since the abolishment of the position a new claim arises. This is not the claim before the Division. The occurrence out of which this claim arose was the abolishment of the position. That question was before the Division in Docket 732, and the appeal was dismissed. As such, it was a final determination of that claim.

\* \* \* \* \*

"AWARD: Claim dismissed."

Additionally, see "Opinion of Board", Award 943, Fourth Division:

"The genesis of this dispute was the act of the Carrier in abolishing the position of third-trick Yardmaster at Meridian, Miss., effective May 16, 1949, and thereafter permitting the Night General Yardmaster to perform such Yardmaster's duties.

"The Yardmasters' Organization seasonably protested the Carrier's action in writing and in conference during July and August, 1949, and the Organization's claims were finally rejected by the highest officer designated by the Carrier to handle claims under date of August 27, 1949.

"Thereafter, no further action was taken by or on behalf of the affected employees until over 2½ years later when on April 4, 1952 the Organization's General Chairman wrote the Carrier's Chief Personnel Officer submitting the claim of W. B. Francis. The Organization contends that the Francis claim is not the same dispute which was rejected by the Carrier in August, 1949, but is the continuation of the alleged violation of 1949 and that 'each day that the General Yardmaster is allowed to perform Yardmaster duties that were not performed by him prior to the effec-

tive date of the Agreement is a new and separate violation of the Agreement.'

"The general rule which is uniformly recognized is that, unless a statute of limitations or an agreement of that character specifically provides otherwise, the period of limitation begins to run at the time when a complete cause or right of action accrues, or arises. The authorities uniformly hold that the time when the aggrieved party could have conclusively determined his rights fixes the time when his cause of action accrued.

"The money claim is an integral part of and is necessarily based on the alleged violation of the Agreement by the Carrier's action in abolishing the Yardmaster's position and assigning the work to the General Yardmaster. It is that action which gave substance and vitality, if any, to the resulting claim for money. We think they are inseparable, and that the Carrier's denial of the claimed violation in 1949 necessarily denied any liability attaching thereto. The fact that in August, 1949, or theretofore, a specific employe was not named as a money claimant as the result of the alleged wrongful transfer of the Yardmaster's work to the General Yardmaster, is of no significance in these circumstances. It was clearly within the power of the employes' Organization to do so at the time. To say, more than 2½ years after the claimed violation of the Agreement was finally denied on the property, that another employe then asserting his seniority was not bound by the 1949 decision would be to render meaningless the one-year limitation agreed to by the contracting parties.

"There is nothing in the Agreement to suggest that the parties contemplated a breach thereof should be construed as a day to day violation until corrected, and we have no power to supply it. The logical implication is that the parties themselves did not intend that result. The provision that decision by the highest officer designated by the Carrier to handle claims shall be final and binding unless within one year proceedings for final disposition of the claim are instituted by the employe or his representative, was plainly intended to provide the means for ending disputes within a reasonable time. This is in conformity with the spirit and the language of the Railway Labor Act. We hold this claim is barred under Rule 21 of the effective Agreement.

"AWARD: Claim denied."

Also, "Opinion of the Division" in Award 1586, Second Division:

"Claimant contends that he was unjustly dismissed from the service of the carrier on December 22, 1950 and demands that he be returned to service with seniority rights unimpaired and be paid for time lost. The Division is deadlocked on whether or not claimant should be entitled to docket his claim.

"It appears on the face of the record that the same claim was previously presented to this Division, docketed under number 1438 and resulted in Award 1510. By this award, the Board dis-

missed the claim for the reason that an appeal was not taken to this Board within ninety days after the denial of the claim by the highest designated officer of the carrier as required by Rule 33 (b), current agreement. An interpretation of the award was requested and the Board in so doing said 'that the failure of the claimant to file the claim with the Board within the time prescribed by paragraph (b) of Rule 33 of the current agreement precluded consideration of such claim and required that it be dismissed.' See Interpretation No. 1 to Award 1510.

"The award and interpretation thereof constitute a final determination of the claim. This is so even if it be a continuing claim. The failure to appeal within the time fixed by the cut-off rule is equivalent to an acceptance of the decision of the carrier. It is final and conclusive of all matters arising out of the alleged breach of the agreement.

"Where it appears on the face of the record, including the previous records of the Board involving the same dispute, that no unadjusted dispute exists, the Board should refuse to docket the claim. To do otherwise would be a vain thing and only tend to encumber the records of the Division.

"AWARD: Leave to docket denied."

as well as "Opinion of Board", Award 9447, Third Division:

"The Employees' Position is that the refileing, thus limited, is authorized by Section 3 of Article V of the National Agreement of August 21, 1954.

"The material provisions of that National Agreement are as follows:

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

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

'(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his de-

cision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances. \* \* \*

'(c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employees and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. \* \* \*

'3. A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof.' \* \* \*

"The question presented is whether the filing of claims for continuous violations as authorized by Section 3 includes the refiling of claims which have been denied but not appealed within sixty days, and therefore under Section 1(b) 'shall be considered closed'.

"That the refiling of such claims was not within the contemplation of the parties is indicated by the absence of express reference, as well as by their obvious intention to provide for the prompt disposition of claims and grievances. The adoption of Section 3 indicates that for the purpose of the original filing of claims continuing violations were considered in a different category from violations not continuing, perhaps because they might affect successive claimants; — that claims for ordinary violations should therefore be filed within sixty days, but that claims for continuing ones could be filed at any time, though with financial retroactivity limited to sixty days to discourage intentional or undue delays.

"There is no indication that their differences were considered such as to warrant the refiling of claims already closed by failure to observe time limits, or to warrant repeated filings; in fact, the contrary is suggested by the provision that the rights of all claimants should be fully protected by the filing of one claim as long as the violation continues, thus again evidencing the desire for prompt and final disposition of claims and grievances.

"The above considerations are not conclusive, but our disposition of this claim is dictated by the well settled rules of construction of contracts that each provision is to be given effect, and that as to an ambiguous or doubtful provision a construction must if possible be adopted which is consistent with the rest of the agreement.

"As noted above, Section 1 (b) of the National Agreement provides that upon a failure to take an appeal within the prescribed sixty day period 'the matter shall be considered closed, \* \* \*.' Under the accepted rules we cannot reasonably adopt a construction of Section 3 which would limit the effect of Section

1 to grievances which do not continue, so that continuing ones are open to refiling, either once or repeatedly. Any doubt in that regard seems further concluded by the additional provision of Section 1(b) that 'this shall not be considered as a precedent or waiver of the contentions of the employes as to **other** similar claims or grievances'. (Emphasis ours.) The express provision that other similar claims and grievances are not concluded by failure to appeal the current one certainly emphasizes the fact that the current claim or grievance is definitely and finally disposed of.

"This claim is not properly before the Board, due to failure of the Organization to comply with the National Agreement of August 21, 1954, in that proper appeal on the property was not made within sixty days as required by Article V, Section 1 (b). The provisions of that Agreement are mandatory. (Awards 8383, 8564, 8886, 9189.) The Board is without authority to make an award on the merits.

"AWARD: Claim dismissed."

### III. CLAIMS ARE BARRED UNLESS PRESENTED WITHIN SIXTY (60) DAYS OF THE OCCUR- RENCE ON WHICH CLAIMS ARE PREMISED.

There can be no question but what this claim is premised on the abolishment of yardmaster positions at Streator, Illinois. This is borne out by the original presentation to Superintendent Yost by General Chairman Wine in letter dated November 12, 1960, quoted in Carrier's Statement of Facts, as well as by "Claim" as presented in President Schoch's notice of intent to the Fourth Division, March 29, 1962, wherein he states the bases of the claim as —

"\* \* \* due to the work of yardmasters **after the abolishment of the yardmaster positions** being distributed to other crafts outside the scope of the Yardmasters' Agreement \* \* \*."  
(Emphasis ours.)

As previously stated, the last yardmaster assignment abolished at Streator, Illinois was effective with the close of work June 6, 1960, and the last abolishment prior to June 6, 1960 was the abolishment effective with the close of work January 31, 1958. Claim which has resulted in this submission was not presented to the Carrier until in letter dated November 12, 1960, as shown in Carrier's Statement of Facts. This was in excess of sixty days from the date of occurrence, the time limitation provided for such presentation in Article V(a), quoted in Carrier's Statement of Facts, hereinafter again quoted in part for ready reference:

"All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 calendar days from the date of the occurrence on which the claim or grievance is based.  
\* \* \*"

The claim is, therefore, barred from consideration and the Fourth Division, National Railroad Adjustment Board, has consistently upheld this position, i.e.:

**Award 793:**

“OPINION OF BOARD: \* \* \* Except for the date from which reparation is claimed, the claim in this docket does not vary in substance from the claim presented in Docket 732 (Award 734). Changing the date from which reparation is claimed does not change the date ‘of the occurrence out of which such’ grievance arose, or extend the periods in which the appeal may be made.

“But the Organization contends that it is a continuing violation; that each day since the abolishment of the position a new claim arises. This is not the claim before the Division. The occurrence out of which this claim arose was the abolishment of the position. That question was before the Division in Docket 732, and the appeal was dismissed. As such, it was a final determination of that claim. \* \* \*”

**Award 943:**

“OPINION OF BOARD: \* \* \* The general rule which is uniformly recognized is that, unless a statute of limitations or an agreement of that character specifically provides otherwise, the period of limitation begins to run at the time when a complete cause or right of action accrues or arises. The authorities uniformly hold that the time when the aggrieved party could have conclusively determined his rights fixed the time when his cause of action accrued. \* \* \*”

**Award 1042:**

“OPINION OF BOARD: \* \* \* After the claimant’s regular Yardmaster position was abolished on March 15, 1953, and for a period of five days, he had the right under Article 8 of the Agreement to seek a position of a Yardmaster junior to him. His failure to lay any claim to the General Yardmaster Position No. 1 within five days of the abolishing of his yardmaster job, and his subsequent failure to present any claim or grievance thereunder within 30 days after the date of the occurrence upon which the claim or grievance is based (Article 15) bars him from having that claim granted by this Board even if it had merit. \* \* \*”

IV. IF FOR SOME UNFORESEEABLE REASON THE BOARD DOES NOT AGREE THAT THIS CLAIM IS BARRED UNDER I, II AND/OR III, THE CARRIER WILL SHOW, WITHOUT PREJUDICE, THAT THE CLAIM IS WITHOUT MERIT AND SHOULD BE DENIED.

As set forth in Carrier’s Statement of Facts, at Streator, Illinois prior to February 1, 1958 there were only two yard engine assignments in effect and two yardmaster assignments in effect. Effective with the close of work January 31, 1958 one of the two yardmaster assignments was abolished, the 9:00 A.M. assignment. The engine foremen protecting the two yard engine assignments were allowed the so-called

footboard yardmaster differential. Also, just prior to June 6, 1960 at this point there were only three yard engine assignments in effect, one around the clock, and one yardmaster assignment, going on duty at 11:00 P.M. Effective with the close of work June 6, 1960 the yardmaster assignment was abolished. The engine foremen protecting the yard engine assignments are allowed the footboard yardmaster differential. In abolishing the two yardmaster assignments referred to, the Carrier was exercising the right specifically reserved to it in that portion of Section 1-a of Article I of the current Yardmasters' Agreement reading:

"The Management retains the right to establish, maintain and abolish yardmaster positions in any seniority district."

There is no schedule requirement that the Carrier maintain a yardmaster's position when there is no need for it. It is and always has been the prerogative of Management to determine the amount and kind of supervision necessary in connection with its yard operations. Section 1-a, of Article I specifically reserves to the Carrier the right to determine when to "establish", when to "maintain" and when to "abolish" a yardmaster position. The validity of this rule and the right thus preserved to the Carrier has already been upheld in this Board's Award 829.

Section 1-a, Article I, heretofore quoted in Carrier's Statement of Facts, is a part of the Arbitration Proceedings, National Mediation Board, Docket No. A-1848, Arbitration 57, Award dated March 21, 1946, and is a section on which it subsequently was deemed necessary to request an interpretation. The interpretation of Arbitration Award, National Mediation Board, Docket No. A-1848, Arb. 57, dated at Chicago, Illinois, March 11, 1950, contains the following question and answer which is relevant to this case:

"QUESTION 1:

Is the Carrier correct in its position that Article I, Section 1-a, of the Arbitration Award permits it to continue the use of agent-yardmasters and footboard yardmasters, as it has in the past, to perform yardmaster duties in conjunction with their other duties as agents and yard foremen (switchmen), or is the Organization correct in its position that Article I, Section 1-b, of the Arbitration Award applies and prohibits the Carrier from abolishing a Yardmaster position when there is no longer need for such a position and assign the remaining yardmaster duties to an agent-yardmaster or footboard yardmaster, to be performed in connection with their other duties.

"ANSWER:

Section 1-a by the specific non-inclusion of agent-yardmasters and footboard yardmasters contemplates their continued use as such. However, with respect to the establishment, maintenance and abolishment of yardmaster positions, the parties are not hereby deprived of their rights under the Railway Labor Act."

The Carrier thus has the right, under Section 1-a, Article I, to utilize a footboard yardmaster to perform yardmaster duties whenever the amount of supervision necessary does not warrant the establishment or maintenance of a full-time yardmaster position.



The inclusion of the reference to "Agent-Yardmasters or Footboard Yardmasters" in Section 1-a, Article I, of the Yardmasters' Agreement was for the specific purpose of recognizing the right of such classes of employes to function as such without violence to the Yardmasters' Agreement, and that is what occurred in this case in respect to work performed by the footboard yardmaster.

The foregoing is supported by that contained in the "Opinion of Board", Award No. 829, Fourth Division, involving a somewhat similar dispute on the Coast Lines of this Carrier, where it is stated:

"But under the interpretation the Mediation Board also ruled, in answer to Question Number 1 that, awarded section 1-a, of the Agreement, 'by the specific non-inclusion of Agent-Yardmasters and Footboard-Yardmasters, contemplates their continued use as such.'"

as well as by the following awards:

**Award 482, Fourth Division:**

"It appears that on April 21, 1947, the Yardmaster position on the third or night shift at Idaho Falls, Idaho, was abolished, and that on June 19, 1947 this position was reestablished. During the intervening period a Footboard Yardmaster supervised the single switch engine crew operating on this shift. The petitioner contends that the performance of this supervisory work by the Footboard Yardmaster constituted a violation of the controlling agreement, effective November 16, 1946, and it requests that the employe adversely affected by this alleged violation be compensated for all wages lost by him.

"Rule 16 of the agreement expressly safeguards 'the carrier's right \* \* \* to discontinue established positions'; and Rule 1 expressly excludes Footboard Yardmasters from the scope of the agreement. These provisions furnish a definite basis for the carrier's procedure. The discontinuance of positions because of the changing needs of the service, does not require the assent of the employes; and the very exclusion of Footboard Yardmasters from the scope of the agreement constitutes a recognition of their existence on this property and of their performance of yardmaster work in conjunction with their duties as engine foremen. No evidence was submitted to show that the Footboard Yardmaster performed any work other than that of his own classification, as recognized in agreements of long standing between the carrier and the Brotherhood of Railroad Trainmen, and no valid grounds were adduced for considering the abolition and subsequent reestablishment of the position of Yardmaster, under the circumstances of this proceeding, as constituting a violation of the Yardmasters' Agreement."

**Award 486, Fourth Division:**

"\* \* \* Finally, no violation of the agreement resulted from the use of a Footboard Yardmaster during the four-hour night period when no Yardmaster was on duty. See Docket No. 476,

Award No. 482, decided by this Board concurrently with this proceeding.”

**Award 967, Fourth Division:**

“We find nothing in the rules cited to us which requires the carrier to maintain a position of yardmaster at the point involved, in the event any yardmaster duties are required. Rule 16 (e) specifically provides: ‘This agreement shall not be construed as an obligation to maintain or establish yardmasters’ positions, nor as restricting the Company’s right to discontinue yardmaster positions now or hereafter established.’ The scope rule together with the Memorandum of Understanding of April 18, 1946 particularly permits ‘yardmaster duties’ to be performed by certain classes of employees who are not yardmasters. That memorandum of agreement is quoted in full in Award 734 (page 11) and by reference in Award 793 (page 13) and again is quoted in Award 797 (page 6). It is again quoted here: ‘Confirming verbal understanding reached in conference at St. Louis, Missouri today, it is understood paragraph (c) of Rule 1, agreement effective September 11, 1945, which reads: ‘This agreement does not change present practice of officers of the Railway, agent-yardmasters or footboard yardmasters, directing or supervising switching or yard service’ applies to instances where officers of the railway, Agent-yardmasters or footboard yardmasters are required to perform certain yardmasters duties after the effective date of the agreement signed at St. Louis September 11, 1945 and effective September 16, 1945, as well as instances where this was being done at the time the agreement was signed. Signed at St. Louis, Mo., April 18, 1946’ ”

Going now to the specific claim as quoted in Statement of Claim, it is alleged that “\* \* \* the work of Yardmasters after the abolishment of the yardmaster positions \* \* \* (was) distributed to other crafts outside the scope of the Yardmasters’ Agreement \* \* \*” and that as a result thereof Yardmasters T. J. McGurk and R. B. Sullivan each are entitled to an additional day each date at the yardmaster rate. In previous correspondence it was alleged this work was performed by footboard yardmasters, clerks, operators and others.

While, as heretofore stated, the Carrier, under the Agreement, has the right to utilize a footboard yardmaster to perform yardmaster service, attention is directed to the fact that much of the work listed is **not** work belonging exclusively to those of the yardmaster class, although some of this work may have been performed by the yardmasters when assigned at Streator, incidental to and in conjunction with their supervisory duties. Much of the work listed is **work that is regularly and normally performed by other than yardmasters** and cannot be considered exclusive yardmaster work.

It is and always has been the function and responsibility of an engine foreman to secure information and arrange the work for his own engine. In order to accomplish this he must get certain information from the Agent and others in the office and must exercise his own judgment as to the manner in which the work is performed. That obviously is the duty of any engine foreman.

Figuring tonnage, ordering and releasing switchmen and preparing and mailing time slips is certainly not work reserved exclusively to those of the yardmaster class but is also regularly performed by clerks, agents, dispatchers and others, including footboard yardmasters.

Just what is yardmaster work? This Board has said (Awards 1228 to 1233, for example) that 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 employees. The work of a yardmaster is basically the work of planning and supervising the work of other employees. The question of how much supervision is required must of necessity be one of managerial discretion to be decided by the Carrier and which the rule has reserved to the Carrier. This Board encountered this same difficulty in describing yardmaster duties in its recent Awards 1580 and 1584.

Without receding from the foregoing, if it is the position of the Employees that certain of the work forming the basis for this complaint is yardmaster work—and, as to that performed by the footboard yardmasters, that the Carrier does not have the right, under awarded Section 1-a, Article I, to utilize footboard yardmasters to perform such yardmaster work—it is only necessary to direct the Board's attention to Section 1-b, Article I, of the current Agreement, heretofore quoted in Carrier's Statement of Facts, which specifically provides that other than yardmasters may, incidental to their other duties, perform duties performed by yardmasters.

Section 1-b, Article I, as will be noted from the asterisk (\*) designation, is also a part of the Arbitration Proceedings, National Mediation Board, Docket No. A-1848, Arbitration 57, Award dated March 21, 1946, and likewise is a section on which it was subsequently necessary to request an interpretation. Interpretation of Arbitration Award, National Mediation Board, Docket No. A-1848, Arb. 57, dated at Chicago, Illinois, March 11, 1950, contains the following question and answer concerning this Section:

“QUESTION 2:

Is the Carrier correct in its position that Article I, Section 1-b, of the Arbitration Award permits ‘other properly authorized representatives of the Company, including General Yardmasters, referred to in Section 2-a \* \* \*’ to perform yardmaster duties incidental to their other duties so long as such performance does not result in the elimination of an existing yardmaster position, or is the Organization correct in its position that the incidental performance of yardmaster duties by ‘other properly authorized representatives of the Company, including General Yardmasters’ in connection with their other duties amounts to a failure and refusal by the Carrier to establish a yardmaster position, and is a violation of that portion of the arbitrated rule reading ‘\* \* \* so long as such performance does not result in the elimination of a yardmaster position.’

“ANSWER:

The question propounded presents the problem of whether ‘elimination’ also includes ‘failure to establish.’

'Elimination' may, under certain circumstances, include 'failure to establish.' These circumstances may involve volume and character of the work performed. However, the controlling test is whether such work when performed by 'other properly authorized representatives' is or is not incidental to their other duties."

Based on the foregoing, the Carrier has the right to utilize "other properly authorized representatives of the Company" to perform yardmaster work, **incidental** to their other duties. From the work listed by General Chairman Wine and quoted in Carrier's Statement of Facts it can be readily observed that should any of such work be considered yardmaster work, **such work could only be considered as incidental to the other duties of the footboard yardmaster and others and such performance of work did not result in the elimination of a yardmaster's position or in failure to establish a yardmaster position**—rather, it was the reduction in the amount of supervision deemed necessary by Management. The work simply was not there and there was no longer justification for continuing the yardmaster positions. As previously stated, after the last yardmaster position was abolished, **there were only three yard engine assignments in effect, one around the clock**, each of which is protected by a footboard yardmaster.

The incidental performance of yardmaster duties by employees other than those of the yardmaster class has been held not to be in violation of the rights of yardmasters by the Fourth Division, National Railroad Adjustment Board, in numerous awards, i.e.:

#### **Award 406**

"We are not required in every case to grant affirmative relief where it may be shown that a clerk, agent or other employee exercises some minor or incidental supervision over yard switching, in connection with the discharge of his other duties. We have recently held in several cases that such violation must be substantial in nature. See Awards of this Division numbered 358, 359, 363, 365, 367 and 396."

#### **Award 497**

"\* \* \* Undoubtedly when it abolished a shift as it did on June 12, 1947, and reduced its yardmaster positions from three to two, some of the minor supervisory work of that position was performed by a footboard yardmaster, who is a foreman covered by the Trainmen's Agreement. This did not constitute a breach of the current agreement. For the right to abolish a position is undoubted when there is not sufficient work to justify its continuance. It is true that the abolishment of a position does not give to the carrier the right to assign the work of that position to employees not covered by the Scope Rule of the Agreement. Yet the work may be of such a nature, and it may be the apparent purpose of the Agreement that a rigid exclusion of all others from the performance of it is not intended. Such is the case here, and what the carrier did was not a violation of the rule. Award 482 is an authority for a denial of this claim."

**Award 1299**

"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.

\* \* \* \* \*

"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."

**Award 1499**

"\* \* \* 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 Foreman, 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. \* \* \*"

Awarded Section 1-a, Article I, of the Agreement permits the retention and use of footboard yardmasters to perform yardmaster duties and Awarded Section 1-b, Article I, of the Agreement provides that employes, other than yardmasters, may, incidental to their other duties, perform duties performed by yardmasters.

In order to prevail the Employes must conclusively show that work **exclusively reserved to yardmasters** is being performed by others in an amount such as would place the Carrier in violation of the rules. This they cannot do!

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The Carrier reserves the right to make such additional reply as it may conclude is required upon receipt of the Employes' ex parte submission.

All that is contained herein has been available to the Employes or their representatives.

Oral hearing is desired.

**OPINION OF BOARD:** This dispute concerns the alleged use of employes outside the scope of the Yardmasters Agreement to perform Yardmaster work at Streator, Illinois, on October 26, 1960, and subsequent dates.

In January 1958, there were two Yardmaster positions at that location. One was abolished on January 31, 1958, and a claim was filed on February 27 of that year alleging that on February 1, 1958, and thereafter, non-Yardmasters were discharging the functions of the abolished position. That claim was processed on the property but abandoned after Carrier's highest grievance officer had denied it on October 8, 1958.

The remaining Yardmaster position was abolished June 6, 1960, and Petitioner, by letter dated November 12, 1960, launched the instant claim.

There is no merit in the contention that the claim must be dismissed under the time limit requirements of Article V of the August 12, 1954, National Agreement since it was filed more than sixty days after the Yardmaster position was abolished. The act complained of is not the elimination of a position but rather the use of non-yardmasters to handle the duties of the abolished position. The first claim date is October 26, 1960, and the initial filing of the claim took place on November 12, 1960, well within the prescribed sixty-day time limit.

The present claim is not merely a continuation or resurrection of the earlier claim that had been abandoned and is quite distinguishable in that respect from Fourth Division Award 1348 as well as Third Division Awards 9447, 10251 and similar holdings. When the 1958 claim lapsed, one yardmaster position still remained in existence. It was not until June 6, 1960, that both positions had been eliminated and this fact materially changes the situation. The two claims thus were based on different sets of facts. We are not persuaded that this Board is precluded from considering the present claim, which charges that ineligible persons are performing duties of a position abolished in 1960, simply because a 1958 claim, filed more than two years before such abolishment occurred, was permitted to lapse.

Turning now to the merits, we find that, in considering the matter on the property, Petitioner supported its claim with particularized information showing that on specified dates between October 26, 1960, and February 16, 1961, certain employees outside the coverage of the Yardmaster Agreement performed work of the abolished position. The duties in question were described in sufficient detail and, in our opinion, are substantial.

Though confronted with this specific information, Carrier raised no objection to its quality and presented no facts on the property to explain away or controvert the charges.

Carrier has committed itself to a collective bargaining agreement covering its yardmasters and their work. So long as that Agreement remains in force, Carrier cannot unilaterally eliminate Yardmaster positions and have their duties performed by footboard yardmasters or other persons outside the scope of the Agreement. See Award 1343.

No provision of the Agreement calls for a different result and the Board is not in a position to consider the equities. While Carrier retains the right to abolish positions under Article I, Section 1-a, this does not mean that it validly can use employees excluded from the Agreement's coverage to discharge the functions of the abolished positions. Article I, Section 1-b authorizes Carrier to have its representatives perform yardmaster duties under certain conditions but only if such use does not re-

sult in the elimination of a yardmaster position. Here a yardmaster position was eliminated and there was no authority for Carrier to use its representatives to discharge the functions of that position.

The record establishes that Carrier has engaged in violations of the Yardmasters Agreement by its use of employees outside the scope of that Agreement to perform Yardmaster work on the following dates: October 26, 27, 28, 29 and 31, 1960; November 4, 5, 6, 7, 8, 9, 12, 13, 16, 19, 20, 22 and 23, 1960; December 15, 16, 17, 19, 22, 23, 24, 25, 26, 29, 30 and 31, 1960; January 1 and 30, 1961; and February 2, 3, 4, 6, 9, 10, 12, 13 and 16, 1961. The claim will be sustained as to those specific dates.

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

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

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

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

The Yardmasters Agreement was violated.

#### AWARD

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of FOURTH DIVISION

ATTEST: Patrick V. Pope  
Secretary

Dated at Chicago, Illinois, this 24th day of July, 1963.

#### **CARRIER MEMBERS' DISSENTS — DOCKET 1775, AWARD 1835; DOCKET 1782, AWARD 1836**

One of the well settled principles of this Division is that the burden of proving a violation of the agreement is upon the Petitioner. In applying this principle we have heretofore consistently held that where it is contended that other employees are performing yardmaster duties the Petitioner must show by sufficient and competent evidence, not merely "specific information", that employees other than yardmasters are actually performing yardmaster supervisory duties in substantial volume. Until there is sufficient and competent evidence of such fact, there is no duty upon the Respondent to object to the "quality" or to "explain away or controvert" the "specific information" submitted by the Petitioner. There was no evidence here that other employees were in fact performing any yardmaster supervisory duties. All the so-called "specific information" shows is that some clerical and yard employees were performing their duties without supervision by a yardmaster; that no employees were performing any work which could properly be classified as exclu-

sively yardmaster work; that no orders or instructions of supervisory nature were given the yard crews by any official or employee. If the "specific information" proves anything, it proves that there is a complete lack of need for yardmasters at Streator and Ponca City.

The awards in these dockets are so obviously erroneous and such a complete departure from principles established by our prior awards that we are required to note our dissent thereto.

**CARRIER MEMBERS**

**A. H. Deane**

**J. R. Wolfe**

**C. A. Conway**

**OPINION OF THE LABOR MEMBERS WITH RESPECT TO  
AWARD 1836, DOCKET 1782**

The claim here involved, processed subsequent to the abolishment of yardmaster positions, was a continuing one requesting payment for October 26, 1960, **and all subsequent dates**, to require the Carrier to correct the conditions which brought about the dispute.

Certainly, the specific evidence produced on forty-one (41) days proving the violation contended was more than sufficient to indicate without question that the improper action of the Carrier was a regular and continuing infraction, which would justify an award sustaining the claim as made.

We perceive of no valid reason for limiting the allowances to the forty-one (41) days on which evidence was produced. This award will tend to eventually put an end to continuing claims which have been recognized by the various Divisions of the National Railroad Adjustment Board for many years and are specifically provided for in negotiated agreements; will force the Employees to submit multitudinous specific claims for specific dates, thereby, further over-burdening the various Divisions and adding to the backlog of cases now the source of concern.

Claim should have been sustained as made.

**LABOR MEMBERS**

**R. H. Wachowiak**

**W. J. Ryan**

**J. P. Tahney**