

NATIONAL RAILROAD ADJUSTMENT BOARD**FOURTH DIVISION**

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

PARTIES TO DISPUTE:**RAILROAD YARDMASTERS OF AMERICA****GRAND TRUNK WESTERN RAILROAD COMPANY**

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

Extra Yardmaster E. G. Hardin be allowed one 8-hour day at the appropriate pro rata Yardmaster rate and also 4 hours at the time and one-half rate for September 8, 1964 (4:30 A. M. to 4:30 P. M.), on account of an employe outside the scope of the Yardmaster Agreement performing Yardmaster work at Blue Island, Illinois.

EMPLOYES' STATEMENT OF FACTS: On September 8, 1963, at Blue Island, Illinois the Eastbound track was taken out of service from 4:30 A. M. to 4:30 P. M. between 139th Street, Blue Island and 155th Street, Harvey. Form 19, Order No. 1 was issued providing for movement of trains through yard limit on written authority of Yardmaster, but instead the General Yardmaster, who is outside the scope of the Agreement, performed the functions which are exclusively the duty and responsibility of the Yardmaster.

POSITION OF EMPLOYES: The position of the employes in the handling of this dispute on the property is evidenced by the exchange of correspondence reproduced herein and attached as Exhibit A, 9/19/64; B, 10/12/64; C, 11/2/64; D, D1, 11/12/64; E, 1/5/65; F, 1/14/65; G, 1/25/65; H, H1, 2/5/65.

The issue involved in this claim is whether a General Yardmaster can perform yardmaster duties and in so doing deprive an available and qualified yardmaster of a day's work to which he is entitled. When claim was first filed on September 19, 1964 in Exhibit A, Local Chairman Russell quoted Article 1 (a) of controlling agreement which states that: "the term yardmaster shall be understood to mean yardmasters of all grades except **General Yardmasters.**" (Emphasis ours.) This rule clearly and unambiguously places the General Yardmaster outside the purview of the Yardmasters' Agreement.

In the instant case, carrier found it necessary to take main track out of service for a period of 12 hours. The Operating Book of Rules on the

railroads of this country are pretty well standardized on setting up procedure to effectuate such moves. 19 order issued in this instance is also reproduced in third paragraph of Exhibit A. Train dispatcher moved trains against current of traffic up to Yard limits, where it then became necessary for trains to proceed under written authority from the yardmaster through said yard limits. The record shows that the written authority was given not by the yardmaster, but by General Yardmaster Dooley. This the Carrier admits, and in last paragraph of Mr. Sanders' letter to General Chairman Woldanski of January 25, 1965, Exhibit G, goes on to assert that General Yardmaster who had general supervision of Blue Island issued these instructions incidental to his duties. How can we reconcile this contention with terms of Article 1 (a) hereinbefore quoted? Or, how can we square this opinion of Carrier with Ex Parte No. 72, Regulations of the Interstate Commerce Commission, defining subordinate officials. "YARDMASTERS - this class shall include yardmasters and assistant yardmasters, excepting general yardmasters at large and important switching centers where of necessity such general yardmasters are vested with responsibilities and authority that stamp them as officials."? Thus, it is patently clear, both by terms of Agreement and in conformity with Book of Operating Rules, that the yardmaster, rather than the General Yardmaster, who is of official stature, is the employe authorized to protect this movement.

Carrier also argues that the relaying of the dispatcher's instructions to the trains involved did not justify the use of a yardmaster. We are indeed appalled at such a statement coming from supposedly experienced and knowing railroad personnel. The operator delivers and relays instructions from the dispatcher, but to get through yard limit territory the yardmaster instructs and gives permission to the trains involved. Lacking this permission, the trains cannot get through. An examination of the 19 order in Exhibit A clearly indicates this. Carrier has also advanced another threadbare argument that the total time consumed in issuing instructions to get these trains through yard limits against the current of traffic was only 25 minutes. This is refuted by General Instructions 10, Exhibit H, which places the movement of the train under the authority of the yardmaster as long as the train order remains in effect. The Operating Rules of this Carrier, as every carrier in the country, provide that train orders once in effect continue so until fulfilled, superseded or annulled. This order No. 1 was in effect 4:30 A. M. to 4:30 P. M., and protection was necessary for that period of time. No effort of carrier to evade its responsibility under the rules by minimizing the importance and effect of the train order is sufficient or convincing enough to support its position.

It has been shown that General Yardmaster is not within the scope of the yardmasters' Agreement, that the routing of trains through yard limits by train order required the services of a yardmaster and finally it has been shown and acknowledged that these duties were performed by General Yardmaster, in violation of the controlling Agreement.

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 must be sustained.

CARRIER'S STATEMENT OF FACTS: The claimant, Mr. E. G. Hardin, was regularly assigned as a yardman at Blue Island, Illinois, a station of the carrier's Chicago Division between Battle Creek, Michigan, and Chicago,

Illinois. Claimant Hardin also held seniority as an extra yardmaster at Blue Island. A position of General Yardmaster has been in existence at Blue Island since 1950. A trick yardmaster position has been established at that point since December, 1955. The position of General Yardmaster is an official position, while the trick yardmaster position is covered by a Working Agreement, effective March 1, 1952, in effect between this Carrier and the Railroad Yardmasters of America. The hours worked by the General Yardmaster have varied over the years, but have remained between the hours of 6:30 A. M. and 5:00 P. M., dependent on the demands of service. The trick yardmaster position, since its establishment, has had assigned hours varying from 5:00 P. M. to 1:00 A. M., to 11:55 P. M. to 7:55 A. M., in accordance with the demands of service. The Trick Yardmaster's assigned hours at the time of the instant claim were 5:00 P. M. to 1:00 A. M. There are three separate stations located within the Blue Island Switching District. They are, from West to East, Blue Island, Harvey and Thornton Junction.

At 1:35 A. M. on September 8, 1964, the following train order was issued by the Chicago Division Train Dispatcher:

“Y 19 1 Chicago Eastward Trains
Y 19 1 Elsdon Eastward Extras
Y 19 1 Battle Creek Westward Train
Y 19 1 Battle Creek Yard Westward Extras
Y 19 1 Blue Island Yardmaster
Y 19 1 Valparaiso Extra 9014 West
Extra 4700 West and Extra 9016 West
Y 19 1 Thornton Junction Operator

Eastward track will be out of service four thirty 4:30 A. M. until four thirty 4:30 P. M. between crossover at 139th Street Blue Island and crossover at 155th Street Harvey. Eastward Trains will receive written authority from Yardmaster Blue Island for movement over westward track through these limits.

GRR”

As will be noted by the above quoted train order, a copy of such train order was furnished to all trains operating through Blue Island, as well as the Yardmaster at Blue Island. Accordingly, all train crews departing Chicago, Illinois (the Carrier's most westwardly terminal on the Chicago Division, located 20.2 miles west of Blue Island), on eastbound trains were aware that they could not operate through Blue Island to Harvey, on the Westbound main line, without written instructions from Blue Island. The train crews operating Eastbound Trains out of Chicago on September 8, 1964, received the written authority to use the Westbound Main Line from 139th Street, Blue Island, to 155th Street, Harvey, by telegraph message from Blue Island, when they obtained their train clearance at Chicago.

During the hours of 4:30 A. M. to 4:30 P. M. on September 8th, one Eastbound passenger train, and three Eastbound freight trains received written authority to use the Westbound Main between Blue Island and Harvey. During this same period, one Blue Island Yard engine was issued written authority to use the Westbound Main line to Harvey. The written authority to Eastbound Trains, departing Chicago, was issued as follows:

Passenger Train No. 20 – departed Chicago, 9:40 A. M.
Freight Train No. 492 – departed Elsdon (Chicago) 11:05 A. M.
Freight Train No. 484 – departed Elsdon (Chicago) 12:30 P. M.
Freight Train No. 802 – departed Elsdon (Chicago) 2:45 P. M.

The written authority for yard engine 1514's movement to Harvey was issued at approximately 8:45 A. M. The approximate wording of the written instructions in question read as follows:

“Train No. (or Engine No.)

You will use westward main track from facing point crossover at Rock Island Bridge Blue Island to facing point crossover 155th Street Harvey.

J. G. Dooley
General Yardmaster”

The preparation of each of the five messages in question amounted to less than five minutes in each instance; the total time consumed in issuing all five messages being less than twenty-five minutes spread over a period in excess of six hours. Because the trick yardmaster had gone off duty at 1:00 A. M. on September 8, 1965, the messages in question were prepared by the General Yardmaster.

On September 19, 1964, the following claim was filed with the Superintendent, Chicago Division:

“RAILROAD YARDMASTERS OF AMERICA

Blue Island 9/19

Mr. E. T. Rose
Superintendent
GTW RR
Battle Creek, Mich.

As local chairman of RYofA, I am submitting a claim for Extra Yardmaster E. G. Hardin for one (1) day at yardmaster rates account not being used Tuesday, September 8th, 1964, to perform yardmaster work and work performed by General Yardmaster J. G. Dooley, in violation of RYofA Agreement with the GTW RR dated effective March 1, 1952.

Evidence as follows:

Article 1, Definitions (a) of RYofA Agreement states — When used in this agreement, the term ‘Yardmaster’ shall be understood to mean Yardmasters of all grades except General Yardmasters. (Therefore, the fact that GYM performed the following work is a direct violation of the RYofA Agreement.)

Work performed by GYM as follows:

Train order form 19, train order No. 1, dated Battle Creek, Michigan, September 8, 1964, addressed to Yardmaster, Blue Island sent by dispatcher G. R. Randt and made complete 1:35 A. M.,

September 8, 1964 to Operator Sztkowski gave instructions as follows — Eastward track will be out of service four thirty 4:30 A. M. until four thirty 4:30 P. M. between crossover at 139th Street Blue Island and crossover at 155th Street Harvey Eastward trains will receive written authority from yardmaster Blue Island for movement over westward tracks through these limits. GRR.

GYM J. G. Dooley issued instructions per above to the following trains.

Yard Engine 1514 departed Blue Island 8:45 A. M. 9/8/64

Train No. 20 Eng. 4952 by Blue Island 10:12 A. M. 9/8/64

Train 492 Eng. 9012 departed Blue Island 11:50 A. M. 9/8/64

Train 484 Eng. 9020 departed Blue Island 1:06 P. M. 9/8/64

Train 802 Eng. 4700 by Blue Island 3:05 P. M. 9/8/64

The five (5) trains above used westbound main line as described in Train Order No. 1 on written authority of GYM J. G. Dooley.

E. G. Hardin was available for this work and would appreciate your authorization for payment to Mr. Hardin on his next pay period.

/s/ R. K. Russell
Local Chairman
RYofA.

cc-A. Woldanski”

The Superintendent declined the claim as follows:

“GRAND TRUNK WESTERN RAILROAD COMPANY

October 12, 1964

File: 8380-1097

Mr. R. K. Russell
Local Chairman
Railroad Yardmasters of America
121 Kathleen Lane
Chicago, Illinois

Dear Sir:

Referring to your letter of September 19, 1964, submitting a claim for Extra Yardmaster E. G. Hardin for one day's pay at yardmaster's rate of pay account not being used to perform yardmaster work on September 8, 1964, which work was performed by General Yardmaster Dooley, which you claim was a violation of agreement with the Railroad Yardmasters of America dated March 1, 1952. The work was performed between the hours of 8:45 A. M. and 3:05 P. M. September 8.

I cannot agree with your contention that Mr. Dooley performed yardmaster's work. It is the opinion of the Carrier that no yardmaster is required at Blue Island during the period Mr. Dooley issued in-

structions to trains operating between 1:00 A.M. and 5:00 P.M. September 8th, and the claim of Extra Yardmaster E. G. Hardin is declined.

Yours truly,

/s/ E. T. Rose
Superintendent"

The decision of the Superintendent was appealed to the Vice President and General Manager as follows:

"RAILROAD YARDMASTERS OF AMERICA

8940 Concord
Detroit, Michigan 48211
File: WOL 125
November 12, 1965

Mr. H. A. Sanders,
Vice Pres. and Gen. Manager
Grand Trunk Western Railroad
131 W. Lafayette
Detroit, Michigan 48226

Dear Sir:

I am appealing the decision of E. T. Rose, Superintendent, where he denied Extra Yardmaster E. G. Hardin one day's pay at Yardmaster rate, September 8, 1964 at Blue Island.

Regards to your letter to Local Chairman R. K. Russell on October 12, 1964, your file 8380-1097 and I quote from your letter:

'I cannot agree with your contention that Mr. Dooley performed Yardmaster work. It is the opinion of the carrier that no Yardmaster is required at Blue Island.'

During the period Mr. Dooley issued instructions to trains operating between 1:00 A.M. and 5:00 P.M. September 8, 1964.

In Mr. Rose's letter he admitted that General Yardmaster Dooley was performing yardmaster work.

As you know, Mr. Sanders, Grand Trunk Western Railroad entered into agreement with The Railroad Yardmasters of America effective March 1, 1952; therefore, the carrier violated Article 1 and A.

Also in support of this claim General Yardmaster Dooley issued order to Yard Engine 8:45 A.M. September 8, 1964, Train No. 20 — 10:12 A.M. on September 8, 1964 — Train No. 492 — 11:05 A.M. on September 8, 1964 — Train No. 484 — 1:06 P.M. on September 8, 1964 — Train No. 802 — 3:05 P.M. on September 8, 1964, which amounted to 6 hours and 20 minutes.

The Railroad Yardmasters of America are the duly authorized and designated representative under the Railway Labor Act of the class and craft of Yardmasters.

In view of the above circumstances, Mr. E. G. Hardin was available for this work and should be paid one day's pay at yardmaster rate.

Otherwise, I desire a conference to discuss this matter further.

Very truly yours,

/s/ A. J. Woldanski
General Yardmasters of
America

cc-E. T. Rose, Superintendent
Please note that your denial decision is rejected.

cc-M. G. Schoch, President
Railroad Yardmasters of America
537 S. Dearborn Street
Chicago, Illinois 60605

cc-R. K. Russell
2612 Flossmoor Road
Flossmoor, Illinois 60422"

The Vice President and General Manager denied the claim in the following letter:

"GRAND TRUNK WESTERN RAILROAD COMPANY

January 5, 1965
File: 8390-2(117)
Your File: WOL 125

Mr. A. J. Woldanski, General Chairman
Railroad Yardmasters of America
8940 Concord
Detroit, Michigan 48211

Dear Sir:

This refers to your letter of November 12, 1964 appealing claim of Extra Yardmaster E. G. Hardin, Blue Island, for one day's pay at yardmaster rate, September 8, 1964. The basis of the claim was that General Yardmaster Dooley issued instructions to trains operating between 1:00 A. M. and 5:00 P. M.

General Yardmaster Dooley issued written instructions to five eastbound trains to use westbound main track between 139th Street and 155th Street because eastbound main track was out of service. These instructions were issued over a period of 12 hours between 4:30 A. M. and 4:30 P. M.

It is your contention that Articles 1 and A of the Yardmasters' Agreement were violated by Mr. Dooley's action above described.

It is carrier's position that there was no violation of the Yardmasters' Agreement in this case. The relaying of the dispatcher's

instructions to the trains involved did not justify the use of a yardmaster in the instant case. Refer to Fourth Division Awards 406 and 446, among others.

In view of the foregoing, the instant claim is declined, as it is not supported by any rule or agreement.

You have requested a conference if this claim is not allowed.

Conference to discuss this claim can be held at 10:00 A. M., Friday, January 22, 1965, in the Board Room 804, 131 West Lafayette, Detroit, Michigan.

Advise if time and date are satisfactory.

Yours very truly,

/s/ H. A. Sanders"

At the request of the employes, a conference was subsequently held on January 22, 1965, and Carrier's decision thereat was confirmed in writing to the General Chairman as follows:

"GRAND TRUNK WESTERN RAILROAD COMPANY

January 25, 1965
File: 8390-2(117)
Your File: WOL-125

Mr. A. J. Woldanski, General Chairman
Railroad Yardmasters of America
8940 Concord Avenue
Detroit, Michigan 48211

Dear Sir:

This confirms conference held with your organization January 22, 1965, at which time the claim of Blue Island Extra Yardmaster E. G. Hardin for one day's pay at yardmaster rates for September 8, 1964, was discussed.

Carrier representative reiterated its position set out in my January 5, 1965 letter that the relaying of the dispatcher's instructions to the trains involved did not justify the use of a yardmaster in the instant case. You were further informed that the total time involved in the issuance of such instructions did not exceed twenty-five minutes in the twelve hour period.

You contended that a yardmaster should have been used in accordance with General Instruction No. 10 of Time Table No. 5.

Carrier representative informed you that such General Instructions were complied with when the General Yardmaster who had general supervision of Blue Island issued such instructions incidental to his duties.

Carrier's declination of January 5, 1965, was reaffirmed.

Yours very truly,

/s/ H. A. Sanders"

To which the General Chairman replied:

"RAILROAD YARDMASTERS OF AMERICA

8940 Concord
Detroit, Michigan 48211
Yours File: 8390-2(117)
Our File: WOL 125
February 5, 1965

Mr. H. A. Sanders
Vice President and Gen. Manager
Grand Trunk Western Railroad
131 W. Lafayette Blvd.
Detroit, Michigan 48226

Dear Sir:

Regarding our conference held January 22, 1965 in your office, my contention was that E. G. Hardin was entitled to one day's pay at yardmaster's rate for September 8, 1964. In our discussion I pointed out that the claim was valid as admitted by Mr. Rose, Superintendent, and Mr. Sanders, Vice President and General Manager by their statements that Mr. J. G. Dooley, General Yardmaster at Blue Island did in fact issue written instructions to five (5) Eastbound trains to use the Westbound Main Track between 139th Street and 155th Street because Eastbound Main Track was out of service for a period of twelve hours between 4:30 A.M. and 4:30 P.M. on September 8, 1964.

In view of the fact that the instructions issued by General Yardmaster Dooley covered a twelve hour period, Mr. Hardin should be entitled to 8 hours at straight time rate and four hours at rate of time and one-half.

Mr. Sanders' contention in the fourth paragraph of his letter of declination dated January 5, 1965, File No. 8390-2-117, that it is the carrier's position that there was no violation of the yardmaster agreement based upon a premise that Mr. Dooley was merely relaying instructions of dispatcher to the trains involved which did not justify the use of a yardmaster in the instant case, and makes reference to Fourth Division Awards 406 and 446, among others, is entirely misrepresentation of the facts.

The correct facts of the instant case are as follows: Grand Trunk Western Time Table No. 5, which was in effect at the time of the violation, September 8, 1965, clearly prescribes how trains will move through yard limits on other than their assigned tracks under General Instructions No. 10. Trains moving within yard limits on other than their assigned track will be governed by written instructions over the signature of the yardmaster, who will be held responsible for the safety of such moves. Enginemen handling such trains must use caution.

Rule 10 clearly states yardmaster and the dispatcher in his train order putting Eastbound Main Line out of service, clearly stated that yardmaster would issue instruction for the use of Westbound Main Line by Eastbound trains. This is definitely not relaying instructions of dispatcher, but the prescribed work of the yardmaster, as defined by the rules.

When the operating rules clearly define the duty as that of the yardmaster, they cannot then arbitrarily deny the facts of their own prescription and falsely describe the action of the General Yardmaster Dooley as doing dispatcher's work.

To further substantiate the validity of this claim, the dispatcher could only have gotten Eastbound trains to move through Yard Limits on the Westbound Main Line by issuing train order Form R to each of the five trains involved, giving them right over opposing trains from 139th Street to 155th Street, which the dispatcher did not do in this instant case.

The only authority for movement on the Westbound Main Line by the five Eastbound trains, which included a Passenger Train No. 20, was the written instruction of Yardmaster as prescribed by Rule 10 of General Instruction in Time Table No. 5, which were, in fact, performed by General Yardmaster E. G. Dooley in violation of the Railroad Yardmasters of America Agreement, Article (1).

When used in this agreement the term 'yardmaster' shall be understood to mean yardmasters of all grades, except General Yardmasters.

I cannot accept your declination of this claim; for your information, I am sending this claim to Grand Lodge for further handling.

Yours very truly,

/s/ A. J. Woldanski
General Chairman
Railroad Yardmasters of
America

cc-M. G. Schoch, President
Railroad Yardmasters of America"

Copies of the Yardmasters' Working Agreement, effective March 1, 1952 and amendments thereto, are on file with the Fourth Division.

POSITION OF CARRIER: That portion of the Employees' Statement of Claim, for four hours at the punitive rate of pay is not properly before this Board because it was not handled in the usual manner on the property as required by the provisions of Article V of the August 12, 1954 Agreement. A copy of said Article V is attached hereto as Carrier's Exhibit No. 1. In this respect, the instant claim was initially submitted on the property for one day's pay at yardmaster's rate. See Local Chairman Russell's letter of September 19, 1964, to Superintendent E. T. Rose, which is reproduced on pages 3 and 4 of Carrier's Submission. On appeal to the Vice President and General Manager, the employes again claimed one day's pay at Yardmaster's rate. See General Chairman Woldanski's letter of November 12, 1964, to

the Vice President and General Manager, which letter is reproduced on pages 5 and 6 of Carrier's Submission. The employees' first and only reference to payment of four hours at the punitive rate, in addition to the eight hours pro rata originally claimed, was contained in their letter of February 5, 1965, which was written thirty-one (31) days after the Vice President and General Manager, the highest officer of the Carrier designated to handle claims and grievances, had declined the employees' appeal. The employees' February 5, 1965 letter is reproduced on pages 8 and 9 of Carrier's Submission. Furthermore, the employees' reference to the additional four hours at punitive rates in their February 5, 1965 letter, did not constitute a claim, but was merely a statement to the effect that the claimant should be entitled to eight hours' straight time and four hours' overtime because of Carrier's statement that the work in dispute had occurred during the twelve hour period that the Eastward Main Line between Blue Island and Harvey was out of service. In this respect the employees' exact statement, quoted from their February 5, 1965 letter, regarding the four hours' punitive pay, read as follows:

"In view of the fact that the instructions issued by General Yardmaster Dooley covered a twelve hour period, Mr. Hardin should be entitled to 8 hours' straight time rate and four hours at rate of time and one-half."

As previously stated, that portion of the instant claim for payment of four hours at the time and one-half rate of pay was not handled on the property in accordance with the provisions of Article V of the August 12, 1954 Agreement (see Carrier's Exhibit No. 1), and is not, therefore, properly before this board.

Regarding the merits of the instant claim, Carrier has shown in its Statement of Facts, that the work in dispute in this claim consisted of a total of five messages, issued by the General Yardmaster to Road Trains and/or yard engines, which departed Blue Island (yard engine) or Elsdon Yard-Chicago (road trains), between the hours of 8:45 A. M. and 2:45 P. M. The total time spent by the General Yardmaster in preparing and issuing the messages in question amounted to less than twenty-five minutes (less than five minutes per message) over a period in excess of six hours.

The employees have alleged that the twenty-five minutes spent by the General Yardmaster on September 8, 1964, in issuing the messages in question, constituted work which should have been performed by a yardmaster. In other words, the employees are contending that the Carrier was required to call a yardmaster on duty and compensate him for eight hours, for the performance of twenty-five minutes' work. Such a contention is wholly without merit. This Board in ruling on numerous similar claims has held that where work is performed by other employees which is minor and incidental in character, the Board will not require the establishment or filling of the position of yardmaster. In this respect, the Fourth Division held as follows in Award No. 406:

"We are not required in every case to grant affirmative relief where it may be shown that a clerk, agent or other employe 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."

In Award 446 the Board stated:

"In the situation heretofore described, it appears to this Board that the Yardmaster supervisory duties, if any, performed by employes of another class are at most minor and incidental in character and we conclude that the claim should be denied."

In Award 538 it was held:

"On behalf of Carrier there is cited a comparatively recent award of this Division, Award 445, which in brief holds that where work is performed by other employes which is minor and incidental in character the Board will not ordinarily require the establishment and filling of the position of Yardmaster, allowing for a reasonable discretion on the part of Carrier in such matters. * * *"

Also, in Award 806 the Board ruled:

"We have carefully examined the record, and from the facts submitted have concluded that work complained of was performed under circumstances supporting our conclusion that it was but incidental to the General Yardmaster's duties and was not of a volume or character sufficient to constitute a failure to establish a Yardmaster position."

Following the basis of the "Findings" in the above-cited Awards, it should be pointed out that in the instant case the Eastward main line between 139th Street Blue Island and 155th Street Harvey, was taken out of service for a period of 12 hours on September 8, 1964. During the period of 8:45 A. M. and 2:45 P. M. on that date only four road trains and one yard engine required permission to operate over the Westward Main Line, against the current of traffic, while the Eastbound Main Line was out of service. Clearly, the volume of traffic involved was light, and as previously stated herein, the time spent by the General Yardmaster in authorizing the train movements over the Westward Main Line (twenty-five minutes or less) was insignificant. Further, the fact that a trick yardmaster had never been employed at Blue Island during the hours of 7:55 A. M. to 5:00 P. M., further emphasizes the fact that the General Yardmaster's actions on September 8, 1965, did not result in the displacement of a yardmaster or the removal of the supervisor duties normally attributed to Yardmasters, from under the Scope of the Yardmasters' Working Agreement. There simply was not sufficient work involved in authorizing Eastbound trains to use the Westbound main line to justify the calling of a yardmaster.

The employes, as allegedly supporting the instant claim, have cited paragraph (a) of Article 1 of the Yardmasters' Working Agreement and paragraph No. 10 of the General Instructions of Time Table No. 5, dated April 26, 1964. Paragraph (a) of Article 1, reads as follows:

"When used in this Agreement, the term 'Yardmaster' shall be understood to mean Yardmasters of all grades except General Yardmasters."

The above quoted paragraph clearly excludes General Yardmasters from under the Scope of the Yardmasters' Working Agreement. However, in view of the numerous Awards of the Fourth Division in similar disputes, it

cannot be held that the General Yardmaster in the instant case, as the result of an isolated incident involving less than twenty-five minutes' work, performed sufficient work to justify the calling of a yardmaster.

Paragraph No. 10 of the General Instructions (Time Table No. 5), cited by the employes, reads as follows:

"Trains moving within Yard limits on other than their assigned track will be governed by written instructions over the signature of the Yardmaster, who will be held responsible for the safety of such moves. Enginemen handling such trains must use caution."

The employes contend that the foregoing quoted instructions gave yardmasters the exclusive right to issue written messages authorizing trains to move within Yard limits on other than their assigned track. However, as indicated by the title of "General Instructions" as contained in Time Table No. 5, the cited paragraph No. 10 is a general rule, and would not necessarily govern under all conditions. In this respect, said paragraph No. 10 refers to "the Yardmaster" and obviously is intended to apply to movements within the yard limits of a station where a yardmaster is employed and on duty. However, in the instant case, there was no yardmaster on duty during the period the written instructions were required, and the General Yardmaster, accordingly, assumed the responsibility of issuing the required instructions. To support the employes' contention that General Instruction No. 10 gives yardmasters the exclusive right to issue the written instructions covered thereby, the rule would have to state "a Yardmaster." Since no yardmaster was on duty or assigned to work at Blue Island during the period the Eastward Main Track was out of service on September 8, 1964, it must be concluded that the term "over the signature of the Yardmaster" (Emphasis ours) as used in General Instruction No. 10, was not applicable to the prevailing conditions at Blue Island and the General Yardmaster, who is in charge of the overall operation of the Blue Island Switching District, properly assumed the responsibility of issuing the required written instructions as a duty incidental to his position.

Carrier submits that the work which serves as a basis for the instant claim was performed under circumstances incidental to the General Yardmaster's primary duties, and was not of a volume or character sufficient to require the establishment of a yardmaster's position on the date in question.

The instant claim should be denied, and Carrier requests that this Board so award.

The instant claim has been handled in the usual manner on the property, up to and including the Vice President and General Manager, the highest officer of the Carrier designated to handle claims and grievances, with the exception of that portion of the instant claim for four hours at the punitive rate of pay.

All data contained herein have in substance been presented to the employes and made a part of the particular question in dispute.

Oral hearing is not desired unless so requested by the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: On September 8, 1964, while the eastbound track at Blue Island, Illinois, was out of order, the General Yardmaster issued

instructions to several train crews to use the westbound track while proceeding through the yard. These instructions were given on five occasions — once to yard engine and once to each of four train crews — and their issuance required a total of twenty-five minutes of the General Yardmaster's working time. Petitioner maintains that a trick yardmaster should have been called to issue the orders, and that it was improper for the General Yardmaster to perform the work.

There is no question but that general yardmasters are outside the scope of the controlling agreement. It is equally clear that no trick yardmaster was on duty from 8:45 A. M. to 3:05 P. M., the period during which the disputed instructions were issued. The record also reveals that Carrier failed to present, during discussions of the grievance on the property, any evidence to support its contention that, as a matter of well-established past practice, general yardmasters are entitled to perform the work in question.

In our view, however, it is a compelling consideration that the work complained of consumed no more than twenty-five minutes, or five to six percent of an eight-hour day. We are not satisfied from the record that it was part of a "whittling away" process (cf., Award 1494) or constitutes a substantial invasion of the rights protected by the Yardmasters Agreement.

We have considered Petitioner's assertion that trains receiving instructions of the type in question would be under the yardmaster's authority as long as the instructions remain in effect. However, that contention and the reference to General Instruction No. 10, without additional facts and details, are not sufficient proof that more than twenty-five minutes' work was required of a yardmaster in the present case.

The work in controversy was insubstantial in volume and, under the specific facts before us, did not warrant the employment of a yardmaster for a full day. The claim will be denied. See Awards 406 and 806.

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

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

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

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

The parties to said dispute waived right of appearance at hearing thereon.

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION

ATTEST: M. L. Humfreville
Acting Secretary

Dated at Chicago, Illinois, this 8th day of June, 1966.

**DISSENT OF LABOR MEMBERS TO AWARD 2122
(DOCKET 2079) – RYA vs. GTW**

Stated briefly, the facts of this case follow:

Carrier used an individual outside the Scope of the Yardmasters' Agreement to perform yardmaster work. This was never denied or refuted.

The work involved required someone to be available for a period of 7 hours, 40 minutes, as contended by the Employes and not refuted by the Carrier, although Carrier states that the time required to perform the functions required only 25 minutes, but no proof was submitted to corroborate this statement. Nevertheless, it was necessary to have someone available during the 7 hours, 40 minutes, since there was no way of knowing exactly when it would be necessary to issue the orders.

To avoid payment of a yardmaster day to protect this service, Carrier used a general yardmaster to perform the work, which admittedly belonged to the yardmaster craft, thus violating the agreement.

Notwithstanding the fact that the majority in their Opinion, first two paragraphs, uphold the position of the Employes, they ridiculously deny the claim with the absurd observation, "We are not satisfied from the record that it was a 'whittling away' process (cf., Award 1494) or constitutes a substantial invasion of the rights protected by the Yardmasters' Agreement." This latter statement it makes despite the decision in Award 1494, wherein it was stated, "Employes are entitled to the entire work content of their position that is embraced within the scope of the agreement. . . ." (Emphasis ours.)

The author of this Award 2122 also handed down the decision in Award 1494 and quotations therefore are his opinions. Thus, it is obvious that decision in this case is contrary to the principles previously established, and there was no justification for a denial award, which was definitely erroneous.

We dissent vigorously.

LABOR MEMBERS

**A. T. Otto, Jr.
J. P. Tahney (A)
W. J. Ryan (A)**