

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

George E. Bushnell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that there exists now two sets of gates at Glendale Tower, Los Angeles Division, operated by towermen represented by this Organization and that for such operation, towermen are entitled to compensation of \$10.00 per month effective with the second period of February, 1939."

EMPLOYES' STATEMENT OF FACTS: "Glendale Tower is located on the Los Angeles Division near the passenger station of the Carrier in the City of Glendale. In addition to the operation of levers governing the movement of trains, the towerman handles crossing gates governing vehicular traffic on Brand Boulevard—Glendale Boulevard, the name changing at the point of intersection of the Southern Pacific and Pacific Electric which lines cross just north of the Tower and adjacent thereto.

"The Pacific Electric divides the vehicular traffic which crosses the Southern Pacific tracks at grade and gates operated by the towerman at Glendale Tower govern the vehicular traffic crossing over Southern Pacific tracks, two operations being necessary for each Southern Pacific train movement. No operations of gates necessary for Pacific Electric train movements.

"Agreements in effect between the parties to this dispute are, as relates to rules and working conditions dated September 1st, 1927, and as to rates of pay, May 1st, 1927, as revised July 1st, 1930, and August 1st, 1937."

POSITION OF EMPLOYES: "This claim is filed and prosecuted under Rule 31 (f) of the Agreement in effect:

'Where telegraphers are required to handle highway or street crossing gates, they will be paid five dollars (\$5.00) per month per set of gates in addition to their regular salary.'

"The Rule can have but one meaning, that is—

One set of gates.....	\$ 5.00
Two sets of gates.....	10.00
Three sets of gates.....	15.00
Four sets of gates.....	20.00, etc.

and the only question debatable is as to the number of sets of gates operated at Glendale.

withstanding the method of control, it is still one set of gates. Independent control valves are necessary and desirable from a safety standpoint in order that the employe operating the gates may exercise some discretion and independent control in their manipulation as trains approach the crossing.

"The Organization in progressing the claim with the Carrier has cited Decision No. 3954, United States Railroad Board, in support of this claim. Only a cursory examination of that decision will disclose that the facts and circumstances in that case are neither analogous nor even similar to the facts in this claim. In the claim covered by Decision No. 3954, the gates protected a grade crossing over the tracks of two Carriers. That is not the situation here, as heretofore explained. This claim involves the operation of a set of gates protecting only one highway grade crossing over the tracks of one Carrier, the Southern Pacific Company.

CONCLUSION

"The alleged claim as submitted by the Petitioner is without merit and is apparently based on an incorrect assumption of facts, as has heretofore been explained. No agreement provision supports the claim and Decision No. 3954, United States Railroad Labor Board, which will doubtless be cited, does not support it.

"The Carrier, therefore, requests that the claim be accordingly denied."

OPINION OF BOARD: The dispute between the parties is whether the Southern Pacific crossing gates on Brand Boulevard being operated at Glendale Tower consist of one set of gates or two sets of gates.

In 1922 gates were first installed at this crossing and they remained unchanged until 1929 when the boulevard was widened and the vehicular traffic separated so that it thereafter moved on both sides of the Pacific Electric tracks which occupy the center of this two way boulevard. The gates consist of four arms, two on either side of the Electric Railway tracks and they guard the Southern Pacific crossing.

The employes claim that two operations are necessary for each Southern Pacific train movement because the gates on the one side are operated by a separate air control valve from the other.

The carrier says that the four arms constitute but one set of gates and that the number of air control valves has no bearing on the dispute. It submits a photograph and a location plan of the crossing and a location plan of the Virginian Railway and Norfolk and Western crossings at Walnut Street in Roanoke, Virginia. See United States Labor Board Decision No. 3954.

Rule 31 (f) of the Agreement on which the claim is based reads:

"Where telegraphers are required to handle highway or street crossing gates, they will be paid five dollars (\$5.00) per month per set of gates in addition to their regular salary."

On April 10, 1924, the United States Labor Board determined in Decision No. 2369 that "the Towermen at Glendale Tower shall receive five dollars (\$5.00) a month, additional, account of being required to operate crossing gates." Neither that decision nor the instant record disclose the number of arms then comprising the set of gates at this crossing

On April 14, 1924, just four days later, the Labor Board in Decision No. 2374 promulgated the rule that: "Where telegraphers are required to handle crossing gates they will be paid \$5.00 a set of gates in addition to their regular salary, Rule 31 (f) of the instant agreement, dated September 1, 1927, then followed in due course.

The record does not show whether this agreement preceded or followed the widening of Brand Boulevard and the change in the location of the arms of the gates. Nor does it show the date of Decision 3954 on the operation at the Walnut Street crossings in Roanoke. It does, however, show the layout of these crossings with a set of gates with four arms protecting the Virginian crossing and another set of gates with four arms protecting the Norfolk and Western crossing just a short distance from the Virginian crossing. Walnut street has a single street car track in its center while Brand Boulevard has two vehicular traffic lanes with double electric railway tracks between these lanes.

The record does not show how many air valves are used to control each set of the four arms involved in Decision 3594 but according to the employes' brief in the instant case that decision, which from its number must have been promulgated considerably later than the rule announced in Decision 2374, held that at the Walnut Street crossings "the two sets of gates are operated independent of each other."

There are four arms at Brand Boulevard and there were four arms at each crossing at Walnut Street. If the employes' contention in the instant case is to be upheld, then the Labor Board should have held in the Walnut Street case that there were four sets of crossing gates rather than two.

While Decision 3954 may not be controlling, it is most persuasive when the two layouts are compared. We therefore hold that there is only one set of gates at Glendale Tower.

In view of our holding we do not deem it necessary to discuss the carrier's claim that "long settled and uniform practice in administering a rule should be recognized as reflecting the true intent and purpose of the framers of the rule."

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the carrier did not violate the terms of the agreement and no circumstances are shown which support the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 31st day of July, 1941.