

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Edward F. Carter, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**  
**SOUTHERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated agreement in effect by: (a) permitting able-bodied, former Section Foreman E. T. White to displace, or roll, Crossing Watchman, Mrs. A. E. Belk at Memphis, Tennessee, on January 3, 1946, and (b) denying Mrs. A. E. Belk the right to displace a junior crossing watchman in service at Memphis;

(2) That Mrs. A. E. Belk shall be restored as crossing watchman at Memphis, Tennessee, and paid for all time lost equal to that which she would have earned as a crossing watchman, retroactive to January 3, 1946.

**EMPLOYEES' STATEMENT OF FACTS:** The claimant, Mrs. Anne E. Belk, was employed by the Southern Railway on July 18, 1943 and assigned to the evening shift as a crossing watchman on the Beale Street Crossing, Memphis Tennessee. After having worked a few days, she was injured by being struck by a street car while engaged in her duties as crossing watchman. Having recovered from injuries sustained, she was assigned as crossing watchman on the Union Avenue Crossing, Memphis, on March 17, 1944. Having worked a while on the Union Avenue Crossing, she was rolled, or displaced, by a senior crossing watchman. Being rolled off the job as crossing watchman at Union Avenue, she then displaced or rolled, a junior crossing watchman on the Sledge Street Crossing and continued to work on that crossing until January 3, 1946 when she was displaced by former Section Foreman E. T. White. Being displaced by former Section Foreman White, Mrs. Belk sought to displace one of three junior crossing watchmen, M. K. Wiginton, J. P. Johnsie, or Mrs. Burnson, but was denied an opportunity to displace one of these three crossing watchmen. These three crossing watchmen, who were junior to Mrs. Belk, were working extra at the time, but since then M. K. Wiginton and J. P. Johnsie have been assigned to regular crossing watchmen positions.

Agreement effective August 1, 1940 between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYES:** The only provision in agreement between the Carrier and the Brotherhood of Maintenance of Way Employees that deals with and controls the service of crossing watchmen is Rule 16, appearing on page 91 of the printed agreement, which reads:

In conclusion, the Carrier respectfully submits it has shown that:

(1) Persons employed as highway crossing watchmen do not have seniority or promotion rights, nor do they have displacement rights.

(2) That persons so employed do not have such rights is admitted by the General Chairman in his letter of March 28, 1946, to Assistant to Vice President Dugan (Carrier's Exhibit B) in which he said, "I admit according to the Agreement, crossing watchmen do not come under the seniority and promotion rules \* \* \*."

(3) Positions of highway crossing watchmen are to be filled by the management at its discretion from employees in any Department.

(4) **Men** employed as highway crossing watchmen are included in the Scope of the Agreement with laborers and others, here in evidence, for the purpose of representation only.

(5) Rule 16 is to be utilized to make provision for **men**—

(a) who have grown old, but are physically able to perform watchman service, or,

(b) who have become physically incapable of performing their customary work, but are physically able to perform watchman service.

(6) Mr. White has grown old in the service and while indications are he is physically impaired, he is physically able to perform crossing watchman service.

(7) It was not necessary that Mr. White be physically incapable of performing his customary work before being eligible for placement on position of crossing watchman.

(8) Rule 16 refers specifically to **men**—not women.

(9) Mrs. Belk was employed as a temporary expedient and under the Agreement, here in evidence, did not establish seniority or rights to promotion, nor did she establish a displacement or rolling right.

(10) Mrs. Belk became an ex-employee when Mr. White was assigned to position of highway crossing watchman and there is no obligation to rehire her.

(11) The money claim cannot be valid under the Agreement, here in evidence. Furthermore, it is barred by Rule 19 for period greater than sixty days prior to March 30, 1946.

(12) Carrier did not violate the Agreement, here in evidence, and neither claim is valid.

For all of the reasons given, the claims should be denied, and the Carrier respectfully requests that the Board so decide.

**OPINION OF BOARD:** Claimant, Mrs. Anne E. Belk, was employed by Carrier as a crossing watchman on July 18, 1943. Shortly after March 17, 1944, she was displaced by a senior crossing watchman. She then displaced a junior crossing watchman on another crossing and continued to work at such crossing until she was displaced on January 3, 1946 by former Section Foreman E. T. White, an employee of 34 years service in the Maintenance of Way Department. She then sought to displace one of three other junior crossing watchmen and this opportunity to displace was denied her. The Organization contends that Claimant was wrongfully denied the right to displace a junior crossing watchman on January 3, 1946 and asks that she be restored as a crossing watchman with all wage loss from January 3, 1946.

The rule applicable to the dispute is as follows:

"The provisions of Article II and III will not apply to the positions of track, bridge and highway crossing watchmen, and flagmen at non-interlocked railway crossings. Such positions will be filled by the management at its discretion from employees of any department. It is understood that the men in these occupations are included for the purpose of representation only.

"It is understood that this rule is, so far as possible, to be utilized to make provision for men in all Departments who have grown old or become physically incapable of performing their customary work but are physically able to perform watchman service; it is not to be availed of to care for young able-bodied men who may have been furloughed or out of service for other causes. In its administration the principle of seniority, i. e., give preference to the men oldest in company service regardless of Department when their physical condition will permit, shall be observed." Rule 16, current Agreement.

The foregoing rule means that management may fill positions of track, bridge and highway crossing watchmen from employee who have grown old in service or become physically incapable of doing the work of their positions, if they are physically able to perform watchmen service. In the selection of these employees preference is to be given to men oldest in company service regardless of the department in which they have been employed. By the express provisions of the quoted rule, after assignment to a watchman's position no seniority, promotion or displacement rights can be acquired.

It is pointed out that seniority has been recognized and displacements permitted in the past. This simply indicates that Carrier was willing to handle these matters in the manner shown. It was under no obligation to do so by the terms of the Agreement. This Claimant can acquire no greater rights than the old or disabled employees assigned to watchman positions.

No basis for an affirmative award exists.

**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 Employees involved in this dispute are respectively carrier and employees 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 Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 22nd day of May, 1947.