

Award No. 3899

Docket No. MW-3936

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

THE UNION TERMINAL COMPANY

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

(1) That J. L. Elam be returned to his position of crossing watchman at Dallas, Texas, and that he be allowed eight (8) hours pay at the crossing watchman's rate for each day he has been held out of service subsequent to February 21, 1947, and employes having no seniority as crossing watchmen have been permitted to perform the duties previously performed by Mr. Elam.

EMPLOYEES' STATEMENT OF FACTS: Prior to February 21, 1947, there were in effect two positions as watchman at the Union Terminal, Dallas, Texas; one position working from 7:00 A. M. to 3:00 P. M. and the other working from 3:00 P. M. to 11:00 P. M. J. S. Shaver was employed on the 7:00 A. M. to 3:00 P. M. assignment and J. L. Elam was employed on the 3:00 P. M. to 11:00 P. M. assignment.

On February 18, 1947, Bulletin Number 9-1947 was issued, advertising a position of watchman with assigned hours from 8:00 P. M. to 5:00 A. M., with one hour for meal period. Both Watchman Shaver and Watchman Elam placed bid on this position which by reason of his seniority was awarded to Watchman Shaver, effective February 21, 1947. Subsequent to the abolishment of the two positions and the establishment of the new position, work heretofore performed by Watchman Elam has been performed by various other individuals, such as Redcap Supervisors, Switchmen and Herders, and City Policemen.

Agreement between the parties is by reference made a part of this Joint Statement of Facts.

POSITION OF EMPLOYEES: The Union Terminal Company has at its passenger station in Dallas, Texas, a foot traffic crossing over their tracks at grade level for the use of their passengers. This crossing is located at the North end of the passenger tracks and in addition to its use by the passengers, it is also used by employes with baggage trucks to transport mail, baggage, and express to and from trains.

Prior to February 21, 1947, Crossing Watchman J. L. Elam was for many years assigned to the protection of the traffic over this crossing. His regular assigned hours were from 3:00 P. M. to 11:00 P. M. In addition to the crossing protection, Elam was assigned to supervising the parking lots, both north and south of the passenger station, checking against overtime

the uniformed police officer, who is on duty at the station from 8:00 A. M. until 12:00 midnight, to police the situation vigorously, which has been done with result that offenders have now been reduced to a minimum.

By reason of the falling off in passenger travel following the end of the last World War it was found that the watchmen at the crossing were no longer needed during the daylight hours, consequently the position of day watchman was abolished effective February 21, 1947. The work being done by the daylight watchman on the North crossing at the time the position was abolished has not since been done by any other employe or person.

There is no work to be done at that point. The switchmen protect their cars in movements across the North crossing both day and night as they have always done. There is no longer any need for protection of the North crossing during daylight hours as it is not a public thoroughfare, although as above stated, it is used to some extent by our patrons.

There is no rule in the agreement between this Carrier and the Brotherhood of Maintenance of Way Employes requiring the maintenance of a position that is no longer necessary. On the other hand, it is the prerogative of the Management to determine whether certain work is necessary in rendering service to the public and it is our position that a day position of watchman at the crossing here involved is no longer necessary and request your Board to so find and deny this claim.

Your attention is called to this Board's Awards 66 and 439, also to that part of the opinion in Award 730 reading:

"This Board has repeatedly held that the Carrier is within its rights in abolishing positions when the work has disappeared or substantially reduced in volume."

It must be pointed out that the claim herein is for eight (8) hours pay at the Crossing Watchman's rate for each day the claimant has been out of service subsequent to February 21, 1947. Evidently the claimant has been employed elsewhere during the time he has been out of our service. It is my understanding that he has been, however, we are not informed as to the amount of compensation received. The amount of compensation he has received in outside employment would offset to that extent the claim for pay for time lost. See your Board's Awards 326, 624, 693, 1499, etc., as well as awards rendered by the other divisions of the National Railroad Adjustment Board.

This matter is not mentioned with any thought that the claim will be substantiated. On the contrary, we feel certain that the Board cannot do other than deny it. It is mentioned merely because the Board has ruled in several cases that unless the issue of offsetting the compensation received in outside service from the pay for time lost is raised by the carrier in its submission same will not be considered by the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim here is based on the contention that Carrier abolished a position of crossing watchman and assigned its duties to others not covered by the Scope Rule of the Agreement.

In the passenger station at Dallas, Texas there is a foot traffic crossing over the tracks at one end of the station. It is not a public crossing. Originally passengers who were physically unable to use the stairs to reach an overhead crossing and who had obtained a written permit or who were accompanied by a red cap were the only members of the public allowed to use the crossing in order to reach the trains. Two positions of crossing watchman were established, and watchmen were assigned to enforce such restrictions and to keep those who were not authorized from using the crossing. Later on the restrictions were relaxed, and the public generally were permitted to use the crossing. Thereafter the watchmen were chiefly used to assist the city police in regulating traffic in, and the use of, two automobile parking lots at the station, and to prevent overparking.

On February 21, 1947, the two positions of watchman, one from 7:00 A. M. to 3:00 P. M., and the other from 3:00 P. M. to 11:00 P. M., claimant's position, were abolished. A single position from 8:00 P. M. to 5:00 A. M. (subsequently changed to 7:00 P. M. to 4:00 A. M.) was established, and the other watchman, senior to Claimant, bid it in. Thereafter this claim resulted.

• Claimant is made that the Red Cap Supervisor is now doing the work formerly performed by Claimant in the parking lots. However that cannot be said to be work covered by the scope of the Agreement. Furthermore, since the two parking lots are regulated by a City Ordinance the enforcement of the city regulations as to parking is a function of the city Police Department. Complaint is also made that switchmen and herders guard the crossing when switch engines occupy it. Carrier asserts that such employes have always protected the movement of yard engines over street crossings in Dallas, and when doing so here they are performing their usual and customary duties. We cannot say from the record before us that the protection of such a crossing as is here involved when used by switch engines is work delegated exclusively to Crossing Watchmen either by the Agreement or by long custom and practice.

The facts contained in the record do not show that the regular duties of a Crossing Watchman are being improperly performed by others. Accordingly, the claim must be denied.

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 Employee involved in this dispute are respectively carrier and employee 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 agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1948.