

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Great Northern Railway Company that Agent-Telegrapher F. A. Olson, second Telegrapher H. W. Block and third Telegrapher A. C. May, each be paid Ten Dollars (\$10.00) per month effective September 1, 1947, account required by instructions of the Division Superintendent to flag, by a push button arrangement installed in the telegraph office, two crossings (Third and Fourth Street Crossings) at Dassel, Minnesota.

JOINT STATEMENT OF FACTS: Article XIV-(b), Schedule No. 8, effective September 1, 1947, currently in effect, reads as follows:

"FLAG CROSSINGS. When other competent station help is available, employees will be relieved from flagging crossings. When required to flag crossings, employees will be paid \$10.00 per month."

There is no requirement in operating Book of Rules for agents or operators to flag crossings.

At Dassel, Minn., where the railway runs east and west, there are two public highway crossings, one just west of the depot known as Fourth Street Crossing, and one just east of the depot known as Third Street Crossing.

Sometime prior to April 27, 1946, a Griswold Signal was installed at the Fourth Street Crossing with a push button installed in the depot so this signal could be operated from the depot, but the employees in the depot were not required to operate this Griswold Signal by push button until April 27, 1946, when they received the following instructions from their Division Superintendent:

"Willmar, Minnesota
April 27, 1946
870-A

Mr. F. A. Olson, Agent
Dassel, Minnesota

Just received a complaint from Mr. McNally, Chief Engineer of the Minnesota Railroad and Warehouse Commission, relative to operation of crossing signals at 4th St. Crossing, Dassel.

Mr. McNally states while at Dassel in company with Commissioner Chase on Wednesday, April 24th, they observed an eastbound freight occupied the main line track west of 4th St. Crossing for a considerable period of time prior to its proceeding across the cross-

To the contrary, the entire argument advanced by the Employees in behalf of their request for compensation for "flagging crossings" was based upon their assertion that it was a definite hardship upon the employees due to having to go outside in all sorts of inclement weather and that the flagging of crossings was very hazardous due to the increasing irresponsibility of motorists, in support of which latter argument they cited cases of several employees who had been run down and killed while performing this duty.

Certainly there are none of these objectionable features present herein. The employee does not have to go outside the depot. (See Joint Statement of Facts, reading: "During this operation the operator is required to observe the movement of the train from his office window from the time it arrives until it departs.")

Just as obviously, the second argument relating to the hazard involved does not enter, since he can hardly be run down by a motorist while standing in his office window.

This carrier greatly dislikes to resort to sheer technicalities in the application of schedule rules, preferring to apply such rules on a common sense basis in line with their intent, but, inasmuch as the argument of the Employees in this case is based upon the sheerest of technicalities, the Carrier must, of necessity, meet technicality with technicality.

Therefore, the Carrier holds that in this case at Dassel, the employee does not flag any crossing. The automatic Griswold crossing signal performs this work and all that the operator does is to order its performance by pressing a button which communicates such order in the way of an electric impulse to the signal.

The Carrier points out to your Board that there is no material difference between this action on the part of the operator and that which would be required of him if, instead of pressing a button which set the Griswold signals to flagging the crossing, he was required to instruct a crossing watchman, either by telephone or by pushing a button operating a bell or buzzer, when such flagman should begin to flag for an approaching train. In neither case does the operator flag the crossing; in one case the Griswold signal does it; in the other the flagman would do it.

The employees, therefore, are attempting to read into this rule something which is not contained in the language of the rule itself; since at Dassel they do not in fact flag the crossing; something that was never even thought of during the conferences leading to its adoption, and something which, based upon the arguments advanced by the Employees themselves during such conferences, obviously is not the intent of the rule, since neither the element of hardship due to having to go outside during inclement weather, nor that of the hazard of being run down upon which the allowance specified in the rule was requested, enter into this case.

The Carrier holds that in this case the claim of the Employees is neither upheld by the language of the rule nor by the intent thereof as understood by its negotiators and must therefore be denied by your Board.

OPINION OF BOARD: Agent-telegrapher Olson, second telegrapher Block, and third telegrapher May, each claim compensation at the rate of \$10.00 per month for flagging the two crossings located at Third and Fourth Streets, Dassel, Minnesota, effective September 1, 1947.

The Claimants rely upon the following Rule, (Article XIV-(b), Schedule No. 8), found in the current Agreement which became effective September 1, 1947:

"(b) Flag Crossings—When other competent station help is available, employees will be relieved from flagging crossings. When required to flag crossings, employees will be paid \$10.00 per month."

The negotiations that resulted in the adoption of the foregoing Rule throw little light upon the question as to whether activities of the character herein involved were or were not in the contemplation of the contracting parties at the time. We are, therefore, obliged to resolve the issue from a consideration of the provisions of the Rule itself and the facts disclosed by the joint submission of the parties. It affirmatively appears from the record that "flagging" was and is accomplished in various ways and at many places on the Carrier's railroad. In other words, there does not appear to have been a single recognized method of flagging in use at the time the Rule was promulgated. Significantly, also, the practice with which we are here concerned had already been established when the Rule was agreed upon.

We are inclined to attach more importance to the purpose of the so-called flagging operation than to the amount of time or the physical effort involved in its performance. The proper protection of highway crossings is, of course, a matter of concern to the management of a railroad. The function imposed upon the Claimants required of them a high degree of care and responsibility. In the light of the existence of the Rule and of its comprehensive language, we do not feel that the Carrier is entitled to exact this kind of service without compensating those that perform it. No basis for exempting such service from the application of the Rule can be found in the record.

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 evidence supports the claim that the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of January, 1949.