

Award No. 4845

Docket No. MW-4784

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

DELAWARE & HUDSON RAILROAD CORPORATION

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

(1) That the Carrier violated the agreement subsequent to March 25, 1948 by permitting employees of the Signal Department to erect and paint certain buildings used for the purpose of housing signal apparatus in connection with the installation and operation of automatic short-arm gates and flashers;

(2) That the Carrier further violated the agreement by permitting employees of the Signal Department to install and paint automatic short-arm gates subsequent to March 25, 1948, and

(3) That the employees covered by the scope of the Maintenance of Way Agreement be compensated an equal number of hours at their pro rata rates as was consumed by the employees of the Signal Department in the performance of the work referred to in parts (1) and (2) of this claim

EMPLOYEES' STATEMENT OF FACTS: Subsequent to March 25, 1948, employees of the Signal Department were assigned to the erection and painting of certain small buildings of various dimensions. These buildings were erected for the purpose of housing apparatus used in connection with the installation and operation of automatic short-arm gates and flashers. The erection and painting of all buildings heretofore has been performed by employees covered under the scope of the effective agreement between this Brotherhood and the Carrier. The erection and painting of buildings has always been considered as Bridge & Building work.

Also, subsequent to March 25, 1948, employees of the Signal Department were assigned to the installation and painting of automatic short-arm gates. Heretofore the entire installation of crossing gates and the painting of same has been performed by Maintenance of Way Department employees. The Signal Department, subsequent to March 25, 1948, did make such installations.

We attach as Employees' Exhibits A-1 and A-2, which are photographs of the type of building referred to in this claim. These buildings are metal and set upon concrete slabs as bases. They have a door which allows for the entrance of a signal repairman into this small building in order to maintain or adjust the equipment housed inside. These buildings are permanent installations and the Carrier made many such installations on its system since March 25, 1948.

We also attach as Employees' Exhibit "B" a photograph of an automatic crossing gate with flashers attached. This is the type of crossing gate

In the laying of the concrete piers, the Signal Department employees have performed the mason work on all but one Division where the piers were precast in a shop by the Maintenance of Way employees, with the help of the employees of the Signal Department, and shipped to the point where required. The Signal Department employees then set same in the excavation. The building, or cabin, is assembled by interlocking of some parts and bolting others. This being performed by employees of the Signal Department. At points where the present concrete piers are not used, the Signal Department employees dig holes and place forms therein, into which is poured concrete. When the concrete is set, the forms are removed and building is put together. When the building is completely assembled, the necessary wires and cables are installed. The grading is then done. All like service has always been performed by employees of the Signal Department ever since this type of building has been used to house electrical equipment. Employees of the Maintenance of Way Department have never erected any such buildings.

The inside of these cabins are always painted by Signal Department employees. The outside of the cabins and the short-arm gates are painted by Maintenance of Way Department employees in all cases. The only exception being to the painting of short-arm gates was at Bainbridge and Altamont, when, after installing gates, the Signal Department employees applied the paint.

The employees of the Maintenance of Way Department do not have the knowledge or skill to maintain the electrically equipped short-arm gate. The employees of this department have not been excluded from any work unless it can be considered that when a broken arm is replaced they are being deprived of the few minutes it takes to unbolt the old and apply the new arm. These arms are purchased completely ready to be installed and are carried in stock. It would also require an electrician from the Signal Department to be on hand to remove the wire from the broken arm and wire the arm being installed with electric lamps.

The Carrier reiterates that employees of the Maintenance of Way Department have never erected any buildings used to house equipment for operation of automatic short-arm gates and flashers or any building required to house electrical equipment. The painting of the crossing gates, with the exception of the work at Bainbridge and Altamont, has always been done by the Maintenance of Way Department employees.

(Exhibits not reproduced).

OPINION OF BOARD: In connection with the installation of modern automatic short-arm electric gates and flashers, it was necessary to erect a number of small buildings approximately 6'x6'x7'6". These small buildings have an entrance, serial cable, shelving, rubber matting, and the floor, siding and roof are of steel, lined with celotex and fitted with boards for mounting electrical apparatus. The material for these buildings is purchased, knocked down, from the manufacturer. The work in connection with their construction consists of excavations for foundations, building forms for concrete foundations, pouring concrete into forms, back-filling, erection of the building, painting and the installing of the electrical equipment. It is conceded at the outset that the installation of all electrical equipment is work belonging to the Signal Department. The maintenance of way employees contend, however, that the other work described in connection with the construction of these buildings belongs to them.

The scope rule of the Maintenance of Way Agreement embraces all work which the employees included therein traditionally and customarily performed at the time the agreement was negotiated and customarily performed at the time the agreement was negotiated. The construction of buildings is work included in that which is traditionally and customarily performed by maintenance of way employees. The structures involved are buildings within the meaning of the foregoing statement. It will be observed that they require a foundation, have an entrance and must be assembled. The fact that they are prefabricated and purchased in a knocked down condition does not change their

classification as buildings within the meaning of the rule. Nor does their small size change the application of the rule. We think the result is controlled by Award 4491 to which we adhere. An affirmative award is required on Claim (1).

It is urged in Claim (2) that the installations of the automatic short-arm gates and the painting of such gates is work belonging under the Maintenance of Way Agreement. The construction, operation and maintenance of crossing gates is historically the work of maintenance of way employees. Certainly the excavations, the building of concrete foundations and the back-filling is work that ordinarily belongs to this group. The setting of the unit on the foundation is as much the work of maintenance of way employees after electrification as before. We think this work belongs to the maintenance of way employees, including the painting necessary to be performed as a part of the installation. The maintenance and installation of the electrical appurtenances belong to the Signalmen, including such painting as is strictly incidental to such maintenance and installation. The correctness of the foregoing is supported by the fact that Rule 36(a) lists the positions of gate maintainer and gate maintainer helpers and fixes the rate of pay of each. We think Claim (2) also should be sustained.

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 violated.

A W A R D

Claims (1), (2) and (3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of April, 1950