

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
BOSTON & MAINE RAILROAD**

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

(1) That the Carrier violated the agreement when on September 25, 1949, it abolished the crossing watchmen positions of A. Johnson, A. Stewart, P. J. Chandonnett, and assigned the duties to individuals not within the scope of the agreement;

(2) That Crossing Watchmen A. Johnson, A. Stewart, P. J. Chandonnett to be allowed to return to their former positions on the Portsmouth Branch, Manchester, N. H., and be reimbursed on the basis of eight (8) hours per day at straight time rate for each working day, Monday through Friday, and at time and one-half rate on each Saturday since September 25, 1949, and until such time that they are returned to their former positions;

(3) That the Carrier violated the agreement when on September 26, 1949, it reduced Crossing Watchman Hedwick Cameron's position on the Portsmouth Branch, Manchester, N. H., from eight (8) hours per day to three and three-fourths ($3\frac{3}{4}$) hours per day and assigned the duties to individuals not within the scope of the agreement;

(4) That Crossing Watchman Hedwick Cameron be allowed to work the full eight (8) hours of the position, and that she be reimbursed on the basis of four and one-fourth ($4\frac{1}{4}$) hours per day at the straight time rate for each working day since September 26, 1949, and until such time as proper adjustment is made.

EMPLOYES' STATEMENT OF FACTS: On September 21, 1949, A. Johnson, A. Stewart and P. J. Chandonnett, Crossing Watchmen, having regular assignments on the Portsmouth Branch at Manchester, N. H., were notified that effective with the completion of their work on September 24, 1949, their positions would be abolished.

Subsequent to September 24, 1949, the duties formerly performed by the Crossing Watchmen have been assigned to and are being performed by individuals not within the scope of the Agreement.

On September 21, 1949, Hedwick Cameron, Crossing Watchman at Union Street, on the Portsmouth Branch, Manchester, N. H., was notified

tender's position when automatic electric crossing gates are installed at a crossing formerly protected by one of his represented employees. The need for crossing protection at such a crossing still exists, in other words, work of the position still remains, it was performed prior to electric gate installation by the represented employee. Has Petitioner ever taken such a position? Never, in so far as Carrier is aware. **Petitioner has clearly recognized that his agreement provides no such protection to his represented employees.** He has recognized that it is a managerial prerogative to determine,

- (1) whether or not any crossing protection is necessary,
- (2) whether or not this protection shall be by those employees whose equipment is to pass over the crossing,
- (3) whether the assigned manual protection, if any, shall be allocated to the telegraphers located nearby, to an agent-crossing watchman, or to crossing tenders,
- (4) the hours and days during which manual protection shall be provided at any specific crossing, and
- (5) at any time to increase, decrease, or entirely discontinue manual crossing protection by his represented employees at any specific crossing,

all of the aforesaid managerial prerogatives being subject to properly constituted public authority. Proof of his recognition is evidenced by his appearance, or that of his representative, at many public hearings when Carrier is attempting to secure permission from a regulatory body to install automatic electric crossing gates, discontinue manual crossing protection at a crossing or decrease the hours of such manual protection, and his utter failure, over the years, to ever interpose the slightest complaint or objection when Carrier exercised the aforesaid managerial prerogative.

SUMMARY: Carrier has shown above that there is absolutely no merit in the claim in this docket because,

- (1) it is not supported by rule, and
- (2) past practice clearly supports the Carrier.

The claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: It appears that for many years public highway crossings have been protected as to train movements by one of several methods, to-wit, (1) by a member of the train crew, (2) manually by a crossing tender or by employees within the scope of the Telegraphers' agreement or (3) by automatic signals on crossing gates. It also appears, without challenge, that changes in the type of protection have been made from time to time at various crossings by approval of the State Public Service Commission and without protest from the Organization.

The Scope Rule of the Agreement provides that "the rules of this agreement apply to the following employees on payrolls of the Operating Department: Crossing Tenders." Nowhere in the agreement is there any provision requiring any specific crossings to be protected by a crossing tender nor establishing any criteria for determining which crossings should be so protected. In view of the undisputed past practice and the changes in type of protection afforded with approval of the Public Service Commission after a hearing, we think the Scope Rule, as it states, covers employees in the classification of crossing tender but does not require their employment at any specific crossings.

The changes here involved were made upon approval of the Public Service Commission. If the Organization objects to the discontinuance of protection by crossing tenders, it has a right to object thereto before the Commission but such discontinuance under the circumstances here shown is not a violation of the agreement.

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: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1951.