

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GULF, MOBILE AND OHIO RAILROAD COMPANY

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

(1) That the Carrier violated the agreement when it required or permitted an employe holding no seniority under the effective agreement to replace a broken wooden gate arm on the crossing gate at 5th Street, Springfield, Illinois, on August 15, 1951;

(2) That Bridge and Building Carpenter J. A. Huddleston be allowed four hours pay at his straight time rate because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The replacement of gate arms on the Carrier's crossing protection facilities has in the past been recognized as being Bridge and Building work and has been assigned to and exclusively performed by Bridge and Building Carpenters. Signalmen are generally assigned to install the electrical lighting fixtures which are presently being attached to crossing gates in lieu of hanging kerosene lanterns on each gate arm as was the practice before the advent of electrical warning lights on crossing gate arms.

The installation and replacement of gate arms on other than electrically operated gates continues to be assigned to Bridge and Building Carpenters. However, when electrically operated gates are installed as a replacement for gates operated by air or other means, the Carrier has assigned the replacement and installation of gate arms to employes other than Bridge and Building Carpenters.

On August 15, 1951, a gate arm on the Carrier's crossing gate at 5th Street, Springfield, Illinois, was broken and the work of replacing it was assigned to an employe not covered by the scope of the instant agreement.

The crossing gates at 5th Street, Springfield, Illinois, were at the time electrically operated, having been installed a comparatively short time prior to the date involved, and replaced air-operated crossing gates.

The Employes contended that the replacement of gate arms was properly the work of Bridge and Building Carpenters, that the substitution of an electrical operating device for air or other operating devices did not remove

9. Gate arms are ordered from the manufacturer, ready to install by bolting into place, make necessary balancing and electrical connections. Such installation is not properly carpenter's work.

(Exhibits not reproduced)

OPINION OF BOARD: The claim is: (1) that the Carrier violated the Agreement with the Brotherhood of Maintenance of Way Employees by permitting an employe holding no seniority under the Rules to replace a broken wooden gate arm on the electrically operated crossing gate at 5th Street in Springfield, Illinois, on August 15, 1951; and (2) that Bridge and Building Carpenter Huddleston should therefore be allowed four hours pay at straight time.

In the Statement of their Position the Employees cite not only their own 1950 Agreement for the Northern Region, but also the 1950 Agreement of the Brotherhood of Railroad Signalmen of America.

The Scope Rule of the Employees' Agreement (Article 1) provides:

"These rules govern the hours of service and working conditions of all employes in the Maintenance of Way and Structures Department, * * * except the following:

"(b) Signal maintenance forces;

"* * *

"(d) Such other employes as may be included within the scope of other schedules of hours of service and working conditions."

The Classification of Work Rule (Article 30), states that bridge and building employes' work consists, not of "all paint, mason, concrete, wood (etc.) work", but of all such work in connection with "bridges, shops and roadway buildings," and other items not here concerned, "and other fixtures made in and permanently recognized as B. & B. work, * * *."

The question, therefore, is whether the work claimed is work on "other fixtures made in and permanently recognized as B. & B. work."

The Employees' Statement of Facts in the Joint Submission includes the following:

"The replacement of gate arms on the Carrier's crossing protection facilities has in the past been recognized as being Bridge and Building work and has been assigned to and exclusively performed by Bridge and Building Carpenters. * * *

"The installation and replacement of gate arms on other than electrically operated gates continues to be assigned to Bridge and Building Carpenters. However, when electrically operated gates are installed as a replacement for gates operated by air or other means, the Carrier has assigned the replacement and installation of gate arms to employes other than Bridge and Building Carpenters.

"On August 15, 1951, a gate arm on the Carrier's crossing gate at 5th Street, Springfield, Illinois, was broken and the work of replacing it was assigned to an employe not covered by the scope of the instant agreement.

"The crossing gates at 5th Street, Springfield, Illinois, were at the time electrically operated, having been installed a comparatively short time prior to the date involved, and replaced air-operated crossing gates."

The Carrier's Statements of Facts includes the following:

"The claim arises because a gate arm at the 5th Street crossing in Springfield, Illinois, was damaged in a severe windstorm, and a signalman and assistant signalman replaced the arm and made the necessary electrical connections, balanced the arm and tested it for proper functioning.

"* * *

"This crossing protection is an electrically operated protective device ordinarily used by railroads at highway or street crossings at grade to warn motorists of approaching or passing trains. The protection device consists of flashing lights, bells, and a wooden arm that lowers across the intersection when a train approaches. The arm is made of special lightweight wooden strips approximately one inch thick by eight inches wide. The arm is operated by an electric motor and balancing is an important factor in its proper functioning. The wooden arms are ordered from a factory and come assembled, wired and painted, and ready for installation by bolting into place. Wires are strung along the arm which contains three warning lights.

"Similar electrically operated crossing protection devices have been used on this carrier for approximately 15 years, and their installation and maintenance have always been considered the work of signalmen.

"The particular crossing protection signal at 5th Street in Springfield was installed in 1949. Prior to its installation, the crossing was protected by a crossing watchman.

"The repairs to the crossing protection arm on August 15, 1951, consumed approximately four hours of the signalman's and assistant signalman's time. The repairs consisted of replacing the damaged arm by bolting in the new arm, connecting the wiring and testing the crossing arm by testing the circuits in such a way that the arm would raise and lower properly."

The Employees disclaim any electrical work. The record does not show how much of the four hours' work consisted of electrical connections and testing, but the latter presumably took a substantial amount of time.

The record shows that commencing in 1936, over 150 electrically operated crossing gates have been installed. In their Statement of Facts the Employees state, as above noted, that "when electrically operated gates are installed as a replacement for gates operated by air or other means, the Carrier has assigned the replacement and installation of gate arms to employees other than Bridge and Building Carpenters". The gate in question replaced a manually operated gate.

From the Employees' above admission and other undisputed evidence in the record, it appears that when the Scope Rule was re-adopted in 1950 and intermediate dates since 1936, the installation and repairs of electrically operated crossing gates were being done by signalmen. Apparently the propriety of that action was not questioned until the filing of this claim and its companion claim, Docket MW-7574, Award 8177, in 1951.

The employees contend that however the gates are operated, the work of bolting a new wooden gate arm in place is exactly the same, and is done by the same tools generally used by carpenters. Since the arms are complete when supplied for installation and are merely bolted in place, the tools used would seem rather to be those habitually used by electricians, machinists and others. However, as noted above, the Rules do not list as B. & B. work all work involving wood or done with certain kinds of tools. They list work

on specific installations and (1) other fixtures (2) made in and (3) permanently recognized as B. & B. work.

Obviously the "fixture" is the gate, and not merely the wooden portion of it to be replaced. That meaning is dictated, both by the general definition of "fixture", and the functional entity of the specific items preceding the words "and other fixtures" in Article 30.

The other two requirements are that the fixtures in question must be both "made in" and "permanently recognized as" B. & B. work. Neither of these requirements is fulfilled. The record does not show that these gates are made in B. & B. work. As for the wooden arms themselves, the record shows that they are purchases ready made from a manufacturer, so that if they themselves were the "fixtures" they could not qualify as made in B. & B. work. In view of the admitted practice since 1936 we cannot find that these fixtures are permanently recognized as B. & B. work. Thus none of the three requirements is complied with.

Since the above consideration disposes of the claim it is unnecessary to consider other questions, such as the express exclusion (Article 1) of maintenance forces and employees included under other agreements; or of the applicability of the Signalmen's Agreement and the propriety of considering this docket without the participation of the Brotherhood of Railroad Signalmen of America.

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 1, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tumunon
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December, 1957.