

Award No. 9333

Docket No. MW-8328

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BOSTON & MAINE RAILROAD COMPANY

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

(1) The Carrier violated and continues to violate the effective Agreement when it assigned the work of operating portal doors of Hoosac Tunnel to employees who hold no seniority right thereunder;

(2) All employees of Section No. 50 who are adversely affected be paid for all monetary loss suffered since January 10, 1955 and to continue until such time as the violation referred to in part one (1) of this claim is corrected.

EMPLOYEES' STATEMENT OF FACTS: Hoosac Tunnel, located on the Boston and Maine Railroad at North Adams, Massachusetts, is four and three-fourths miles in length and is cut through solid rock. There is a continuous water seepage in this tunnel, especially on the West-end. In cold weather, this water seepage freezes, causing large accumulations of ice to form on the rails, ties and road-bed, thus making hazardous track conditions. In order to minimize the hazards of this ice, many, many years ago, starting soon after Hoosac Tunnel was completed in 1875, the Carrier installed large wooden swinging doors at the tunnel opening on the West-end, to help keep out the freezing winds. A Trackman was assigned to each of three shifts, seven days per week, to open and close these swinging doors for each passing train by means of a hand-operated winch. These doors were wired electrically in such a way as to prevent a clear signal from being shown to approaching trains when the doors were closed. A small shanty, was provided for the Trackmen assigned to this work and a telephone installed to provide direct communication with the tower at all times and by which means he was notified of each approaching train so that he could open the tunnel doors.

During the Fall of 1954, Maintenance of Way Bridge and Building forces assisted in installing a new metal overhead door which replaced the large wooden doors at the West portal of Hoosac Tunnel. An electric motor was installed to raise and/or lower this overhead metal door which is set in operation by a pushbutton placed in the North Adams Signal Tower. Special electric controls were also placed at the tunnel door to be used by trackmen in

The new doors can be opened or closed in 18 seconds from the time the switch is turned on as compared with the former method which took up to 30 minutes to operate under the old system. These new "Guillotine" type doors, electrically operated, and controlled by the tower director, did away with the necessity of the train director to make a 'phone call to have a sectionman turn the winch by means of a crank which would open or close the doors when required and resulted in a much smoother, safer and swifter operation. As an example—these doors could be open or shut in 18 seconds, as stated above, which alleviated the icy conditions and no longer created the intensive forecasting required by the tower director under the old method.

The tower director controlled this operation from the North Adams Tower previously, and is doing the same thing now.

The sectionman did not have any control over these doors at any time. As stated above, the only time that the sectionman made a move in regard to these doors was under the express orders and direction of the tower director on duty, coming under the O.R.T. Agreement.

The Petitioner is actually requesting that the Carrier, during winter months, put a sectionman in the Signal Tower alongside the tower director and when the "model board" indicates that a train is approaching the Tunnel, that he be allowed to reach over and turn the switch which opens the new "guillotine" type doors.

This, of course, is absurd, and it is difficult to understand how the Petitioner can submit such a claim.

The turning of this switch to open and close these Tunnel doors, is just as much a part of the train director's duties as was the use of the telephone previously to notify the sectionman to turn the crank for the opening or closing of the doors. As stated above, the tower director controls these doors and merely because the manual operation became obsolete, it cannot now be said that a sectionman, who is a laborer, must be the man used to press the button to open the doors under the new system. I do not think your Honorable Board can condone such a demand.

This claim should be declined as it is wholly without merit or any rule basis.

All data and arguments contained herein have been presented to the Petitioner in conference and/or correspondence.

OPINION OF BOARD: This claim stems from the introduction on November 23, 1954, of a new electric process to open and close tunnel doors located at the west portal of Hoosac Tunnel at West Adams, Massachusetts. Prior to the aforementioned date and for a very substantial period of time, a trackman had been assigned on each shift to operate the doors by hand power upon receiving telephoned information as to approaching trains from another employe, a telegrapher known as tower director, stationed in a tower three-quarters of a mile from the tunnel. With the advent of the new process, the trackman's work of operating the tunnel doors was abolished and the tower director was assigned to operate the electric push button or switch located in the tower, that thereafter opened and closed the doors.

Preliminarily, it may be noted that due notice has been given the Telegraphers' Organization of the proceedings in this matter. The present claim is therefore before this Division for decision on its merits.

However, Carrier maintains that we are precluded from considering the merits and that the claim must be dismissed since it failed to name the Claimants and therefore is not in compliance with the requirements of Article V, Section 1 (a) of the 1954 National Agreement. This contention was not raised on the property and in any event, in this Referee's opinion, lacks merit since the identity of each of the Claimants, though not specifically mentioned is readily ascertainable. See Awards 8526 and 9248.

Turning to the merits of the case, it is Petitioner's contention that Carrier violated the applicable Agreement by unilaterally and arbitrarily transferring work exclusively performed by trackmen for about eighty years to employees who held no seniority rights under the Agreement.

The Scope Rule of the Agreement is not helpful since it is vague and does not specifically deal with the work in question. It is appropriate therefore to consult past practice to explain the intent of the parties. See Award 5407. The evidence as to such practice indicates that for many years prior to the new process the work in question was a dual operation, initiated by advice from the tower operator and manually carried out by the trackman. Under the old procedure the latter used a crank to manipulate the doors in a slow manual operation. It is not material, although Carrier emphasizes the point, that he may have performed the operation under the express direction of the train director and under no conditions used his own independent judgment in opening or closing the doors. It is pertinent, however, that both employees were part of the same process under the old procedure, although there was a division of work between them.

In the new operation, the tower operator still initiates the doors' opening and closing but there is no longer any work for the trackman. The manual work the latter did is now performed by electric power. In our view, it would be straining technicalities to an unreasonable and impractical degree to rule that Carrier must assign the trackman to push the button in the tower. This is not a case where a Carrier abolished a position but substantial duties of that position remained and were transferred elsewhere. Cf., e.g., Awards 864 and 1217. There is no evidence that the tower operator's duties were increased by the abolition of the trackman's tunnel-door position. The clear fact is that there is no showing here, under even the most favorable interpretation of the record, that more than a negligible amount of the trackman's assigned tunnel-door duties remained to be performed after the new electric process went into effect.

In view of the foregoing considerations, we can not find that the record establishes a violation of the Agreement. See Awards 8660, 8656, 8544, and 3051; cf. 4768.

The claim will 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 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 breached.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1960.