

Award No. 9610

Docket No. MW-7979

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ERIE RAILROAD COMPANY

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

1. The Carrier violated the Agreement when it abolished positions of crossing watchmen at South Oliver Street, North Tonawanda, New York, as of July 24, 1953, and the crossing protection work at that point thereafter assigned to and performed by individuals holding no seniority rights under the Agreement between the Erie Railroad Company and its Crossing Watchmen, Drawbridge Engineers and Drawbridge Tenders represented by the Brotherhood of Maintenance of Way Employees;

2. Crossing protection work at South Oliver Street, Tonawanda, New York, be restored to employees subject to the rules of the Agreement referred to in Part (1) of this claim;

3. Crossing Watchmen John Thom, Hoyt Butler and Glenn Gardner be allowed eight hours' straight time pay for each day in which crossing protection work at South Oliver Street, Tonawanda, New York, is assigned to and performed by other than Crossing Watchmen subject to the Agreement referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Prior to July 24, 1953, Maintenance of Way Crossing Watchmen performed all of the work in connection with furnishing crossing protection at South Oliver Street, North Tonawanda, New York.

Effective July 24, 1953, the Carrier abolished the crossing watchmen positions at South Oliver Street Crossing and individuals holding no seniority rights under the Agreement between the Erie Railroad Company and its Crossing Watchmen, Drawbridge Engineers and Drawbridge Tenders, repre-

detrimental to the safe efficient operation of the Carrier to have relinquished this right exclusively to the employees covered by the Crossing Watchmen's Agreement. A sustaining award would have the effect of giving the employees this right.

As near as can be determined, Petitioner made no protest to the Public Service Commission of the State of New York when application was filed by the Carriers. Therefore, in accordance with Award 5575 and established past practice, petitioner has no recourse under an agreement void of any guarantee provision.

Part 3 of the claim requests that the three named claimants, "be allowed eight hours' straight time pay for each day . . ." Even if the claim were a justified one, which it is not, the claimants cannot show that they lost any work because the positions which were no longer required were abolished.

On July 24, 1953, claimant John Thom exercised his seniority rights by displacing at Felton Street Crossing, North Tonawanda, N. Y. He continued in the position until March 25, 1954 when he was awarded a position at Robinson Street, North Tonawanda, the position he now holds.

Claimant Hoyt Butler also displaced at Felton Street, North Tonawanda. He continued in this position until he retired on February 13, 1954.

Claimant Glenn Gardner did not work at Oliver Street at the time the positions were abolished. He was, however, displaced by claimant Butler. On July 30, 1953, he exercised his seniority rights at Main Street, Niagara Falls, N. Y. He was absent account illness from September 24, 1953 until February 22, 1954. He resumed duty at Felton Street on February 23, 1954 and continued as such until March 24, 1954. He then worked at Thompson Street from April 1, 1954 to April 30, 1954. Following this, he was absent and on July 13, 1954 he was disqualified by the Chief Surgeon. He was subsequently qualified for duty and resumed service on March 7, 1955 at Cleveland Avenue Crossing.

The foregoing clearly shows that claimant Thom lost no time. Further, claimant Butler retired on February 13, 1954 and could have no claim. Similarly, claimant Gardner has no claim because he either worked or was absent for reasons just stated.

Based upon the reasons and facts furnished by the Carrier together with authorities cited, the Carrier submits that the claim is without merit and should be denied.

OPINION OF BOARD: Prior to July 24, 1953, the Carrier and the New York Central Railroad jointly maintained crossing protection at South Oliver Street, North Tonawanda, New York. The work consisted of the ordinary manual use of signs, lanterns, and whistles handled by Crossing Watchmen, and was assigned to and performed by the three Claimants who held Crossing Watchmen positions covered by the Agreement of July 1, 1951 between the parties.

On July 24, 1953, pursuant to approval of the New York State Public Service Commission, the two Carriers completed the installation of electrically operated crossing gates at the South Oliver Street Crossing, and, since that date, activation of the gates has been required of the New York Central

Towermen stationed near the crossing. On the date mentioned, the three Crossing Watchmen positions were abolished.

Petitioner contends that under the Scope and Seniority Rules of the Agreement between the parties, crossing protection is work accruing to the seniority class of Crossing Watchmen, and that since manual operation remained to be done in connection with the electric gates, the Carrier violated the Agreement by assigning such work to a class of employees outside coverage of the Agreement.

The record does not establish these contentions. While Crossing Watchmen furnished crossing protection by signs, lanterns and whistles, at the South Oliver Street crossing for many years, no provision of the Agreement confines all crossing protection to this class of employees either at that location or any other location on the property. The record shows, without contradiction, that during the same period, and even prior to the execution of the Agreement relied on, employees covered by the Telegraphers' Agreement were responsible for crossing protection at locations on the property. The record also establishes that members of train crews on Carrier's Wyoming and Buffalo Divisions have regularly furnished flagging protection at crossings for their trains.

The crossing protection work of Claimants consisted of the ordinary and normal use of signs, lanterns and whistles. There is no doubt that such work was abolished, and no contention is made that Carrier was prohibited from such action. However, Petitioner argues that some vestige of their manual crossing protection work remains by reason of the fact that the electric gates are activated by the movement of a lever. We do not agree. If the lever is moved but the electric power device fails to lower the gates, no crossing protection is furnished. As we see it, the gates, not the lever, furnish the crossing protection. The tools of the Crossing Watchmen—signs, lanterns and whistles,—furnished crossing protection only when they were used by the Crossing Watchmen for that purpose. The electric gates replace both. See Award 9313. Furthermore, as already found, neither the Agreement nor practice confines all crossing protection to Claimants' class.

Petitioner states that Crossing Watchmen actuate electric crossing gates at a number of locations on the property. We do not say that such function may not be assigned to that class of employee. We hold only that the claim here is not established by 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of *THIRD DIVISION*

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 2nd day of November, 1960.