

Award No. 10302

Docket No. MW-9330

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

George D. Bonebrake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

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

(1) The Carrier violated the effective Agreement, beginning on February 13, 1956, when it assigned Crossing Watchman's duties at Jersey City, N.J., Central Division, to employees not covered by the scope of the effective Agreement;

(2) The senior Crossing Watchman on the Central Division now be paid the equivalent number of hours worked by other than Maintenance of Way Crossing Watchmen from February 13, 1956, until the violation referred to in part one (1) of this claim is corrected.

EMPLOYEES' STATEMENT OF FACTS: Prior to and following January 13, 1956, contractors were engaged in the erection of a Pier for one of the approaches to a new Turnpike which was to cross the Carrier's tracks west of Claremont Crossing, Jersey City, N.J. To enable these contractors to move materials to and from the Pier site, a new roadway, leading from Claremont Crossing was built for a distance of several hundred feet.

On January 13, 1956, the Carrier assigned a Transportation Department Flagman, who holds no seniority rights under the effective Agreement, to protect this new crossing from approaching trains, by giving hand signals to the operators of the contractor's trucks to proceed or stop, before passing over this crossing.

The Claim as set forth herein was filed; the Carrier denying the claim throughout all stages of handling.

The Agreement in effect between the two parties to this dispute dated June 1, 1941, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts:

We are attaching as Exhibit "A" a plan of the area involved in the instant claim showing Claremont Crossing (also known as Caven Point Road), the site of the pier construction and in red, the route traveled by the trucks to the construction work.

The duties of the Transportation flagman located at Claremont Crossing, east of the construction work, was to coordinate the movement of trucks and other pieces of machinery over that portion of Claremont Crossing into the temporary roadway with the rail movements over the various main tracks so that the trucks would not have to stop on the crossing when once they were permitted to proceed to or from the point of construction. Furthermore, the Transportation flagman located at this point, as well as the Transportation flagman located west of the construction work, were under the supervision of the Transportation conductor who was located at the construction work controlling the movement of rail operations account of the construction men, with cranes, etc., fouling the adjacent main tracks.

Insofar as the normal flow of traffic over Claremont Crossing was concerned; as we have previously stated, this was handled by the Maintenance of Way watchman and ground-man on duty at that point for that purpose.

Inasmuch as the Transportation flagman was assigned at Claremont Crossing to control the movement of rail traffic, as well as trucks, over the crossing to the temporary roadway, thereby not violating any of the rules referred to by the employes, plus the fact no one suffered any contractually compensable loss thereby, this claim is without merit and should be denied in its entirety.

The Carrier affirmatively states that all data contained herein has been presented to the employes' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute arose out of the assignment and use by Carrier of transportation Employes to perform work alleged to be of the character customarily performed by Maintenance of Way Crossing Watchmen. The circumstances that brought this dispute about, were of a temporary nature, and arose because of the construction of a pier or piers adjacent to Carrier's tracks to support an overhead bridge of the New Jersey Turnpike. In order to assist the Contractors who were constructing the piers, temporary roadways were built leading from the Claremont Avenue crossing, Jersey City, N.J., parallel to the track for approximately 700 feet.

On February 13, 1956 a flagman was assigned and used to protect movements over these temporary roadways from approaching trains, by giving hand signals to the operators of contractors trucks. The temporary roadway, with which we are principally here concerned, entered Claremont Avenue between crossing gates for traffic on Claremont Avenue. These gates were operated by Maintenance of Way Crossing Watchmen around the clock, who were located in a tower near the crossing, assisted by crossing ground-men.

The temporary road, principally in dispute, was approximately 12 feet wide, and was adjacent to Carrier's main Track 3. There were, in this locality 8 main tracks and a number of yard tracks. This temporary road led from Pier 13. The other temporary road, which is secondarily involved, led from Pier 14. It crossed 4 yard tracks west of Claremont Avenue crossing, and entered such street south of the tracks and the gates. A flagman was stationed at this crossing (designated as 2A on Access Road "D" on a map submitted by Petitioner in its brief, as to which map Carrier does not object). The flagman at the Claremont crossing is the one with which we are principally

concerned. Both flagmen received signals from the conductor and/or brakeman located at Pier 13, as to approaching trains, which information was received by telephone located for that purpose at or near the Pier.

The flagman at the Claremont crossing moved out to or was stationed on, at least part of the time, the crossing itself. He was not restricted in his duties to the temporary road, but extended them to the crossing. As stated by the Carrier in its submission:

"The duties of the Transportation flagman located at Claremont Crossing, east of the construction work, was to coordinate the movement of trucks and other pieces of machinery over that portion of Claremont Crossing into the temporary roadway with the rail movements over the various main tracks so that the trucks would not have to stop on the crossing when once they were permitted to proceed to or from the point of construction." (R. 17, 18. Emphasis ours.)

The flagman at the crossing over the yard tracks for the temporary road leading to and from Pier 14, did not extend or have extended his duties onto Claremont Avenue.

The point involved is not necessarily how far or where flagman duties are performed, but whether it extends to and includes for a substantial period of time, a public crossing where watchmen customarily perform their duties. Here we find that there was an encroachment. True, the flagman for the Claremont crossing was concerned only with the movement of trains and contractor's trucks. In that respect he was not involved with normal traffic on Claremont Avenue, but that fact alone does not take him from out of the purview of the Agreement. Even though the flagmen's duties were concerned only with a segment of those of the watchmen, there was to that extent an overlapping of duties, which overlapping here is sufficient to remove him from the category of being only a flagman. This is not to say that any and all overlapping creates such a result, but here we find such a situation to exist.

The Agreement specifically sets forth in Rule 48 "Crossing Watchmen," and in Rule 1, Scope, it is stated:

"The rules contained herein shall govern the hours of service, working conditions and rates of pay of all employees in any and all sub-departments of the M. of W. and Structures Dept. represented by the Brotherhood of Maintenance of Way Employees, and such employees shall perform all work in the M. of W. and Structures Dept." (R. 5. Emphasis ours.)

Without belaboring the issue, we are of the opinion, and so find, that the assignment and use of a flagman at and on the Claremont crossing violated the Agreement but that the one at the crossing over the yard tracks for the access road to Pier 14 did not create a violation. This decision, of course, is limited to the facts of the case.

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 has been violated as herein set forth.

AWARD

Claim sustained as to Claremont crossing only, and denied as to other crossings or flagmen.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Date at Chicago, Illinois, this 16th day of January, 1962.