

Award No. 10402

Docket No. MW-9399

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it abolished position as Crossing Watchman at Bates Street, St. Louis, Missouri, and thereafter assigned the crossing protection to Switchmen:

(2) Crossing protection work at Bates Street, St. Louis, Missouri, be restored as it was prior to January 24, 1956, to the employees holding seniority under the provisions of the effective agreement;

(3) Crossing Watchman Roosevelt Davis be paid at his respective straight time rate for all time that his crossing protection duties have been performed by Switchmen, beginning sixty (60) days prior to January 24, 1956, and continuing until the violation has been corrected.

EMPLOYEES' STATEMENT OF FACTS: Crossing protection work at Bates Street, St. Louis, Missouri, has historically and traditionally been assigned to and performed by Maintenance of Way Crossing Watchmen.

Prior to January 24, 1956, positions as Crossing Watchmen, Bates Street, St. Louis, Missouri, were abolished account of installation of automatic gates. Due to track circuits and switching that was required at this location, manually operated push-button controls were installed to operate these automatic gates for the protection of pedestrian and vehicular traffic and such work was assigned to and performed by Switchmen, who hold no seniority rights under the effective Agreement.

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 August 1, 1950, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

"Three hours a day are not a substantial part of an employe's time when he works eight hours per day."

In conclusion, it is the Carrier's position that, in the case here under consideration, the installation and operation of the automatic devices resulted in the crossing protection work being very nearly non-existent, insofar as the work is performed by employes of other crafts or classes. The duties of providing crossing protection do not belong to crossing watchmen exclusively, and in this case the quantity of such work being performed by switchmen is a very inconsequential amount.

There is no agreement requirement or merit to substantiate payment of this claim, and it is hoped you will so find.

(Exhibits not reproduced.)

OPINION OF BOARD: Bates Street is a public Street which crosses the Missouri Pacific Railroad Company property within the switching limits of the St. Louis Terminal Division. Prior to April 4, 1955, this crossing was protected with manually operated gates, with one watchman for each shift on duty during a 24 hour period, seven days a week. Claimant Roosevelt Davis was the highway crossing watchman on the first shift at Bates. The Employees contend that the Carrier was in violation of the Agreement on August 30, 1955, when it abolished Claimant's position and thereafter had the work of affording crossing protection performed by Employees outside the coverage of said Agreement.

Effective April 4, 1955, the manually operated gates were replaced by gates and flashing lights activated by track controlled electric circuits. As of that date the second and third positions of Crossing Watchmen were abolished, the first shift position occupied by Claimant was continued in effect until August 30, 1955 when it was abolished.

The employees contend that the operation of the gates is semi-automatic while the Carrier avers it is entirely automatic. The gates are activated by the presence of cars or engines within the area of operating electrical circuits. It is not necessary for Switchmen to manipulate the gates because the approach of equipment will raise them.

There are instances when cars or engines are standing or being moved within the activating circuit, when a Switchman may turn the switch to raise the gates for their own convenience rather than move the equipment off the circuit. This record convinces us that the gates are automatically operated.

In Award 9313, this Division said:

"It is well settled that it is not a violation of an Agreement to install labor saving equipment even though jobs are thereby eliminated. Awards 3051, 4063, 6416, 8656. But Claimants contend that the new gates are only 'semi-automatic' by reason of the occasional manual operation thereof at the Biddle Street Tower, and that the change constitutes the transfer of crossing watchmen's work to the members of another craft.

"It is obvious that these gates are fully automatic in normal operation and thus supersede the watchmen. It is difficult or impossible to imagine any automatic mechanism which will not some-

times require manual control. The above instances of physical operation, which are infrequent and involve trivial amounts of time, do not constitute the transfer of crossing watchmen's work to the telegraphers, for that is being performed by the automatic gates."

In Award 5331, this Division said, we quote:

"Except insofar as it has restricted itself by the Collective Bargaining Agreement or as it may be limited by law, the assignment of work necessary for its operations lies within the Carrier's discretion. It is the function of good management to arrange the work, within the limitations of the Collective Agreement in the interests of efficiency and economy."

The record shows that the crossing watchman work at Bates Street Crossing practically disappeared when the automatic crossing protection device was placed in service, there was but a trivial amount left; and no watchman was needed.

Nowhere in this Agreement is protection of crossings given exclusively to Maintenance of Way employees.

In Award 9605—this Division said, we quote:

"Nowhere in this Agreement can we find any provisions requiring any specific crossings to be protected by a flagman, nor establishing any criteria for establishing which crossings should be protected by what craft. In view of the past practice that the work of protecting crossings has been performed by members of more than one craft, and since the Carrier is not prohibited from abolishing jobs, we must conclude that the Agreement has not been violated and the claims must be denied."

In view of the facts set out above, the claim must 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 there was no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of March 1962.