

Award No. 10545

Docket No. MW-8967

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

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

- (1) The Carrier violated the effective Agreement when, on July 22, 1955, it abolished the position of Crossing Watchman at Danforth Street, Taunton, Mass., and thereafter assigned the work of protecting this crossing to a Switchtender, who holds no seniority as a Crossing Watchman;
- (2) Crossing protection work at Danforth Street, Taunton, Mass., be restored as it was prior to July 22, 1955, to an employe holding seniority in the effective Agreement;
- (3) Crossing Watchman Paul T. Clark be paid at his respective straight time rate for all time that his crossing protection duties have been performed by the Switchtender from July 22, 1955, until the violation has been corrected.

EMPLOYES' STATEMENT OF FACTS: The operation of crossing gates and affording crossing protection work necessary to be performed between the hours of 6:00 A.M. and 2:00 P.M. over the Carrier's tracks at Danforth Street, Taunton, Massachusetts has **always** been exclusively assigned to and performed by Crossing Watchmen holding seniority under the Agreement between the two parties to this dispute.

Effective July 22, 1955, under the guise of abolishing the crossing watchman's position at the aforesaid location, the work of operating the crossing gates and affording crossing protection between the hours of 6:00 A.M. and 2:00 P.M. at Danforth Street, Taunton, Massachusetts, was unilaterally and arbitrarily assigned to and performed by other than employes holding seniority under the Agreement between the two parties to this dispute.

The claimant employe was the incumbent and owner of the crossing watchman's position at this location at the time the work of that position was

may be found in Article 18(b) of the contract with the Order of Railroad Telegraphers which provides:

"Employees on positions regularly filled six or seven days per week and who are required to protect highway crossings shall be paid \$1.20 per week; employees on positions regularly filled but five days per week and who are required to protect highway crossings shall be paid \$1.00 per week."

There are attached representative examples of earlier cases in which the final denial decision has not been appealed:

Exhibit	Decision of
C	September 16, 1954
D	November 9, 1950

Upon what authority Employees seek a different result in this proceeding Carrier is not advised. In accord with the precedents cited above, it is submitted the conclusion in the present case should also be:

Claim denied.

All of the facts and arguments used in this case have been affirmatively presented to Employees' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization alleges that the Carrier violated the September 1, 1949 Agreement when on July 22, 1955, it abolished the first trick Crossing Watchman's position of Claimant Paul T. Clark at the Danforth Street Crossing, Taunton, Massachusetts, and assigned the work to a switchtender who holds no seniority as a Crossing Watchman.

The crossing in question is a grade crossing adjacent to a reportedly busy freight yard and is protected by standard crossing gates. Hand switches are used in main line and yard tracks while levers, located in a shanty at the crossing, control crossovers in the running tracks.

The record reveals that the Danforth Street Crossing, up to July 22, 1955, was protected as follows:

Trick	Classification	Organization
First	Crossing Watchman	Maintenance of Way
Second	Switchtender	Trainmen
Third	Switchtender	Trainmen

The controlling Agreement cites the work of a Crossing Watchman as "Watching at crossings and protecting traffic." While the record doesn't delineate all the duties of a switchtender, it does indicate that a switchtender operates switches involved in the movement of train traffic while a Crossing Watchman does not. From the crossing protection data, supra, it is equally evident that the second and third trick switchtenders also handled the crossing gates at the Danforth Street Crossing during their tours of duty.

It should be noted that the Organization did not question the Carrier's statement that "due to changes in freight schedules, heavier trains and increased traffic handled at Taunton yard, the services of a switchtender at Danforth Street became essential to avoid intolerable delays."

It must also be noted that in the record, the Organization made no protest or reference to the work performed by the second and third trick switchtenders even though part of their work involved:

1. "Watching at crossings and protecting traffic";
2. and handling the crossing gates.

Thus, we must conclude that the Organization did not have an exclusive right to the "Crossing Watchman's Work" at the Danforth Street Crossing and that the Agreement was not violated by the Carrier. However, we readily admit that under different circumstances the Organization's exclusive right to "Crossing Watchman's Work" might readily be established.

This case is factually distinguishable from the Awards cited in support of the Organization's position. Therefore, such Awards did not give comfort or support to the Organization's case.

Accordingly, we must conclude that the Carrier did not violate the Agreement and deny the claim.

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 Carrier did not violate 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 25th day of April 1962.