

Award No. 10729

Docket No. MW-9604

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert J. Ables, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

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

(1) The Carrier violated its Agreement with its Maintenance of Way and Structures Department employes when it assigned employes outside the scope thereof to perform painting work in the Belmar, New Jersey area which was of the character theretofore assigned to and performed by B&B Painters;

(2) That each B&B Painter on the NY&LB Division be allowed pay at their respective straight-time rates for an equal proportionate share of the total man-hours consumed by other forces in performing the painting work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Maintenance of Way and Structures Department Bridge and Building Painters have historically and traditionally performed the work of painting flasher poles, standards, cross buck signs, key boxes, crossing gates, etc. Such work is not new or novel to B&B Painters on this or any other Carrier.

Beginning on January 16, 1956, the Carrier assigned Signal Department employes, who hold no seniority rights under the effective Agreement, to paint flasher poles, standards, cross buck signs, key boxes, crossing gates, etc., at the following crossings, Belmar, J. J. located on the Carrier's New York and Long Branch Division:

Seventh Avenue	Tenth Avenue	Sixteenth Avenue
Eight Avenue	Twelfth Avenue	Seventeenth Avenue
Ninth Avenue	Thirteenth Avenue	Eighteenth Avenue

B&B Painters, holding seniority rights on the New York and Long Branch Division, were available, qualified and willing to have performed this disputed work.

Claim as set forth herein was filed, and the Carrier has denied the claim.

The employes take the position that this is not a jurisdictional matter between the two Organizations. However, inasmuch as the Signalmen have taken the position this is their work, as found in Vice President Fields' letter of February 6, 1957, and the position of the Maintenance of Way Employes as evidenced by their claim that the installation of automatic crossing gates and flashers is their work, we do not know now this question can be resolved other than as a jurisdictional question, which your Honorable Board lacks authority to decide.

Secondly, the provisions of Section 3, First, (j) of the Railway Labor Act, reading as follows, have not been met;

“(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employe or employes and the carrier or carriers involved in any disputes submitted to them.”

There is no question but what the Signalmen, who are performing the work which is claimed by the Maintenance of Way Employes, are “employes” who are “involved”, therefore must be given “due notice of all hearings”. Therefore, your Honorable Board must afford the Signalmen an opportunity to participate and present their views.

Third: should your Honorable Board decide that this case should not be dismissed for any of the reasons previously given, and assume jurisdiction, the Carrier contends that the Signalmen assigned to perform the painting of the flasher poles, standards, key boxes, etc. of the newly installed automatic crossing gates was not in violation of any effective agreements and, therefore, a sustaining award is not warranted.

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

(Exhibits not reproduced.)

OPINION OF BOARD: During the week commencing January 16, 1956, employes of the Carrier's Signal Department painted the flasher poles and key boxes on the newly installed crossing gates and flashing lights at certain crossings at Belmar, New Jersey.

These are the same facilities involved in the case covered by Award 10728 and it is agreed by the parties that the issues and arguments in the two cases are the same.

Accordingly the decision in Award 10728 is controlling in this dispute.

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 Employes involved in this dispute are respectively Carrier and Employes 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 3rd day of August 1962.