

Award No. 11907
Docket No. CL-11584

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION 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 rules of our Agreement when they assigned employes outside the scope of our Agreement, effective September 15, 1958 to perform work coming under the scope of our Agreement at 128 Station, Mass., commencing week ending September 6, 1958,

2. Mr. W. R. Watson, Mr. T. P. Gunn, and Mr. R. J. McBride, and/or his/or their successors be remunerated for all time they lost when employes not covered by our Agreement were allowed to perform our work at Route 128 Station, Mass., commencing week ending September 6, 1958,—this claim to continue until this matter is adjusted.

EMPLOYES' STATEMENT OF FACTS: On or about April, 1953, a new Station was opened up on this property known as "Station Route 128, Mass." Without any negotiations, two positions were established at that point with duties as Watchmen, - Train Announcers, Gatemen, etc.

On May 13, 1953, Division Chairman, F. E. St. Angelo filed a claim with former Sup't Mr. F. E. Watson for two senior furloughed people affected by this illegal move commencing April 26, 1953 and until the matter was settled. (Exhibit No. 1.)

On June 2nd, 1953, the General Chairman wrote to the former Ass't Vice President, in charge of Personnel, Mr. E. R. Perry, requesting him to instruct the supervisory employes responsible for these conditions to place the jobs on the Bulletin Board, showing the hours, rates of pay, classification, etc. (Exhibit No. 2.)

Carrier respectfully submits that the claim should be either denied, dismissed or remanded to the parties involved for agreement.

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

(Exhibits not reproduced.)

OPINION OF BOARD: In the year 1953 Carrier established a passenger station at Dedham, Massachusetts located on its main line and situated some eleven miles west of Boston. This Station has been designated as "Route 128". The station facility consists of a ticket office and parking lot, with a capacity in excess of 2,000 cars, on the westbound side and a shelter for passengers on the eastbound side. An inter-track fence is situated between the two main tracks and extends the entire length of the station platform except for a twenty (20) foot wide crossing connecting the eastbound and westbound platforms which allows patrons to cross from one side to the other.

Patrolmen were assigned to Dedham Station on June 21, 1953, and, as a part of their regular assignment, handled the passenger traffic protection work at the crossing until September 15, 1958, at which time the Patrolmen's positions were abolished.

On September 5, 1958, two regular positions and one relief position of Crossingman were bulletined to Maintenance of Way Employees and the bulletins contained the following description of duties: "Duties: Protect pedestrians crossing tracks between eastbound and westbound stations; necessary crossing snow removal when required; cleaning up debris; consistent with crossing protection, perform messenger work as required by Ticket Agent." Subsequently employees under the Maintenance of Way Agreement were assigned to these positions.

It is the contention of the Petitioner that when the police duties were removed from the positions at Route No. 128 all the remaining work as defined in the bulletin to Maintenance of Way employees on September 5, 1958 is covered by the Scope Rule of the Clerks Agreement, the pertinent part of which is, as follows:

"Rule 1 — Scope of Agreement and Excepting Therefrom

* * * * *

"(2) Other office, station and stores employees—such as office boys, messengers, chore boys, train announcers, gatemen, baggage and parcel room employees, train and engine crew callers, caboose inspectors, operators of certain office or station appliances and devices, elevator operators, office station and warehouse watchmen and janitors."

Petitioner contends that when the police duties were removed from the positions involved all remaining work is covered by the Clerks' Scope Rule—the duty of protecting pedestrians is the Gateman's duty, snow removal is Laborer's work, cleaning up debris is a Janitor's or Porter's work, messenger work is a Messenger's duty; it is the further contention of Petitioner that the type of work described in the bulletins was not covered by the Maintenance

of Way Agreement as it covers "Highway Crossing Watchmen and Gatemen" and the area involved in this dispute at Route No. 128 is not a "highway crossing".

Carrier, adversely, contends that these Crossingmen under the Maintenance of Way Agreement are properly assigned to protect the crossing at Route No. 128 between eastbound and westbound stations and to warn patrons of approaching trains, that whatever little additional work they perform is incidental to and consistent with the main content of the assignment which is to protect the crossing; Carrier asserts that when the Patrolmen were assigned to Route No. 128 Station they had as an incidental part of their functions cautioned patrons not to pass over the crossing in the path of oncoming trains; that this continued until April 30, 1958, when Carrier modernized its Police Department, abolishing fixed post patrolmen assigned and affording necessary police protection by periodic Mobile police patrol; that, however, before the abolishment of patrolman assignments could be made effective, Carrier was ordered by the Massachusetts Department of Public Utilities to maintain a status quo pending the hearing; that on July 3, 1958, the Department of Public Utilities issued its Order 12583, the pertinent part of which is, as follows:

"Ordered: That until further ordered by the Department, the New York, New Haven and Hartford Railroad Company shall provide an attendant from 6:00 A.M. to 1:00 A.M., Daylight Saving Time, daily at the opening in the intertrack fence at its Route 128 Station to warn patrons of the approach of trains." (Emphasis ours.)

that thereafter fixed post patrolman assignments at Route No. 128 were abolished and the pedestrian crossing, in compliance with the foregoing order, was thereafter protected by an Attendant (Maintenance of Way Crossing Watchman).

In its first Submission, Carrier urged that what is involved here is a jurisdictional dispute between the Brotherhood of Railway Clerks and the Brotherhood of Maintenance of Way Employees and stated that there is also pending before the Fourth Division a Claim presented by the Railway Patrolmen's International Union asserting their employees have an exclusive right to the work involved here. The Third Division Board, obviously, has no control over the Patrolmen's International Union. Though the two Organizations, the rights of whose employees to certain positions are under discussion presently, are under the jurisdiction of this Third Division Board, we are convinced that under the facts and circumstances of this case we would not be justified in remanding it to the property on the ground that this is a jurisdictional dispute.

Carrier further contends that Petitioner having made claim to the work assigned to the Patrolmen in 1954, Petitioner is guilty of laches and has not complied with the "Time Limit" rule in presenting this claim and asserts that for the foregoing reasons this Claim should be dismissed. It does appear from the Record that on Carrier's assurance to Petitioner that this work primarily involved police protection that Petitioner dropped the Claim. We are satisfied that in as much as in 1958 the Patrolmen's positions at Route No. 128 were abolished and new positions of Crossing Watchmen were created that Petitioner has not been guilty of laches and the Claim is not barred by the "Time Limit" rule.

That brings us to a consideration of the merits of this Claim. Petitioner contends that the duty of "Highway Crossing Watchmen and Gatemen" is what the Carrier contracted with the Brotherhood of Maintenance of Way Employes to perform and that such work, definitely, is not involved in this dispute as a "Highway" is a "public road or way open to all travelers" and consequently, the type of area involved here is not of the type contemplated in the Maintenance of Way Employes Agreement.

Webster's New World Dictionary (1959) defines "highway", as follows:

- "1. any road freely open to everyone; public road.
2. a main road; thoroughfare.
3. a main route by land or water.
4. a direct way to some objective."

We cannot, therefore, restrict the term "highway" to the limited meaning urged by Petitioner that it applies only to a "public road". In Rule 53 of the Maintenance of Way Agreement "Crossing Watchman's Work" is defined in the schedule as "watching at crossings and protecting the traffic".

Petitioner has a definite obligation, under a Scope Rule which simply names position as we have here, to sustain the burden of proving that historically, through tradition, custom and practice, the work involved here belongs exclusively to employes under the Clerks Agreement. This the Petitioner has failed to do. See Award 8381 — Vakoun; Award 10390 — Dugan; Award 10615 — Sheridan; Award 10985 — Hall; Award 11128 — Boyd; Award 11645 — Dolnick and others.

To the contrary, it is evident from the Record that, under their contract, employes under the Maintenance of Way Agreement had the right to do this work; that the Patrolmen for five years had protected this crossing along with their other duties without any protest from the Petitioner. Obviously, it must be concluded this Claim is without merit and there must be a denial award.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.