

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**THE CHICAGO RIVER AND INDIANA
RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when, on or about March 9, 1958, it abolished twelve (12) positions of highway crossing watchmen and thereafter assigned the crossing protection work comprehended in such positions to employees who hold no seniority rights under the provisions of this Agreement.

(2) The highway crossing protection work referred to in Part (1) hereof be restored and assigned to employees holding seniority rights under the provisions of this Agreement.

(3) Highway Crossing Watchmen R. Taylor, J. Kreisinger, S. Vice, C. Veraet, J. Taylor, A. Marshall, H. Haimann, W. Carey, J. P. Kelly, P. Trzeciak, C. Chellman and M. V. Collins each be allowed eight hours' pay at their respective straight time rates for each day that the crossing protection work referred to in Part (1) of this claim is assigned to and performed by employees who hold no seniority rights under the provisions of this Agreement.

EMPLOYEES' STATEMENT OF FACTS: Prior to March of 1958, Claimant R. Taylor was regularly assigned to the position of highway crossing watchman at 40th Street and Packers; Claimants J. Kreisinger and S. Vice were regularly assigned to the position of highway crossing watchman at 42nd Street and Loomis; Claimant C. Veraet was regularly assigned to the position of highway crossing watchman at 45th Street and Loomis; Claimants J. Taylor and A. Marshall were regularly assigned to the position of highway crossing watchmen at Stone Gate; and Claimants H. Haimann and W. Carey were regularly assigned to the position of highway crossing watchman on the Carrier's Middle Division.

Claimants J. P. Kelly, P. Trzeciak, C. Collins and C. Chellman were regularly assigned to the position of relief highway crossing watchmen at the above referred to locations.

All data contained herein have been the subject of correspondence and/or conference between the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: The subject of this dispute concerns certain "crossings" situated within the area known as the Chicago Union Stock Yards. Since 1865 this area has been a center of the stock industry. However for some years prior to the date of this dispute there has been a steady exodus of the stock industries from the yards in question resulting in a loss of business and a corresponding decrease in the number of engine and train movements over the crossings in the area. Consequently, during March and April of 1958, the Carrier abolished certain crossing watchmen positions in the Union Stock Yards. Petitioner filed claims for certain crossing watchmen taking the position that the Carrier violated the Maintenance of Way Agreement in assigning or allowing employees not covered by the Agreement to perform work allegedly reserved to crossing watchmen.

Carrier states that no rule of the Agreement grants crossing watchmen exclusive rights to the work in dispute and cites Rule 18(e) as specifically conferring rights to abolish positions. It also contends that it is a managerial right to determine whether or not crossing watchmen's positions are necessary. In addition, while the Petitioner cites the Scope and Seniority Rules as supporting the claim herein, this Division has consistently rejected this same Organization's contentions in this respect on other carriers, and has denied similar claims holding as follows:

"No rule in the M of W Agreement requires any specific crossings to be protected by crossing watchmen, or establishes any criteria for determining which crossings should be so protected. See Awards 5575, 7809, 9605, 9610 and 10405."

The cases are legion holding that neither the Scope Rule nor any other rule provides for the exclusion of others in the performance of the service in question. See Awards 1490, 3899, 7809, 8173, 8174, 9605, 9610, 10402 and 10545.

Petitioner relies on the Scope Rule to support its claim. The Scope Rule in the instant case does not describe the work reserved to the class of employees covered by it. Train movements over public highway crossings have been protected by several methods, viz., by train crews, manually by crossing tenders and telegraphers, and by automatic signals or gates. See Awards 4261, 5575, 7809, 9313, 9605, and 9610. It is not denied that other employees besides those covered by the Maintenance of Way Agreement have frequently performed the duties of crossing watchmen. In other words the work in question does not exclusively belong to the said watchmen and they have not performed it to the exclusion of all other employees.

In Award 10515 (Dolnick) the principle, followed in many Awards of this Division, is set forth as follows:

"It is not enough that the Organization show that employees covered by the Agreement have performed similar work. The Organization must show that such employees have exclusively performed such work."

Also see recent Awards 11621, 11598, 11495 and 11081.

Also see Award 11658 (Dolnick):

"* * * it is the consistent position of this Division that under the Scope Rule of this Agreement it is necessary to determine whether the work claimed is historically and customarily performed by Maintenance of Way employees. The burden of proving such custom and practice is upon the Petitioner. There is no such proof in the Record."

Also see Award 11758, 8173, 11861, 11791 and 11793.

The facts in the instant case, supported by a long line of prior Awards, do not show that the Carrier violated the Agreement.

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 19th day of December 1963.