

Award No. 12458
Docket No. SG-11237

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CHICAGO, AURORA AND ELGIN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago, Aurora and Elgin Railway Company that:

(a) The Carrier violated the current Signalmen's Agreement, particularly the Scope Rule, when it permitted Chicago and North Western Signal Department forces to install new automatic crossing gates at West Street, Wheaton Street, Hale Street, Main Street and Cross Street in Wheaton, Illinois, commencing on or about May 19, 1958; therefore the Carrier now be required to compensate Signal Maintainers A. Greenwood, S. W. Hill, and Ed Paver, whose assigned headquarters are at Wheaton, Illinois; furloughed Signal Maintainers Ralph Cluts and N. Schwickrath, at their respective pro rata rates of pay for all time used by Chicago and North Western Signal Department forces in installing and constructing the new automatic crossing gates at West Street, Wheaton Street, Hale Street, Main Street and Cross Street, in addition to all time spent in removing the old manually operated air gates, commencing May 19, 1958, until the date of completion.

(b) The Carrier now be required to compensate the above-named employees for all time spent by Chicago and North Western Signal Department forces subsequent to date of completion in maintaining the new automatic crossing gates.

(c) That the maintenance of the automatic crossing gates at the above-named streets be returned to the proper Signal Department forces on the Chicago, Aurora and Elgin Railway.

EMPLOYEES' STATEMENT OF FACTS: The main line of the Chicago, Aurora and Elgin Railway Company, consisting of two tracks, and the main line of the Chicago and North Western Railroad Company consisting of three tracks, run parallel to each other in an east-west direction through Wheaton, Illinois. There are five streets that cross the Chicago, Aurora and Elgin Railway and the Chicago and North Western Railroad in a north-south direction in the City of Wheaton, Illinois.

union, and Mr. E. J. Burman, Vice-president of the union, fully concerning the proposed action by the Chicago and North Western Railway Company, and stated to them that if there was any jurisdictional dispute between members of the union employed by Chicago, Aurora and Elgin Railway Company, and those employed by the Chicago and North Western Railway Company, it should be settled before the work was done. Chicago, Aurora and Elgin Railway Company heard nothing further concerning the matter until claim was made upon it subsequent to completion of the work.

POSITION OF CARRIER:

1. The agreement between the parties covers only work done by or for the railroad, or under its control and direction. The mere fact that physical circumstances compelled the Chicago and North Western Railway Company to install its signalling system on ground belonging to the Chicago, Aurora and Elgin Railway Company, does not in any way affect or constitute a violation of any agreement between Chicago, Aurora and Elgin Railway Company and its employes.

2. That it would be inequitable to hold the railroad liable on this claim when timely notice was given to the union and to the General Chairman of the railroads' employes in such union, and no action was taken by them to indicate that a jurisdictional dispute existed, or if one existed, that it had not been resolved within the union.

OPINION OF BOARD: The main line of the Chicago, Aurora and Elgin Railway Company, party to this dispute and herein called Carrier, consisting of two tracks, and the main line of the Chicago and North Western Railroad Company, herein called C.N.W., consisting of three tracks, run parallel to each other in an east-west direction through Wheaton, Illinois. There are five streets, in Wheaton, that cross the five tracks. The tracks are so close together that for many years crossing gate protection at the crossings has been provided by two sets of crossing gates—one north of the C.N.W. tracks on C.N.W. property, and one south of Carrier's tracks on Carrier's property.

The record reveals that for long years the two Carriers divided the costs of installation, repair, maintenance and operation of the manually operated gates.

Petitioner alleges that the manually operated gates, on both sides of the tracks, were installed, maintained and operated by Carrier's employes. It is undisputed that this work when performed on Carrier's property, was within the Scope of the Agreement between Carrier and Petitioner; and, it is indisputable that the work performed on C.N.W. property was not within the scope of the Agreement, C.N.W. not being privy to it.

In 1958, C.N.W., by authority granted by Illinois Commerce Commission, removed the manually operated gates and installed automatic gates on its property and on Carrier's property. This work, plus the operation, maintenance and repair of the automatic gates, was performed by C.N.W. employes. All costs were borne by C.N.W. Petitioner claims that because work of this nature had in the past been performed by Carrier's employes, that the work should have been assigned to Claimants.

Assuming, *arguendo*, that the work, in the past, had been performed by Carrier's employes, it cannot be held that such past practice brought the work on C. N. W. property within the Scope of the Agreement. On the other hand,

work of this nature performed on Carrier's property is reserved to Carrier's employees covered by the Agreement, regardless of who pays for it or to whose benefit it accrues.

We will sustain paragraphs (a) and (b) of the claim, but limit the monetary award to having Claimants be made whole in such amounts as each would have earned for performance of the work described in said paragraphs on Carrier's property.

Paragraph (c) of the claim is 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 Carrier violated the Agreement as set forth in the Opinion.

AWARD

Claim sustained in part and denied in part, as set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1964.