



Award No. 16527
Docket No. MW-17277

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

(1-a) The Carrier's assignment of Crossing Watchman H. E. McGhee to a work period starting at 9:30 A. M., on Mondays through Fridays was in violation of Rule 14 of Article 5. (Sys. File D-4415/F-11807)

(1-b) The Carrier further violated the Agreement when it assigned a trackman to perform crossing watchman's work from 7:30 A. M. to 9:30 A. M. each day, Mondays through Fridays.

(2-a) Crossing Watchman H. E. McGhee be assigned a work period in accordance with the provisions of Rule 14 of Article 5.

(2-b) Crossing Watchman H. E. McGhee be allowed two (2) hours' pay at his time and one-half rate, commencing on July 15, 1966, and continuing for each work day thereafter that the violation referred to in Part (1-b) of this claim continues to exist.

EMPLOYEES' STATEMENT OF FACTS: Claimant Crossing Watchman McGhee, along with Messrs. J. L. Hooker, W. T. McArthur and G. W. Stevenson, were regularly assigned Crossing Watchmen at Theresa Avenue, St. Louis, Missouri, who provided crossing protection at that point on a twenty-four (24) hours per day, seven (7) days per week basis. Effective July 12, 1966, crossing protection at said crossing was reduced to ten (10) hours per day (7:30 A. M. to 5:30 P. M.) five days per week (Mondays through Fridays). The crossing was closed to traffic during non-protected hours by keeping the crossing gates in a closed position from the end of one tour of duty to the beginning of the subsequent tour of duty.

This reduction in crossing protection resulted in the elimination of three (3) positions of crossing watchmen and, shortly before the change was placed into effect, a notice was posted in the crossing watchmen's cabin at Theresa Avenue, advising that, effective July 15, 1966,

1. Track Laborer Juan Algalas would protect the crossing from 7:30 A. M. to 9:30 A. M. each day Mondays through Fridays.

trackman who fills out his eight-hour tour of duty inspecting switches and oiling switch lamps in the same area.

(Exhibits not reproduced.)

OPINION OF BOARD: Missouri Public Service Commission Order, Case No. 15916, dated July 24, 1966, a copy of which has been made a part of the record in this docket, provided, effective July 12, 1966, for the closing of a grade crossing between Theresa Avenue and the tracks of the Carrier here involved and other Carriers in the City of St. Louis during all hours of the day and night on Saturdays, Sundays and certain legal holidays, and from 5:30 P.M. to 7:30 A.M. on other days, during which periods the crossing would be gated and locked against street traffic. The order provided that on days other than Saturdays, Sundays and certain legal holidays, the crossing would be kept open and crossing watchman service provided between the hours of 7:30 A.M. and 5:30 P.M. The provisions of the Commission Order were made effective by the Carrier as of 5:30 P.M., Friday, July 15, 1966. Prior to the effective date of the Commission's Order the crossing was open 24 hours per day, seven days per week, and continuous crossing watchman service provided.

To provide the crossing protection as required by the order, crossing watchman H. E. McGhee was assigned a work period of 9:30 A.M. to 5:30 P.M., and the services of a trackman were utilized to provide crossing watchman service from 7:30 A.M. to 9:30 A.M., the trackman filling out his eight-hour tour of duty inspecting switches and oiling switch lamps in the same area.

The Petitioner contends that under the provisions of Rule 14 of Article 5, which reads:

"Employees working single shifts, regularly assigned exclusively to day service, will start work period between 6:00 A.M. and 8:00 A.M."

The Carrier was contractually obligated to assign the Claimant a starting time between 6:00 A.M. and 8:00 A.M.

The Carrier contends that Rule 14 of Article 5, heretofore quoted, provides for starting work periods for the general force where control of the required hours of service rests with the Carrier; that the hours of protection for the crossing here involved between 7:30 A.M. and 5:30 P.M., except Saturdays, Sundays and specified holidays, are by orders of a state regulatory body and, therefore, outside of management's control; that under the circumstances Rule 14 of Article 5 has no application, and that the 9:30 A.M. starting work period is permissible under the provisions of Rule 17 of Article 5 which reads:

"For operations necessitating working periods varying from those fixed for the general force as per Rules 14, 15 and 16, the hours of work will be assigned in accordance with the requirements."

We agree with the Carrier as to the applicability of Rule 17 of Article 5 under the circumstances here involved and hold that the 9:30 A.M. starting time of Claimant McGhee is permissible under that rule.

The Petitioner also contends that the Carrier violated the Agreement when it assigned a trackman to perform crossing watchman service from 7:30 A. M. to 9:30 A. M. each day, Monday through Friday. We find no rule in the Agreement that prohibits the assignment of a trackman to protect highway crossings. In Award 13382, involving the same parties, the Board held that Rule 10 of Article 3 permits the Carrier to fill crossing watchman positions as it sees fit, so long as such positions are filled by employees taken from the ranks of the Maintenance of Way craft or class. Furthermore, Rule 34 of Article 5 contemplates that an employee may be required to perform more than one class of work on any day.

The claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was not violated by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1968.