



Award Number 17560

Docket Number MW-17388

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

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

- (1) The Carrier violated the Agreement when it failed to retain G. W. Stevenson on the position of Crossing Watchman at Theresa Avenue, St. Louis, Missouri, which remained after the elimination of three (3) positions of crossing watchmen at that point. (System File D-4416/F-8800)
- (2) The Carrier further violated the Agreement when it refused to permit Crossing Watchman G. W. Stevenson to fill the one position of crossing watchman which remained at Theresa Avenue, St. Louis, Missouri after the aforesaid job eliminations.
- (3) Crossing Watchman G. W. Stevenson be returned to the position of crossing watchman at Theresa Avenue and that he be reimbursed for all monetary loss suffered because of the violations referred to in Parts (1) and (2) of this claim."

EMPLOYEES' STATEMENT OF FACTS: G. W. Stevenson, with seniority dating from October 12, 1945 and H. E. McGhee, with seniority dating from May 6, 1946, along with Messrs. J. L. Hooker and W. T. McArthur, were regularly assigned crossing watchmen at Theresa Avenue, St. Louis, Missouri, who provided crossing protection at that point for twenty-four (24) hours per day, seven days per week. Effective July 12, 1966, crossing protection at this point was reduced to ten (10) hours (from 7:30 A.M. to 5:30 P.M.) per day and to five (5) days per week (Mondays through Fridays). The crossing was closed to traffic during "non-protected hours" by keeping the crossing gates lowered from the end of one tour of duty until the beginning of the subsequent tour of duty.

This reduction in crossing protection at Theresa Avenue resulted in the elimination of three 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 that

1. Track Laborer Juan Algalas would protect the crossing from 7:30 A.M. to 9:30 A.M. on Mondays through Fridays;
2. Crossing Watchman H. E. McGhee would protect the crossing from 9:30 A.M. to 5:30 P.M. on Mondays through Fridays;

OPINION OF BOARD: Prior to July 15, 1966, the subject crossing was open to vehicular traffic twenty-four hours per day, seven days per week, thus requiring four watchmen positions.

Subsequent to that date, the Missouri Public Service Commission ordered the crossing to be gated and locked against vehicular traffic except between the hours of 7:30 A.M. and 5:30 P.M. on regular week-days thereby reducing the number of watchmen positions needed to only one.

One of the occupants of the four watchmen positions previously required was selected to fill the existing position. Claimant, one of such occupants, was passed over by Carrier in its selection.

Claimant contends that because he was senior to the watchman selected, Carrier violated Article 3—Rule 10 of the Agreement which provides:

"The general rule of promotion and seniority will not apply to positions of track, bridge and highway crossing watchmen and signalmen at railway (non-interlocked) crossings, but such positions will be filled by employees taken from the ranks of employees covered by this agreement or covered by other agreements between the Railway and Brotherhood of Maintenance of Way Employees. Preference in filling and retaining these positions will be given to incapacitated employees determined by the degree to which incapacitated for other work, seniority in the service of the railway and ability to perform the work. . . ."

However, a reading of the rule clearly reveals that to prove a prima facie case establishing a violation, Claimant must first prove that he was more incapacitated for other work than the watchman selected by Carrier. Since Claimant has failed to prove this element of his case, the claim must be and is 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1969.

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