



Award Number 17784

Docket Number MW-18431

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, 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 assigned crossing watchman's work to forces outside the scope of its agreement with the Brotherhood of Maintenance of Way Employees. (System file F-6953/D-4833).
- (2) Trackman Jonas Lewis be allowed pay at his straight time rate for the same number of man hours expended by outside forces in the performance of said work beginning sixty (60) days prior to August 30, 1968, and continuing thereafter for each day that the violation continues to exist.

EMPLOYEES' STATEMENT OF FACTS: A State Highway project near Tulsa, Oklahoma, required that a considerable amount of earth fill material be moved from one side of the Carrier's tracks to the other. The equipment used to transport this material crossed the Carrier's tracks at a public highway crossing near the West Third Street Viaduct and at Madison Avenue. The flashing crossing signals were removed from the Madison Street crossing while this work was in progress and outside forces were assigned to perform crossing watchman's work at each of these crossings. The work consisted of preventing vehicular traffic (public vehicles as well as earth moving equipment) from crossing the tracks when trains were approaching and also to keep the crossing clean and flangeways clear of debris.

The claimant (a trackman) was working at a point away from Tulsa, Lklahoma, but he had previously been regularly assigned at Tulsa. When he was required to leave Tulsa, he requested that he be returned thereto at the first opportunity in accordance with the provisions of Rule 6 of Article 2 which reads:

"Seniority rights of laborers, as such, will be restricted to their respective gangs, except that when force is reduced laborers affected may displace laborers junior in service on their seniority district, and such laborers may return to gang from which displaced in order of seniority.

NOTE: Laborers desiring to return to gang from which displaced will notify Roadmaster of their desire to return before vacancy occurs. The Roadmaster will notify the employe when vacancy occurs or forces are increased. There will be no claims for pay

each side of the crossing. Entrance to industrial firms located east of and in the barricaded zone of Madison Avenue is accessible without using the rail crossing.

On July 19, 1968 north and south shoo-fly tracks (run-around tracks) from MP G-424 plus 27 poles to MP G-423 plus 03 poles were placed in service and the four existing tracks were removed from service for the construction of an underpass. Speed of trains on the shoo-fly tracks was restricted to 10 miles per hour. The grading contractor began using Madison Avenue as a haul road on or about July 15, 1968.

The contractor guarded the movement of his earth-hauling and other equipment to protect against accidents and personal injuries and hence the dispute that the Carrier permitted unauthorized personnel to encroach upon the rights of the employees covered by the Agreement between the parties.

(Exhibits Not Reproduced)

**OPINION OF BOARD:** In the opinion of the Board, the showing in this docket does not warrant a finding that the guarding of the crossings in question with a crossing watchman, was work that the Carrier was under obligation to perform.

J. D. Metcalfe, Inc., a contractor for the Oklahoma Highway Department, had permission for the construction and use of a temporary private road crossing over and across the right-of-way tracks at Mile Post G-424-3. The contractor also used a barricaded crossing at Madison Avenue as a haul road.

To safeguard the movement of earth-hauling vehicles and other equipment over the Carrier's tracks the contractor provided his own crossing watchman.

The contractor's work was not related to or for the Carrier. The crossings were private. There was no requirement on the Carrier to provide protection. Accordingly, the claim should 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.

#### 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 13th day of March 1970.

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