



Award No. 18626
Docket No. SG-18641

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ERIE-LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie-Lackawanna Railroad Company:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly the Scope, when beginning on or about March 25, 1958, it permitted and/or condoned the action of signal employees of another railroad installing, and subsequently maintaining, the automatic highway crossing protection at Douglas, Clinton, Russell, Fayette and Sibley Streets, Hammond, Indiana.

(b) Carrier should be required to compensate Signal Gang Foreman C. L. Coates, Leading Signalman D. H. Young, Signalman O. B. Daniels, and Signal Helper K. D. Spickelmier, at their respective rate of pay, for all time spent by the employees from the other railroad in performing work on these crossing signal installations, this to be paid in addition to compensation previously allowed during the claim period.

(Carrier's File: 165-Sig.)

EMPLOYEES' STATEMENT OF FACTS: This dispute arose because employees not covered by the applicable Signalmen's Agreement and especially the Scope Rule, installed automatic highway crossing protection devices at Douglas, Clinton, Russell, Fayette and Sibley Streets in Hammond, Indiana, all on the property of and for the benefit and use of the Erie-Lackawanna Railroad, beginning about March 25, 1968, and subsequently maintained the crossing protection devices.

Representatives of the Erie-Lackawanna, Monon Railroad and Brotherhood of Railroad Signalmen met at the request of the Carriers on August 14, 1967, in Chicago to discuss the installation of the electrically operated highway crossing protection devices involved herein by the Monon signal forces. It was decided and the representatives of the Brotherhood were so advised that the Erie-Lackawanna signal forces would install all crossing apparatus on the Erie-Lackawanna Railroad property.

On March 25, 1968, the Brotherhood's General Chairman advised the Carrier's Chief Signal Engineer he had learned that the work of installing

Lackawanna Railway, and Carrier continues to protect the involved crossings by manual operation.

Under date of May 21, 1968 (Carrier's Exhibit E), the Local Chairman instituted claim on behalf of D. H. Young, C. L. Coates, O. B. Daniels and K. D. Spickelmier for 16 days' pay at 10 hours per day, alleging that Monon employes performed work on Erie-Lackawanna property in setting foundations for the Monon's automatic gates, gates cantilever signal and cable work at Douglas, Fayette and Clinton Streets. Claims were denied on June 13, 1968 (Carrier's Exhibit F), and thereafter handled in the usual manner on the property. (Copies of pertinent correspondence attached as Carrier's Exhibits G through Q.)

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization contends that Employees of the Monon Railroad installed automatic highway crossing protection devices at Douglas, Clinton, Russell, Fayette and Sibley Streets in Hammond, Indiana, on the property and for the benefit and use of Erie-Lackawanna Railroad Company, Carrier herein. The Organization further contends that this work belonged to Erie-Lackawanna employees. In defense, Carrier alleges that the Monon Railroad and the Erie-Lackawanna tracks run parallel in an East-West direction through Hammond, Indiana, with Monon's single track South of Erie-Lackawanna two main tracks; that Monon advised Carrier that they (Monon) were going to install automatic crossing systems at the intersections above set out. That Carrier declined to cooperate in this project, and that Monon employes performed all of the work complained of within the confines of city streets, which constitute public crossings off Carrier's right of way which did not interfere with Carrier's use of these crossings. Carrier further alleges that the automatic crossing system installation complained of was placed into effect only on Monon rails and that Monon performed no work for Carrier and Carrier continues to protect these crossings by manual operation.

Procedurally, Carrier defends this case by alleging that the Organization was not specific enough in its claim as required by Section 3(i) of the Railway Labor Act, in that the claim was for undisclosed dates, unspecified amounts and lacked the naming of a specific rule violation.

Carrier has placed in this record abundant probative evidence that the installation of automatic highway crossing devices at the crossings involved in this dispute was performed for and on behalf of the Monon Railroad; that only Monon employes were used to perform this work; that the work performed was on City Streets not situated on Carrier's property; and that if any work was performed on Erie-Lackawanna property or equipment, it was performed without the consent or agreement of Erie-Lackawanna Railroad. Therefore, the burden of proof shifted to the Organization to disprove Carrier's contentions. The record is void of any such proof, and it must be concluded that the Organization has failed to sustain its burden. To hold Carrier responsible for Monon's unauthorized act would place Carrier in an indefensible position. See Awards 9847, 10549, 12907, 14888 and 14889, among many others. Therefore, this 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 Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1971.