NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19363

THIRD DIVISION Docket Number MW-14737

Paul C. Dugan, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(The New York, New Haven and Hartford Railroad Company

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

(1) The Carrier violated the Agreement beginning on September 1, 1962 when it

(a) discontinued the use of crossing watchmen to perform crossing protection work at Route 128 Station and

(b) assigned the work of providing crossing protection at Route 128 Station to employes who do not hold any seniority as crossing watchmen. (Carrier's Docket 9390)

(2) The Crossing watchmen who were furloughed as a result of abolishment of positions at Route 128 Station be allowed pay for all time that they have been improperly out of service subsequent to September 1, 1962.

(3) All Crossing Watchmen who were required to take a reduction in earnings by reason of abolishment of Crossing Watchmen's positions at Route 128 Station be allowed a wage adjustment to provide them with the difference in pay between what they did receive and what they would have earned, had positions of Crossing Watchmen at Route 128 Station not been abolished.

(4) Positions of Crossing Watchmen at Route 128 Station be re-established in accordance with the provisions of our existing Agreements and that the employes referred to in Parts (2) and (3) above be allowed wage adjustments as outlined therein subsequent to September 1, 1962 until positions are properly re-established.

OPINION OF BOARD: The Organization contends that the protection of the pedestrian crossing at Route 128 Station, Dedham, Massachusetts is work reserved to maintenance of way employes, in this instance crossing watchmen. The Organization alleges that Rule 53 of its Classification Agreement with Carrier, namely that part thereof reading: "Crossing Watchman's Work: watching at crossings and protecting traffic" gives this work to Claimants; that in two previous Dockets No. 1478, Award 1502 (Fourth Division) and No. CL-11584, Award 11907 (Third Division) Carrier unequivocally contended that such work contractually belonged to maintenance of way employes.

Carrier's position is that crossing protection does not accrue exclusively - by rule or practice - to maintenance of way employes; that such work has been performed on the property by (a) crossing watchmen, (b) telegraphers,

(c) train crews, (d) switchmen, clerks, patrolmen and others; that the Clerks' Agreement and the Brotherhood of Railroad Trainmen (now UTU) provide for and refer to "protecting crossings"; that the assignment of the work in dispute to patrolmen does not violate the Scope Rule of the Maintenance of Way Agreement; that inasmuch as many other crafts have performed this work shows that such work does not belong exclusively to crossing watchmen.

This Board was confronted with a similar issue in Award No. 14227, involving the same parties to this dispute and concerning the abolition of a crossing watchman position at Danbury, Connecticut and assigning the work of said position to Telegraphers-Operators. The Board in interpreting the Scope Rule and Rule 53 in said Award No. 14227 clearly and explicitly said:

> "It is our view that neither the Scope Rule alone nor in conjunction with Rule 53 explicitly creates any exclusive reservation of this work to the Organization. We furthermore adopt the view, held many times by this Board, that absent an explicit reservation of work in the agreement, only a system-wide practice of exclusive work assignment can serve to merge that practice into the agreement and thereby establish a right of exclusivity."

See also Award No. 18935.

The Organization's member of this Board vigorously contended that Carrier openly admitted in Dockets No. 1478 (Award 1502) and No. CL-11584 (Award 11907) that the work in dispute belongs exclusively to maintenance of way employes. However, close examination of said Awards clearly shows that the Board did not find that said crossing watchmen's work belongs "exclusively" to said maintenance of way employes, and thus it's contention in this regard is without merit and must be denied.

Inasmuch as petitioners failed to meet its burden of proving "exclusivity" to the work in question, we must deny the claim.

We hasten to add that inasmuch as the other crafts involved were notified of the pending dispute, the mandate of the U.S. Supreme Court in Transportation Communication Employees Union v. Union Pacific Railroad Co., 385 U.S. 157, has been met.

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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1972.