

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19606
Docket Number MW-19517

Gene T. Ritter, Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(Norfolk and Western Railway Company (Lake Region)

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

(1) The Carrier violated the Agreement and the Railway Labor Act when it unilaterally abolished the position of crossing watchman at Coshocton, Ohio on February 26, 1970 and assigned all crossing protection work at said crossing to transportation department employees (System File MW-CSH-70-1).

(2) The position of crossing watchman at Coshocton, Ohio he re-established and assigned to Mr. L. E. Shetler.

OPINION OF BOARD: Prior to February 26, 1970, Claimant was the regularly assigned Crossing Watchman at Cambridge Street, Coshocton, Ohio. His duties consisted of flagging vehicular and pedestrian traffic. Carrier desired to abolish Claimant's position and requested permission from the City of Coshocton and from the Public Utilities Commission of Ohio. The City of Coshocton granted the Carrier permission to remove the Crossing Watchman from said location "provided that Carrier will stop its trains prior to entering the right-of-way of Cambridge Road and will flag traffic on Cambridge Road." The Public Utilities Commission authorized the proposed change in crossing protection at Cambridge Street and in its order stipulated that "in lieu of said protection, said railway be, and is hereby directed to stop its trains prior to entering the right-of-way at said crossing and to provide that train personnel will flag vehicular and pedestrian traffic at said Cambridge Street crossing." Thereafter, and in a letter dated February 18, 1970, Carrier advised Claimant that effective 6:30 P.M., Thursday, February 26, 1970, the position as Crossing Watchman, Coshocton, is hereby abolished, and Carrier instructed train crews to flag their own movements over the involved streets and bridge. The Organization contends that Rules 1, 15 and 26 of the Current Agreement confer the involved work on employees covered by the Maintenance of Way Agreement. Also, the organization contends that the involved work was negotiated and that the Carrier can not abolish this position and assign the work thereof to employees of another craft. The Organization also contends that Maintenance of Way employees have performed the involved work for more than sixty years and that the involved work belongs exclusively to Maintenance of way employees. Carrier contends that neither the Scope Rule nor any other rule of the Agreement makes the work of protecting movements over crossings exclusively that of employees represented by the involved Organization; that on a system wide basis, Carrier has in the past abolished Crossing Watchmen positions and has assigned train crews to flag their movements over such crossings.

The allegation by the Organization that the involved position was negotiated into the Agreement has no merit. This allegation was based upon the fact that the position is specifically listed within the Wage Schedule. Article II (b) of Mediation Agreement Case No. A-5987 made October 7, 1959, is as follows:

"(b) The listing of rates of pay in the Agreement does not constitute a guarantee of the continuance of any position ***."

Also, the Organization has failed in their burden of proof that protecting crossings on this property has been performed exclusively by Maintenance of Way employees. To the contrary, the record is abundant with proof that train crews have protected movements over crossings where crossing watchmen positions were abolished. As was the case in Award 9605, nowhere in this Agreement can we find any provisions requiring any specific crossings to be protected by a flagman or establishing any criteria for establishing which crossings should be protected by what craft.

Also, in this dispute, there has been no monetary claim made. There has only been a request for restoration of a position. This Board has no authority to restore positions.

For the foregoing reasons, 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 Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, 35 approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

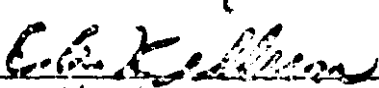
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1973.