

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32141
Docket No. MW-31109
97-3-93-3-43

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier used outside forces (City of Lawrence, Kansas) to perform railroad crossing protection work at Fourth and Locust Street, Lawrence, Kansas beginning September 3, 1991 and continuing (System File S-607/920096).**
- (2) The Agreement was further violated when the Carrier did not give the General Chairman advance written notice of its intention to contract out the work involved here in accordance with Rule 52.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Sectionman K. P. Fox shall be allowed compensation, at his respective rate of pay, equal to the total number of man-hours expended by the outside forces in the performance of the crossing protection work at the Fourth and Locust Street crossing."**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

K. P. Fox (Claimant) has established and holds seniority as a Kansas Division Group 17 Sectionman within the Track Subdepartment, and was working as such when this claim arose.

Previous to the time of this dispute, Carrier had been using a Sectionman in the City of Lawrence, Kansas, to flag a street and railroad crossing for school children. The Sectionman spent a approximately one and one-half hours performing these duties each school day of the school year. The rest of the Sectionman's time was spent performing normal maintenance duties. When Carrier decided that it had "insufficient work" to justify the Sectionman's position in Lawrence, the job was abolished. Shortly thereafter, the City of Lawrence hired a person to flag the school crossing for the children, and Carrier, as part of "an overall community relations effort", agreed to reimburse the City of Lawrence for the cost of the School Crossing Guard. It is not disputed that the former incumbent of that Sectionman's job took another position, nor is it disputed that the former incumbent was in no way deprived of employment as a result of the abolishment.

Subsequent to the abolishment, the Organization initiated a grievance on behalf of the Claimant alleging that he should have been utilized in lieu of a "contractor" (the City of Lawrence, Kansas) to perform the flagging duties. Carrier denied the General Chairman's appeal, maintaining that the crossing work is not reserved for exclusive performance by the maintenance of way craft, and that as "a matter of past practice", other crafts have performed flagging without protest from the Organization. The issue was again discussed, and declined, by Carrier on September 25, 1992.

At issue in this case is the right of Carrier to discontinue flagging for school children at a school crossing, and the right of the City of Lawrence to take that work over. Particular note must be taken of the fact that the flagging duties did not involve flagging for maintenance of way operations, but rather flagging a crossing for children. The Organization asserted that Carrier had violated both the Scope Rule and Rule 52 of the controlling Agreement, when it discontinued the use of a maintenance of way employee to perform the flagging duties in dispute.

This is not a case of first impression. In Third Division Award 29753 we denied a virtually identical claim, holding: "Since the Carrier had no obligation to provide the services, the provisions of Rule 52 are not operative in this matter and we find that the Carrier is not in violation of the Agreement." Again, in Third Division Award 31282, the same dispute involving the same school crossing duties at the same intersection in Lawrence, Kansas, again resulted in a denial "in the interest of stability." Now, all undaunted, like the Phoenix rising from the ashes, another identical claim is presented for our edification and determination. In paraphrase of Justice Oliver Wendell Holmes' observation on the subject of finality and authoritative precedent, we conclude that even the most protracted litigation between the most adamant of protagonists eventually must come to a conclusion.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 13th day of August 1997.