

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (WESTERN LINES)**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Atchison, Topeka & Santa Fe Railway that, the carrier is violating telegraphers' agreement by requiring employes under said agreement to flag highway crossings and that such work shall not be required of them."

JOINT STATEMENT OF FACTS: "An agreement bearing effective date of February 5, 1924, and August 1, 1937, as to rules and working conditions and rates of pay, respectively, are in effect between parties to this dispute.

"Employes under the provisions of the Telegraphers' Schedule are required by the Railway Company to flag highway crossings."

POSITION OF EMPLOYES: "The scope of the Telegraphers' Schedule reads:

'This Schedule will govern the employment and compensation of
Telegraphers
Telephone Operators (except switchboard operators)
Agent-Telegraphers
Agent-Telephoners
Towermen
Levermen
Tower and Train Directors
Block Operators
Staffmen

and such agents and other employes as may be shown in the appended wage scale.'

"February 17, 1938, the following instructions issued by the carrier:

'Effective with time table 64, February 20, Nos. 21 and 17 run Wednesdays and Sundays and Nos. 18 and 22 run Wednesdays and Saturdays.

'Please arrange to see that your principal crossings are flagged when such trains pass your station during time office is open.

'Advise if understood.'

"February 21, 1938, additional and specific instructions were issued and reading:

what they omit, which the carrier maintains is improper and cannot be done, it would result in no one knowing what a contract means after it is signed.

"The foregoing proves conclusively that flagging highway crossings adjacent to or through the depot grounds has been, for a number of years and still is a distinct related part of the duties of employees covered by the Telegraphers' Schedule. The scope rule does not define the specific duties of the positions covered thereby nor does it limit the duties that may be assigned to those whose employment and compensation is governed by that schedule as it recognizes that by necessity there would be a wide variation in the requirements.

"The carrier contends that there is nothing in the scope rule or any other rule of the Telegraphers' Schedule to support the position of the employees which is evidenced by the fact that the employees did not cite one thing in their schedule in support of their position. This in itself would call for a complete denial of their claim."

OPINION OF BOARD: The scope rule of the Agreement, upon an alleged violation of which this claim is based, specifies the classes of employees subject to the Agreement; it does not specify the work which may properly be assigned to, or the duties which may properly be required of, these classes of employees. In point of fact, the employees here involved perform a great variety of services for the inclusion of which no express authority either exists or is required to exist. These services have developed in response to the exigencies of particular situations, and no reason appears why the duties prevailing at any given time should be deemed to be definitive. Reasonable flexibility in the administration of the railroad industry, except in so far as it is inhibited by law or restricted, expressly or by necessary implication, through agreement of the parties, is essential to the welfare of the employees as well as to that of the carriers. Unless thus limited, the managerial discretion of the carriers must be held to be controlling. It is true, of course, that the duties entrusted to these employees from time to time have developed along lines related in a general way to the work traditionally performed by them; but the duties here in dispute—the requirement that these employees devote a few minutes each day to the flagging of crossings in the immediate vicinity of their stations for certain designated high speed trains—are likewise not unrelated to tasks already being performed by them without protest. Accordingly, without deciding that the flagging of crossings constitutes in all circumstances a proper requirement under the scope rule of the Agreement, and without prejudice to the rights of other organizations in connection with such work under their own agreements, it is the opinion of the Board that no violation of the Telegraphers' Agreement has been established in this case.

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 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 evidence of record does not disclose any violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of May, 1940.