

Award No. 2075
Docket No. TE-2108

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines:

That Towermen Benson and Eaton be compensated at the rate of \$5.00 per month for services required of them in flagging crossing at Modesto Tower, November 10, 1939 to December 20, 1939.

EMPLOYEES' STATEMENT OF FACTS: Claimants Benson and Eaton employed as towermen at Modesto Tower, November 10, 1939 to December 20, 1939, were instructed by Carrier official to flag crossing of highway adjacent to tower for protection of vehicular traffic, this being substitute service for the usual method of gates being installed for such protection, these gates being operated from the tower. Towermen so used left the tower and went to the highway crossing in each instance when Tidewater Southern trains used Southern Pacific crossover.

POSITION OF EMPLOYEES: There is an agreement between the parties to the dispute on file with the Board.

EXHIBITS "A" to "K" are made a part of this submission.

The claim is prosecuted under Rule 31 (f), which we quote—

"RULE 31

Incidental Duties

(f) Where telegraphers are required to handle highway or street crossing gates, they will be paid five dollars (\$5.00) per month per set of gates in addition to their regular salary."

The Committee also asserts that Rule 31 (e) is pertinent and this also we quote:

"(e) Assignment of duties other than those usually performed by telegraphers may be handled by the employes through their committee under the grievance rules of this schedule."

Conference was held on this dispute January 8th, 1941, at which time the correction in dates was made as reflected in writing. See EXHIBIT "I".

EXHIBIT "F" substantiates the position of the Committee that proper instructions were issued by the proper officer of the Carrier to these Towermen Claimants in this dispute, to flag the highway crossing at the Modesto Tower.

during the period October 1 to December 31, 1939 (which includes the period involved in the instant case, namely, November 10 to December 20, 1939) the average daily train movement on the Tidewater Southern Railway was but two, and therefore, it was only necessary for the towerman (if on duty) to protect the highway crossing at the most, on an average of two times daily. This fact coupled with the additional fact that the distance between the tower and the highway is only 30 feet, clearly establishes that the time and effort necessary to protect the highway crossing was nugatory and such being the case there was no basis whatever for additional compensation.

In view of Award 1078 of this division, no valid contention can be made by the petitioner that the carrier did not have the right to require the towermen assigned to Modesto Tower to flag the highway crossing.

The foregoing conclusively establishes—

- 1). that the carrier had the right to require the towermen assigned to Modesto Tower during the period November 10 to December 20, 1939, to flag the highway crossing to protect motorists against Tidewater Southern Railway trains moving over the highway;
- 2). that the said towermen not having been required to handle highway or street crossing gates were not entitled to additional compensation under Rule 31 (f) of the current agreement;
- 3). that no rule or provision of the current agreement supports the alleged claim for additional compensation;
- 4). that there was no basis whatever for additional compensation.

CONCLUSION

The carrier submits that it has conclusively proved that the alleged claim in the instant case is entirely without merit and therefore the carrier asserts it is incumbent upon the Board to deny it.

OPINION OF BOARD: The two rules under which this claim is based are Sub-sections (e) and (f) of Rule No. 31, reading as follows:

“(e) Assignment of duties other than those usually performed by telegrapher may be handled by the employees through their committee under the grievance rules of this schedule.

“(f) Where telegraphers are required to handle highway or street crossing gates, they will be paid five dollars (\$5.00) per month per set of gates in addition to their regular salary.”

Subsection (e) could only apply when the claimants did work other than that usually performed by telegraphers or towermen. What would apply to a telegrapher would apply to a towerman under the last sentence of the Scope Rule which says, “In application of these rules, employees covered thereby will be considered as telegraphers.” The record shows that the flagging in question had previously been performed by towermen at this place. Having previously performed this work at the place in question, it follows the work in flagging at the crossing in this claim was not “* * * duties other than those usually performed by telegraphers * * * .”

Since it is admitted that the flagging was done by hand, and not by highway or street crossing gates, then Subsection (f) of the rule would not apply.

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 employee involved in this dispute are respectively carrier and employee 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

There was no 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 18th day of January, 1943.