

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the Committee of the Order of Railroad Telegraphers that

(a) The Carrier violates the terms of the Telegraphers' Agreement by arbitrarily reducing the hourly rates of pay for positions of Agent-Crossing Watchmen on Sundays and holidays below the rate fixed in the Agreement: and

(b) And further violates the terms of the said Agreement by employing persons not under the Telegraphers' Agreement to perform the recognized schedule work of these positions on such Sundays and holidays on which the regularly assigned incumbents have refrained from working at the arbitrarily reduced rates of pay; that

(c) Such of these Agent-Crossing Watchmen who have worked on their positions on Sundays and holidays at the arbitrarily reduced rates of pay shall be compensated for the difference between what they were paid and what they should have been paid retroactive to July 2, 1941 and that

(d) Such of these Agent-Crossing Watchmen as have refrained from working on their Sundays and holidays at the arbitrarily reduced rates of pay shall be compensated for all such lost time at the fixed schedule rates retroactive to July 2nd, 1941.

JOINT STATEMENT OF FACTS: There is an agreement in effect between the Order of Railroad Telegraphers and the Boston and Maine Railroad, revised July 1, 1939.

The wage scale, which is part of this Agreement, shows the following positions:

STATION	POSITION	RATE PER HOUR
Cross Street	Agt. & C. W.	62 $\frac{1}{4}$ ¢
Woburn Highlands	"	62 $\frac{1}{4}$ ¢
Central Square	"	62 $\frac{1}{4}$ ¢
North Woburn	"	62 $\frac{3}{4}$ ¢
North Wilmington	"	70 $\frac{1}{2}$ ¢
West Acton	"	71 ¢
Lincoln	A. O. & C. W.	75 $\frac{3}{4}$ ¢
Phillips Beach	A. & C. W.	67 $\frac{1}{4}$ ¢
Devereaux	Agt. & C. W.	65 $\frac{3}{4}$ ¢

No employe who in exercise of seniority bids in a six day position can properly claim pay for Sunday.

The incumbent of this position at Lincoln chose to cover the crossing work himself rather than cover with a Crossing Tender and he reported his time as Crossing Tender, at rate of pay of a Crossing Tender.

Phillips Beach: No question on Sunday work as no crossing protection by anyone on Sunday.

Agent's hours on week days are from 6:15 A.M. to 2:15 P.M. and Crossing Tender's hours are from 2:15 P.M. to 11:00 P.M.

On Holidays, commencing in September 1935, ticket sales were discontinued and Agent was instructed to have crossing protected by Crossing Tender for all trains.

On Holidays Crossing Tenders on both tricks do the same work as on one trick other week days.

Devereaux: No question on Sunday work as no service by anyone on Sunday.

On Holidays, commencing in September, 1932, ticket sales were discontinued and Agent was instructed to have crossing covered by Crossing Tender on Holidays.

The Agent's week day hours are from 6:20 A.M. to 2:30 P.M. and Crossing Tender's hours are from 2:20 P.M. to 10:50 P.M. On holidays Crossing Tenders do same work on both tricks as on one trick ordinary week days.

West Acton: There is no claim for Sundays. Crossing Tender has always covered Sunday work—not the Agent.

Commencing July 4, 1931 the Agent's position at West Acton was not worked on the seven (7) Holidays named in the Agreement. At that time Agent was not handling crossing protection and crossing man worked Holidays.

In 1932 consideration was given the question of closing the agency at West Acton entirely, but it was finally decided that while the savings were not as great, to continue the agency—the Agent to also protect crossing during his hours of service—which was week days, which agreement was concurred in by Telegraphers' Committee.

Crossing Tender continued to perform Sunday work and Agent's instruction from 1932 were to use Crossing Tender to protect crossing on such Holidays.

OPINION OF BOARD: While the claim is divided into four parts it presents but two basic questions for determination: (1) whether the Carrier, by using "crossing tenders" to flag crossing at the designated stations on Sundays and holidays, violated its agreement with the Telegraphers, and (2) whether Agent-Crossing Watchmen called on for such service are entitled to pay at the rate provided for such positions in the Telegraphers' agreement.

First. Flagging at the crossings in question undoubtedly falls within the scope of the Telegraphers' agreement. But it also falls within the scope of an agreement the carrier has with the Brotherhood of Maintenance of Way Employees. The Carrier, therefore, is under contract with two groups of its employes for the performance of the same service. Whether or not, generally, under such circumstances, one group may assert violation of its agreement, by reason of the employment of members of the other group to perform the service, we need not decide. For it appears from the record

that the claimants acquiesced in the employment of "crossing tenders" for a long period of time at the stations in question. We are of the opinion that, under the facts disclosed by the record, the carrier did not violate its agreement with the Telegraphers by employing "crossing tenders" to flag the crossings in question on Sundays and legal holidays. It follows that subdivisions (b) and (d) of the claim should be denied.

Second. It is too well settled to require citation of authority that a contract, by a beneficiary under a collective bargaining agreement, to accept wages less than the schedule provided for in such agreement is void. Nor is the acceptance of a wage less than that provided for in such agreement an estoppel against claims for wages at the rate provided for. The Agents-Crossing Watchmen who were called upon to flag any of the crossings in question are entitled to the rate of pay provided for such positions in the Telegraphers' agreement. The fact that they performed no other service appertaining to the position of Agent-Crossing Watchmen is immaterial. They were called and performed service within the scope of duties of the position, and are entitled to pay at the rate provided for in the agreement. It follows that subdivisions (a) and (c) of the claim should be sustained.

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 carrier violated the agreement insofar as it failed to pay Agents-Crossing Watchmen, who were employed on Sundays and holidays, at the rate provided for in the Telegraphers' agreement.

AWARD

Claim sustained as to subdivisions (a) and (c). Claim denied as to subdivisions (b) and (d).

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of April, 1943.