

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE NEW YORK CENTRAL RAILROAD COMPANY
(Line West of Buffalo)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The New York Central Railroad Company, Line West of Buffalo,

(a) That the Carrier violates the provisions of Article 17 of the Telegraphers' Agreement between the parties by refusing to pay the \$5.00 per month compensation provided therein to the incumbents of positions at "HF" tower, South Bend, Ind., who are required to raise and lower the highway crossing gates at Arnold Street by means of the home signal lever governing the movement of trains of the Grand Trunk Western Railway Company through the interlocking plant; and,

(b) That the Carrier shall reimburse these employees retroactively to January 27, 1948, the amount they each have thus been improperly deprived of by reason of this violation.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement between the parties bearing effective date of July 1, 1946, as to rules of working conditions, copy of which is on file with the Board and by reference is made a part of this Statement of Facts.

For a number of years the Carrier has maintained an interlocking at South Bend, Indiana, which controls the movement of trains of both the New York Central Railroad and the Grand Trunk Western Railroad. This interlocking is known as "HF" Tower and is manned by one telegrapher-leverman in each 8 hour period.

Arnold Street is a public highway, crossing the tracks of the Grand Trunk Western Railroad at grade approximately 2,536 feet west of "HF" Tower. Electrically operated crossing gates control the movement of highway traffic on Arnold Street over the tracks of the Grand Trunk Western Railroad. Levers 111, 113 and 115 at "HF" tower govern the movement of westward trains on the Grand Trunk Western Railroad and operate signals located approximately 2,336 feet west of "HF" tower, and about 200 feet east of Arnold Street. Levers 90 and 91 at "HF" Tower govern the movement of eastward trains on the Grand Trunk Western Railroad and operate signals located approximately 800 feet west of Arnold Street and 3,336 feet west of "HF" tower. Because of a curvature in the tracks of the Grand Trunk Western Railroad and also a building accupied by the Olivert Farm Equipment Company

- intent of Article 17, the "Gates" rule of the Telegraphers' Agreement;
3. No rule of the Agreement was violated and Article 17, the "Gates" rule, negotiated into the agreement 11 years before automatic gates were first installed on Line West property, is not applicable;
 4. Awards of the National Railroad Adjustment Board support the carrier's position;
 5. The claim is without substance, is not supported by any rule, understanding or practice and should be denied.

(Exhibit not reproduced.)

OPINION OF BOARD: The Carrier maintains an interlocking, known as HF tower, at South Bend, Indiana, which controls the movement of New York Central and Grand Trunk trains at that point. Three telegrapher-levermen are employed around-the-clock. The Grand Trunk also operates an interlocking, known as Olivers tower, which is manned by Grand Trunk employes and controls the movement of Grand Trunk trains on the Grand Trunk tracks. On January 27, 1948, crossing watchmen at Arnold Street were displaced by the installation of an automatic-track circuit operated-flashing light signals and gates. The Organization contends that the new installation required the telegrapher-levermen to raise and lower the highway crossing gates at Arnold Street by means of the home signal lever, bringing into operation the following portion of Article 17, current Agreement:

"Employees required to protect crossings either by gates, manually operated flasher, or hand signals, will be allowed five dollars (\$5.00) per month additional compensation for each crossing."

The record discloses that trains approaching from the west automatically operate the signals and gates which protect traffic at Arnold Street until the approaching train has cleared the crossing. It is not unusual, however, for trains to stop short of the crossing to perform switching and other duties. It then became necessary during such periods to open the gates at Arnold Street to permit highway traffic to cross. In order to do this, it was necessary for the telegrapher-leverman, when information came to him requiring the raising of the gates, to throw his home signal lever back to break the automatic circuit, thus permitting the gates to rise. This meant, likewise, that when the train was prepared to move out of the automatically controlled area, that the home signal lever must again be thrown to protect the train, including the lowering of the crossing gates at Arnold Street. We think the handling of the crossing gates in this manner was a protection of crossings within the quoted portion of Article 17. The record shows, however, that on July 15, 1948, the Grand Trunk placed a toggle switch in operation which permitted Grand Trunk employes in Olivers tower to raise and lower the crossing gates by a push button operation. It is not contended that any violation occurred after this date insofar as eastbound trains are concerned.

It is further contended that similar violations occurred in the handling of westbound trains and that they continue to exist up to the present time. The record discloses that trains approaching the interlocking from the east are controlled in a similar manner as trains approaching from the west except that the record is not clear as to the facts and circumstances surrounding their movements. There is some indication in the record that trains approaching from the east stop in the signal controlled area only in case of emergency. There is no convincing proof that switching or other than line run train operations occur in the area east of the Arnold Street crossing. In fact, the claim seems to have been made on the basis of conditions existing prior to July 15, 1948 and the assumption that said conditions would continue as to eastbound trains as they had existed prior to that date. Consequently, we do not decide whether or not any Agreement provision was violated as to westbound trains because of a want of proof.

The claim will be sustained from January 27, 1948 to July 15, 1948, the date the method of protecting the Arnold Street crossing eliminated the question here in issue.

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

The Agreement was violated to the extent shown in the Opinion.

AWARD

Claim (a) sustained to the extent shown in the Opinion and Findings.

Claim (b) sustained from January 27, 1948 to July 15, 1948.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of July, 1949.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Interpretation No. 1 to Award No. 4481

Docket No. TE-4418

NAME OF ORGANIZATION: The Order of Railroad Telegraphers

NAME OF CARRIER: The New York Central Railroad Company, (Line West of Buffalo).

Upon application of the representatives of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The question to be determined by this interpretation is whether the "five dollars (\$5.00) per month additional compensation for each crossing" is to be prorated where the service was required only a part of a month. The answer is in the affirmative. While the payment is made on a monthly basis, the rule contemplates a full month's service for the compensation allowed. It necessarily follows that if the protection of crossings within the purview of Article 17 was required for a part of a month only, the compensation should be prorated accordingly. The compensation paid by the Carrier in satisfaction of the award was correct and constitutes a full compliance with that part of the award providing: "Claim (b) sustained from January 27, 1948 to July 15, 1948."

Referee Edward F. Carter, who sat with the Division as a member when Award No. 4481 was adopted, also participated with the Division in making this interpretation.

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

**ATTEST: A. I. Tummon
Acting Secretary**

Dated at Chicago, Illinois, this 21st day of July, 1950.