

Award No. 4846
Docket No. MW-4785

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DELAWARE & HUDSON RAILROAD CORPORATION**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the agreement when on or about September 7, 1946, it allocated certain work of repairing and maintaining crossing gates to employes not covered under the scope of the carrier's agreement with this Brotherhood:

(2) That the Maintenance of Way employes who previously performed this work prior to September 7, 1946 be allowed compensation at their pro rata rate for a number of hours equal to the number of hours consumed by employes not covered by the scope of this agreement in the performance of this certain work subsequent to September 7, 1946.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 7, 1946 all the work of maintaining crossing gates was performed by employes coming under the scope of the Carrier's agreement with this Brotherhood. Subsequent to that date certain of this work has been assigned to employes under the scope of the Carrier's agreement with its Signal Forces. The work referred to assigned to the Signal Department is the maintenance of the Carrier's automatically electrically operated crossing gates.

We attach as Employees' Exhibit "A" a photo of an automatic crossing gate with flashers attached, which is the type of gate involved in this docket.

The Employees have claimed that the Carrier violated the agreement by assigning this work to Signal Department employes. The Carrier has denied the claim.

The Agreement between the parties to the dispute dated November 15, 1943 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: For many years throughout the lifetime of the present agreement, as well as the superceding agreement that this Carrier has held with its Maintenance of Way employes, the work of maintaining and repairing its crossing gates has been considered as work coming within the Scope of the Maintenance of Way agreement. This the Carrier cannot deny.

We quote below Scope Rule of the effective agreement:

"The rules contained herein shall govern the hours of service, working conditions and rates of pay of all employes in any and all sub-departments of the Maintenance of Way and Structures Depart-

work of repairing and maintaining crossing gates was not exclusively performed by the employes of the Maintenance of Way Department. On our Champlain and Susquehanna Divisions, the Signal Department employes maintained the pneumatic gates, with the exception of some of the painting or supplying of gate arms. When gate arms were broken, the forces of the Maintenance of Way Department built the arms for the Signal Department to install. On the Champlain Division there have been no electric crossing gates installed and the work of maintaining and repairing the pneumatic type gate still continues to be performed by employes of the Signal Department. On the Susquehanna Division some electric short-arm gates have been installed and this type of gate, with the pneumatic gate, is serviced by employes of the Signal Department.

On the Saratoga and Pennsylvania Divisions, the work of repairing and maintaining the pneumatic style gate has been, and continues to be, performed by employes of the Maintenance of Way Department. After the Signal Department installed short-arm electric gates, replacing the pneumatic gate on some crossings, the Signal Department continued to repair and maintain them on these two divisions. The painting of both style gates has always been performed by Maintenance of Way Department employes.

On all Divisions the employes of the Signal Department have always installed, replaced and maintained all electric lights and wiring on both pneumatic and short-arm gates.

The Carrier believes the short-arm gate an entirely new type of crossing protection cannot be properly installed or maintained without electrical knowledge of which it is contended that employes of the Maintenance of Way Department are not expected or required to possess; and, as this style gate is new and has only been installed and maintained by Signal Department employes, it cannot be claimed that the work has previously been performed by other than Signal Department employes, so therefore, the agreement rules and duties of no other employes have been encroached upon.

(Exhibit no reproduced.)

OPINION OF BOARD: It is the contention of the Organization that the repairing and maintaining of crossing gates is work belonging to employes under the Maintenance of Way Agreement. The Carrier asserts that it has properly assigned this work to signalmen. This dispute is closely associated with that in Award 4845.

The construction, operation and maintenance of crossing gates is historically the work of maintenance of way employes. There is evidence, however, that prior to September 7, 1946, the work of repairing and maintaining crossing gates on the Champlain and Susquehanna Divisions, except for painting and supplying of gate arms, was performed by signalmen. On the Saratoga and Pennsylvania Divisions the repairing and maintaining of the pneumatic style gates was performed by the maintenance of way employes. The Carrier asserts however that the short-arm, electric gates were installed by signalmen and maintained by them. It was the advent of the new short-arm electric gates and flashers which is primarily responsible for the dispute here involved.

Where the maintenance of way employes performed the work of repairing and maintaining the manually operated crossing gates, such work is not taken from them merely because of the use of the more modern short-arm, electrically operated gates. On the other hand, the maintenance and repair of all electric apparatus used in connection with crossing gates is clearly the exclusive work of signalmen.

We hold therefore that the general maintenance of crossing gates belongs to maintenance of way employes. This is supported by Rule 36 (a), current agreement, which lists the positions of Gate Maintainers and Gate Maintainer's Helpers. The work includes painting, repairing and caring for these

crossing gates. Their work is subject, however, to the right of signalmen to maintain and repair all electrical apparatus including wiring and lights, and other work which is incidental thereto. The repair or replacement of wooden gate arms which are electrically lighted is the work of signalmen. If not so lighted, it is the work of maintenance of way employes. In other words, all maintenance of crossing gates belongs to maintenance of way employes except that pertaining to the electrical fixtures and apparatus, and such maintenance and repair as is incidental thereto.

The Carrier insists that the work of repairing and maintaining short-arm, electrical gates has been performed by signalmen. Such work as hereinbefore set forth belongs to maintenance of way employes. We find no evidence of acquiescence in these improper assignments sufficient to bar the Organization from asserting them. An affirmative award is required to the extent set forth in this Opinion.

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 Agreement was violated to the extent set forth in the Opinion.

AWARD

Claim sustained per Findings and Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of April, 1950.