

Award No. 7764

Docket No. MW-7349

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

John Day Larkin, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY**

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

1. The Carrier violated the Agreement when it required its crossing watchmen at Waco, Texas, to temporarily suspend performing the duties of their regular positions on various dates in May, 1953;

2. Crossing Watchmen H. A. Cline, J. G. Mathis, J. W. Nicks, H. Nevels, G. S. Graves, J. B. Lynch, G. R. Spencer, O. F. Gray and O. Chesser each be reimbursed for the exact amount lost account of the violation referred to in part (1) of this claim.

**EMPLOYES' STATEMENT OF FACTS:** The Claimant employees are all crossing watchmen employed by this Carrier at Waco, Texas.

Crossing protection over the Carrier's tracks in Waco, Texas is generally provided by electrically or mechanically operated gates and signals, the actuation of which is remotely controlled by the crossing watchmen when and if crossing protection is required. Should, for any reason, these remotely controlled actuating devices become inoperable, the crossing watchmen are required to station themselves on the ground and provide crossing protection by the use of flags, stop banners and/or lanterns.

On May 12, 1953, a tornado struck Waco, disrupting certain electrical and communication transmission systems and which rendered the operation of some of this Carrier's electrically and mechanically operated crossing protection facilities inoperable. Similar crossing protection facilities in use by the M. K. T. Railroad in Waco were also rendered inoperable.

The electrical and mechanical actuation and operation of the crossing protection facilities at this Carrier's crossing on 13th Street in Waco, Texas was not adversely affected or rendered inoperable by the tornado.

On the M. K. T. property, the crossing watchmen were required to station themselves on the ground and to provide crossing protection by means of flags, stop banners and lights while the electrical and mechanical actuation and operation was inoperable.

watchmen could have protected only one crossing each. Their assignments were to protect three crossings each by means of the signal towers.

Thus watchmen could not be used and it was not known when the services of watchmen would again be required. Therefore, in keeping with the requirement to operate in an efficient, economical manner in the public interest it was reasonable and proper to abolish the positions.

#### IV

During the period the positions were not in existence no one performed the duties to which crossing watchmen were assigned prior or subsequent to that period. The crossing watchmen were assigned to work in three towers. No crossing flagmen were employed. As stated above, each watchman protected three street crossings. They were assigned to cover two shifts. During remainder of the 24-hour period when watchmen were not on duty, signs reading as follows:

#### "Signals Not In Operation."

were placed on each crossing. Train or yard engine crews moving over the crossings during such hours protected the movement in the same manner as at crossings where watchmen have never been employed.

During the period the positions were not in existence they handled in the same manner, except that the crews were subject to the restrictions of the soldiers and police and were able to move over the crossings only if and when permitted by such authorities. Such control as exercised by the authorities and by the crews in moving over the crossings was incidental to their own duties. No one operated the signals installed for use of crossing watchmen or otherwise acted as crossing watchmen.

#### V

Claimants are not entitled to pay during the period the positions they had been filling were not in existence. It has been pointed out that the positions were abolished, as the Carrier had the right to do. While the notice was given orally it had the same effect as a written notice. No other form of notice would have been of more benefit to the watchmen. There was no question of exercising seniority and working elsewhere. Watchmen's jobs are not filled by seniority.

Each claimant had right to pay as crossing watchmen only so long as position as such was maintained by the Carrier and such claimant was assigned to the position by the Carrier.

Here the Carrier exercised its right to abolish the positions. Claimants held no positions during the period of claim and clearly have no right to any payment.

The facts pointed out above show that the claim is not supported by the rules and is not valid for any reason, and the Carrier respectfully requests that the claim be denied.

Data herein has been presented to representatives of the employees.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On May 11, 1953, a tornado struck Waco, Texas. That part of the city through which this Carrier's main track runs was devastated. More than a hundred people were killed and enormous property damage resulted. Communication lines were destroyed. Carrier's passenger and freight depots were heavily damaged; and the three signal towers at Fourth, Seventh and Twelfth Streets, being in or near the devastated area, were put out of service. While the record does not indicate that martial law was declared, military personnel from Fort Hood and State

Highway Patrolmen were moved in and took command of the situation. The entire area was roped off. All traffic at the Carrier's crossings was stopped. Only relief supplies and those performing relief service in the area were allowed to cross the tracks. And even the trains which went through were subject to the restrictions of the military and police who were in command of the situation. It was approximately a week before traffic could begin to move in an orderly fashion.

In view of this situation Carrier's crossing watchmen assigned to the towers at Fourth, Seventh and Twelfth Streets were unable to function. There was no electricity for operating signals or bells, and no way in which they could be used as crossing watchmen. Consequently, on May 13, 1953, upon instructions from the Division Superintendent, the Carrier's Agent at Waco orally informed the Crossing Watchmen that their positions were abolished. However, as the restricted area was reduced and it became possible to re-establish normal traffic movement, the Watchmen's positions were restored; two were re-opened May 18 and the third on May 21.

It is the contention of the Claimants that the Carrier improperly terminated their services for the period in question, and violated the Agreement in assigning their duties to others not covered by the Agreement.

It is clear from the facts of this case that the Carrier had no control over the direction of traffic at the crossings involved. This function was removed by the officials who took command in the emergency situation. Since the Carrier could not assign these Claimants to any duties within the restricted area during this emergency, we fail to see any contractual obligation to continue the positions. The matter may have been handled in an unusual manner in that ordinary procedures in abolishing and reestablishing positions were not observed. But in emergencies of this kind, extraordinary procedures which are not clearly in violation of specific agreement provisions may be followed.

We differ with Claimants in their contention that their work was assigned to others during this emergency. Their work simply did not exist during the period in question. Even if there was some direction of traffic at the crossings, it was neither normal traffic to which these Claimants are assigned, nor was it a matter subject to the Carrier's discretion or control.

**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 Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 1st day of March, 1957.