

Award No. 7809
Docket No. MW-7358

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
BOSTON & MAINE RAILROAD**

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

(1) The Carrier violated the Agreement from May 31, 1954, to July 31, 1954, both dates inclusive, when it assigned crossing protection work at Union Street, Methuen, Massachusetts to other than employees subject to and holding seniority within the Agreement of November 29, 1943, between the parties hereto.

(2) The senior spare Crossing Tender available on each or any of the days within the period referred to in part (1) of this claim be allowed eight hours straight-time pay for each of such days in which he and/or they were so available and not used.

(3) That, for each day within that period in which no spare Crossing Tender was available, the senior available regularly assigned Crossing Tender on any such days be allowed eight hours of pay at time and one half rate.

(4) That a joint check of the Carrier's records be made to accurately determine the identity of the claimants and the amounts due each of them.

EMPLOYEES' STATEMENT OF FACTS: Union Street in Methuen, Massachusetts is a street leading into the Rockingham race tracks and traffic over this street is extremely heavy during the period in which races are scheduled during the racing season.

This street crosses the Carrier's tracks at grade and the Carrier provides crossing protection at this point during periods in which racing meets are scheduled. The crossing protection work at this point during such periods has always been assigned to Crossing Tenders in line with the provisions of the Agreement covering the employees of that class.

However, during the 1954 racing meet held from May 31 to July 31, 1954, (both dates inclusive) the crossing protection work at this point was assigned to an employee holding seniority within the scope of the Carrier's Agreement with The Order of Railroad Telegraphers, who was awarded

Crossingtenders.

Nowhere in the Agreement is there any provision requiring any specific crossings to be protected by a crossingtender nor establishing any criteria for determining which crossing should be so protected. In view of the undisputed past practice and the changes in type of protection afforded with approval of the Public Service Commission after a hearing, we think the Scope Rule, as it states, covers employes in the classification of crossingtender but does not require their employment at any specific crossing." (Emphasis Supplied)

Therefore, the Carrier has been protected by the foregoing award insofar as the claimant is concerned. The only concern of the Carrier was to be protected from a claim by the Telegraphers' Organization. As stated above, the Telegraphers' Organization agreed to such an arrangement. Therefore, the Boston and Maine Railroad is on safe ground and there should be no claim brought forth by any organization as to the method of handling the instant case.

Please note plan above showing location of "Operator's shanty". The reason for placing this operator's shanty at this point was for the accessibility of the operator, on duty, during the Racing Season, to handle the necessary flagging protection in addition to the Manual Block System in effect due to the single iron.

Therefore, there can be no justification for claim when an operator merely flags a few trains during a particular Racing Season incidental to his duties as an operator under the Telegraphers' Agreement. There are other locations on this Railroad where this is being done as brought out in Third Division Award No. 5575, Opinion of the Board quoted above.

Claim is without merit and should be declined.

All data and arguments herein contained have been presented to the Organization in conference and/or correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves crossing tenders at Union Street, Methuen, Massachusetts, where the Carrier provides crossing protection only during the racing season. The instant case arises over the manner in which this service was assigned from May 31, to July 31, 1954. Prior to the 1954 season, Crossing Tenders, covered by the petitioning Organization's Agreement, had been assigned to this work.

The record shows that not only was this a temporary assignment, but also it entailed relatively little work, since this was a single track line with few trains daily. The change of assignment here complained of came about as a result of the closing of the Methuen Station on December 31, 1953, and the rearrangement of service accordingly. The position of Agent was abolished with the closing of the station. And thereafter the Carrier constructed, at the Union Street Crossing, a block operator's office, equipped with a train control board and necessary wires for a block operator to function during the racing season. This was in lieu of the Agent formerly assigned at the Methuen Station. The plan was to have the block operator protect the highway crossing, incidental to a limited number of other duties of the operator. The actual protection of the highway crossing involved two trains per day during the racing season, except May 31, when only one train made the trip, and July 5, when four trains were involved.

The Carrier has an agreement with the Order of Railway Telegraphers which includes in its scope the position of "Block Operator". This and other positions within the scope of the agreement with the ORT includes the duty of protecting crossings as incidental to other normal duties. Article 19(b) of the latter Agreement provides that,

"Employees assigned to telegraph duties and not now protecting crossings or operating hand-thrown switches will be exempt from such duties unless agreed to by the Railroad and the General Chairman."

In spite of the fact that there is a letter from General Chairman J. J. McGraw of the ORT, dated September 24, 1954, and addressed to General Chairman Cameron of the Brotherhood of Maintenance of Way Employees, renouncing any claim for members of his Organization for the work here in question, the record shows that the Carrier's Vice President in charge of Operations did discuss the assignment of the Block Operator (with the duties of protecting the crossing) with General Chairman McGraw on April 30, 1954 and the later agreed to the assignment.

In short, public highway crossings have been protected in various ways, on this Carrier's property as on others. Even though this temporary assignment during the racing season had been previously given to employees covered by this Organization's Agreement, this was not a full-time position specifically set up in the Agreement and reserved exclusively for Crossing Tenders. As we said in a previous award involving the same parties:

"The Scope Rule of the Agreement provides that 'the rules of this agreement apply to the following employees on payrolls of the Operating Department: Crossing Tenders.' Nowhere in the agreement is there any provision requiring any specific crossings to be protected by a crossing tender nor establishing any criteria for determining which crossings should be so protected . . . we think the Scope Rule, as it states, covers employees in the classification of crossing tender but does not require their employment at any specific crossings". Award 5575.

Various methods have been and are used to protect public highways at crossings. Train crews often perform this service. Automatic signals are frequently used. And at times these duties are performed manually by crossing tenders, as in the past at Methuen, Massachusetts. Employees covered by the Telegraphers' agreements are also assigned this work at times. Just as the Carrier in this instance terminated the Station Agent's position, so also could it abolish the position of crossing tender. The Carrier might have elected to install automatic signals at the crossing in question. But since the Block Operator's equipment was installed and those covered by the Telegraphers' agreements are at times made responsible for crossings, the action taken by the Carrier in this instance does not go contrary to general practice.

The Scope Rule of the Maintenance of Way Agreement, as it stands, has not been violated in this instance, since it does not provide for the exclusion of others in the performance of the service in question. Nor do we find any other provision of the parties' Agreement which has been contravened.

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 4th day of April, 1957.

CHICAGO, ILLINOIS, APRIL 4, 1957

TO THE HONORABLE CHIEF OF THE NATIONAL RAILROAD ADJUSTMENT BOARD

FROM THE NATIONAL RAILROAD ADJUSTMENT BOARD, CHICAGO, ILLINOIS

RE: [Illegible text]

AND: [Illegible text]

AND: [Illegible text]

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