

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CENTRAL OF GEORGIA RAILWAY COMPANY

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

(1) The Carrier violated the Agreement beginning on May 15, 1954, when it abolished positions of crossing watchmen and relief crossing watchmen at Third Street and Society Street, Albany, Georgia, and thereafter assigned the crossing protection work at these crossings to employees in the train service department;

(2) That crossing protection work at Third Street and Society Street, Albany, Georgia, be restored as it was prior to May 15, 1954, to the employees holding seniority in the effective Agreement;

(3) That the crossing watchmen and the relief crossing watchmen affected by the abolishment of the aforesaid crossing watchmen's positions be paid at their respective straight time rates for all time that their crossing protection duties have been performed by train service employees from May 15, 1954, until the violation has been corrected.

(4) That a joint check of the Carrier's payroll and other records be made to accurately determine the employees involved and the monetary amounts due.

EMPLOYEES' STATEMENT OF FACTS: Crossing protection work at Third Street and Society Street, Albany, Georgia, has historically and traditionally been assigned to and performed by crossing watchmen.

Positions of crossing watchmen, the incumbents thereof, and the work inherent thereto are covered by and subject to the rules of the "Agreement between the Central of Georgia Railway Company and its Maintenance of Way Employees as represented by the Brotherhood of Maintenance of Way Employees", the Twenty-First Edition becoming effective September 1, 1949 and still currently in effect.

Beginning as of June 15, 1954, the Carrier required crossing watchmen to discontinue performing crossing protection work at Third Street and Society Street and, under guise of abolishing the positions of crossing watchmen at that point, assigned the crossing protection work formerly performed by such

SUMMARY

Carrier has shown clearly that there is absolutely no merit in this claim because it is not supported by any rule of the effective agreement, and that crossing protection does not belong exclusively to the Maintenance of Way crossing watchmen.

The claim should be denied.

All data submitted in support of Carrier's position in this case has been presented orally or by correspondence to the Employees or duly authorized representative thereof, and made a part of the dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The confronting claim as it presently stands for adjudication, concerns the alleged violation of the effective agreement, arising out of the Carrier's action in abolishing the Second Trick Crossing Watchman position, Third Street Crossing, Albany, Georgia. Request is made that the Respondent be ordered to restore this position, and that all employees adversely affected be made whole for all wage loss sustained.

The Organization took the position that the Scope Rule (Rule 1) of the effective agreement clearly embraces crossing protection work and that this being true, all such work accrues to the employees covered thereby. It was asserted that this work could not be properly performed by employees not covered by the agreement for the further reason that the classification of Crossing Watchman and corresponding wage rates were established under Rule 15 (e) and 34 (c). It was further pointed out that Crossing protection work remained at this point.

The Respondent countered with the assertion that crossing protection work had never been assigned exclusively to Crossing Watchman or placed exclusively under the Maintenance of Way Agreement. It was pointed out that a crossing watchman had never been assigned to the third trick at Third Street Crossing and that train service employees had always been required to comply with operating rules and protect their own train when proceeding over a crossing.

The Respondent further asserted that the establishment of Crossing Watchman positions with corresponding wage rates were to provide for those times and places when such work was assigned to employees covered by the effective agreement.

The confronting Scope Rule is of the broad and general type. It does not set out the various items of work coming thereunder. Certainly crossing protection work is not mentioned. In interpreting and applying similar rules this board has on each occasion made a determination as to whether or not the work there in question was of the type that had historically or traditionally assigned to and performed by employees covered by that particular agreement.

In applying this criteria to the facts of record here we find that over a long period of time, that is since 1918, train crews have been required to protect their trains in proceeding over public crossings. So therefore upon a finding that a substantial amount of crossing protection work has been performed by other than Maintenance of Way forces we cannot conclude that this work belongs to such forces to the exclusion of all others.

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 Carrier did not violate the effective agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December, 1957.