

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

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

1. The Carrier violated the Agreement beginning on January 20, 1954, when it abolished positions of Crossing Watchmen and Relief Crossing Watchmen at Ashley Street and O'Fallon Street, St. Louis, Missouri, and thereafter assigned the crossing protection work at these crossings to other than employees covered by and subject to the Carrier's Agreement with the Brotherhood of Maintenance of Way Employees;

2. Crossing protection work at Ashley Street and O'Fallon Street Crossings be restored as it was prior to January 20, 1954, to employees holding seniority rights under the effective Agreement;

3. Crossing Watchmen Greer Slinkard, Walter F. Hommert, Charles J. Heintz, Bidwell Bryant, William C. Buhrmaster and Alvin W. Brown, as well as any other Crossing Watchmen holding seniority rights on the Merchants Division who has been or may be adversely affected, each be allowed pay at their respective straight time rate for an equal proportionate share of the total man-hours consumed by the employees of another craft from January 20, 1954, until the violation as referred to in part (1) of this claim has been corrected.

EMPLOYEES' STATEMENT OF FACTS: On January 20, 1954, the work of protecting vehicular and pedestrian traffic at Ashley and O'Fallon Street Crossings, St. Louis, Missouri, was assigned to employees holding seniority rights under the Order of Railroad Telegraphers' Agreement. For many, many years prior to January 20, 1954, the work of protecting these crossings was performed by employees holding seniority rights in the Maintenance of Way Department, whose hours of service, working conditions and rates of pay were and are governed by the Brotherhood of Maintenance of Way Employees' Agreement.

The total of all manipulations at both crossings amounts to only forty-six over a period of eight days during which there were 556 movements over the involved trackage. If we were to say that each manipulation would take two seconds, which is excessive, that would be only ninety-two seconds in all, or about a minute and a half of the leverman's time. Manifestly it would be altogether out of reason (even if we had a rule requiring it) to force this company to employ a crossing watchman to sit in Biddle Street tower for the purpose of handling potential manual operation of the gates at Ashley and O'Fallon Streets in the light of the above statistics. Based on the eight-day check in our Exhibit A and taking two seconds for each manipulation and applying the average manipulations of the test period to all the days from January 20, 1954 to October 25, 1955 we come up with approximately two hours' time that the levermen at Biddle have devoted to manual control of the gates at Ashley and O'Fallon.

In summing up the Carrier's position the following are the points we wish to stress:

(1) Our agreement with the Maintenance of Way organization recognizes the prior right of other crafts to protect crossings.

(2) Employees represented by the Order of Railroad Telegraphers have participated in protecting crossings since 1936 without protest from the Maintenance of Way organization.

(3) It was the installation of automatic protection at Ashley and O'Fallon Streets that was the cause of displacing the crossing watchmen at those locations.

(4) If the previously cited items are not considered controlling, certainly the amount of work involved that crossing watchmen might be eligible for is so insignificant as to bar serious consideration.

For these reasons we respectfully request this honorable board to reject this claim.

All data submitted in support of Carrier's position has been presented to the duly authorized representative of the Employees and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 1 of the Agreement (the Scope Rule) includes Highway Crossing Watchmen, the definition of whose position in Rule 2 (the Classification Rule), is as follows:

"An employe assigned to the watching and protection of grade crossings, including the operation of manually controlled gates, **not otherwise protected by other crafts**, shall constitute a Highway Crossing Watchman."

The record shows that in 1952, when this Agreement became effective, telegraphers and towermen represented by the Order of Railroad Telegraphers were operating crossing gates, and that the manually controlled gates at Biddle Street, St. Louis, had been so operated from the Biddle Street Tower since 1936. In 1954 the gates and flashers at nearby Ashley and O'Fallon

Streets, which had been operated by highway crossing watchmen under this Agreement, were superseded by automatic devices operated by track circuits. The manual operation of automatic gates becomes necessary at times, as when mobile equipment stops for a while on an approach circuit or for some reason the electric circuit fails to operate the gates. Controls for that purpose were therefore installed in the Biddle Street Tower for control by the operators under the Telegraphers' Agreement, who had for years operated the Biddle Street gates.

An eight day test in August, 1955 showed that the total traffic movements in this section by trains, light engines and motor cars, averaged about 25 per day on each of the first and second shifts, and 19 on the third shift. It showed also that during the entire eight day period the total number of manual gate movements (either up, by pushing a button, or down, by moving a lever on the panel) were as follows: At O'Fallon Street: 1st shift, 19 (an average of $2\frac{3}{4}$ per shift), 2nd shift, 1; 3rd shift, 2; total, 22 (an average of $2\frac{3}{4}$ per full day); at Ashley Street: 1st shift, 16 (an average of 2 per shift); 2nd shift, 3; third shift, 5; total 24 (an average of 3 per full day). But the manual gates at Ashley Street had been operated only from 6 A. M. to 6 P. M., so that only the first shift and part of the second were involved; during those two full shifts the total manual moves numbered 19, or an average of $2\frac{3}{4}$ per day. The evidence is that each such operation takes a second or two of the operator's time; but assigning a quarter of a minute to each, the entire time involved in a full day hardly exceeds a minute and one-half, practically all of it during the first shift. It also obviously involves some preliminary attention, in most instances presumably for traffic moving past the Biddle Street gates also.

It is well settled that it is not a violation of an Agreement to install labor saving equipment even though jobs are thereby eliminated. Awards 3051, 4063, 6416, 8656. But Claimants contend that the new gates are only "semi-automatic" by reason of the occasional manual operation thereof at the Biddle Street Tower, and that the change constitutes the transfer of crossing watchmen's work to the members of another craft.

It is obvious that these gates are fully automatic in normal operation and thus supersede the watchmen. It is difficult or impossible to imagine any automatic mechanism which will not sometimes require manual control. The above instances of physical operation, which are infrequent and involve trivial amounts of time, do not constitute the transfer of crossing watchmen's work to the telegraphers, for that is being performed by the automatic gates.

It must also be noted that the Agreement does not give this Brotherhood exclusive jurisdiction over the protection of crossings but expressly mentions protection by other crafts. But Claimants contend that the reference to "gates not otherwise protected by other crafts" should be construed as meaning "gates not otherwise controlled by other crafts on May 1, 1952." We cannot attribute to the Rules a meaning not expressed by their words nor warranted by reasonable implication. Both this Agreement of 1952 and the Telegraphers' Agreement of 1938 refer to the control of crossing gates without any expression of limitation or preferential right, and we can imply none.

For the reasons stated the Claim must be denied.

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 has not been violated.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 29th day of March, 1960.