

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carl R. Schedler, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**CHICAGO, SAINT PAUL, MINNEAPOLIS AND OMAHA
RAILWAY COMPANY**

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

1. The Carrier violated the Agreement, beginning on June 19, 1953, when it unilaterally and arbitrarily removed crossing protection work at West Minneapolis non-interlocked crossing from within the scope of the agreement between the two parties to this dispute and unilaterally and arbitrarily transferred and assigned said crossing protection work to employees outside the scope of the agreement between the two parties to this dispute;

2. The crossing protection work at the West Minneapolis non-interlocked crossing be returned to and assigned within the provisions of the Agreement controlling between the two parties to this dispute;

3. Crossing Flagmen Joe Gallagher, Clarence L. Johnson, Rudolph Stotka, and William Polenske, together with any other employees adversely affected by the violation referred to in part (1) of this claim, be reimbursed for all monetary loss suffered by reason of said violation.

JOINT STATEMENT OF FACTS: Prior to 12:01 A. M., Friday, June 19, 1953, twenty-four hour flagman protection has been furnished by this carrier at the crossing of its tracks and the Great Northern tracks at West Minneapolis. These crossing flagmen were represented by the Brotherhood of Maintenance of Way Employees. Effective as of 12:01 A. M., Friday, June 19, 1953, these crossing watchman positions were abolished and effective as of the same time under General Order No. 3 of Twin City Terminal Division, dated June 16, 1953, all yardmen, trainmen and enginemen were notified that movements across such crossing must be protected by a member of the crew at the crossing. A copy of that General Order is attached hereto as Joint Exhibit "A".

position paid .296 per hour more than his flagman's position and he has worked steadily as a truck driver since.

George P. Norberg, a transient without rights in the maintenance of way department, was placed on Rudolph Stotka's flagman position at West Minneapolis and worked from May 26, 1953 until the position was abolished on June 19, 1953. Mr. Norberg was hired with the distinct understanding that it was merely a temporary position which was to be abolished and that he would be through on the date the position was abolished.

It is therefore the position of this carrier that the claim should be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute is before the Board on an agreed statement of facts. Since the facts are not in controversy the record consists largely of argument by the parties in support of their respective contentions. The basic issue before the Board is whether the Carrier violated the Agreement when it abolished the flagmen positions at the Crossing of Carrier's tracks in West Minneapolis, Minnesota and required train crews to perform their own flagging protection after June 19, 1953. The Organization claims that the crossing protection work should be returned to members of the Organization, and that the displaced flagmen be paid for certain monetary losses. The Carrier denied the claim and contends there has been no breach of the Agreement.

The Organization maintains that the performance of this flagging work was the exclusive work of employees covered by the Maintenance of Way Agreement, and that their Scope and Seniority Rules were violated by permitting train crews to do this work. The proof offered fails to support this contention. It is true that for the past twenty-five years or more the flagging work was performed at this crossing by employees within the coverage of the Agreement. However, the Agreement does not expressly provide that all flagging work at crossings on the Carrier's property will be performed by employees covered by the M/W Agreement. As a matter of fact, the record discloses that flagging work at crossings on this property has at all times been done by trainmen as well as Maintenance of Way employees. In fact, crossing protection is done in a number of ways, both manually and mechanically.

Nowhere in this Agreement can we find any provisions requiring any specific crossings to be protected by a flagman, nor establishing any criteria for establishing which crossings should be protected by what craft. In view of the past practice that the work of protecting crossings has been performed by members of more than one craft, and since the Carrier is not prohibited from abolishing jobs, we must conclude that the Agreement has not been violated and the claims 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 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 there was no violation.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October, 1960.