



Award Number 17820

Docket Number TE-17857

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
SOO LINE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Soo Line Railroad Company, that:

1. Carrier violated the agreement when it required and permitted train or engine employees not working under the agreement to operate the manually controlled railroad crossing gates at Gloster, Minnesota.
2. Carrier shall compensate Telegrapher J. D. Knops two hours at the punitive rate of Gloster, Minnesota on each of the following dates: April 3, 5, 7, 10, 12, 19, 1967; and on each subsequent date for which a time claim has been or will be submitted when similar violations occur.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The claim in this issue is based upon the provisions of an Agreement between the Soo Line Railroad Company, hereinafter referred to as Carrier, and the Transportation-Communication Employees Union, hereinafter referred to as Employees or Union. The Agreement effective July 1, 1956, as amended and supplemented is by this reference made a part of this submission. The claim was handled on the property in the usual manner, including conference, (July 24, 1967), and has been declined.

The dispute arose when Carrier permitted employees outside of the Agreement to perform work belonging to employees covered by the Agreement. This was the handling of manually operated crossing gates at Gloster, Minnesota.

Employees contend before this Honorable Board, that certain provisions of the collective bargaining Agreement were violated.

Carrier contended that the work in question is not reserved exclusively to telegraphers by the rule, custom, or practice and that claimant's rights were in no way violated.

(b) ISSUES

1. Did Carrier violate the parties' Agreement when they transferred the work of operating the manually controlled crossing gates to train crews?

its forces was economically unjustified. Despite the fact that the Soo Line had received no inbound nor outbound revenue at Gloster since August 1958, round-the-clock Telegrapher service was maintained. The sole duty performed by the Agent and Operators had shrunk to the receipt of train orders and the handling of the crossing gate.

In 1957, while the Soo Line operated one freight train and one passenger train in each direction each day, studies were commenced concerning the feasibility of installing an automatic interlocking plant at Gloster and C.T.C. between Gloster and Trout Brook Junction (over which route the Northern Pacific operated some of its trains on Soo Line tracks into St. Paul). Negotiations were commenced with the Northern Pacific in December 1959, but it was not until six years later that the two roads could reach agreement on the abolition of agency service at Gloster. At this time the Soo Line passenger trains had been discontinued and only one westbound freight, operating on a tri-weekly schedule, passed through Gloster.

In March 1966, the Soo Line and the Northern Pacific jointly petitioned the Minnesota Railroad and Warehouse Commission for authority to discontinue agency service and to abandon the station facilities at Gloster. Under date of June 16, 1966, the Commission granted this authority. Copies of the Petition, supporting exhibit of expenses, and Report, Findings of Fact and Order of the Commission are attached as Carrier Exhibits "A", "B", and "C", respectively.

Further negotiations between the carriers ensued as to arrangements for handling NP train movements, over Soo trackage between Gloster and Trout Brook Junction. Upon settlement of these matters in March 1966, the positions of Agent-Operator and two trick Operators at Gloster were abolished and the agency closed effective April 1, 1966.

With the abolishment of the station forces at Gloster, Soo Line train crews operating through that point were required to open and close the crossing gates in accordance with Rule 98(a) of the Consolidated Code of Operating Rules. This, in turn, prompted claims for a call on each such occasion by the Agent located at North St. Paul, three miles away.

Copies of schedule agreement between the parties to this dispute, effective July 1, 1956, and supplements thereto are on file with the Board and are made a part of this record by reference.

(Exhibits Not Reproduced)

OPINION OF BOARD: At Gloster, Minnesota, where tracks of the Carrier cross those of another railroad at grade, telegraph service had been maintained on an around-the-clock basis for many years. Protection for the railroad crossing was provided by a manually operated gate which also actuated signals indicating the position of the gate. This gate and its signals were operated by the telegraphers.

After train movements had declined to one train per day on a tri-weekly basis, all telegrapher positions were abolished, and operation of the crossing gate was thereafter required of the train crew using the crossing. Telegraphers considered this to be a transfer of work in violation of their agreement, and filed claim accordingly.

Carrier defends against the claim primarily on the ground that the work of handling crossing gates is not performed by telegraphers and on a system-wide basis and is not, therefore, reserved exclusively to such em-

ployes. Carrier admits that this work has been done by the telegraphers at this particular point for many years, and the Employees contend that this fact supports their position. Numerous awards of this Board provide support for both viewpoints.

However, we believe it is not necessary to deal with local versus system-wide practices in order to dispose of the instant dispute. Carrier states that telegraphers were allowed additional compensation, under Rule 19(c) for operating the crossing gate, and this is not denied by the Employees.

Rule 19(c) provides an "arbitrary" or "special allowance" for employees required to operate crossing gates, crossing signals, or to flag crossings. Such rules obviously treat the activities covered as being tasks not normally a part of the duties that can properly be assigned under the scope rule. They provide evidence which, if not refuted, implies that the work enumerated is outside the scope of agreement.

In the record before us, there is nothing to refute the implication of Rule 19(c). The claim, therefore, must be denied, in view of which conclusion other questions raised need not be considered.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of April 1970.