

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42421
Docket No. MW-41866
16-3-NRAB-00003-120168**

The Third Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(Union Pacific Railroad Company (former Chicago
(and North Western Transportation Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned B&B Subdepartment employes to perform Track Subdepartment crossing watchman work at crossings between Mile Posts 20.2 and 24 on the Geneva Subdivision beginning on Friday, November 12, 2010 through Sunday, November 14, 2010 instead of Track Subdepartment employes W. Overton, R. Alegria, J. Correa, K. Jackson, J. Parker, C. Robinson, K. Freeman, F. Giron, and R. Jenson (System File JJ-1002C-351/1544782 CNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants W. Overton, R. Alegria, J. Correa, K. Jackson, J. Parker, C. Robinson, K. Freeman, F. Giron, and R. Jenson shall now each be compensated at their respective and applicable rates of pay for all straight time and overtime hours worked by the B&B Subdepartment employes in the performing the aforesaid Track Subdepartment crossing watchman work on November 12, 13 and 14, 2010.”**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Carrier acknowledges as noted in the Statement of Claim that on the specified dates in question, November 12 through 14, 2010, work related to a signal "cutover" described as integration of the signal system occurred on the Geneva Subdivision. More specifically, the signal cutover involved approximately four miles of track that had signal systems cut in or integrated into the Carrier's network. The work required a large number of signal employees to test and monitor the signaling system as it is integrated into the existing network and additional employees to protect or flag crossings and pieces of track to ensure trains, employees and the public do not proceed on a wrong signal or when no signal is available. Carrier explained it assigned 26 Bridge and Building (B&B) Subdepartment employees to provide the necessary protection by performing the duties of flagging railroad crossings to stop public traffic from crossing the tracks at a time a train was approaching.

The Organization is in agreement that the work at issue involved protecting the public and track structure from the infinite number of possible occurrences or consequences that might take place at railroad crossings as a result of the Carrier conducting its daily business on its operating property such as, movement of trains, track maintenance projects, signal projects such as here or any other activity that would require protection of the public from Carrier operations. At issue in this case however is the Organization's contention that the work of protection as so described here falls within the duties of the job classification of "Crossing Watchman", a classification that is specifically listed as part of its Track Subdepartment and is not part of its Building and Bridge Subdepartment. The B&B Subdepartment does list among its 12 job classifications "Bridge Flagmen" but the Organization's disagreement with Carrier here is that the work in dispute was not the work of the type of flagging as so contended by Carrier but rather the work of the type of flagging belonging to employees classified as "Crossing Watchmen."

The Organization asserts the duties of flagman or lookout involves the work of “track protection” which can be performed by any maintenance of way employee of any Subdepartment in connection with Subdepartment work. Additionally, the Organization asserts flagmen are used for flagging a type of track protection used in connection with the restriction of movements on track. More specifically, flagmen are used to protect track vehicles, work groups, or trains from other track vehicles, work groups, or trains from catastrophic events that could possibly occur as a result of separate track vehicles, work groups, or trains utilizing the same track. The Organization argues this type of flagging was not the flagging work that was being performed in this case. A further distinction pertains to “lookout” duties which are not performed by Crossing Watchmen. The Organization explained that lookouts are used to warn fellow employees of approaching trains so that the work group may clear the track with sufficient time to enable a train to pass safely. According to the Organization, lookouts are most often used when other protection such as, dispatcher provided protection involving track and time are unavailable.

Carrier submits that any qualified employee, meaning employees that have passed exams pertaining to Flagman, Employee-In Charge and Lookout work can perform flagging duties and the B&B employees it utilized to perform those duties on the claim dates at issue were all qualified. Carrier asserts that as a result, the duty of flagging is not exclusive to any specific craft or classification within a craft. Carrier maintained it has not assigned any employee to perform the duties of Crossing Watchman for 30 to 40 years which duties were utilized back in the 1970s and entailed protection of crossings on a 24-hour basis prior to the utilization of gates. Therefore, the duties of a Crossing Watchman are no longer needed and the Organization has not refuted this development. Finally, Carrier argues the Organization has failed to provide documentation, specifically seniority rosters, to prove that the named Claimants hold Crossing Watchman seniority. Carrier argues that failing to prove Claimants held seniority as Crossing Watchman and failing to dispute that flagging duties are not exclusive to any craft or classification of craft and, in turn, failing to provide any proof that the B&B employees utilized to perform the flagging duties in question were not qualified to do so, the Organization failed in its burden of proof by a preponderance of the evidence to show that it had violated any of the applicable provisions of the Controlling Agreement cited by the Organization. Based on the foregoing argument asserted, the Carrier urges the Board to deny the instant claim in its entirety.

The Board is satisfied that the Organization has successfully drawn the distinction between the duties of flagging and lookout universally performed by any

and all qualified maintenance of way employees and the duties of flagging, admittedly antiquated but uniquely different from the universal kind, performed by employees classified as Crossing Watchman in the Organization's Track Subdepartment. The Board is struck by the fact given Carrier's position that it has not assigned any maintenance of way employees to perform the duties once associated with the classification of Crossing Watchman in four (4) decades that such a classification is still included in Rule 2 of the Controlling Agreement. The fact that this classification remains in the Agreement and that the Organization has seized on it to prove the merits of the subject claim before us, signifies to the Board that it still must have significance at least to some degree. Thus, had the Organization been able to prove by a preponderance of the evidence before us that Claimants held seniority in the Crossing Watchman classification the Board would have concurred in its position that Carrier assigned the wrong maintenance of way employees to perform the work in question. However, the Organization failed to produce such proof in the record evidence and thus failed to adequately meet its burden of proof in order to prevail in its claim before us. Accordingly, we are compelled to deny the subject claim.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of October 2016.