

SPECIAL BOARD OF ADJUSTMENT NO. 396

THE BROTHERHOOD OF RAILROAD TRAINMEN
vs.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim of Worcester Yard Brakemen Passarelli and Rankin for one day, February 3 and 4, 1958 in Worcester Yard.

OPINION OF BOARD:

On the dates of the claim surveyors employed by the State of Massachusetts were surveying on the Carrier's property, on or near the right of way. On each day they were on the property somewhat less than one hour. The Carrier states that surveyors checked with the operator at Hope Avenue who advised that there were no trains due and no need for flag protection.

The theory of the instant claim is that the above-named claimants should have been used on the subject dates to perform flag protection for the s The Carrier contends that it is the sole judge of whether flag protection is needed and such protection was not needed on the occasions here involved.

The contract provision cited in behalf of this claim (Rule 69A of the Mediation Agreement dated December 19, 1956) states: "If a flagman is called by the Company. . . ." This provision does not declare that management must call a flagman under specified circumstances. Moreover, numerous previous decisions on the property have held that it is for the Carrier to determine whether flag protection is required.

AWARD:

Claim denied.

Lloyd H. Bailer
Lloyd H. Bailer, Neutral Member

George J. Carroll Employee Member J. J. Duffy Carrier Member

New Haven, Connecticut
April 29, 1964