

SPECIAL BOARD OF ADJUSTMENT NO. 488

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 66

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

(1) The Carrier violated the effective Agreement by failing to assign crossing watchman protection to a maintenance of way employe at a temporary crossing at Mile Post 64-30 during the period commencing on or about August 11, 1962, and continuing.

(2) Trackman Mike Woody, Sub-Division #4, of the Akron Division be now compensated at his respective rate of pay for all time worked by an employe of the Condon-Cunningham Construction of Omaha, Nebraska, while such employe was protecting the referred-to temporary crossing at Mile Post 64-30, commencing on or about August 11, 1962, and continuing until this violation of the Agreement ceases."

FINDINGS: Condon-Cunningham Construction Company held a contract with Cuyahoga County for relocation of a public highway. A private crossing was placed at Mile Post 64-30 to permit contractor's trucks to cross Carrier's right-of-way. A Condon-Cunningham employe was placed at the crossing. When a Condon-Cunningham truck approached the crossing, its employe would observe if a train was approaching, and if not, he would wave the truck over the crossing. If a train was approaching he would stop the truck until the train passed.

The Condon-Cunningham employe did not seek nor receive from Carrier information on the movement of trains. He was not protecting the Carrier's crossing or trains. However, if a contractor's truck spilled any material on Carrier's right-of-way, the Condon-Cunningham employe cleaned it up.

We will deny claim of a rules violation in this man protecting his employer's trucks; but we will sustain claim of rules violation for the Condon-Cunningham employe removing spilled material from Carrier's right-of-way. We feel, however, the claim as made is without limitation. The Carrier is entitled to some protection against indefinite claims of this character. The question of the amount of compensation is returned to the parties for a reasonable settlement.

AWARD: Claim sustained only for contractor's employe removing spilled material from Carrier's right-of-way. Question of the amount of compensation is returned to the parties for a reasonable settlement.

/s/ Edward A. Lynch  
Edward A. Lynch, Chairman

/s/ A. J. Cunningham  
A. J. Cunningham, Employee Member

/s/ W. B. Kohler  
W. B. Kohler, Carrier Member

Dated at Baltimore, Maryland,  
this 29th day of June, 1965.