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STATEMENT  
OF CLAIM:

(1) The Carrier violated the effective Agreement when, on Saturday, December 20, 1952, it allocated the work of repairing and/or replacing of the crossing gate arms at Potee Street, Brooklyn, Baltimore Terminal to employes not covered under the scope of the Carrier's Agreement with this Brotherhood;

(2) Carpenters M. M. Crim and John Blair each be allowed four (4) hours' pay at their time and one-half rate account of the violation referred to in part one (1) of this claim."

FINDINGS: Initially we have in this Docket the Third Party Notice issue raised in Carrier's original submission to the Third Division. It also appears in several other dockets pending before this Board.

Part Second of Memorandum Agreement, between the Baltimore and Ohio Railroad Company and the Brotherhood of Maintenance of Way Employees, creating this Special Board of Adjustment, provides that this Board "shall have jurisdiction to hold hearings in respect to those claims (Attachment A) and to render awards thereon x x x."

We are thus empowered to hold hearings in respect to these claims and to render awards thereon, irrespective of any third-party issue which may appear in the submission before us.

We shall proceed to the merits of this claim which is properly before us.

We have here a question from the Carrier as to whether or not this case has been timely filed by the Committee within the meaning of the time limit provision of Article V (2) of the August 21, 1954 Agreement.

Organization's letter of intent to file was dated December 29, 1955, and does meet the requirement of the August 21, 1954 Agreement. The claim is properly before us. Award 7850.

The work involved in this claim is that of "repairing and/or replacing of the crossing gate arms at Potee Street, Brooklyn, Baltimore Terminal." Organization claims that on December 20, 1952 "two Signal Department Mechanics were called out to repair or renew the crossing gate arms" in question.

The grade crossing in question was constructed in 1947.

There is present in this record letter dated April 15, 1953, from Carrier's Manager Labor Relations to Organization's General Chairman which admits

that "the work of replacing or repairing these gates was initially handled by carpenters working under your agreement x x x."

It being abundantly clear that from the time of their construction in 1947 to December 20, 1952, the work of replacing or repairing the crossing gate arms on this particular crossing was handled by Employees under the Maintenance of Way Agreement, it is equally clear that Carrier's action of December 20, 1952, in assigning this particular work to employees not covered under the scope of the Carrier's Agreement with the Brotherhood here involved was a violation of that Agreement.

What we are here deciding is "the work of repairing and/or replacing of the crossing gate arms at Potee Street, Brooklyn, Baltimore Terminal," and nothing more.

In sustaining this claim, however, we will follow those decisions of the Third Division which hold that claims based on work not performed can be at pro rata only.

AWARD

Part (1) of Claim sustained.

Part (2) of Claim sustained at pro rata only.

(s) Edward A. Lynch

Edward A. Lynch  
Chairman

(s) A. J. Cunningham

A. J. Cunningham  
Employee Member

(s) T. S. Woods

T. S. Woods  
Carrier Member

Dated at Baltimore, Md.,  
this 28th day of March, 1960.