

SPECIAL BOARD OF ADJUSTMENT NO. 287

[illegible]

AWARD IN DOCKET NO. 17

STATEMENT

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

(1) The Carrier was in violation of the agreement for the period beginning on March 4, 1957, and continuing through April 23, 1957, when it assigned other than B&B forces to flag for and protect B&B forces and equipment being used on a B&B project just east of Madison Road, Oakley, Ohio.

(2) B&B employees James W. Wilt and Raymond Collins each be allowed pay at his respective straight time rate for an equal proportionate share of the total man hours consumed by other than B&B forces in performing the work referred to in Part (1) of this claim."

FINDINGS: Here we have a situation where B&B forces are driving pile for the construction of a highway underpass under Carrier's tracks in its yard at Oakley, Ohio, Cincinnati Terminal. From the time each pile was positioned for driving until it was driven or cut off, the main tracks were blocked.

Carrier states:

"Therefore, it was necessary to place a telegraph operator at the bridge site to secure permission from the Train Dispatcher to block the track each time a pile was to be driven. Approaching trains were furnished with train orders and two flagmen taken from the ranks of the trainmen (yard trainmen) were placed at the scene under the direction of the operator to protect such trains and authorize their movement through the area upon advice from the operator that the route was clear."

The Organization here relies on Award 7960. Carrier argues "the only purpose involved for the assignment of the flagmen was to protect the operation of trains in territory where tracks were being periodically blocked and fouled by a crawler crane and the piles it was driving. Section men or B&B forces had never been assigned to perform flagging at this point. There was no connection whatever between the assignments of the B&B forces and those of the yardmen-flagmen. x x x"

We cannot accept Carrier theory that the only purpose for the assignment of the flagmen "was to protect the operation of trains."

Admittedly the pile driving work blocked the tracks at times, which, of course, stopped the operation of the trains. The prime purpose for flagging in this instance, stemming as it did from the work then being done by B&B forces, was

to indicate at what points such B&B work would block the tracks, and at what point such work would permit of the passage of trains. Such flagging was also for the purpose of protecting the B&B equipment and the B&B men working on the project from danger. We are not concerned with what Carrier did, or by what means, after the B&B project reached a stage where its trains could move without impediment from the B&B work then in progress.

Award 7960 found that claimants there had been assigned to "keep the then existing tracks free of earth or other material that might fall from the new grade." In other words, their assignment as trackmen was to keep the tracks passable for trains. Flagging service was a necessary protection when such tracks were not passable.

Here, B&B men were assigned to do pile driving work which, at times, made these tracks impassable. Flagging service was a necessary protection when such tracks were not passable. The cycle of the B&B work in progress was under the direction of B&B supervision.

Flagging is a task performed by and required of many classes of railroad employees and is not the exclusive function of any particular class.

Carrier brief states:

"As in the case of many employees on this property other than trainmen, employees coming under the scope of the Maintenance of Way Agreement can, as the occasion demands, be required to perform flagging, e.g., for the protection of their motor cars, etc. x x x"

We think, from the facts here, this was an occasion which required that the flagging be done by B&B men. It was an integral and necessary part of the B&B work then in progress.

We will, therefore, sustain part (1) of the claim.

We will not sustain part (2) of the claim for two reasons:

1. Both claimants, Wilt and Collins, were working at this point during this time.
2. There is no showing here that claimants had been examined on and satisfactorily passed an examination on flagging rules, as in Award 7960.

AWARD

Part (1) of claim sustained.

Part (2) of claim denied for reasons set forth in Findings.

(s) Edward A. Lynch

Chairman

(s) A. J. Cunningham

Employee Member

(s) T. S. Woods

Carrier Member

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