

SPECIAL BOARD OF ADJUSTMENT NO. 287

PARTIES:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 6

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

(1) The Agreement was violated on September 17, 18, 24, 25 and on October 1 and 2, 1955, on which dates a Track Foreman performed work and duties which were exclusively assigned to and performed by Trackman Zeke Johnson on days which were part of his regular assignment;

(2) Trackman Zeke Johnson be reimbursed for the exact amount of monetary loss suffered account of the violation referred to in Part (1) of this claim.

FINDINGS: Carrier's track forces were assigned the work of rebuilding the track structure and crossing surface on crossing No. 148, immediately west of the station at Chester, Pennsylvania.

Although Carrier argues now it was originally a "misassignment," Claimant Trackman Zeke Johnson was assigned by Section Foreman B. Chiminto to the task of setting out red lanterns at night and removing them in the morning, Monday through Friday, for the purpose, Organization asserts, of protecting the work then being performed by track forces.

However, Foreman Chiminto assumed to himself the handling of these lanterns on Saturdays and Sundays -- without Carrier's knowledge. Carrier asserts crossing watchmen are regularly assigned to service this crossing (a city crossing) from 7 a.m., to 11 p.m. and the handling of lanterns at this crossing is the responsibility of such crossing watchmen. However, Foreman Chiminto filed for and was allowed time from 3:00 p.m. to 6:00 p.m., each Saturday and Sunday for "cleaning and filling lanterns," despite the fact that Chiminto receives a negotiated \$50.00 monthly "arbitrary" for "all necessary duties in connection with the supervision of crossing watchmen at this and the several other grade crossings at Chester."

Carrier asserts it had no direct knowledge of what Foreman Chiminto was doing until after the presentation of the claim now before us.

What, then, of Carrier argument that the work in question should have been assigned to crossing watchmen? A crossing watchman was in service on this City crossing, in addition to a crossing gate operator, from 7 a.m., to 11 p.m., and Carrier takes the position that the work here involved was the proper function of these crossing watchmen.

Organization takes the opposite position: that it is customary that Track forces are held responsible for performance of all protection necessary in connection with the projects on which they are engaged.

The assignment of Claimant Johnson, a trackman, to the handling of lanterns on this project on a Monday through Friday basis by Carrier's foreman cannot be ignored; neither can carrier evade its responsibility for the acts of its Foreman.

Admittedly the "handling of lanterns" is a task performed by and required of many classes of railroad employees and is not the exclusive function of any particular class; there is no particular skill required.

That being so, and it being admitted that Claimant was assigned and directed by Carrier's Foreman to handle the lanterns Monday through Friday, Rule 18 would be controlling, and under the circumstances here present this work should have been performed by Claimant:

Second Division Award 1825 held:

"When work is not the exclusive right of any one class or craft, Carrier may have the employees of any class or craft perform it who have a right thereto. However, if Carrier assigns it to employees of one craft or class from Monday to Friday that class or craft has the same right to the same work if performed on Saturdays and Sundays and Carrier cannot assign it on those days to another class or craft."

In so stating, we point up the fact that this claim is sustained solely on this point. We are not deciding the question of the rights of trackmen versus crossing watchmen to the handling of lanterns at grade crossings where trackmen are engaged in repair, rebuilding or similar projects.

AWARD

Claim sustained.

(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.