SPECIAL BOARD OF ADJUSTMENT No. 541
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
ERIE LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM:

1. The Carrier violated the effective Agreement by failing to assign Crossing Watchman's work to employes holding seniority in the Maintenance of Way Department, in lieu of permitting an outside party to perform this crossing watchman work, on July 1, 1963 and continuing.

2. Crossing Watchman Joseph Ferraro holding rank No. 4 on the New Jersey and New York Railroad Company (Erie-Lackawanna) Roster of Crossing Watchmen, be now compensated for a days pay on each day, beginning July 1, 1963, and continuing that this referred to violation of the Agreement continues.

FINDINGS:

Under the terms of an agreement between Carrier and Brookfield Construction Company, the latter was permitted to construct a private crossing of Carrier's tracks in the vicinity of South Hackensack, New Jersey, and was required to furnish its own watchmen at the crossing facilities. Petitioner contends that it was improper to use Brookfield Construction Company watchmen instead of employees covered by the Maintenance of Way Agreement to protect crossings on Carrier's tracks.

The critical question is whether or not the disputed work belongs to Petitioner. Neither the Scope Rule nor Rules 3(a), 3(b), 4, 8, 8(b), 8(d), (13n) nor any other provision of the Maintenance of Way Agreement prescribes that all private crossing watchman duties must be assigned only to employees covered by the terms of that Agreement. Seniority rights and bulletin procedures, important as they are, do not of themselves provide the necessary exclusivity but only come into play after work has been brought under the aegis of a collective bargaining agreement. Even so, there would be no problem with some types of work that clearly belong to Petitioner by custom and tradition. So far as the record shows, however, there is nothing in custom or tradition or past practice that confines private crossing protection to Claimant's class of employees.

On the contrary, such evidence as there is seems to support Carrier's contention that employees outside the Maintenance of Way Agreement have furnished crossing protection on a considerable number of occasions during recent years.

The applicable Agreement and evidence do not substantiate the claim and it accordingly will be denied.

AWARD: Claim denied.

Dated at New York, N. Y., this 10th day of March, 1965.

/s/ Harold M. Weston
HAROLD M. WESTON, REFEREE

/s/ Arthur J. Cunningham
ORGANIZATION MEMBER

/s/ R. A. Carroll
CARRIER MEMBER