

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 509

Heard at Montreal, Tuesday, June 10th, 1975

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

The Union claims the Company violated Rules 7.1 and 32.3 of Wage Agreement No. 17 when Crossing Watchman I. Challice was not called to work on an overtime basis on four rest days. August 17th, 18th, 24th and 25th, 1974. The claim is for 32 hours at the rate of time and one-half.

JOINT STATEMENT OF ISSUE:

The grievor's regular assigned position is Crossing Watchman, King St., Peterborough, Ontario. His hours of work are 1030 hours to 1830 hours with Saturday and Sunday rest days. His duties consist of manually operating the crossing protection to prevent excessive and needless operation thereof when switching movements are being made or when cars are standing with the track circuit, otherwise the protection is operated automatically.

On August 17th, 18th, 24th and 25th, the grievor's rest days, certain rails were removed from the tracks in connection with open-cut sewer construction. Prior to and after completion of the construction work the signals were de-activated and activated by a Signal Maintainer. The Union alleges such work should have been performed by the Crossing Watchman and claims 8 hours' pay at time and one-half for each of the four days involved.

FOR THE EMPLOYEE:

(SGD.) P. A. LEGROS
GENERAL CHAIRMAN

FOR THE COMPANY

(SGD.) S. T. COOKE
ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

W. H. Barton	System Labour Relations Officer, Montreal
A. D. Andrew	System Labour Relations Officer, Montreal
W. W. Wilson	Labour Relations Assistant, Toronto

And on behalf of the Brotherhood:

P. A. Legros	System Federation General Chairman, Ottawa
G. D. Robertson	Vice President, Ottawa
W. Montgomery	General Chairman, Belleville

AWARD OF THE ARBITRATOR

Rule 7.1 of the collective agreement is as follows:

- 7.1** Where work is required by the railways to be performed on a day which is not part of any assignment, it may be performed by an available laid-off or unassigned employee who will otherwise not have forty hours of work that week. In all other cases by the regular employee.

The only question which arises under this section, requiring resolution in the instant case, is whether the grievor was “the regular employee” and thus entitled to be called for the work in question. Article 32.3, also relied on by the Union, is as follows:

- 32.3** Except in cases of emergency or temporary urgency, employees outside of the maintenance of way service shall not be assigned to do work which properly belongs to the maintenance of way department, nor will maintenance of way employees be required to do any Work except such as pertains to his division or department of maintenance of way service.

Under this article, the question which arises with relation to this case is whether the work in question properly belongs to the maintenance of way department.

Now I have no doubt that the work of the Crossing Watchman, at the location in question, is work properly belonging to the maintenance oil way department, and that the grievor is “the regular employee” on that Job. With respect to both the above articles, then, the question to be determined in this case comes to this: did the activation and de-activation of the signals on the days referred to by a Signal Maintainer amount to the performance of the work of the Crossing Watchman? If it did, then the grievance must succeed, if it did not, then it must fail.

In **Cases Nos. 453** and **471** it appeared that the grievor was “the regular employee”, or one of the regular employees, assigned to certain Work. Each case turns on its own facts, however, and there is no analogy from the circumstances of those cases to the situation here. In the instant case, the work of the Crossing Watchman at the location in question involved the control of the signals to provide proper protection for movements on sidings and on the main track. The actual physical motion involved may have been merely that of pushing a switch, but the essence of the Job is that the switch be pushed at such times, and having regard to such train movements, as will provide the proper crossing protection, and avoid excessive operation of the signal on switching movements.

On the occasion in question the Signal Maintainer activated and deactivated the signals, not on account of train movements (for there were none), but in order to cut out the automatic operation of the signal which would ensue when rails within the crossing circuit were removed. Operation of the signal switch for this purpose did not form part of the Crossing Watchman’s duties, but was simply for the purpose of assisting the sewer construction. The Signal Maintainer was not, in this case, concerned with train movements or the protection of the crossing, as the Crossing Watchman would be. He did not perform the work of a Crossing Watchman on the occasion in question. The reply to the question posed in this case, then, must be “no”.

For the foregoing reasons, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR