

PARTIES TO DISPUTE:

Elgin, Joliet & Eastern Railway

and

United Transportation Union

STATEMENT OF CLAIM:

"ZY-24-73

Claims declined by Director of Labor Relations January 9, 1974, June 26, 1974, and November 15, 1974. Claims request one day's pay for each date on behalf of J. Madonich account not used as flagman at South Gate."

FINDINGS:

During the period involving the claim dates, a new bridge over the Calumet River was in progress. The new bridge was to replace a parallel bridge known as "Old Bridge 710." The new bridge, also known as "Bridge 710", was to carry rail traffic over the Calumet River into and out of South Chicago Yard.

While construction work was in progress, there were large numbers of contractor's employes and Carrier's Maintenance of Way personnel working in the area. Trucks, bulldozers, and other heavy equipment were in operation in and around the construction siet. According to Carrier, Maintenance of Way personnel were assigned to provide flag protection for such personnel and equipment against train movements into and out of South Chicago Yard over "old Bridge 710" during the construction period. Claimant herein, a yardman, contends that he should have been used for each of the 82 days a Maintenance of Way flagman

performed "flagging." The basis of the claim is that Claimant had the exclusive right to perform flagging under the circumstances and conditions existing.

The Board is satisfied that the claim should be denied.

There are numerous awards of the National Railroad Adjustment Board and Public Law Boards that have held that yardmen, by contract or practice, do not have the exclusive right to perform the work claimed under similar or analogous circumstances.

In a virtually identical dispute, the Board in Award No. 13 of Public Law Board No. 1204 denied the claim, finding in pertinent part:

The basic thrust of the Claimant's contention is that irrespective of the circumstances and situation, any flagging performed by anyone other than U.T.U. employees (Trainmen) within switching limits is a violation of Rule 10(e).


The Board does not agree.

While it is clear that yardmen have a right to give signals to yard engine crews "for the purpose of governing their movements in switching operations," it is clear that Maintenance of Way personnel were not involved in work that was in any way intended by Carrier to deprive the Claimants of their right to control the movement in switching operations. It is equally clear that the function of the Maintenance of Way personnel is to preserve the track under the circumstances in order that the work of the Railroad and the work of the independent contractor can continue with the least possible disruption. In this sense, the flagging was incident to the duty of aiding the independent contractor in furtherance of protecting the interests of Carrier.

The rule cited by the Claimants is grounded on safe track, no potential danger of obstruction, and normal and routine switching movements. It did not, as far as this Board is able to determine from the record, contemplate the type of activity involved in this dispute. (Underscoring provided)

AWARD

Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: October 5, 1979