

Award No. 3289

Docket No. MW-3283

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA**

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

(1) That the Carrier violated Agreement in effect between itself and the Brotherhood of Maintenance of Way Employees by its failure to bulletin vacancy in the position of Bridge Tender at San Leon, Texas, caused by the resignation of Bridge Tender C. H. King, to employes in the Maintenance of Way Department, but instead of bulletining and assigning to that position an employe coming within the scope of the Maintenance of Way Agreement, assigned thereto an Agent working under the scope of another agreement;

(2) That the position of Bridge Tender at San Leon, Texas shall be bulletined at once and an employe coming within the scope of the Maintenance of Way Agreement assigned thereto.

EMPLOYES' STATEMENT OF FACTS: For several years past there has been a night bridge tender assigned on the draw bridge at San Leon, Texas. The last bridge tender being Mr. C. H. King who resigned about May 6, 1944. Mr. King was assigned to this bridge tender's position by bulletin No. 40 on January 7, 1941. Mr. King's resignation caused a vacancy in this position of night bridge tender. However, instead of bulletining this vacancy to employes in the Bridge and Building Department, or assigning an employe in the Bridge and Building Department, to that position, the Carrier assigned the station agent at San Leon to the position of night bridge tender.

Agreement effective December 1, 1937 between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Article I and Article III, Rules 2 and 3 of agreement in effect between the Carrier and the Brotherhood of Maintenance of Way Employees read:

"ARTICLE I.

**Hours of Service and Working Conditions Governing
Employees Herein Named**

Scope

These rules govern the Hours of Service and working conditions of all employes in the Maintenance of Way Department (not including supervisory forces above the rank of foremen) as follows:

Roadway Track Department: Section and extra gang foremen, assistant foremen and section and extra gang laborers.

Every effort has been made to dispose of this dispute with the Organization by negotiation, reviewing the history of the assignment, giving reference to the inclusion of the position of Agent-Bridge Tender under the Telegraphers' Agreement, the decisions of the Third Division Board in similar disputes, but all such efforts have failed and the Organization has progressed this dispute to your Board for decision. Every effort has been made to set out herein all known relevant, argumentative facts, but it is not known what the Organization will present; therefore, the Carrier desires an opportunity to make such additional answer thereto, as may be deemed appropriate.

OPINION OF BOARD: For many years prior to December 1, 1937, the Carrier maintained the position of "Agent-Bridge Tender" at San Leon, Texas, under the Telegraphers' agreement. This was a daytime job. The duties consisted of the ordinary work of a small agency plus the handling of the drawbridge and work incidental thereto. Traffic by water required the operator of the drawbridge, on occasion, outside of the regular hours of the Agent-Bridge Tender. The Agent-Bridge Tender responded to calls for such service and was paid therefor under the Telegraphers' agreement.

On December 1, 1937, the Carrier entered into an agreement with the Brotherhood of Maintenance of Way Employees. Article 1, referred to as the Scope provisions, covered among others "bridge tenders". This article contained a note, "It is understood that the foregoing applies only to exclusive pumpers and exclusive bridge tenders".

Thereafter the "Agent-Bridge Tender" position was maintained, with duties as before, under the Telegraphers' agreement until December 16, 1940. No protest was made by the Brotherhood of Maintenance of Way Employees.

In 1940 the construction and maintenance of army camps above the bridge greatly increased the water traffic. The Carrier, to meet its obligations with reference to the operation of the bridge, on December 16, 1940, placed an exclusive bridge tender on the job at night. This position was bulletined and filled under the December 1, 1937 Agreement.

On May 6, 1944, the traffic on the water had decreased to the point where the Carrier deemed the position no longer necessary, the incumbent holding the position resigned, and the Carrier re-established the Agent-Bridge Tender relations that had existed prior to December 16, 1940. Effective December 16, 1944, the Carrier listed the position of San Leon "Night Bridge Tender" in a list of "monthly rated positions" setting out the hours of the assignment, the new monthly rate and equivalent hourly rate. The Organization requested that the position be bulletined and filled from Maintenance of Way employees. The Carrier refused. The present claim resulted.

Two questions are presented. Did the Carrier violate the Agreement of December 1, 1937 by the failure to bulletin and fill the position? Should it now bulletin the position and assign the work to a Maintenance of Way employee? The Brotherhood contends that the Carrier, by listing the position in the "monthly rated positions" on December 16, 1944, recognized that the position had not been abolished and accordingly was subject to bulletin and assignment. We see no merit in this contention. The mere listing of the position does not create a contractual obligation to maintain the position at all times.

By the quoted "note" in the Agreement of December 1, 1937, the Scope Rule which included "bridge tenders was understood to apply "only to * * * exclusive bridge tenders". The Brotherhood states that when this note was written it was "the understanding that the carrier would not enlarge upon its assignments of agent-draw bridge tender positions, but that any positions of draw bridge tenders that way be established in the future must be assigned to employees coming within the scope of the Maintenance of Way Agreement". We need not determine whether or not the Carrier has violated this alleged understanding. It is an established rule, founded on good reason, that where a written agreement has been entered into, all prior and contemporaneous negotiations and understandings are merged in the writing. The written

agreement expresses the intention of the parties. Any other rule would destroy the benefits of a written agreement. Hence, we are not permitted here to consider the alleged oral understanding.

The question then is, is the night work now being done by the agent-bridge tender "exclusive bridge tender" work? The parties themselves have answered the question. For three years subsequent to December 1, 1937 the "Agent-Bridge Tender" did the work without protest or claimed violation of the Agreement of December 1, 1937. It is not now claimed that the Agreement was violated prior to December 16, 1940. We accept, as we should, the construction which the parties have themselves placed upon the contract. The work as presently being done is substantially what was being done prior to December 16, 1940. Accordingly, we are of the opinion that the Carrier has not violated the December 1, 1937 Agreement and is not required to bulletin and assign the job under that Agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier has not violated the December 1, 1937 Agreement and is not required to bulletin and assign a Maintenance of Way employe to the night bridge tender's job at San Leon, Texas.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 13th day of September, 1946.