

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD CO.**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that furloughed Pontoon Helper W. H. Bouzek, called for service to relieve the engineer on the Prairie du Chien pontoon bridge from February 1 to February 12, 1946, inclusive, shall be paid at the rate of time and one-half for services rendered on Sunday, February 3rd, and Sunday, February 10th, in connection with relieving the engineer from February 1 to 12, 1946, inclusive.

EMPLOYEES' STATEMENT OF FACTS: Commencing with our letter to H. H. Cameron, Chief Carpenter, under date of February 20, 1946, we submitted claim in behalf of William H. Bouzek, pontoon bridge helper, on pontoon bridge B-380 located on the Mississippi River near Marquette, Iowa, who, during the period February 1 to 12, 1946, inclusive, relieved Pontoon Engineer F. F. Feeley while Feeley was on vacation; that he, Bouzek, should be paid at the rate of time and one-half on February 7, 1946, his regularly assigned day of rest. The claim was declined by Mr. Cameron, whereupon it was progressed to Assistant to Vice President F. H. Allard, who likewise declined the claim.

After the claim had been declined by Mr. Allard we advised him of our intention to submit it to the Third Division of the National Railroad Adjustment Board, inquiring if he would be agreeable to join us in a joint statement of facts to the Board, setting up the Statement of Claim as follows:

"Claim of the System Committee of the Brotherhood that Pontoon Helper W. H. Bouzek, employed on the Prairie du Chien pontoon bridge, who is regularly assigned to six days per week, shall, under the application of Schedule Rule 23 (b) (1) be paid at the rate of time and one-half for service rendered on February 7, 1946, which was his regularly assigned day of rest."

Mr. Allard agreed to join with us in a Joint Statement of Facts to your Board. It appears, however, that while Mr. Allard was in the course of preparing the carrier's position in connection with the claim, it had come to his attention that W. H. Bouzek was not regularly employed as a pontoon bridge helper during the months of January and February, 1946, having been laid off in force reduction on December 12, 1945, which is evidenced by letter addressed to General Chairman J. G. James, under date of September 30, 1946, by Mr. F. H. Allard, copy of which is shown as Employees' Exhibit "A."

pontoon engineer's position was one that was regularly established on a seven (7) day calendar basis as of October 21, 1944. There has been no change in the occupant of that position, therefore, the position is still assigned on a seven (7) day calendar basis and pays the pro rata rate daily.

It is the carrier's position that there is nothing in Rule 23 that would support the payment claimed. As indicated above, the claimant had no regular assignment and was simply an extra employe called to relieve the pontoon engineer from February 1 to 12, inclusive, and would necessarily accept the conditions attached to the position on which he was relieving. As previously explained, the pontoon engineer is not paid the time and one-half rate on Sundays. He is paid the pro rata rate seven days per week.

Briefly, it is the carrier's position that first of all the claim is not proper because it has not been presented within the time limitations of Rule 46. Secondly, the claim cannot be supported by the schedule rules, therefore the carrier respectfully requests that it be denied.

OPINION OF BOARD: Bouzek, a furloughed employe, was called to relieve Engineer Feeley who was on vacation from February 1, 1946, to February 12, 1946. Feeley's position was a seven-day position and paid straight time rate seven days a week. Bouzek worked two Sundays, February 3 and February 10, and makes this claim to be paid time and one-half for this Sunday service.

The claim is based upon Rule 23 (a) of the agreement, which so far as here material provides, "... employes who are required to work on Sundays ... shall be compensated therefor at the rate of time and one-half." However, paragraph (c) of this same Rule 23 provides, "Paragraph (a) of this rule will not apply to positions which were, as of October 21, 1944, regularly established on a seven-day calendar basis." The position filled by Engineer Feeley was a position which was, as of October 21, 1944, regularly established on a seven-day calendar basis, and which continued as such when claimant relieved Feeley while on vacation. None of the contingencies referred to in subdivision (1) of paragraph (c) had happened so as to change this seven-day assignment to a six-day assignment.

Under the express language of paragraph (c), the preceding paragraph (a), upon which claimant relies, is not applicable to the position which claimant temporarily filled, and it follows that he was properly compensated at straight time rate paid the position.

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 parties waived oral hearing thereon;

That the Carrier and the Employes involved in this dispute are respectively carrier and employes 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 claimant was properly compensated for the work performed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 17th day of July, 1947.