Award No. 5827

Docket No. MW-5831

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David R. Douglass, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) That the Carrier violated the effective agreement when they assigned an employe holding no seniority in the Drawbridge Tender's class to operate a drawbridge on June 10 and 11, 1950, and failed to utilize the services of Drawbridge Tenders J. A. Meadors, and E. A. Williams;

(2) That Drawbridge Tenders J. A. Meadors and E. A. Williams be compensated for 8 hours each at their respective time and one-half rate of pay because of the violation referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On Saturday, June 10 and Sunday, June 11, 1950, P. J. Dooling was absent from his assignment as Drawbridge Tender at Beardstown, Illinois.

Saturday, June 10, 1950, was regularly assigned rest day for Drawbridge Tender J. A. Meadors and Sunday June 11, 1950, was a regularly assigned rest day for Drawbridge Tender E. A. Williams.

Carrier assigned R. C. Applegate, a Bridge and Building Helper, holding no seniority in the classification of Drawbridge Tender, to protect Dooling's position during his absence.

Meadors and Williams are regularly assigned Drawbridge Tenders, are carried on the appropriate seniority roster as such, and were individually available on the days claimed.

The Employes contended that Meadors and Williams should have been assigned this overtime service in preference to an employe holding no seniority in the Drawbridge Tenders' class and grade. Accordingly, claim was filed in behalf of Meadors and Williams for eight hours' pay each, at their respective time and one-half rate of pay.

Claim was declined.

The agreement in effect between the two parties to this dispute dated

3. The use of a B&B Helper to provide relief on a Drawbridge Operator position is clearly and strictly in conformity with the provisions of Rule 31½(e) and the agreed-upon application of said rule.

4. The awards of the Third Division of the National Railroad Adjustment Board cited by the Carrier clearly and decisively support Carrier's position that since the work involved in this dispute was the result of a vacation absence, no vacancy existed under the agreement that could be claimed by the claimants on a seniority basis.

5. With these irrefutable facts and circumstances present, Petitioner's claim is totally lacking in contractual substance and must, therefore, in all things be denied.

The Carrier affirmatively states that all data herein and herewith submitted has been previously submitte dto the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: There were four Drawbridge Operators assigned at Beardstown, Illinois. Three of these were operators assigned to regular 5-day assignments and there was one relief operator named Dooling, who relieved the other three on their rest days. In order that all four could get two days rest each week it was necessary to assign B&B Helper Applegate to work one eight-hour assignment each Monday.

In this case, the relief operator took his five-day vacation and B&B Helper Applegate worked in his stead. Applegate worked as a relief Drawbridge Operator and completed his forty-hour wee. He also worked Saturday and Sunday at overtime rates. Saturday was the rest day for Drawbridge Operator Meadors while Sunday was the rest day for Drawbridge Tender Williams. These two contend that their seniority entitled them to this overtime work in preference to Applegate, who had no seniority as a Drawbridge Tender and who was getting to work Saturday and Sunday at overtime rates. No claim was made for the days that Applegate worked as a relief Drawbridge Tender other than the days when he worked at overtime rate and when the Claimants were available to perform this work.

Several rules of the effective Agreement and of the Vacation Agreement have been cited in the docket, regarding this claim. We shall discuss some of these as they pertain to the instant case.

Rules 2 (b), 4 (a), 4 (d) and 5 establish rights of seniority to the Claimants as Drawbridge Tenders as distinguished from seniority as a B&B Helper.

Rule 25 of the effective Agreement regards application of seniority rights to temporary vacancies. This rule is not applicable to this case inasmuch as this involves a man who was on vacation. Rule 12 (b) of the Vacation Agreement specifically states that a vacation absence will not constitute a vacancy under the terms of any Agreement.

Rule 40 provides for application of seniority in giving preference to overtime work to senior available qualified employes in the respective gangs. In this case the work involved was basically a vacation relief assignment altho a relief employe performed the work at overtime rates.

Rule 39 (g) has reference to work on a day which is not a part of any assignment. This work was performed on a day which was a part of an assignment, the work being performed seven days per week.

Going to the Rule 31½ (e) of the Agreement we find provisions for regular relief assignments. Applegate, in this instance, had a regular relief assignment which was on Mondays from midnight to 8:00 A. M. The fact that Applegate was required to perform work as relief worker in excess of that which he normally handled is not, in itself, a violation of the Agreement.

Under Rule 12 (a) and 12 (b) of the Vacation Agreement, it is contemplated that regular relief employes may be used to perform the work of vacationing employes. Award No. 5108 of this Division is cited by the Carrier as being in point. The case, among other things, brought up the question of the application of seniority in a situation where one regular employe, whose job had been blanked, worked the assignment of a vacationing employe and also worked the Sunday rest days of his regular assignment, but was required to lay off on the Saturday rest days of the vacationing employe's assignment. There a claim was made by a senior employe for work at overtime rates because a junior employe was performing vacation work on days in which the Claimant was available and entitled to perform by virtue of his seniority. The Board in that case, referring to the Vacation Agreement, said, "Conceding some inconsistency appears in the language of 12 (a), supra, and the last sentence of 12 (b), supra, it can be harmonized and both subsections of the Article given full force and effect by construing the last sentence of 12 (b) to mean the effort to observe the principle of seniority required by its terms has application to employes who are so situated they would be able to work the position of a vacationing employe without subjecting the Carrier to payment of overtime under the rules of the Agreement."

We agree in principle with this quoted statement, but we should make an exception to this statement by the addition of one sentence. The sentence being—In instances where the Carrier is confronted with a situation by which it becomes necessary to fill the position with an employe drawing overtime rate of pay, then the Carrier should apply seniority in assigning the work.

Rule 12 of the Vacation Agreement does not require the Carrier to go to greater expense because of granting a vacation, but when the Carrier does actually go to greater expense by the payment of overtime to a relief worker then the senior available employe should be entitled to the work. The last sentence of Rule 12 (b) Vacation Agreement reads, "When the position of a vacationing employe is to be filled and regular relief employe is not utilized, effort will be made to observe the principle of seniority." The principle thought in providing for the use of relief workers was to protect the Carrier against having to assume greater expense because of the vacationing employe taking his vacation rather than working and receiving pay in lieu thereof. We don't believe that the relief employe was being utilized in the light of the Agreement. He was being used, but not to any advantage in the monetary sense.

The claim for time and one-half pay is not proper. We concur in the reasoning of Award No. 4244 of this Division of the Board.

Based on all the facts and circumstances as appear in this docket we believe the claim to have been properly progressed to this Board.

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 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 the Agreement was violated.

AWARD

Claim sustained at pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of June, 1952.