

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
SOUTHERN PACIFIC COMPANY (Pacific Lines)

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

(1) That the Carrier violated the provisions of the current effective agreement when it discontinued the positions of helper, Dumbarton Bridge, effective on completion of work shift November 15, 1950, and assigned the duties formerly performed by the helpers to other employees;

(2) That the Carrier removed Rose E. Santos and Emily Rieder from their helper positions, Dumbarton Bridge, on or about November 16, 1950, and unilaterally assigned to other employees who hold no seniority in the class of helper, Dumbarton Bridge, the work of helper;

(3) That the positions of helper, Dumbarton Bridge, be reestablished, and the incumbents as of November 15, 1950, namely, Rose E. Santos and Emily Rieder, be returned to their regular positions, in accordance with the provisions of Rule 2, and the seniority rules of the current agreement, and compensated for all wage loss suffered by them due to this violation, such compensation to be retroactive to November 16, 1950.

EMPLOYEES STATEMENT OF FACTS: The Carrier owns and operates a drawbridge identified as the "Dumbarton Bridge", in connection with which Drawbridge Tender Helpers were employed, whose principal duties were as follows:

1. Assist the Leverman in the operation of the Bridge.
2. Care and Maintenance of 21 lamps and signal lanterns. This duty includes lighting lamps each evening and extinguishing same in the morning. Lamps must be kept filled with kerosene and cleaned frequently due to cement dust which blows from across the Bay on the West side and smears the lenses.
3. Before opening the bridge at night, it is necessary for the helper to place lighted signal lanterns on the lift rails, and on the fixed portion of the bridge, in order that operator may close bridge safely. Pull rods must be pulled up and notched, on each end of

right of carrier. The facts placed in evidence by carrier in this submission clearly demonstrate that there is no need for helpers to assist the drawbridgetenders in the operation of the draw on the Dumbarton Bridge, and if helpers were still actually employed at that point they would perform absolutely no useful functions for carrier, or the public patrons of carrier. We also believe that the highly superficial allegations which have been made by the organization in prosecuting this claim also establish the absence of any need for helpers on the Dumbarton Bridge.

III

THE SOLE ISSUE IN THIS CASE IS WHETHER CARRIER CAN BE REQUIRED TO CONTINUE THE EMPLOYMENT OF HELPERS AT A POINT WHERE INDUSTRIAL AND MECHANICAL IMPROVEMENTS, TOGETHER WITH SLIGHT OPERATIONS, HAVE ELIMINATED ALL CONCEIVABLE NEED FOR AND ALL USEFULNESS OF SUCH HELPERS: NO RULE OF THE CURRENT AGREEMENT PURPORTS TO IMPOSE SUCH A BURDEN UPON CARRIER, AND THIS DIVISION HAS RULED THAT SUCH BURDEN DOES NOT EXIST.

When the facts hereinbefore placed in evidence are considered, there can be no doubt the absence of any need whatever for a helper to assist the drawbridgetender on the Dumbarton Bridge. It also cannot be denied that the individuals who are now performing the work in connection with the operation and maintenance of Dumbarton Bridge are perfectly entitled to do that work pursuant to the provisions of the current agreement and the Telegraphers' Agreement. In these circumstances, it is apparent that the real issue in the case is whether or not the organization can compel carrier to employ helpers at a point where those helpers can perform no useful function for carrier. This Division has consistently held that carrier has an unquestionable right to abolish positions where mechanical improvements have eliminated work to the extent that the service of the occupants of such positions are no longer required. See Award No. 3051.

IV

CONCLUSION

Carrier respectfully asks that the claim be denied.

All data herein submitted have been presented to the duly authorized representatives of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization claims on account of abolishment of helper positions held by regularly assigned employees, on Dumbarton Bridge, effective November 15, 1950, by Carrier, the two employee claimants should be restored to their positions and compensated for all lost time since November 16, 1950, when it is alleged the Carrier unilaterally assigned the work previously assigned to the claimants, to other employees holding no seniority at Dumbarton Bridge. Such action by the Carrier is in violation of Rule 2 and the seniority rules of the current Agreement between the parties, as alleged by the Organization.

Carrier contends that by its action in discontinuing the two positions, it was justified and there was no longer a need for such positions, and that certain work previously performed by the employee came under their Agreements. In fact, the record shows much of the work allegedly claimed as performed by claimants, had actually been performed by the leverman and B&B employees.

There is no denial Carrier had the right under the Agreement to abolish the positions. Claim is based on the contention that the work still remained and was assigned to junior M/W employees or to levermen holding no rights under the Agreement.

Rule 2 is the seniority rule in the Agreement, and entitles employees to positions in accordance with their relative length of service with the Carrier.

Carrier further contends that the affected employees could have exercised their right of displacement and have taken positions within the same seniority district then held by employees junior to the claimants, and would have suffered no loss in earnings.

Rule 19 of the Agreement provides the method the employees are required to follow in exercising their seniority when losing positions that are abolished by displacement or force reduction. We quote a portion of the rule as here applicable:

"All displacements must be made within ten (10) days from the date employee loses regular position * * *."

Nothing in the record discloses the claimants made an effort to assert their seniority rights as provided in Rule 19 of the Agreement, and certainly these employees by their failure to exercise such rights have suffered no wage loss, and consequently would have no claim, due to their own neglect to exercise their rights. Certainly this Board would have no authority to require the Carrier to pay for alleged loss of earnings to an employee under such circumstances. See Awards 5232, 5233 and 5234.

The only question we now have to determine is whether or not the work having been performed prior to November 15, 1950, has remained after the positions were abolished, and the work given to other employees. Carrier contends the positions abolished were in the interest of efficiency and economy, in fact many months before the abolishment took place, Carrier had arranged for the installation of a submarine cable to facilitate the handling of the leverman's work. Prior to the installation of the cable, it was the helper's duty to assist the drawbridge tender in maintaining communications with the shore, at times when the bridge was open. It is not denied by the Organization such helpers did remain on the stationary portion of the bridge during operation of the draw, as all telephone connections between the bridgetender and the shore were broken off when the draw was open. By installation of the submarine cable, steady communication was maintained thereafter whether the bridge was open or closed. This eliminated the work of the helper insofar as opening and closing of the draw was concerned, and was the principal duty of the helper's position. Certainly the operation of maintenance of communication, when the cable was installed, brought about the extinction of any duty the helpers had, when the bridge was open or closed. This Board has held in many awards, the installation of labor saving devices cannot be construed as taking the work out of provision of the scope rule in the Agreement. No additional work was added to the duties of the bridgetender, as a result of the installation of the submarine cable. Award Nos. 3051 and 4713 related awards sustain this view.

Without listing the other duties as performed by the helpers, most of them are of a minor nature, and actually the duties, consisting of filling and lighting lamps, were completely changed by the Carrier with the installation of eight (8) day lamps, which would require filling and lighting once in eight days. Such work was assigned to the B&B mechanic, whose duty it was to maintain and repair equipment as was necessary. Such maintenance and repair of equipment had not at any time been performed by helpers. All of the former duties assigned the helpers would not require more than an hour to perform. The additional duties, while having been performed by the helpers before the positions were abolished, is work incidental to the positions to which it was assigned. The positions were abolished, the work

no longer exists, and the claim does not merit a sustaining award. We are of the opinion from the facts in this case that the Carrier was justified in abolishing the position where the work no longer exists and the duties assigned to other employes were not of a substantial nature to justify a holding that Carrier arbitrarily violated the Agreement. See Awards 5074, 5779, 5318, 4939 and many other supporting awards.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of September, 1953.