

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Emmett Ferguson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO GREAT WESTERN RAILWAY COMPANY**

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

(1) That the Carrier violated the agreement beginning on March 2, 1952, when it assigned the duties of bridge protection at South St. Paul, Minnesota, to an individual holding no seniority under the effective agreement;

(2) That the senior bridge watchman be allowed eight hours pay at his straight time rate beginning on March 2, 1952 and for each day subsequent thereto until the violation referred to in Part (1) of this claim is corrected.

EMPLOYEES' STATEMENT OF FACTS: For many years prior to 1951, the Carrier maintained a "swing" or drawbridge over the Mississippi River at South St. Paul, Minnesota. Draw-bridge operators were assigned to operate this bridge and to maintain the necessary navigation lights.

The drawbridge was dismantled during the year of 1951, and it was not thereafter necessary to provide drawbridge operators on an "around-the-clock" basis. Only one drawbridge operator was thereafter required, with his duties confined to caring for and watching the navigation lights.

The Carrier, therefore, abolished three of the four drawbridge operators' positions, and assigned the senior bridge operator, Mr. G. A. Goodyear, to watch and care for the kerosene navigation lights, retaining him in the capacity of a bridge watchman. Upon the close of the 1951 navigation season, Mr. Goodyear was furloughed, account of no navigation lights being required.

Persons owning or operating bridges over navigable waters constructed under authority of the Act of March 3, 1899 (Sec. 9, 30 Stat. 1151, 33 U.S.C. 401) are required to maintain, at their own expense, such lights and other signals thereon as the Secretary of Treasury shall prescribe as to render navigation through or under such bridges reasonably free and easy.

Navigation lights are required to be kept constantly burning during certain prescribed hours during the navigation season and for this reason, when the 1952 navigation season opened, the Carrier was again required to maintain, at its own expense, navigation lights on the bridge structure and piers at South St. Paul, Minnesota.

3. CLAIM IS NOT SUPPORTED BY MAINTENANCE OF WAY AGREEMENT

Part (2) of claim is that the senior bridge watchman be allowed eight hours pay at his straight time rate beginning on March 2, 1952, and for each day subsequent thereto. The Carrier has shown that the various classifications under the Bridge and Building Department and it will be noted that there is no classification of "Bridge Watchman". There being no classification of Bridge Watchman and no seniority roster for Bridge Watchman, the Employees should be required to prove that a seniority roster for bridge watchman exists and that the unnamed claimant is in fact the senior bridge watchman.

The employees should also be required to explain the basis for their contention that said unnamed bridge watchman is entitled to eight hours pay at a rate that does not exist. Furthermore, they should be required to cite rule that would entitle an employee eight hours pay for performing duties requiring short periods for special purposes. In this connection attention is called to provisions of the following rule:

"Rule 34. When hourly rated employees are required to report at usual starting time and place for the day's work and when conditions prevent work being performed, they will be allowed a minimum of three hours at pro rata rate. If held on duty over three hours, actual time so held will be paid for. This will not apply to employees notified in advance of usual starting time or to extra gang laborers.

"Employees whose regular assignment is less than three hours are not covered by this rule. (This paragraph is to cover regular assignments, such as care of switch lamps or other duties requiring short periods on Sundays or other days for special purposes.)"
(Underscoring supplied)

In view of the underscored portion of Rule 34 it is quite apparent that even if the Carrier had the necessary special equipment and employees capable to operate same, the work in dispute could have been performed without payment of eight hours each day due to the short period of time consumed in performing the work—approximately three one-hour periods per week.

CONCLUSION

The facts and arguments herein presented show conclusively that claim of the Employees is unwarranted and should be denied.

Exhibit "A" is attached hereto and made a part hereof as if fully set forth herein.

(Exhibits not reproduced)

OPINION OF BOARD: The parties' statements of facts hereinbefore set out show substantial agreement. In 1951 there was a bridge with four operators. It was damaged, abandoned and dismantled. During the dismantling one of the bridge operators stayed on and tended the navigation lights until he was furloughed at the end of the navigation season.

In 1952 there was no longer a bridge. The bridge piers did remain but that was only because the Carrier had been restrained from removing them. It was then that the Carrier contracted out the three hours a week work of tending the navigation lights on the piers to a local boatman.

We cannot find that the minor incidental work of tending pier navigation lights was contemplated by the parties when they negotiated the scope rule upon which the Brotherhood bases its claim.

There being no bridge or bridge operator's job to which the incidental light tending work could attach, it follows that this extra-ordinary task may in such instance be contracted out by the Carrier without violation of the rules. To hold otherwise would be contrary to the common sense interpretations to which we are bound.

We are of the opinion that the Carrier did not violate the 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 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 Carrier did not violate the Agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of November, 1953.