

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ERIE RAILROAD COMPANY

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

1. The Carrier violated the effective Agreement when, on December 29, 1954, it abolished positions of Drawbridge Engineer, "DB" Drawbridge, and transferred the remaining work of the positions to Transportation Department Employees, who hold no seniority rights under the effective Maintenance of Way Agreement;
2. Drawbridge Engineer's work at "DB" bridge be returned and assigned to employees in accordance with their seniority rights under the effective Agreement;
3. Because of the violation referred to in part one (1) of this claim Drawbridge Engineers W. J. Barber, H. Bate and A. J. Competiello each be allowed pay for the number of hours each were deprived of working their regular positions on drawbridge "DB" from December 29, 1954, until the violation referred to in part one (1) is corrected.

EMPLOYEES' STATEMENT OF FACTS: Since August 1, 1939, positions of Drawbridge Engineer have been covered in Agreements between the Erie Railroad Company and the Brotherhood of Maintenance of Way Employees.

Effective December 29, 1954, the Carrier converted from steam power to electricity in the operation of drawbridge "DB"; abolished maintenance of way positions of Drawbridge Engineers at that point, and transferred and assigned work in connection with the operation of "DB" drawbridge to Transportation Department employees, who hold no seniority rights under the effective Agreement for Crossing Watchman, Drawbridge Engineers, and Drawbridge Tenders, represented by the Brotherhood of Maintenance of Way Employees.

another situation where Petitioner is attempting to broaden the Scope Rule without the benefit of negotiation.

This Board has made it clear that it is a useless gesture to bring such a dispute before it where, as here, neither the Agreement itself nor past practice thereunder lends any support to the theory and argument of Petitioner. Awards 1708, 1709, 2551, 5043, 5112, 5345.

From the facts herein set forth together with awards cited in support of similar facts and situations, it seems clear that a sustaining award in this dispute would give Petitioner an exclusive right to the work claimed which it does not now have under the agreement, not only at "DB" but at the other points referred to where such work has always been performed by employees represented by the O.R.T. and the B.R.S. of A. Thus, a sustaining award would have the effect of writing a new rule for the parties. But this cannot be done. The rule of this Board, as established by law, is that its sole function is limited to interpretation of agreements as they have been made by the parties. Consequently, it is not authorized to read into a rule, that which is not contained, or by award add or detract a meaning to the agreement which is clearly not the intention of the parties. Awards 529, 2029, 4439, 5864, 5971, 6365, among many others on the same subject.

When the facts and circumstances are viewed in the light of the agreement, it will be readily discerned that the operators at "DB" tower are not performing work that had accrued exclusively to the claimants herein or to other employees of the same craft or class. Hence, the claimants are not, under the agreement, entitled to the compensation which they claim. Furthermore, the claimants have not been without work. Claimant Barber was assigned to a regular relief position under the Telegraphers' Agreement. Claimant Competiello is performing relief service at "HX" drawbridge, and Claimant Bate relinquished his rights and took a position in the Car Department at Jersey City, N. J. Consequently, the earnings of these men would have to be taken into account under any eventuality.

The Carrier has shown that the agreement in question has not been violated.

It is submitted, therefore, that the claim is without merit and should be denied.

All data herein have been presented to or are known to the Petitioner.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to December 29, 1954, "DB" drawbridge on Carrier's New York Division, Greenwood Lake Branch, was operated by steam generated by two coal burning boilers. Claimants, classified as Drawbridge Engineers under the Agreement relied on, were assigned to that operation which included firing and care of the boilers and appurtenances thereto and control of the movement of the drawbridge by the steam power generated by the boilers. Because of the steam boilers, they were required to be licensed engineers in accordance with New Jersey State law.

Electrical equipment to move the drawbridge by electric power was installed, and on December 29, 1954, when the change from steampower to electric power was completed, Claimants' positions were abolished. Activation of the electric power which moves the drawbridge was assigned to the

Operator-Leverman stationed there. He sets the drawbridge in motion by means of an electrically controlled device which is interlocked with the signal system.

Petitioner contends that under the Scope and Seniority Rules of the Agreement between the parties, operation of the drawbridge whether by steam or electrical power is work accruing to the seniority class of Drawbridge Engineers, and that, as a result, Carrier's assignment of such work to a class of employees outside the coverage of the Agreement is a violation thereof.

Carrier contends that neither the Agreement nor past practice has confined operation of drawbridges exclusively to Claimants' class, that such work has not been assigned to any particular craft, that Claimants' predominating work was, as licensed engineers, to fire and tend the coal burning boilers and appurtenances thereto so that movement of the drawbridge was merely incidental to such work, and that by reason of the electrical installation, the work of Claimants' positions has disappeared and is no longer needed.

While Claimants have operated "DB" drawbridge by steam power for sometime, no provision of the Agreement confines all operation of that drawbridge or any other drawbridge on the property to their classification. Nor are Petitioner's contentions supported on the basis of tradition and custom. The record establishes that the operation of drawbridges has not been assigned to any particular craft. The record shows that four drawbridges within a radius of about ten miles of "DB" have been operated by Signal Maintainers covered by the Signalmens' Agreement and Operator-Levermen covered by the Telegraphers' Agreement. Three of these bridges have been electrically controlled and one has been steam controlled. One of these electrically controlled drawbridges has been operated on the first trick by a Drawbridge Engineer covered by Maintenance of Way Agreement and by three Signal Maintainers working on different tricks. The steam controlled bridge has been operated by four Operator-Levermen working on separate tricks and they tend the steam boilers as licensed engineers. These operations have existed for many years and even antedate the first Agreement between the parties. In this state of the record, we cannot conclude that all drawbridge operations, including "DB" drawbridge, have been confined to the Drawbridge Engineer class.

The record fails to establish that since the installation of the electrical device which sets the drawbridge in motion, the work performed by the Operator-Leverman to activate that device is relatively the same class of work which was performed by Claimants when steam had to be generated and used, even though the movement of a lever is required. See Awards 4768, 8544, 8660. No work of firing and tending steam boilers and appurtenances thereto is involved, and no licensed engineers are required. The electrical device interlocked with the signal system actuates the drawbridge. The movement of a lever activates the electrical device. We cannot say that the movement of a lever in itself is "the attribute of any particular trade or profession". Award 2932. Nevertheless, the record shows that the amount of time and work involved in the movement of the lever is insubstantial. Such work, on the record here, does not justify a sustaining award. See Awards 5803, 6187, 6944, 6945.

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 not violated.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 2nd day of November, 1960.