

**Award No. 14074**

**Docket No. MW-14168**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Arthur Stark, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**ELGIN, JOLIET AND EASTERN RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement and understandings and practices thereunder when it assigned a B&B carpenter instead of a Bridge Tender to perform Bridge Tender's duties on Bridge No. 710 on October 2, 9, 16, 23 and 30, 1961.

(2) Bridge Tender A. J. Szoza be allowed eight (8) hours' pay at the Bridge Tender's time and one-half rate for each of the dates referred to in Part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** On Mondays, October 2, 9, 16, 23 and 30, 1961, the Carrier assigned B&B Carpenter E. G. Safstrom to perform drawbridge tender's work at Bridge No. 710. Mr. Safstrom worked from 8:00 A. M. to 4:00 P. M. on each of the aforementioned dates.

The claimant is a regularly assigned drawbridge tender at Bridge No. 710. Monday of each week is one of the claimant's assigned rest days. The claimant was available and could have performed the subject work had the Carrier assigned him to it.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated August 1, 1952, together with supplements, amendments and interpretations thereto, is by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYEES:** Rule 2 reads:

"(a) Except as otherwise provided in this rule, seniority begins at the time employe's pay starts, as of the last entry into the service of the Bridge and Building, Track, or Scales and work Equipment sub-Department.

In essence, by operation of Rules 12(e) and 16, the previous Mechanical Helper incumbent, (the Carpenter referred to in the Organization's Statement Of Claim) was held over and continued to work as a Mechanical Helper under the August 15, 1949 Agreement and he was paid in accordance with Rule 43. This, he properly could be required to do, for he retained his Gary Mechanical Helper seniority, even though he was the successful bidder on the Carpenter's job. If what was done by the Carrier in the instant dispute was not proper, then Rule 12 (e) has no meaning or effect, whatsoever. Rule 12 (e) clearly specifies that the Carrier is not obligated to assign a successful bidder to his new job right now. As far as crossing group lines is concerned, the August 15, 1949 Agreement specifically permits it in this situation.

The Organization's argument is shallow and ignores the depths of the problem. Railroad labor agreements and rules must be interpreted with an appreciation of their compatibility and this compatibility must be protected. In processing this claim on behalf of regularly assigned Bridge Tender Szozda, the Organization has completely ignored and has refused to consider the substantive nature, spirit and intent of the Forty-Hour-Work-Week Agreement which it has adopted. The primary intent of this Agreement carries over to the current unemployment problem in this Country today. Simply, the primary intent was to spread work amongst the many more junior employees rather than the senior few. This intent is clearly set forth in Rule 22, Section (g) Sub-section (7).

Mechanical Helpers on the Gary roster have a greater right to the work which constitutes this one (1) trick a week on Bridge No. 710 than do the regularly assigned Bridge Tenders on Bridge No. 710. This right was given to them by the August 15, 1949 Agreement and its uninterrupted application. If the Carrier improperly filled this trick on Bridge No. 710 during the month of October 1961, the Mechanical Helpers have a basis for complaint and not Claimant Szozda. Szozda is an improper claimant and has no standing whatsoever to complain.

For all the reasons set forth above, the Carrier submits that there is no merit in this claim, and accordingly it should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Since 1949 Bridge No. 710 has been manned as follows: (1) Three regularly assigned Drawbridge Tenders are each assigned to a separate five-day shift; (2) a regular Relief Drawbridge Tender is assigned to a split five-day shift; (3) the tag-end day (Monday) assignment is filled by a Mechanical Helper. Normally, it is true, a Mechanical Helper, who holds Group 1 seniority, would not be used to fill in for a Drawbridge Tender who holds Group 4 seniority. However, in August 1949 the parties mutually agreed to this crossing of Group seniority lines. Their agreement was translated by Carrier's Chief Engineer into an August 15, 1949 Memorandum to the Engineer of Bridges and Building which provided, also, that (1) the one-day Mechanical Helper assignment to Bridge No. 710 would be offered to Mechanical Helpers on the Gary seniority roster in seniority order; (2) if there were no volunteers the least senior man would be selected, (3) the Mechanical Helper would also be assigned to cleaning and oiling Bridge No. 710 (work previously performed by a Helper), and (4) when not needed to relieve the Drawbridge Tenders or to oil and clean the bridge, the Mechanical Helper could be assigned to other work ordinarily done by Mechanical Helpers.

In late September 1961 Mechanical Helper E. G. Safstrom (who held the tag-end assignment at Bridge No. 710) bid into a Carpenter's position in the B&B Department (Group 1). His replacement was inexperienced and required training. On five Mondays—October 2, 9, 16, 23 and 30—Carrier assigned Safstrom (then a Carpenter) to Bridge No. 710. While the record is not completely clear on this point, it would appear that Safstrom trained the newly-assigned Mechanical Helper in bridge tender functions on the five days in question. It is not possible to say, with exactitude, whether Safstrom worked five or six times during these weeks or whether he received straight-time or overtime as a result of his assignments to Bridge No. 710.

Claimant Szozda was one of the regularly-assigned Drawbridge Tenders whose tour of duty, in October 1961, was Tuesday through Saturday, with Sunday-Monday off.

Carrier asserts that the "uninterrupted practice," in situations of this kind, was to use the recently-promoted Carpenter (e.g. the former Mechanical Helper assigned to the tag-end day) to train the newly-assigned Mechanical Helper. Petitioner categorically denies this to be the fact. In the absence of proof, Carrier's contention cannot be sustained. This dispute, consequently, must be decided on the basis of the Agreement.

Rule 28 (b), the unassigned day rule, does not appear to be applicable since it is concerned exclusively with situations "Where work is required by the Carrier to be performed on a day which is not a part of any assignment" (Emphasis ours). The tag-end Mondays in the case at hand, by contrast, were part of the regular scheduled Mechanical Helper's relief assignments. See Award 6503.

How, then, should the five Monday vacancies have been filled? It would have been appropriate to use another qualified Mechanical Helper—but there were none available. It was not proper, however, to use a Carpenter to perform drawbridge tender's work since his position falls within a different seniority Group from that of Drawbridge Tender. There is nothing in the August 15, 1949 special Agreement which authorizes Carrier to cross group seniority lines except in the assignment of a Mechanical Helper to the tag-end day. This exception to the normal contractual procedure does not, on its face, apply to persons in other positions who formerly were incumbents of the Helper position.

The only other available qualified employees in October 1961 were Drawbridge Tenders. While Mr. Szozda was not the most senior Tender, none of the others submitted a claim. Consequently, Szozda was the only qualified and available Claimant and his claim should be granted. Had he been called he would have received time and one-half for hours worked. Petitioner's request for back pay, consequently, will be allowed.

**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 Employees involved in this dispute are respectively Carrier and Employees 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.

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

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

Dated at Chicago, Illinois, this 7th day of January 1966.