Award No. 16571
Docket No. MW-17255

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, 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 that:

(1) The Carrier violated the Agreement when, beginning on Friday, April 29, 1966, it assigned other than a Drawbridge Tender to perform Drawbridge Tender's work on Bridge 204.66 on Friday of each week. (System File M-1170-66/24-3-B).

(2) Drawbridge Tender L. T. Moll be allowed eight (8) hours' pay at his time and one-half rate for Friday, April 29, 1966, and for each Friday thereafter until the violation referred to in Part (1) of this claim is discontinued.

EMPLOYES' STATEMENT OF FACTS: Claimant Moll has established seniority as a Drawbridge Tender (Operator) and, during the period of this claim, was regularly assigned as the third trick operator at Bridge 204.66 at Burlington, Iowa. His assigned working hours are from 10:30 P. M. to 6:30 A. M. each working day with an assigned work week extending from Saturday through Wednesday (Thursdays and Fridays are rest days).

On March 2, 1966, in anticipation of the opening of the 1966 navigation season on the Mississippi River, the Carrier bulletined the number of drawbridge operators' positions that were required for the continuous operation of Bridge 204.66 for twenty-four (24) hours a day, seven (7) days a week, within Notice No. 6 reading:

"CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
Office of The Superintendent
Ottumwa Division

Ottumwa, Iowa
March 2, 1966

to 6:30 A.M. on Friday nights will be protected by the junior helper in B&B Gang No. 1, headquartered at Burlington, Iowa.

Acknowledge receipt and understanding and see that this arrangement is placed in effect effective Friday night, April 29, 1966.

/s/ I. W. Crist
I. W. Crist

cc: Messrs. R. G. Johnson
A. E. Egbers
G. M. Youhn"

Beginning on Friday, April 29, 1966, the Carrier required a B&B helper, who had no seniority as a drawbridge operator, to suspend work on his regular assigned B&B helper's position on each Friday and to perform the work of a drawbridge operator on Bridge 204.66 during the unassigned day of the third shift.

Claim was timely and properly presented and handled by the Employes 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 September 1, 1949, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Prior to the time the instant claim was presented to Carrier, Claimant was assigned as Drawbridge Tender at Burlington, Iowa, working the 10:30 P.M. to 6:30 A.M. shift, Saturday through Wednesday, with Thursday and Friday as rest days. He was relieved on his Thursday rest day by a regularly assigned five-day relief Drawbridge Tender, and he was relieved on his Friday rest day by an employe who worked four days a week as a Bridge & Building Helper and one day as relief Drawbridge Tender, as provided for in Appendix "F" of the Agreement. This arrangement of relief on this position has been in effect ever since the 40-hour week became effective in 1949.

When the employe who had been performing the relief work on Friday (working one day as relief drawbridge tender and four days as B&B helper) was inducted into military service, another B&B Helper, L. D. Wilson, was assigned in the same manner, i.e., he relieved Claimant on his Friday rest day and worked four days a week as B&B Helper.

The instant claim was presented as an alleged violation of seniority rules of the agreement — none specifically named. Claim was finally declined in Carrier's letter of October 25, 1966 (Carrier's Exhibit No. 1) on the basis that the assignment is in conformity with the provisions of Appendix "F" of the agreement, and that such assignment had been in effect since 1949.

The Schedule of Rules Agreement, effective September 1, 1949 and amendments and interpretations thereto are made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier re-bulletined the 3rd Trick Relief Drawbridge Operator position when its occupant entered military service. Upon

receiving no applications therefor, Carrier gave notice that the assignment had been abolished and unilaterally required a B&B helper, who held no seniority as a drawbridge operator, to suspend work on his regular assignment on each Friday and to perform drawbridge work during the third shift.

The Organization contends that same is a violation of Rule 39(g) of the Agreement and that Claimant, the regular 3rd Trick Drawbridge occupant, was entitled to the work for the reason that same arose on his regular assignment on his Friday rest day. Rule 39(g) reads as follows:

> "(g) Where work is required by the Carrier to be performed on a day which is not a part of any assignment it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; **in all other cases by the regular employe.** * * *." (Emphasis ours.)

On the property, the Carrier defended its action upon Appendix F to the Agreement but in its ex parte submission it introduced for the first time certain correspondence as a primary defense. The Organization objected to same and, indeed, this Board has consistently refused to consider evidence not presented on the property. See Awards 2556 (Shake), 8068 (Beatty), 12398 (Wolf), 13139, 13818 (Engelstein) and 14994 (Hall), to cite only a few such awards but distinguish Award 11644 (Dolnick) where the record did not disclose that the letters were not considered on the property. Nonetheless, Carrier asserts that said letters are interpretations of the Agreement between the parties and that as such, form a part of the Agreement which is always before this Board. The letters are not a part of the Agreement on file with this Board, and in order to reach the conclusion Carrier would have us reach, it would be necessary for us to consider said letters in their substantive role. Same would do violence to the great majority of our previous decisions and expunge the clear mandate of Congress in forming this Board, i.e., that the parties exhaust every avenue of settlement before appealing hereto. The timely introduction of the letters on the property might have settled this claim and, on the other hand, there may well be a full and satisfactory explanation of same. Regardless, we are regulated by Circular No. 1 and our previous awards to consider only that which is properly in the record and we must, therefore, sustain the Organization's objection.

A perusal of Appendix F discloses that same does not justify Carrier's action. While the parties there agree that ". . . relief assignments assigned to more than one occupation are proper under the provisions of . . . proposed Rule 32(e)", the Organization qualified same by the following language, to wit:

> "This is to advise that we are agreeable to the method of handling certain specific positions **with an understanding as to what positions and employes are involved.**" (Emphasis ours.)

Clearly, Appendix F does not empower the Carrier to unilaterally make assignments to more than one occupation. Same must still be negotiated thereunder.

Here, the regular employe was Claimant and the work to be performed was not a part of any assignment. Further, there was no available extra or

unassigned employe who would otherwise not have had 40 hours of work that week. Obviously, Claimant should have received the work and the claim under the record before us, should be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of September 1968.

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