Award No. 17719
Docket No. MW-17753

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, 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 January 9, 1967, it employed and used a new employe for one (1) day a week service as a relief drawbridge tender at Beardstown, Illinois. (System Case No. M-1204-67/12-3).

(2) Drawbridge Tender F. O. Spears be allowed eight (8) hours' pay at his time and one-half rate for each day worked by the new employe referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimant was regularly assigned as a drawbridge tender at the Illinois River Bridge, Beardstown, Illinois, with assigned hours from 12:00 midnight to 8:00 A.M. Mondays were one of his assigned rest days.

On Monday, January 9, 1967 and on each Monday thereafter, the services of a drawbridge tender were required at the Illinois River Bridge from 12:00 midnight to 8:00 A.M. Instead of calling and using the claimant to perform the drawbridge tender work, the Carrier assigned the work to an individual (Mr. William Applegate) who does not hold any seniority whatsoever under the Agreement.

The claimant was available, willing and fully qualified to perform the work in question on his rest day but he was not called and permitted to do so.

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: Claimant in this case is F. O. Spears, the regular incumbent drawbridge tender working the 12 midnight to 8:00 A.M. shift on the Beardstown bridge at Beardstown, Illinois. Mr. Spears does not work the 12 midnight to 8:00 A.M. shift on Mondays, this being a day of rest for him, on which day he is relieved by an extra or unassigned employe.

It had always been the practice prior to January 9, 1967, to fill this position on Mondays with an available extra or unassigned employe, who would

otherwise not have forty (40) hours of work in that week. The one extra employe resigned immediately prior to January 9, 1967. When it became apparent prior to the claim date that the Carrier would not have an available extra or unassigned employe, they offered this one-shift per week assignment as drawbridge tender to all B&B employes on the Beardstown Division. None of these employes wanted this one day a week service as relief drawbridge tender. This one day relief work was also offered to D. E. Rebman, who, at that time, was a laid-off B&B helper. He refused it because it "interferes with his unemployment insurance."

It was necessary, therefore, to hire a new employe who not only protects this one day a week work, but relieves regularly assigned employes who are on vacation or off for other reasons.

The schedule of rules agreement between the parties, effective September 1, 1949, and amendments thereto, are made a part of this submission.

(*Exhibits Not Reproduced*)

OPINION OF BOARD: The Claimant in this case alleges that Carrier violated the basic agreement when it hired a new employe to perform one day a week service as a relief drawbridge tender at Beardstown, Illinois. Claimant was regularly assigned as a drawbridge tender at Beardstown with assigned hours from 12:00 Midnight to 8:00 A.M. on all days except Mondays, which each week is one of his assigned rest days. On these latter days, being days of rest, Claimant is relieved by an extra or an unassigned employe.

Prior to January 9, 1967, the date mentioned in the claim, Carrier filled this position on Mondays with an available extra or unassigned employe, who would otherwise not have had forty hours of work in that week. The one extra employe resigned immediately prior to January 9, 1967, whereupon Carrier states that it offered this one day position to all B & B employes on the Beardstown Division, and, not having received an affirmative reply from any of them, hired a new employe, who not only protects this one day a week work, but relieves regularly assigned employes who are on vacation or off for other reasons.

It is the position of the Organization that this one day position comes within the Scope of the Agreement, Rule 1, and as such requires a bulletin as provided in Rule 26 (a). Carrier argues that this is not a new position or vacancy of more than 30 days duration, ergo, it was not required to issue, a bulletin. On the other hand, its justification for hiring the new employe was that he would not only perform service on this one day a week position, but would also relieve regularly assigned employes who were on vacation or who were off for other reasons. Insofar as Rule 26 (a) is concerned, it must have been envisioned that the Monday work would continue for 30 consecutive Mondays and more, but this would not in and of itself bring this type of service under the umbrella of Rule 26 (a). The one day per week service combined with other available work as described by the Carrier, was, as we view it from the argumentation presented by the Carrier itself, contemplated to be of more than 30 days duration. The principal question to be resolved however, is whether the combination of Monday work and extra work constitutes a new position or vacancy as those terms are used in Rule 26 (a). There is no question that the total service to be performed would be of more than 30 days duration, but the terms new position or vacancies connote, in accordance with

other rules of the Agreement a basic 8 hours of work per day and 40 hours per week. There is no provision in the agreement requiring the Carrier to bulletin for service to be performed such as in the instant case. Furthermore, there is nothing in the Agreement, which precludes Carrier from hiring new employes as it did in this case. In order for the Claimant to have succeeded in his claim, he would have had to prove by probative evidence that this was in fact a new position of 8 hours per day duration and 40 hours per week. We find no such evidence in the record and hence can find no violation of the Agreement. We will deny the claim.

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 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 13th day of February 1970.

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