

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19892
Docket Number **MW-19866**

Burl E. Hays, Referee

(Brotherhood of **Maintenance** of Way **Employees**

PARTIES TO DISPUTE: (

(Burlington Northern Inc. (Formerly Chicago, Burlington
& Quincy Railroad Company)

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

(1) The Carrier violated the Agreement when, instead of using Drawbridge Tender W. W. Myers to perform drawbridge tender's work on his rest days, it used B&B Mechanic A. D. Silvius **therefor** on March 22, 23, 29, 30, April 12, 13, May 3, 4, 10 and 11, 1971 (System Files **19-3/MW-6(d)-5**, 6-1-71 and MW-6(d)-5, **7-8-71**).

(2) Drawbridge Tender W. W. Myers be allowed 80 hours' pay at his time and one-half rate because of the violation referred to within Part (1) of this claim.

OPINION OF BOARD: The System Committee of the Brotherhood contends that Carrier violated their Agreement when, instead of using Drawbridge Tender W. W. Myers to perform drawbridge tender's work on his rest days, it used B&B Mechanic A. D. Silvius.

Claimant Myers had previously been relieved on his rest days by **B&B** Helper Owen who was used as a vacation relief drawbridge tender under provisions of Appendix **"F"** which is a part of this record. B&B Helper Owen was not available to perform the drawbridge tender relief work on the days in question, having been assigned to perform vacation relief work elsewhere. Whereupon Carrier assigned this work to B&B Mechanic Silvius.

Claimant insists he was entitled to be called to perform this work and draw time and a half pay. Carrier maintains it had **authority** to designate B&B Mechanic Silvius and pay him at the straight time rate. This created the dispute which is before us.

Let us look at the provisions of the Agreements controlling the dispute. First, let it be noted that there is no dispute over the fact that the Brotherhood's Agreement with the former Chicago, Burlington and Quincy Railroad Company is controlling on dates prior to May 1, 1971, and the subsequent Agreement with the Burlington Northern Inc. is controlling on dates subsequent to May 1, 1971.

Claimant sets forth in Employees' Statement of Facts Rule 2(b), Sections (a), (b) and (c) of Rule 4, and Rule 5(a) and draws the following conclusions:

1. That since drawbridge tenders are within Seniority Group 5 and **B&B** mechanics are within Seniority Group 4 and System B&B mechanics are within Seniority Group 1 and, since their work is separate and distinct, employees within one group are not entitled to perform work of a character accruing to the other group.
2. That the assignment of **B&B** Mechanic Silvius to perform Drawbridge Tender Myers work, when Myers was available, constitutes a direct violation of the Agreement.

Cited in support of this argument are Awards 4490 (Wenke), 4543 (**Wenke**), 5413 (Parker) and many others. The Board is inclined to agree with this contention.

The question has been raised as to whether or not the days involved were a part of any assignment. We believe that since B&B Helper Owen was not available to perform the work of his relief position on the dates involved here because of his assignment to fill another position, these days became "unassigned" days, and that Claimant was entitled to be called and used for this **work** under Rule 39(g) of the Agreement with former **CB&Q** Railroad Company, and under Rule **24(I)** of the Agreement with Burlington Northern Inc. (See Awards 16571 by Heskett, and 15064 by Ives).

Carrier contends that the the tag-end days in question here were properly filled because of a "**long** established practice", and cites several awards 17250 by **Criswell**, **15828** by Ives, and others.) We agree that in certain instances the general **principle** enunciated in these awards is sound. However, we do not believe it applies in this case.

B&B Mechanic **Silvius** was not in drawbridge tenders class, nor was he an unassigned **employee**, nor was he an "extra". In the absence of the regular relief employee (**B&B** Helper Owen) and in the absence of an extra or unassigned employee with seniority in the drawbridge tender's class, we feel Carrier was obligated to designate Claimant Myers, the regular assigned occupant of this position, for the work on his rest days in question here. (Awards 5475 by Carter and 18319 by **Dorsey**).

The claim should be allowed.

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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 **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.

A W A R D

Claim allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **Third Division**

ATTEST: *A. W. Paulke*
Executive Secretary

Dated **at** Chicago, **Illinois**, **this** 8th day **of** August 1973.