

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24266
Docket Number MW-24220

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
(Seaboard Coast Line Railroad Company

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

(1) The Carrier violated the Agreement when it assigned **an** employe (M. H. Allen) holding no seniority **in** the Bridge Tender's class to fill vacation vacancies of bridge tender on September **16, 17, 18, 19**, 25, 26, October 2, 3, 9, 10, 11, **12, 13**, 30, 31, November 1, 2, 3, 6, ~~7~~ 8, 9, 10 and December **4, 5, 6, 7, 8, 10, 11** and **12, 1979** (System Files **C-4(36)-DC/12-5 (80-15)H** and **C-4(36)-DC/12-5 (80-27) G**).

(2) Bridge Tender D. Clement, Jr. be allowed two hundred forty-eight (248) hours of pay at his time **and** one-half rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: This claim arises from Carrier's failure to assign Claimant, D. Clement, Jr., a Group D Rank **I** Bridge Tender in **Carrier's** Maintenance of Way-General Subdepartment to relieve other Bridge Tenders **during** their vacation periods in the months of September, October, November and December **1979**. Instead, Carrier utilized the services **of Trackman**, M. H. Allen, **who** holds no seniority in the Maintenance of Way-General Subdepartment.

The **Organization** asserts that Carrier's actions violates Article **12(b)** of Rule **49** of the Agreement. **That** provision reads:

"(b) As employees exercising their vacation privileges will be compensated under this Agreement during their absence on vacation, retaining their other rights as if they had remained at work, such absences **from** duty will not constitute 'vacancies' in their positions under any agreement. When the position of a vacationing employee is to be filled and **regular** employee is not utilized, effort will be made to observe the principle of seniority."

According to the **Organization**, since a regular relief employe was not utilized to fill the vacation vacancies at issue, Carrier was obligated to observe the principle of seniority by assigning, at a punitive rate, the senior qualified bridge tender in the Maintenance of Way-General Subdepartment. Since M. H. Allen, the employe who actually filled the **positions**, is a **Trackman**, he exercises no seniority as a Bridge Tender, in accordance with Rule 5 - Seniority Groups and Ranks. Thus, the Organization concludes that the senior qualified Bridge Tender, Claimant D. Clement, should have been assigned to fill these vacancies.

Carrier, on the other hand, argues that the language of Article 12(b) does not require it to assign Claimant to the temporary vacancies at issue here. It contends that Claimant was unavailable to fill these vacancies since he was fully employed as a second trick bridge tender when they arose. Furthermore, Carrier contends that its past practice has been to fill such positions in exactly the same manner as it did here - **i.e.** by assigning **Trackmen**, Apprentice Foremen or other employees who do **not** have Bridge Tender seniority to fill vacation vacancies of Bridge Tenders. Carrier **further** asserts that the Organization has never protested this practice. Thus, Carrier concludes that the Organization has acquiesced in its interpretation of Article 12(b) of Rule 49. Accordingly, Carrier asks that the **claim** be denied.

The crux of this dispute centers on the language of Article E!(b). If its language **is** clear and **unambiguous**, then any past practice to the contrary is irrelevant. However, if the language is reasonably subject to different interpretations, then **a** consistent past practice is helpful in determining how the parties themselves intended the language to be interpreted.

Here, we are persuaded that the language of Article 12(b) is sufficiently ambiguous so as to take into account the past practice on the property. The requirement that "effort will be made to observe seniority" may logically mean, as the **Organization** contended, that senior, **qualified** Bridge Tenders already on full time assignment will be utilized to relieve on temporary vacancies when there are no relief Bridge Tenders available. **However**, it may also logically mean that seniority is **utilized** only when employees with Bridge Tender seniority are available account of their not being assigned to full **time** Bridge Tender positions. Simply stated, the "effort" to observe seniority may not extend to reassigning full tire Bridge Tenders to temporary vacation vacancies so as to grant them the punitive rate for filling such positions.

Since the language of Article 12(b) of Rule 49 is ambiguous, we look to the past practice for **an** indication of the proper interpretation of the **provision**. The record evidence clearly reveals that Carrier has repeatedly and consistently assigned employees **who** do not hold seniority as Bridge Tenders to temporarily fill vacation vacancies where regular relief **employees** were not utilized. In addition, the record also indicates that the Organization has never protested this practice, thereby acquiescing to it. As our Board ruled in Award No. 10834:

"We find that a practice extending **over** this period of years, through negotiation of subsequent Agreement, **is** an established practice showing the intent of the parties as to the application of the rules involved."

Here, too, the parties' conduct is an established practice manifesting their intent with respect to the application of Article K(b) of Rule 49. Accordingly, the claim must be denied in its entirety.

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 not violated.

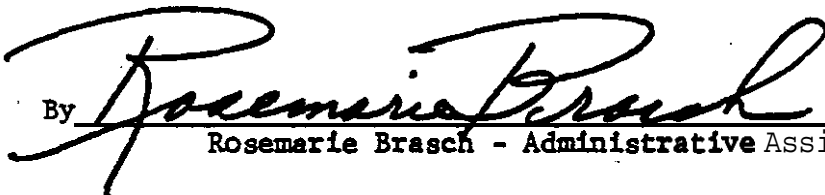
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By



Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of March 1983.