

NATIONAL RAILROAD **ADJUSTMENT** BOARD

**THIRD DIVISION**

Award Number 25342  
Docket Number **MW-24726**

George S. Roukis, Referee

(Brotherhood of Maintenance of Way **Employees**  
PARTIES TO DISPUTE: (  
(**Elgin, Joliet** and Eastern Railway Company

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

(1) The Carrier violated the **Agreements** when it assigned junior furloughed Drawbridge Tender **J. Milevski** to **fill** a temporary vacancy as drawbridge tender on June 25 and 26, 1980 instead of calling and using furloughed Drawbridge Tender **C. Welch** who was senior, available and willing to fill that vacancy (**System File SC-13-80/TM-5-80**).

(2) Because of the aforesaid violation, Drawbridge Tender **C. Welch** shall be allowed pay at the Drawbridge Tender's applicable rate for the total number of man-hours expended by Drawbridge Tender **J. Milevski** on June 25 and 26, 1980.

OPINION OF BOARD: Carrier was compelled to abolish all the Drawbridge' Tender positions on Bridge No. 710 located in the South Chicago **area**. The Relief Drawbridge Tender's position was apparently prematurely abolished on June 22, 1980, and Claimant's **position** was abolished on **June 24, 1980**. Claimant was assigned to the **Midnight-8:00 A.M.** Drawbridge Tender's position prior to the abolishment with Wednesdays **and** Thursdays as his designated rest days.

Following these **abolishments**, Carrier required extra Drawbridge Tender work on June 25 and 26, 1980, respectively, which coincided with the normal rest days of Claimant's previous position and it assigned a furloughed Drawbridge Tender employe to perform this work. This assignment prompted the instant claim.

In defense of his petition, Claimant argues that Carrier violated the pertinent seniority provisions of the **Agreement** since as the senior furloughed employe, Carrier was obligated to call him for this **work**. **He** contends that his seniority entitled him to all available **positions** whether such positions are regularly bulletined, temporary or merely overtime assignments.

Carrier contends that it was not required to assign this work to him since it was allowed under Rule **51(b)** to assign work not required to be performed on a day which is not part of any assignment to an available extra or unassigned employe who did not complete forty (**40**) hours of work that **week**. It argues that this **work** was required to be performed on days which were not part of any assignment and by extension on days that would have been Claimant's designated rest days had his position not been abolished. It asserts that while seniority is a significant factor in any calling procedure, it is not the sole criterion observed under the implementing practices of Rule 51(b). It avers that Claimant had already **worked** forty (**40**) hours that week and had no contractual seniority claim for the extra **work** on June 25 and 26, 1980.

In our review of this case, we concur with Claimant's position. Rule 51(b) which Carrier contends is controlling does not apply to the facts and circumstances herein. It applies to situations where Carrier is permitted to assign senior furloughed employees to work assignments that are not definable vacancy positions, but to work activities that need to be performed on a day not part of any assignment. Rule 51(b) reads:

"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 employee who will otherwise not have forty (40) hours of work that week; in all other cases by the regular employee."

By the parties own on *situs* practice, as evidenced by Carrier's delineation of the calling procedures for Drawbridge Tender employees, furloughed employees not having forty (40) hours of work were called first, followed by the senior available regularly assigned **employee** on his rest day. Next in the order of call were the senior available regularly assigned **employee** on a forward or reverse double and the senior available **employee** working in another seniority group **or** rank who holds Drawbridge Tender seniority rights. But the application of these hierarchal calling procedures presupposes **the** existence of **work assignments**. This is the **pivotal** distinction. If the Drawbridge Tender position had not been abolished, Carrier could have assigned work to the senior furloughed employee on Claimant's rest days. However, there were just no existing positions on Bridge No. 710. They were all abolished when this assignment was made, technically and effectively mooted in these anomalous circumstances Rule 51(b)'s application. Claimant was a furloughed employee on the days the disputed **work** had to be performed and he should have been called first to perform it. The conditions that attached to his former status were no longer operative when his position was abolished. As a furloughed employee, his seniority entitled him to the available work.

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

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1985.