

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Grand Trunk Western Railroad Company (former Detroit,
(Toledo and Ironton Railroad Company)

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

(1) The Agreement was violated when the Carrier failed to recall furloughed Truck Driver-Bridgeman Helper W. Krejci to fill a temporary truck driver-bridgeman helper position beginning on May 30, 1989 (Carrier's File 8365-1-273 DTI).

(2) The Agreement was further violated when the Carrier failed to recall furloughed Truck Driver-Bridgeman Helper W. Krejci to fill a temporary truck driver-bridgeman helper position on July 5, 6 and 25, 1989 (Carrier's File 8365-1-279).

(3) The Agreement was further violated when the Carrier failed to recall furloughed Truck Driver-Bridgemen Helper W. Krejci to fill a temporary truck driver-bridgeman helper position on July 10, 11, 12, 13, 14, 17, 18, 19, 20 and 21, 1989 (Carrier's File 8365-1-278).

(4) As a consequence of the violation referred to in Part (1) hereof, Truck Driver-Bridgeman Helper W. Krejci shall be allowed forty-five (45) hours at his straight time rate of pay.

(5) As a consequence of the violation referred to in Part (2) hereof, the Claimant shall be allowed nineteen (19) hours at his straight time rate of pay.

(6) As a consequence of the violation referred to in Part (3) hereof, the Claimant shall be allowed eighty (80) hours at his straight time rate of pay."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Just prior to the time this dispute arose, Claimant was regularly assigned to a Truck Driver-Bridgeman Helper position. Due to a reduction of forces, Claimant was displaced by a senior employee.

As of July 1989, Mr. Chunko was employed on a two-man B&B gang headquartered at Flat Rock, Michigan as Truck Driver-Bridgeman Helper. The other member of the gang was the Foreman, who performed the work of Bridgeman in addition to supervising the work of the two-man gang. The Foreman was paid at the Foreman's rate of pay, which is higher, for the entire shift.

Mr. Chunko's ordinary duties involved driving the truck to and from a location and helping the Foreman, for which he was paid the Truck Driver-Bridgeman Helper rate of pay. However, when he performed skilled work recognized as Bridgeman's work, he too was paid at the Bridgeman's higher rate of pay. On days when the Foreman was not on duty due to illness or vacations, Mr. Chunko worked alone and was compensated at the Foreman's rate of pay. At no time were there more than two positions on the Flat Rock B&B gang, nor were there more than two people employed on the gang.

On July 7, 1989, the Organization filed a Claim on behalf of the Claimant for nine dates shown in May and June of 1989, on the premise that when Chunko was paid the Bridgeman's or Foreman's rate of pay, Claimant should have been called to fill the position of Truck Driver-Bridgeman Helper. On August 24, 1989, the Organization filed another claim on behalf of the Claimant, again on the presumption that he should have been called to work as Truck Driver-Bridgeman Helper on dates subsequent to the initial claim. On the same date, August 24, 1989, Organization filed a third claim on behalf of the Claimant to cover dates July 10 through 21, 1989, when Mr. Chunko performed either Foreman or Bridgeman duties.

Rules pertinent to this dispute as follows:

"RULE 2--QUALIFICATIONS FOR
POSITIONS

(a) In the assignment of employees to all advertised positions under this agreement except foreman's positions, fitness and ability being sufficient, seniority shall govern. Foremen's positions shall be assigned to senior applicants if in the judgment of Management they possess sufficient ability and fitness; otherwise such positions may be filled by appointment.

* * *

RULE 3--BULLETINING VACANCIES OR
NEW POSITIONS AND AWARDED POSITIONS

(a) New positions or vacancies, other than temporary vacancies, will be bulletined within 15 days previous to or 15 days following the date such new positions or vacancies occur. Temporary vacancies of 30 days or less need not be bulletined but if of more than 30 days' duration will be bulletined as temporary. When it is known that a temporary vacancy will be permanent, it will be bulletined or re-bulletined as permanent.

* * *

RULE 7--SENIORITY LIMITS

The seniority rights of employees are confined to the sub-department in which employed; namely, Track Sub-Department or Bridge and Building Sub-Department.

RULE 8--SENIORITY
(Effective 4-1-55)

(a) An employee's seniority in each classification in a sub-department will begin at the time his pay starts in that classification except

* * *

(d) The classifications in each sub-department are as follows:

BRIDGE AND BUILDING
SUB-DEPARTMENT

Group I

Bridge foreman
Bridgeman

RULE 26 - ASSIGNMENT TO HIGHER OR LOWER RATED
POSITIONS:

An employee may be temporarily or intermittently assigned to different classes of work within the range of his ability. In filling a position which pays a higher rate, he shall receive such rate for the time thus employed."

For its part, the Organization contends the dispute arose when a vacancy in excess of 30 days was created in the truck driver-bridgeman position on those occasions when Mr. Chunko fulfilled Foreman duties. The Organization maintains that the Claimant was fully qualified and available to fulfill the vacancy in question, and in essence, the Carrier used a single employee to fill more than one position at the same time. Therefore, according to the Organization, the Claimant's rights were violated thereby depriving him of monetary benefits which he would have derived from the opportunity to fulfill his previous position.

Carrier maintains that nothing in the Agreement requires it to establish a specific number of jobs. Further, according to the Carrier, Rule 3, upon which the Organization relied heavily, requires that when a new job is established or an existing position becomes vacant, the position must be advertised so that employees are afforded the opportunity to exercise their seniority options. The Carrier contends that no such vacancy existed, temporary or permanent, for more than thirty days. No rule of the Agreement requires the Carrier to bulletin a position unless it meets the aforementioned criteria. Carrier maintains that neither seniority rules, nor precedent entitle a furloughed employee to be recalled for a temporary vacancy, and request the Claim be denied.

This dispute is not a matter of first impression; the same issue on the same facts and under the same Agreement language as presented here resulted in a series of denial Awards by this Board. See Third Division Awards 28048, 28050, 28051, 28052, 28053, 28054 and 28056. Typical of those decisions is the following holding in Award 28050:

"The identical issue, with different dates, has been raised between the same parties previously. In addition, identical arguments were advanced by the two parties and considered by this Board in Third Division Awards 28047 and 28048. For the reasons indicated in the two Awards cited, the Board concludes that Carrier's use of an on-duty Trackman to fill the two one-day Foreman vacancies, in lieu of recalling Claimant from furlough, is permissible under the Agreement."

For the reasons set forth in the aforementioned Third Division Awards, the Board must conclude that the Carrier did not violate the Agreement when it failed to recall the Claimant from furlough.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever, Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1992.