

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30068
Docket No. MW-29670
94-3-91-3-8

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(CSX Transportation, Inc. (former Seaboard
(System Railroad)

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

- (1) The Agreement was violated when the Carrier assigned Maintenance of Way Track Subdepartment employe Mr. W. A. Lee to perform the Maintenance of Way, General Subdepartment, Group D, drawbridge operator's work of operating the lower Savannah River drawbridge between Milepost AK 459.5 and Milepost AK 454.3, i.e., between Augusta, Georgia and Beech Island, South Carolina, on Friday, September 22, 1989 and Saturday, September 23, 1989 and continuing each successive Friday and Saturday thereafter through and including March 10, 1990 [System File 89-64/12(90-74) SSY].
- (2) As a consequence of the aforesaid violation:
 - (a) Mr. E. Pollins shall be allowed pay at his respective time and one-half rate of pay for the work performed by Track Subdepartment employe Mr. W. A. Lee beginning on Friday, September 22, 1989 and each successive Friday thereafter through March 9, 1990; and
 - (b) Mr. J. Youngblood shall be allowed pay at his respective time and one-half rate for the work performed by Track Subdepartment employe Mr. W. A. Lee beginning on Saturday, September 23, 1989 and each successive Saturday thereafter through March 10, 1990."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The Organization raised timely objections to evidence offered by the Carrier de novo in its Submission. None of the evidence so offered will be considered by the Board. The Board's findings are based solely upon the record established on the property.

Claimants established and hold seniority in the General Subdepartment, Group D, as Drawbridge Operators on Carrier's Florence-Savannah seniority district. At the time this claim arose, Claimants held regular assignments as Relief Bridge Tenders. The Carrier operates a drawbridge that crosses the Savannah River at Milepost AK 456.3 on the Augusta Subdivision. On Friday, September 22, and Saturday, September 23, 1989, Carrier assigned a Maintenance of Way Track Subdepartment employee to tend the bridge to accommodate Augusta Riverboat Cruises. The work at issue also was performed by that employee on various subsequent occasions.

It is the position of the Organization that Carrier had ample notice of the cruise company's schedule, so the work involved was not in the nature of an emergency or similar unforeseeable circumstance. The Organization further maintains that bridge tending is properly the work of Group D (Bridge Tender) M of W employees, and that Claimants, who are Group D employees, were qualified, willing and available to be called in to perform the bridge tending.

Carrier contends that the schedule was not predictable, despite the cruise company's brochure. Thus, Carrier was required to provide for bridge tending on short and unpredictable notice. In addition, Carrier maintains that the Claimants live sufficient distance from the site of the bridge in question to be considered "unavailable." Finally, the Carrier denies that the work at issue is reserved to Group D M of W employees.

It is apparent that the Parties' positions with respect to the predictability of the bridge tending responsibility at issue are in diametric opposition. As has been established in numerous Awards on this and other Boards, resolution of such disparities in the Parties' representations of "facts" can be made only when one side has presented a preponderance of evidence to support its position. In the instant case, the Parties' representations are

contradictory, so the Board can make no determination regarding that particular point. Notwithstanding, the irregularity or regularity of the cruise company's schedule is not material to the disposition of this claim (Award 17, Public Law Board No. 2678).

In Third Division Award 24266 involving the same Parties as in this case, the Board found:

"...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."

While the work assigned in this case was not a vacation absence, the principle enunciated in Award 24266 applies at least equally to the arguably occasional bridge tending at issue here.

Finally, with respect to Claimants' reported "availability" for work, Carrier asserts without refutation that Claimants reside 129 and 137 miles, respectively, from the bridge in question. As the Board held in Third Division Award 22234, "long distance [from the site of the work]...may render an employee unavailable." In this case, the peculiar immediacy of the work may reasonably restrict the distance within which an employee must reside in order to be considered "available" for work.

In light of the foregoing the instant claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin, Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of February 1994.