

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38043
Docket No. MW-37172
06-3-02-3-150

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Burlington Northern Santa Fe (former Atchison,
(Topeka and Santa Fe Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Mr. A. Bertrand to perform overtime bridge tender service at Bayou Bouf Bridge at Mile Post 73.3 in the vicinity of Bayou Bouf, Louisiana on February 9, 2001 instead of Bayou Bouf Bridge Tender C. Skaggs [System File JFSF-01-4/15-01-0008(MW) ATS].
- (2) The Carrier violated the Agreement when it assigned Mr. A. Bertrand to perform overtime bridge tender service at Bayou Bouf Bridge at Mile Post 73.3 in the vicinity of Bayou Bouf, Louisiana on February 23 and 24, 2001 instead of Bayou Bouf Bridge Tender C. Skaggs [System File JFSF-01-5/15-01-0009(MW)].
- (3) The Carrier violated the Agreement when it assigned Mr. A. Bertrand to perform overtime bridge tender service at Bayou Bouf Bridge at Mile Post 73.3 in the vicinity of Bayou Bouf, Louisiana on March 2, 2001 instead of Bayou Bouf Bridge Tender M. Frazier [System File JFSF-01-9/15-01-0010(MW)].

- (4) As a consequence of the violation referred to in Part (1) above, Claimant C. Skaggs shall now be compensated for eight (8) hours' pay at his respective time and one-half rate of pay.
- (5) As a consequence of the violation referred to in Part (2) above, Claimant C. Skaggs shall now be compensated for sixteen (16) hours' pay at his respective time and one-half rate of pay.
- (6) As a consequence of the violation referred to in Part (3) above, Claimant M. Frazier shall now be compensated for eight (8) hours' pay at his respective time and one-half 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 were given due notice of hearing thereon.

The instant dispute is over how the Carrier assigned the performance of overtime Bridge Tender service. There is no dispute on the factual situation at bar, or on the status of A. Bertrand who was assigned the overtime service instead of the Claimants.

Bertrand was a Relief Bridge Tender with an assigned headquarters at Berwick Bridge, Berwick, Louisiana. He worked an assigned schedule of Saturday at Bayou Bouf Railroad Bridge, Sunday at Berwick Railroad Bridge, Monday at

Baldwin Railroad Bridge, Tuesday at Mermenau Railroad Bridge and Wednesday as assigned, with Thursday and Friday as rest days.

On Friday, February 9, Friday, February 23, and Saturday, February 24, 2001, the Carrier assigned Bertrand to perform overtime Bridge Tender service at Bayou Bouf Bridge. The senior employee headquartered at Bayou Bouf Bridge, Claimant C. Skaggs, was not called. He is regularly assigned 4:00 P.M. to Midnight Monday through Friday.

Similarly, on Friday, March 2, 2001, the Carrier again assigned Bertrand to perform overtime Bridge Tender service at Bayou Bouf Bridge instead of the senior available employee headquartered at Bayou Bouf Bridge, i.e., Bridge Tender M. Frazier. As with Skaggs, the Carrier did not call Frazier to work the overtime at the bridge where he was headquartered.

The Organization argues that Rule 33 requires the Carrier to give the overtime work to the senior employee assigned to the Bayou Bouf Bridge. Seniority at that bridge clearly puts both Claimants senior to Bertrand. The Organization presented a letter from Claimant Skaggs which outlined the undisputed above facts and that:

"In the past, overtime was always offered to personnel assigned on the bridge in question in order of seniority. If no one wanted the overtime then outside assignments were made by the supervisor."

The Organization holds that the practice on the property has been to afford the senior assigned employee headquartered at the bridge the overtime. Only if all of the assigned employees at that bridge refused overtime in seniority order would it be offered to others, such as Bertrand who, as previously noted, was headquartered at Berwick Bridge.

The Carrier argues that it was required by Rule 33 to assign the overtime work to the senior employee, i.e., Bertrand. While there is some discrepancy on which days Bertrand worked, the Carrier's position is that he worked Bayou Bouf Bridge and in fact, was the senior employee who worked that bridge. Because the Rule requires the Carrier to call overtime preference to individuals assigned to

bridges, rather than “daily assignment seniority” as assigned to a specific bridge, it did not violate the Agreement. The Carrier presented support for its position from former BridgeTender C. Desormeaux who stated:

“I held the relief bridgetenders job from January 1996 to November 1999. The overtime was offered to me on my days off and the days I worked at that bridge according to seniority.”

The Carrier also supported its position with a statement from Bertrand which, in pertinent part, stated:

“In all my 24 years as a bridgetender overtime has always been offered to the bridgetender with the highest seniority first. The bridgetenders who held this job before me were entitled to work overtime on their rest days and the days they worked those bridges.”

This is a contract interpretation dispute wherein both sides state that the Rule supports their respective positions. The Rule in dispute is Rule 33, Section (i) “Preference to Overtime Work,” which states in full:

“Except when employes are utilized as provided in Rule 33 – (f), employes assigned to sections, work districts, specific areas and/or locations shall be given preference in relative seniority order among employes of the gang, work district or location to overtime work to be performed within such section, district, area or location.”

Allegations of past practice and history raised by the Organization are without sufficient probative evidence of support. In fact, there is nothing in this record presented by the Organization to demonstrate any past practice that would provide support for its conclusions. If anything, the Carrier’s above statements support an opposite conclusion.

Nevertheless, the language of the Agreement fails to contain the words to provide the meaning suggested by the Organization. For the Organization to prevail, language must exist in Rule 33 that delineates limitations or spells out meanings of “assigned” within the Rule. The Organization alleges that assigned

means, "headquartered" or "regularly assigned" location of one specific bridge. Bertrand and both Claimants were assigned to the specific location of Bayou Bouf Bridge. Nothing in the language includes limitations on assignment. The Board finds no language in Rule 33 specifying a headquarters location of regular assignment.

It is the Organization that bears the burden of demonstrating practice or Rule support for its position. The Organization states that the Claimants were regularly assigned as Bridge Tenders at Bayou Bouf Bridge, their headquarters and therefore, "shall be given preference in relative seniority order . . . to overtime work. . . ." There is nothing in this Rule to create a limitation as argued by the Organization. The language only states that "employees assigned to . . . locations . . . shall be given preference in relative seniority order among employees of the . . . location to overtime work to be performed within such . . . location." The assignment of the Claimant to this location was a fact of record. The Rule has no limitation of headquarters point or regular assignment to Bayou Bouf Railroad Bridge.

The record indicates that Bertrand was senior to the Claimants. There is nothing in Rule 33 that states Bertrand must have assigned headquarters of Bayou Bouf Bridge. There is nothing that states that Bertrand must be assigned on the date of overtime, rather than working on his rest days. The Organization relies on language that does not limit the Carrier to give preference of overtime to those employees who work a specific bridge, on a specific day, by seniority at that specific location, before the Carrier could give preference to the Relief Bridge Tender.

The Board is forced to conclude from the evidence of record and the language of Rule 33 that the Carrier did not violate the Agreement. There is no proof of any past practice, nor explicit language supporting the Organization's assertions. Bertrand was the senior employee and although not at that location, nor headquartered there, the Rule permits his preference at locations where he has been assigned. We must therefore deny the claim for lack of proof.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of December 2006.