Award No. 3785
Docket No. MW-3838

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO GREAT WESTERN RAILWAY COMPANY

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

(1) That Clair E. Law be allowed pay at the drawbridge operators' rate for time worked on May 17 and 18, 1946;

(2) That Clair E. Law be allowed pay at the overtime rate for time worked as a drawbridge operator on Sundays and holidays between May 17 and June 23, 1946, inclusive.

EMPLOYES' STATEMENT OF FACTS: Clair E. Law is regularly assigned as a B&B cook on the Minnesota Division. While employed as a cook, he is paid at the time and one-half rate for services performed on Sundays and holidays. During the period May 17 to June 23, 1946, both dates inclusive, he was assigned to work as a drawbridge operator at St. Paul, Minnesota. He was not allowed any pay for work performed on May 17 and 18, 1946, and was allowed pay at the straight time rate for all time worked during the period May 19 to June 23, 1946, both dates inclusive.

Agreement between the parties is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: The claimant, Clair E. Law, who, as of May 15, 1946, was regularly assigned as a B&B cook, had been employed in various classifications such as pile driver operator, pile driver fireman, B&B helper, cook, etc., and thereby had gained considerable experience in various classifications of work.

In assigning vacations for the year 1946, the Carrier assigned drawbridge operators working at South St. Paul drawbridge, to take vacations starting May 19, 1946, and continuing up to and including June 23, 1946. In that the drawbridges must be operated every day, it was necessary that a relief operator be assigned to fill such positions during the time the regular assigned drawbridge operators were on vacation. Clair E. Law, who was working as a B&B cook, was instructed to report at the drawbridge at South St. Paul on May 16, 1946, for the purpose of becoming familiar with the operation of the drawbridge so that he would be capable of operating the drawbridge during the period the regularly assigned drawbridge operators were on vacation.

On May 16 and 17, 1946, he worked eight hours each day with the regular drawbridge operator, and starting May 18, 1946, he operated the

contrary to any rule or agreement in effect with the organization, but in fact was in strict conformity with schedule Rules 6 (a), 9 (c) and (h) and 24, previously quoted herein, as well as terms of the Vacation Agreement, and the respondent Carrier therefore respectfully requests that claim be denied by this tribunal.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant, in 1946, was a regularly assigned B&B camp cook employed by the Carrier on the Minnesota division. Several days prior to May 17, 1946, Mr. Herring, the B&B supervisor, talked to the Claimant about the possibility of transferring claimant for about five weeks to do relief work as draw-bridge operator at St. Paul, while the regular draw-bridge operators were taking their vacations.

Mr. Herring had already attempted to get another man for this relief work and then asked the Claimant whether in case the other man couldn't go, the claimant would "try the job." The Claimant told Mr. Herring that he would try the job "if he (the Supervisor) couldn't get anyone else". At that time Mr. Herring explained to Claimant that he might have to break in on his own time.

Claimant's cook position was a six day position. In that position Claimant had received time and one-half for time worked on Sundays and holidays and after eight hours.

Under the contract between the parties camp cooks and draw-bridge operators are in different seniority groups and the Claimant while doing such relief work, retained his seniority as a camp cook and gained no seniority as a draw-bridge operator. The Carrier could have hired an outsider for this work and in such case would have been required to pay only the draw-bridge operator's wages and could have made it a condition of such employment that the outsider break in on his own time.

The Organization, however, insists that since the Claimant was taken out of another seniority group for this work and taken away from his regularly assigned position he cannot be required to break in on his own time (Claim 1) and must be paid for time worked on Sundays and holidays during the period (Claim 2).

The Carrier lays considerable stress on the contention that Claimant "volunteered" to do this relief work. An examination of the record, however, would seem to clearly indicate that Claimant did not desire to do the relief work and was only doing it for the benefit of the Carrier in case the Supervisor "coudln't get any one else." This certainly could not be considered such a "volunteering" on the part of the Claimant as to estop him from claiming whatever rights he might have under the agreement between the parties.

The Carrier also points out the fact that the Claimant did not seem to be informed as to his right to pay for the two days he was breaking in and for Sunday and holiday work until after he was on the relief work. His lack of knowledge as to his rights under the contract could not be held to destroy such rights. The Supreme Court of the United States has held, No. 343, October Term, 1943, that even when an employe knows his rights he cannot enter into a valid individual contract with the Carrier to work at different rates of pay and under different rules and conditions of employment than the pay, rules and conditions of the applicable collectively bargained agreement.

The Carrier also cites Rules 6-(a), 9-(c) and 9-(h) as authorizing the use made of the Claimant in this case. Those rules seem to clearly cover filling of vacancies and new positions rather than the temporary assignment of an employe to do relief work.

The Carrier also cites the vacation agreement as providing that the application of such agreement shall not entail any additional expense to

the Carrier. It has been many times held by this Division that provisions of the Vacation Agreement do not supersede the existing rules and agreements between the parties.

There was cited on behalf of the Carrier Award No. 3092 as holding that it was within the discretion of the Carrier as to the necessity of an employe being required to learn the duties of a position on his own time. In that case the employe in question was bidding in on the position and at the time was informed that she would be required to spend a couple of days on her own time to learn the duties of the position. It was not a case of the Carrier transferring an employe from a regularly assigned position for the convenience of the Carrier.

The Carrier cites Award No. 3616 of this Board which refused a Claimant time and one-half pay for Sunday work where the Claimant was relieving an engineer on a seven day position. In that case the Claimant was a furloughed employe and was, therefore, not an employe regularly assigned to a position which provided a rest day.

In the instant case the Claimant on his regular assigned position as a camp cook was entitled to Sundays and to specified holidays off or to be paid time and one-half if he worked such days.

As a regularly assigned camp cook he was also entitled to pay for the two days which he spent in breaking in on the draw-bridge operator work.

The assignment of the Claimant to do relief work outside of his seniority group for the convenience of the Carrier should not be permitted to deprive the Claimant of the advantages of his regularly assigned position.

He should, therefore, be compensated for the two days he was breaking in as draw-bridge operator and should be compensated at the rate of time and one-half for Sunday and holiday work under modified Rule 24-(a). See Awards Nos. 2340 and 3636.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes 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 facts disclosed by this record support an affirmative award.

AWARD

The claims (1) and (2) are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Ilinois, this 18th day of February, 1948.