

Award No. 13709

Docket No. MW-14573

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**NEW YORK CENTRAL RAILROAD COMPANY
(Western District)**

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

(1) The Carrier has been in violation of the Agreement and of practices thereunder when, beginning with December 5, 1961, it discontinued the use of drawbridge operators on the Maumee River bridge and assigned the traditional and customary work of said drawbridge operators to telegraph operators stationed at the Wabash Tower, West of the Maumes River Bridge.

(2) The Carrier has been in further violation of the Agreement and of practices thereunder when, beginning at 7:00 A. M. on December 16, 1961, it discontinued the use of drawbridge operators on Bridge No. 8½ at Indiana Harbor, Indiana and assigned the traditional and customary work of said drawbridge operators to telegraphers.

(3) (a) The Carrier be required to restore the drawbridge operators' work at the Maumee River bridge to drawbridge operators holding seniority on the Western District seniority roster.

(b) The four (4) senior furloughed drawbridge operators on the Western District seniority roster be compensated for all monetary losses sustained as a result of the violation referred to the Part (1) of this claim.

(4) (a) The Carrier be required to restore the drawbridge operators' work at Bridge No. 8½. Indiana Harbor, Indiana, to drawbridge operators holding seniority on the Western District seniority roster.

(b) Drawbridge Operators W. B. Baker, W. C. Schroeder, A. M. Hardesty, E. E. Cain, H. L. Cain and all others adversely effected by the violation referred to in Part (2) of this claim be compensated for all monetary losses sustained as a result of said violation.

EMPLOYES' STATEMENT OF FACTS: Under date of December 6, 1963, the Brotherhood withdrew Parts (1) and (3) of our Statement of Claim and, therefore, they are not here in issue.

Award 9552, Referee Merton C. Bernstein—

"But, the Carrier did not have the burden of proving practice. The Claimant has the burden of proving all essential elements of the claim. Under a Scope Rule such as that here it had the burden of showing that, at the time the Agreement was made and subsequent thereto, the practice was for work of this kind to be performed exclusively by employees in the classifications covered by the Agreement.

"Claimant having failed to prove the requisite custom and practice, and in reliance upon the most recent award on the subject on this property, Award 8755, the Claim must be denied."

In part 4(a) of the claim, the Organization is asking your Board to require that Carrier restore the drawbridge operators' work at Bridge 8½. That your Board does not have such authority is shown in Award 11752 (Hall). That Award involved claim of Maintenance of Way Organization on Carrier's New York District that Crossing Watchmen's work at Elmsford, New York, be restored to Crossing Watchmen holding seniority within the scope of the agreement between the two parties. The Findings held in part:

"Claim (2) will be denied as it has been uniformly held that this Board has no authority to restore a position once it has been discontinued or abolished."

The Carrier asserts the Awards cited above support its position that this claim is without merit.

CONCLUSION: In conclusion the Carrier has shown the Third Division is without jurisdiction.

The work of handling drawbridges is not reserved exclusively to Drawbridge Operators by the Agreement, custom or practice.

Awards of the Third Division support the position of the Carrier.

The claim, if not remanded or dismissed, should be denied for lack of merit.

OPINION OF BOARD: Under date of December 6, 1963, the Brotherhood withdrew Parts (1) and (3) of their Statement of Claim, submitted September 3, 1963 and, therefore, they are not here in issue.

Prior to December 16, 1961, positions of Drawbridge Operator existed in the H. C. Tower at Indiana Harbor, Indiana, Drawbridge No. 8½. In addition to operating Drawbridge No. 8½, the positions also included the operation of three other drawbridges located nearby. All were operated from the H. C. Tower. Also located in the H. C. Tower, were Leverman—Bridge operators under the Telegraphers' Agreement. The Drawbridge Operator positions were under the Maintenance of Way Agreement.

Effective December 16, 1961, the Telegrapher employees were required to assume the additional duties of handling the operation of the Bridges, formerly performed by the Drawbridge Operators. Through modernization of the starting mechanism and bridge controls, the function of raising and lowering the bridge was returned to the Leverman—Bridge Operators, under the Tele-

raphers' Agreement. Effective the same date, the Drawbridge Operator positions were abolished.

The Claimants contend the abolishment of the positions, Drawbridge Operator, was in violation of the Agreement, when their work was assigned to the Leverman—Bridge Operators, H. C. Tower, Indiana Harbor, Indiana.

The Carrier contends the Scope Rule of the Agreement does not grant this work exclusively to the Drawbridge Operators. The practice on the property has not been to restrict the operating of drawbridges to the Maintenance of Way employees, and such work has been performed by other crafts and classes at other locations and by Leverman—Bridge Operators at the location in the instant dispute.

The parties to this dispute, presented to this Board, in Award 12284, Docket MW-11696, virtually the identical fact situation, and the same issues and Agreement provisions as are present in the instant claim. We do not consider Award 12284 so completely in error as to warrant an abandonment of that holding as controlling in this case. Therefore, the claim will be denied.

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 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1965.