



Award No. 14491

Docket No. MW-15427

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**NORFOLK AND WESTERN RAILWAY COMPANY
(LAKE REGION)**

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

(1) The Carrier violated the Agreement when it assigned James Wheeler instead of regular Drawbridge Engineer Gordon Tincher to operate Drawbridge #210-21 at overtime rate of pay on February 19, 1963. (Carrier's file 30-20-106)

(2) Drawbridge Engineer Gordon Tincher be reimbursed for the exact amount of monetary loss suffered as a result of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The claimant, who holds seniority as a drawbridge engineer as of 3-2-1959, is regularly assigned to the third trick position of drawbridge engineer at Bridge No. 210-21. Tuesday of each week is one of the claimant's designated rest days.

On Tuesday, February 19, 1963, the Carrier called Mr. James Wheeler (who holds no seniority rights as a drawbridge engineer) to perform the rest day work of the claimant's position. Mr. Wheeler worked from 11:00 P.M. on February 19 to 7:00 A.M. on February 20, 1963, and was compensated for his services at the time and one half rate. The claimant was available to perform the subject rest day work.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer, who declined the claim in a letter dated March 19, 1964. In accordance with the provisions of Article V of the August 21, 1954 Agreement, the parties mutually agreed to extend the time limit for the institution of proceedings before this Division. This agreement is reflected in a letter reading:

"September 11, 1964
File: 30-20-106

Mr. James L. D'Anniballe, General Chairman
Brotherhood of Maintenance of Way Employes
1214 Cherry Street
Toledo 4, Ohio

letter the Vice Chairman requested that Claimant Tincher "be reimbursed for time had he been called to perform same." Copy of that letter is attached as Carrier's Exhibit "A".

Copies of correspondence reflecting the subsequent handling of the claim on the property are attached hereto as Carrier's exhibits and identified as follows:

Exhibit "B"—May 17, 1963	— Denial of claim — Bridge & Building Supervisor to Vice Chairman
Exhibit "C"—May 28, 1963	— Appeal — Vice Chairman to Division Engineer
Exhibit "D"—July 12, 1963	— Denial of Appeal — Division Engineer to Vice Chairman
Exhibit "E"—August 7, 1963	— Appeal — Vice Chairman to Assistant Chief Engineer
Exhibit "F"—September 23, 1963	— Denial of Appeal — Assistant Chief Engineer to Vice Chairman
Exhibit "G"—November 20, 1963	— Appeal — Vice Chairman to Chief Engineer
Exhibit "H"—January 2, 1964	— Denial of Appeal — Chief Engineer to Vice Chairman
Exhibit "I"—January 21, 1964	— Appeal — Vice Chairman to Director of Personnel
Exhibit "J"—March 19, 1964	— Denial of Appeal — Director of Personnel to General Chairman
Exhibit "K"—May 15, 1964	— Letter — Director of Personnel to General Chairman
Exhibit "L"—July 30, 1964	— Letter — General Chairman to Director of Personnel
Exhibit "M"—August 27, 1964	— Affirmation of Denial — Director of Personnel to General Chairman

OPINION OF BOARD: On Tuesday, February 19, 1963, Robert Fuller, regularly assigned relief drawbridge engineer, reported that he would be unable to work his regular assigned tour of duty that day. Carrier called extra relief drawbridge engineer James Wheeler to fill the vacancy.

Claimant is the regularly assigned drawbridge operator of this position, one of whose rest days was Tuesday.

The Organization argued that Claimant, as the senior employe was entitled to the work as against Wheeler who did not have seniority at this bridge.

The Carrier argued that Wheeler was entitled to the work as an extra under Rule 24 (k), "Work on Unassigned Days."

Rule 24 (k) does not apply here. It was not work on an unassigned day but work of a regular relief assignment. See Award 12956.

Carrier also alleges that Wheeler was assigned in accordance with past practice. This was mere assertion; no proof was offered. If Carrier relied on practice as its affirmative defense it was obliged to prove it. It failed to sustain its burden.

Claimant, as the senior employe, was entitled to the work, under Rule 1(b) which reads:

“(b) Rights accruing to employes under their seniority entitle them to consideration for positions in accordance with their relative length of service on their respective seniority districts.”

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

That the parties waived oral hearing;

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 Carrier violated the Agreement.

AWARD: Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1966.