



Award No. 14763

Docket No. MW-15852

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it assigned G. F. Chestnutt (who holds no seniority as a bridge tender) instead of Bridge Tenders M. H. Lehmkuhl, W. E. Spears and/or E. A. Parks to perform rest day and/or holiday work at Bridge 117.35, Beardstown, Illinois, on June 26, 27, 28, 29 and 30 and July 3, 4, 5, 6, 7, 10, 11, 12, 17, 18 and 19, 1964.
(Carrier's File: M-1016-64)

(2) Bridge Tender M. H. Lehmkuhl be allowed 48 hours' pay; Bridge Tender W. E. Spears be allowed 64 hours' pay; Bridge Tender E. A. Parks be allowed 16 hours' pay at their respective time and one half rates because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The facts in this case were fully and accurately set forth by the General Chairman in a letter reading:

"November 11, 1964

12-3

Mr. G. M. Youhn, Director of
Labor Relations—CB&Q Railroad
Chicago, Illinois

Dear Sir:

We are appealing the following claim to you in behalf of the following Bridge Tenders employed on the Illinois River Bridge at Beardstown, Illinois on the Beardstown Zone of the Hannibal Division, Mr. M. H. Lehmkuhl, Mr. W. E. Spears and Mr. C. A. Parks.

On May 29, 1964 the regular incumbent of the bridge tender's

tions thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Claimants are regularly assigned as drawbridge tenders at Beardstown, Illinois. Immediately prior to the dates specified in the claim, they were relieved on their rest days by regularly assigned relief employe J. P. Myatt. On June 18, 1964, relief man Myatt was formally dismissed from Carrier's service for being found in a drunken stupor while on duty as bridgetender. Myatt had been held out of service from May 30, pending result of investigation.

At the time Myatt was held out of service there were no employes holding seniority as bridgetenders who were not regularly assigned as such. The permanent vacancy resulting from Myatt's dismissal was bulletined and G. F. Chestnutt was temporarily assigned pending expiration of the bulletin. Chestnutt had performed vacation relief work on all of claimants' positions, including Myatt's, in 1963 and the amount of vacation relief was in excess of 60 days. He also performed some vacation relief early in 1964, and was a qualified former employe.

None of the claimants submitted a bid for the bulletined position, and it was then permanently assigned to Chestnutt at the expiration of the bulletin.

The claimants did not want the vacancy—they only wanted to work on their rest days.

The schedule of rules agreement between the parties, effective Sept. 1, 1949, and amendments thereto are by reference made a part of this submission.

(Exhibits not Reproduced.)

OPINION OF BOARD: Claimants are regularly assigned as drawbridge tenders at Bridge 117.35, Beardstown, Illinois. Immediately prior to the dates specified in the claim, they were relieved on their rest days by a regularly assigned relief employe who was suspended from his position on May 29, 1964 pending an investigation. He was never permitted to return to work and was dismissed from carrier's employment on June 18, 1964 because of misconduct. On June 29, 1964 the permanent vacancy resulting from the dismissal was bulletined. G. F. Chestnutt was assigned to the position previously held by the discharged employe pending expiration of bulletining. The position was awarded to R. L. Livingston on July 14, 1964 after proper bulletining.

Carrier urges that this Claim be dismissed for the reason that Claimants failed to cite the specific agreement provision allegedly violated while this claim was being handled on the property. Although many prior awards sustain Carrier's contention in this case, there are a substantial number of awards that do not. We believe that each claim stands on its own record insofar as the citing of specific rules while being handled on the property. The test should be: 1. Whether or not the Claimant has misled Carrier; 2. Whether or not the facts presented by the Claimant were sufficiently clear to apprise the Carrier of the nature of the Claim; and 3. Whether or not the Carrier requested of the Claimant the specific rules allegedly violated prior to the final denial of the claim. We believe in the instant case that: 1. The Carrier was not misled; 2. That the facts presented by Claimant were sufficiently clear to apprise Carrier of the nature of the claim; and 3. That the record discloses no request of Carrier for citation of specific rules allegedly violated by Carrier prior to final denial

of the claim.

We believe that Carrier should not be allowed to "lay behind a log" during good faith negotiations between Claimant and Carrier. If Carrier did not understand the basis of the Claim, it needed only to have requested specific citations prior to its final denial. Therefore the motion of Carrier to dismiss is hereby denied.

Now we shall discuss the merits of the Claim.

Claimants allege that Carrier violated the agreement of the parties when it assigned G. F. Chestnutt instead of Claimants to fill the vacancy created by the dismissal of a regular employe until such time that the position of the dismissed employe was permanently assigned after proper bulletining, advertising, and bidding.

The pertinent rules of this agreement are:

"Rule 39. (g) Where work is required by the Carrier to be performed on a day which is not a part of any assignment it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe. Note: See Appendix 'J'."

"Rule 24. (f) In filling vacancies or new positions of Drawbridge Tenders and Bridge Watchmen not filled by employes holding seniority in their respective groups, first consideration will be given to qualified applicants on the Division Bridge and Building roster. Employes below the grade of mechanic accepting such positions will retain their seniority rights on their respective rosters."

"Rule 25. A new position or vacancy of thirty (30) days or less duration shall be considered temporary and may be filled without bulletining, except that available employes holding seniority in the grade in which the vacancy occurs who are not assigned in such grade in the seniority district will be given preference in seniority order."

"Rule 27. (b) When it is not known fifteen (15) days in advance that such position is to be created or vacancy to occur, temporary assignment, as per Rule 25 may be made, pending result of bids received on bulletin which shall be posted promptly."

In the instant case the three Claimants held respective assignments to the three regular bulletined shifts. The dismissed employe had, prior to his dismissal, been regularly assigned to the relief shift. Claimants contend that they should have been assigned to work their respective days off at the time and one-half rate of his respective position.

In determining this claim we quote from Award No. 5311 which states: "It is significant to note that under the provisions of Rule 25, a vacancy of thirty days or less duration may be filled without bulletining, except that available employes holding seniority in the grade in which the vacancy occurs who are not assigned in the seniority district will be given preference in seniority order. The Claimant in this proceeding was assigned by bulletin to the second trick crossing flagman position at the time the vacancy occurred on the third

trick, and since he was holding an assignment in the same grade in the seniority district, he had no more right to the third trick assignment than any other employee." Award No. 5311 further states that doubling employees over from one shift to another is strictly an emergency measure which is resorted to only when there is no one else available to fill a vacancy which must be filled in order to meet the requirements of the service.

In the instant proceeding, Claimants were regularly assigned by bulletin to their respective positions at the time the vacancy occurred. There is no contention by Claimants that Carrier had any notice whatsoever that the vacancy would occur when it did.

Therefore, Carrier not only had the right but, under Rules 25 and 27(b), had the duty to fill such vacancy with a man not assigned in such grade in this seniority district.

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 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 Carrier did not violate the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September, 1966.