



Award No. 16332
Docket No. MW-17201

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY**

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

(1) The Carrier violated the Agreement and understandings and practices thereunder when it used Mechanical Helper A. S. Szozda to perform drawbridge tender's duties on Bridge No. 710 on October 8, 9, 29 and 30, 1965 instead of using Drawbridge Tender C. Welch to perform said work. (System Case No. BG-4-65/TM-3-65)

(2) Drawbridge Tender C. Welch now be allowed 32 hours' pay at his time and one-half rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On Friday, October 8, Saturday, October 9, Friday, October 29 and Saturday, October 30, 1965, the Carrier assigned Mechanical Helper A. S. Szozda to perform drawbridge work at Bridge No. 710. Mr. Szozda worked from 12 Midnight to 8 A.M. on October 8 and 9 and from 4 P.M. to 12 Midnight on October 29 and 30, 1965.

The claimant is a regularly assigned drawbridge tender at Bridge No. 710. Fridays and Saturdays are the claimant's assigned rest days. Hence, he was available to perform the subject work.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated August 1, 1952, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Claimant, a regularly assigned Bridge Tender, alleges that he should have been called for duty as Bridge Tender at time and one-half on his rest days on the 8th, 9th, 29th and 30th of October, 1965. The basis for his claim is that the Carrier violated

Effective September 1, 1949, the three regularly assigned full-time positions of Bridge Tender at Bridge 710 will be placed on a five-day week. A new position of a five-day relief bridge tender, effective September 1, 1949, will be bulletined.

This will provide relief for all rest days of bridge tenders at this bridge except 8:00 A.M. to 4:00 P.M. on Fridays. This shift will be relieved each Friday by a mechanical helper holding Gary seniority. To this mechanical helper will also be assigned all the necessary work in connection with cleaning and oiling Bridge 710 which is the work presently being done by the drawbridge tender helper when not relieving a drawbridge tender. When not needed to relieve drawbridge tenders and to oil and clean the bridge, this mechanical helper may be assigned to other work ordinarily done by mechanical helpers.

This work should be offered to the oldest mechanical helper on the Gary seniority roster who can qualify as a bridge tender. If declined by him, it should be offered to the next oldest, etc. If none of the mechanical helpers on the Gary roster desire this work, it should be assigned to the youngest.

/s/ F. G. Campbell

cc: J. Berta
F. T. Brandt"

(The above has been affirmed as an agreement by the Organization in its submission in conjunction with Award 14074.)

(Exhibits not reproduced.)

OPINION OF BOARD: The portion of this claim relating to October 29 and 30, 1965, should be denied on the basis of Award 15837 (Mesigh), where the same parties were involved with an identical situation.

Regarding that portion of the claim relating to October 8 and 9, 1965, Carrier used Mechanical Helper Szozda, who held seniority as a Drawbridge Tender, to perform Bridge Tender's duties on said dates, same being Claimant's rest days. Claimant held the greater seniority.

Carrier contends that Szozda was "the senior unassigned employee" and that Rule 12(c) would apply. However, in Award 14074 (Stark), which involved the same parties, we stated that Szozda was an assigned Bridge Tender at Bridge No. 710. The facts in the present record support this conclusion in that notwithstanding his regular assignment as Mechanical Helper, Szozda on Mondays was the Tag Relief Bridge Tender. This arrangement was accomplished by oral conference with Carrier and Organization's General Chairman.

Carrier seeks to expand said oral agreement by a unilateral communication, a copy of which it sent to the Organization's General Chairman. Collective bargaining is bilateral and there having been no showing by Carrier that the terms of the unilateral communication were heretofore applied in practice upon the property, we hold that said communication does not create an estoppel merely because a copy was mailed to the Organization, and in that light we rule that same is immaterial.

Rule 12(c) has no application in this dispute for the reason heretofore stated. See Awards 1774 (Rudolph) and 14946 (Ives). Therefore, where both Claimant and Szozda were assigned the overtime belonged to the one of them with the greater seniority, i.e., Claimant.

From the record, it appears that the only overtime with which Carrier was faced was on October 8, 1965, and for this reason that portion of the claim relating to October 9, 1965, should be denied.

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 Agreement was violated by the Carrier on October 8, 1965.

AWARD

Claim sustained as to October 8, 1965 only.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1968.