

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

George S. Ives, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES****LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it used an employe junior to J. S. Harville (O. L. Bounds) for overtime service from September 12 through September 30, 1965.
(Carrier's file E-304-14 E-304)

(2) Mr. J. S. Harville now be allowed 110½ hours' pay at his overtime rate because of the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: Claimant J. S. Harville and Mr. O. L. Bounds had established and held seniority as drawbridge tenders (Rank No. 5) in the Bridge and Building Sub-department. The claimant (seniority date — December 16, 1942) is senior to Mr. Bounds (seniority date — April 22, 1952) in that class and rank. During the period herein involved, they were both regularly assigned as drawbridge tenders, with work weeks extending from Monday through Friday (Saturdays and Sundays were rest days).

Prior to September 10, 1965, a hurricane struck that part of the Carrier's main line between Bay St. Louis, Mississippi and New Orleans, Louisiana. Bridges and track installations were damaged to the extent that track between the aforesaid locations was impassable and out of service. The only means of access to intermediate locations in the damaged area was by walking or by boat.

Communications and signal men were assigned to renew and repair various communications and signal facilities on the damaged territory. On each day from September 12 through September 30, 1965, the Carrier assigned and used junior Drawbridge Tender O. L. Bounds to operate one of its boats to transport said communications and signal men to and from various locations between Mile Post 766 and Mile Post 788 in the hurricane area. Mr. Bounds worked a total of one hundred ten and one-half (110½) overtime hours in the performance for said work, for which he was compensated at the drawbridge tender's time and one-half rate of pay.

the provisions of Rule 30(f) of the Maintenance of Way Agreement. Rule 30(f) reads as follows:

The senior available men shall be given preference in the assignment of overtime work on their home sections.

Seniority Ranks 4, 5, and 6 in the Bridge and Buildings Subdepartment are as follows:

"5(b) Bridge and Building Subdepartment:

* * * * *

4 - Carpenters, painters, tinner, sawyers and operators of light-duty cranes weighing (with counterweight) 29,000 pounds or more.

5 - Carpenter helpers, painter helpers, tinner helpers; operators of light-duty cranes weighing (with counterweight) less than 29,000 pounds; operators of concrete pumps, adzers, and similar machines; drawbridge tenders, pumpers, watchmen, and truck drivers.

6 - Laborers."

The current Maintenance of Way Agreement, effective May 1, 1960, which is on file with this Division and by reference is made a part of this submission does not provide for a classification of Motor Boat Operator. Since the claim was not supported by the agreement, and since he was not qualified to operate a boat in the marsh area in question, Mr. Harville's claim was declined.

Correspondence exchanged in connection with the claim is attached and identified as Carrier's Exhibits AA through JJ.

(Exhibits not reproduced.)

OPINION OF BOARD: The fundamental facts involved in this dispute are not in issue. Petitioner contends that Carrier violated the Agreement between the parties by using a junior drawbridge tender to operate a motor boat and transport communication and signal personnel to and from various locations between Mile Post 766 and Mile Post 788 from September 12 through September 30, 1965, following a hurricane. Claimant, a more senior drawbridge tender, contends that he was qualified and available for such work, and seeks compensation for 110½ hours at the time and one-half rate for overtime spent in performance of the disputed work by a junior drawbridge tender.

Petitioner concedes that the disputed work which arose out of an emergency situation does not come within the purview of the Scope Rule of the Agreement, but that Carrier was contractually obligated to assign such work in accordance with Rule 30(f) of the Agreement when it decided to have the motor boat operated by a drawbridge tender. Rule 30(f) reads as follows:

"The senior available men shall be given preference in the assignment of overtime work on their home sections."

Petitioner asserts that Claimant was as available and well qualified for the assignment as the junior employe used by Carrier to perform the disputed work.

Carrier insists that Rule 30 (f) is inapplicable because the work involved was not encompassed within the scope of the Agreement; that Claimant was unfamiliar with the territory and not qualified to perform the disputed work; and, finally, that Carrier was confronted with an emergency situation created by the hurricane, which justified Carrier's actions in this instance.

Previous Awards of this Board have held that the assignment of work to employes within a particular craft or class, which is not encompassed within the scope of the specific Agreement covering such employes, requires application of the seniority provisions of said Agreement in such assignments. Awards 13833, 13469, 13177, 6306, 5939 and 5604. Consequently, Rule 30 (f) would be controlling in this case unless Carrier's failure to comply was justified because of the emergency situation resulting from the hurricane or Claimant was not qualified to perform the disputed work.

Although an emergency situation existed, the disputed work was performed by a junior employe over a period of eighteen days during which time Carrier could have assigned Claimant to motor boat operations, if he was qualified. Therefore, the narrow issue for determination concerns Claimant's qualifications.

Carrier avers that Claimant was not qualified to operate a motor boat in the marshland in question where the operator was required to transport employes between LaFrance Landing and Chef Menteur, a distance of 21 miles. Furthermore, Carrier asserts that Claimant had only operated a boat on the particular body of water in question under the supervision of a foreman, and that no foreman was available to direct him during the period of claim. Petitioner denies Carrier's assertions, and contends that Carrier's own records will disclose that Claimant had previously been assigned to operate Carrier-owned boats on the same body of water as part of his work and was thoroughly familiar with this particular area.

This Board has previously held that a Carrier has no contractual obligation to assign work not within the scope of an agreement to an employe who is not qualified. Awards 14380, 14381 and 14382. The question of Claimant's qualifications has been raised by Carrier because of alleged unfamiliarity with the territory involved. Petitioner asserts that Claimant is familiar with the territory involved through previous assignments by Carrier as well as personal experience while operating his own boat. Thus, we are confronted with conflicting assertions as to material facts involved in this case which cannot be resolved by this Board. Petitioner has the burden of establishing through clear and convincing evidence that Claimant was fully qualified to perform the disputed work, and mere assertions do not constitute proof. Accordingly, the Claim must 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 not violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1968.