



Award No. 16663
Docket No. TE-15934

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert A. Franden, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Pere Marquette District)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chesapeake and Ohio Railway (Pere Marquette District), that:

1. Carrier violated the Agreement between the parties when on November 1, 8, 15 and 22, 1964, it required or permitted a person not covered by said Agreement to perform work at Wallaceburg Bridge, Ontario.

2. Carrier shall compensate Bridgetender A. J. Sheeler, Wallaceburg, Ontario for 5 hours and 30 minutes at bridgetenders' rate, November 1, 1964; 4 hours, 45 minutes November 8; 3 hours, 15 minutes November 15; and 7 hours, 15 minutes November 22, 1964, because of the violation set forth in paragraph one (1) hereof.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective September 1, 1958, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

On November 1, 1964, the following positions were in existence at Wallaceburg Bridge, Ontario:

1st Trick Bridgetender	8:00 A.M. to 4:00 P.M.	Rest Days Sat&Sun
2nd Trick Bridgetender	4:00 P.M. to 12:00 MN	Rest Days Mon&Tues
3rd Trick Bridgetender	11:59 P.M. to 7:59 A.M.	Rest Days Wed&Thur
Relief Bridgetender		Rest Days Fri&Sat

Claimant A. J. Sheeler is regularly assigned to the first trick bridge-tender position at Wallaceburg Bridge and was available for call on the dates claimed.

In the absence of available extra employes, Carrier chose to use one M. C. Stafford, an employe of the Clerks' Organization, to fill the temporary vacancy on the third trick bridgetender position at Wallaceburg Bridge, instead

furloughed status to the position of extra employe under the Transportation-Communication Employees' agreement and was used beginning that night to fill the third shift bridgetender vacancy. There were not at that time any senior extra employes in the Transportation-Communication Employees' craft available to fill this vacancy. Mr. Stafford did not stand to be recalled for work as clerk and did not perform service in the Clerks' craft after October 4, 1964 until December 9, 1964, at which time he was recalled as a clerk. Mr. Stafford elected to return to work as a clerk, relinquishing the seniority he had established in the Transportation-Communication Employees' craft as of October 15, 1964, his first day of service in that craft.

No money claims have been filed by or in behalf of any employes of the Transportation-Communication Employees' craft by reason of Mr. Stafford's service as a bridgetender on Mondays through Fridays during the period October 15 through November 22, 1964.

On the nights of Sundays, November 1, 8, 15 and 22, 1964, it was necessary to work a bridgetender on a call basis within the hours of the third-shift bridgetender assignment. Ordinarily this bridge is left open for river traffic from 8:00 A. M. Sunday until 8:00 A. M. Monday and no bridgetender is assigned to work any one of the three Sunday shifts, but on dates of claim a train operating only in Canada was operated over the sub-division involved and a bridgetender was called to position the bridge for train traffic and reposition it for river traffic after passage of the train.

Mr. Stafford, then holding the third-shift bridgetender position under the rules here involved as a temporary vacancy of less than sixty days, not known to be one of more than thirty days when it began, was given the Sunday calls. The claim here before your Board in behalf of the first shift bridgetender resulted.

OPINION OF BOARD: The Carrier has objected to the Board's jurisdiction in this matter and it is to that question which we must first address ourselves.

The Carrier's grounds for the objection to the jurisdiction of the Board are:

The incident which is the subject matter of this dispute involved Canadian Citizens who were employed by the Carrier solely within the territorial limits of Canada. It must necessarily follow that the Railway Labor Act does not apply to the settlement of the dispute at Bar.

JURISDICTION

The question of the jurisdiction of this Board arose in the dispute which was the subject of Award 12667, (Dorsey). That case involved the same organization and Carrier which are the parties hereto. In that case the Carrier objected to the jurisdiction of the Board on the same grounds that it has set forth in this matter. We hold that the reasoning applied in that case is sound and should be followed by this Board. We hold that the parties are properly before this Board and that we have jurisdiction over the subject matter here involved. By exercising the authority given this Board in Section 3, First (i) of the Railway Labor Act in interpreting and applying the Agreement between the parties, this Board in no way invades the sovereignty of another nation

or extends the jurisdiction of the Railway Labor Act beyond the territorial limits of the United States. Award 12667 (Dorsey) and Award 11639 (Dorsey).

MERITS

On its merits the claim herein must be denied. There is no provision in the Agreement between the parties prohibiting the Carrier from employing a furloughed employe of another craft. The burden is on the employe to show that some provision of the Agreement has been breached. This is not a situation where the employe stood to work in two crafts at the same time. There has been no showing that Stafford was not a bona fide Transportation-Communication Employes member and entitled to the work.

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 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 25th day of October 1968.

SPECIAL CONCURRENCE TO AWARD 16663, DOCKET TE-15934

We agree that the claim was without basis under the Agreement, but, for reasons stated in the Special Concurrence to Award 11639 and Dissent to Award 12667, we disagree with the holding that this Board had jurisdiction.

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